

**SUPPLEMENTAL BOARD BOOK
OF
September 2, 2021**



**Leo Vasquez III, Chair
Paul Braden, Vice-Chair
Sharon Thomason, Member
Ajay Thomas, Member
Brandon Batch, Member
Kenny Marchant, Member**

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
GOVERNING BOARD MEETING

A G E N D A
9:00 AM
September 2, 2021

Dewitt C. Greer State Highway Building
Ric Williamson Hearing Room
125 E. 11th Street
Austin, Texas 78701

CALL TO ORDER

ROLL CALL

Leo Vasquez, Chair

CERTIFICATION OF QUORUM

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

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

Resolution Recognizing October 2021 as National Energy Awareness Month

CONSENT AGENDA

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

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

EXECUTIVE

- a) Presentation, discussion, and possible action on Board meeting minutes summaries for July 8, 2021, and July 22, 2021

Beau Eccles
Board
Secretary

ASSET MANAGEMENT

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

Rosalio Banuelos
Director of Asset
Management

01086	Mission Oaks	Refugio
00155	Legend Oaks	Llano
99176	Mariposa Gardens Apartments	Mathis
99148	Windmill Run Apartment Homes	Sweeny
98148	Sandia Crossing	Luling
98147	Oaks at Winding Way	Gonzales

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

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

20024	Dallas Stemmons Apartments	Dallas
20212	Vernon Pioneer Crossing	Vernon
20495	Fawn Ridge Apartments	The Woodlands
05447	Providence Place II Apartments	Denton

BOND FINANCE

- d) Presentation, discussion, and possible action on Inducement Resolution No. 22-001 for Multifamily Housing Revenue Bonds Regarding Authorization for Filing Applications for Private Activity Bond Authority

Teresa Morales
Director of
Multifamily Bonds

21615	The Terrace at Southern Oaks	Dallas
21621	Palladium East Berry Street	Fort Worth
21622	Palladium Oak Grove	Fort Worth
21623	The Flats at White Rock	Dallas
21624	Potter’s House at Primrose	Dallas
21625	Primrose at Sequoia Park	Denton
21626	Rosemont at Pecan Creek	Denton
21627	River Trails Apartments	San Antonio

COMMUNITY AFFAIRS

- e) Presentation, discussion, and possible action on the Section 8 Program 2022 Streamlined Annual Public Housing Agency Plan for the Housing Choice Voucher Program

Michael DeYoung
Director of
Community Affairs

SINGLE FAMILY & HOMELESS PROGRAMS

- f) Presentation, discussion and possible action on the appointment of Colonia Resident Advisory Committee members
- g) Presentation, discussion, and possible action on Colonia Self-Help Center Program Awards to Cameron County and Val Verde County in accordance with Tex. Gov’t Code §2306.582 through Community Development Block Grant Funding
- h) Presentation, discussion, and possible action on a proposed amendment to a Colonia Self-Help Center Program Contract with Maverick County in accordance with 10 TAC Chapter 25, the Colonia Self-Help Center Program Rule
- i) Presentation, discussion, and possible action on proposed amendments to the 2022-2023 Texas Housing Trust Fund Biennial Plan and authorization to enter into a capacity building agreement with Habitat for Humanity Texas, Inc.
- j) Presentation, discussion, and possible action authorizing extension to Neighborhood Stabilization Program 1 contract for City of Port Arthur

Abigail Versyp
Director of Single Family
and Homeless Programs

RULES

- k) Presentation, discussion, and possible action on an order proposing the repeal, and proposed new rule, for 10 TAC Chapter 1, Subchapter C, Previous Participation and Executive Award Review and Advisory Committee, §1.301 Previous Participation Reviews for Multifamily Awards and Ownership Transfers, §1.302 Previous Participation Reviews for Department Program Awards Not Covered by §1.301 of this Subchapter, and §1.303 Executive Award and Review Advisory Committee (EARAC), and an order directing their publication for public comment in the Texas Register
- l) Presentation, discussion, and possible action on an order proposing the repeal, and proposed new rule, for 10 TAC Chapter 1, Subchapter D, Uniform Guidance for Recipients of Federal and State Funds; §1.401 Definitions; §1.402 Cost Principles and

Brooke Boston
Deputy Director of
Programs

Administrative Requirements; §1.403 Single Audit Requirements; §1.404 Purchase and Procurement Standards; §1.407 Inventory Report; and §1.411 Administration of Block Grants under Chapter 2105 of the Tex. Gov't Code and an order directing their publication for public comment in the Texas Register

- m) Presentation, discussion, and possible action on an order proposing amendments to 10 TAC, Chapter 10, Subchapter G, §10.801, Affirmative Marketing Requirements, and directing its publication for public comment in the Texas Register
- n) Presentation, discussion, and possible action on an order proposing the repeal of 10 TAC Chapter 20, Single Family Programs Umbrella Rule, and an order proposing new 10 TAC Chapter 20, Single Family Programs Umbrella Rule, and directing their publication for public comment in the Texas Register
- o) Presentation, discussion, and possible action on an order proposing the repeal of 10 TAC Chapter 21, Minimum Energy Efficiency Requirements for Single Family Construction Activities, and an order proposing new 10 TAC Chapter 21, Minimum Energy Efficiency Requirements for Single Family Construction Activities, and directing their publication for public comment in the Texas Register
- p) Presentation, discussion, and possible action on an order proposing the repeal of 10 TAC Chapter 24, Texas Bootstrap Loan Program Rule, and an order proposing new 10 TAC Chapter 24, Texas Bootstrap Loan Program Rule, and directing their publication for public comment in the Texas Register
- q) Presentation, discussion, and possible action on an order proposing the repeal of 10 TAC Chapter 25, Colonia Self-Help Center Rule, and an order proposing new 10 TAC Chapter 25, Colonia Self-Help Center Rule, and directing their publication for public comment in the Texas Register
- r) Presentation, discussion, and possible action on an order proposing the repeal of 10 TAC Chapter 26, Texas Housing Trust Fund Rule, and an order proposing new 10 TAC Chapter 26, Texas Housing Trust Fund Rule, and directing their publication for public comment in the Texas Register
- s) Presentation, discussion, and possible action on an order proposing the repeal of 10 TAC Chapter 6, Community Affairs Programs; an order proposing new 10 TAC Chapter 6, Community Affairs Programs; and directing that they be published for public comment in the Texas Register

Abigail Versyp
Director of Single Family
and Homeless Programs

Michael DeYoung
Director of
Community Affairs

SECTION 8

- t) Presentation, discussion, and possible action ratifying staff's action to submit one or more Registrations of Interest to the U.S. Department of Housing and Urban Development a request for additional Veterans Affairs Supportive Housing vouchers within Kerr, Bandera, Medina, Fort Bend and Galveston counties, and if successfully awarded by HUD, authority to make those additional vouchers available through a competition as project-based vouchers

Andre Adams
Manager of Section 8

MULTIFAMILY FINANCE

- u) Presentation, discussion, and possible action to amend the 2021-1 and 2021-3 Multifamily Direct Loan Notice of Funding Availability
- v) Presentation, Discussion, and Possible Action on a waiver of 10 TAC §13.8(b) and other impacted Administrative rules related to floating NHTF units for Vernon Pioneer Crossing in Vernon and approval to submit, as needed, to the U.S. Department of Housing and Urban Development an amendment to the Department's Consolidated Plan/Action Plan
- w) Presentation, Discussion, and Possible Action on waivers relating to 10 TAC §13.3, related to ineligibility of Adaptive Reuse, and 10 TAC §11.1(d)(1), related to Adaptive

Charlotte Flickinger
Multifamily Direct
Loan Manager

Reuse treatment as new construction for Commons at St. Anthony's in Amarillo for National Housing Trust Fund purposes, and approval to submit, as needed, to the U.S. Department of Housing and Development an amendment to the Department's Consolidated Plan/Action Plan

- x) Presentation, discussion and possible action on requests for return and reallocation of tax credits under 10 TAC §11.6(5) related to Credit Returns Resulting from Force Majeure Events for Applications Awarded Competitive (9%) Housing Tax Credits in Prior Application Rounds

Brooke Boston
Deputy Director of Programs

20018	The Park Tower	Fort Worth
20042	Commons at St. Anthony	Amarillo
20075	New Hope Housing Savoy	Houston
20083	Lakeview Preserve	Irving
20114	3300 Caroline Street	Houston
20192	Arbor Park	Austin
20204	Heritage Senior Residences	Houston
20205	Ella Grand	Houston
20212	Vernon Pioneer Crossing	Vernon
20272	Westwind of Dumas	Dumas
20344	Merritt Sunset	Midland

CONSENT AGENDA REPORT ITEMS

ITEM 2: THE BOARD ACCEPTS THE FOLLOWING REPORTS:

- a) Media Analysis and Outreach Report (June, July 2021)
- b) Report on Activities Related to the Department's Response to COVID-19 Pandemic
- c) Report on the Department's Swap Portfolio and recent activities with respect thereto

Michael Lyttle
Director of External Affairs
Brooke Boston
Deputy Director of Programs
Monica Galuski
Director of Bond Finance

ACTION ITEMS

ITEM 3: EXECUTIVE

Executive Director's Report

Bobby Wilkinson
Executive Director, TDHCA

ITEM 4: ACTION REPORT ITEMS

- a) Report regarding the 2021 Competitive Housing Tax Credit awards
- b) Quarterly report relating to staff-issued Determination Notices for 2021 Non-competitive 4% Housing Tax Credit applications

Brooke Boston
Deputy Director of Programs
Teresa Morales
Director of Multifamily Bonds

ITEM 5: BOND FINANCE

Presentation, discussion, and possible action on Resolution No. 22-002 authorizing modifications to single family homeownership programs and approving amending program documents and program guidelines, authorizing the execution of documents and instruments relating to the foregoing, making certain findings and determinations in connection therewith, and containing other provisions relating to the subject; and possible waiver of 10 TAC 10 TAC §27.4(a) and 10 TAC §28.4(a)

Monica Galuski
Director of Bond Finance

ITEM 6: SINGLE FAMILY & HOMELESS PROGRAMS

Presentation, discussion, and possible action on Program Year 2021 Emergency Solutions Grants Program Awards

Naomi Cantu
Homeless Programs Manager

ITEM 7: CDBG CARES

Presentation, discussion, and possible action on the Community Development Block Grant Coronavirus Aid, Relief, and Economic Security Act Texas Emergency Mortgage Assistance Program awards and any timely filed appeals

Rudy Bentancourt
CDBG CARES Director

ITEM 8: RULES

- a) Presentation, discussion, and possible action on an order proposing the repeal of 10 TAC Chapter 12, concerning the Multifamily Housing Revenue Bond Rules, and an order proposing new 10 TAC Chapter 12 concerning the Multifamily Housing Revenue Bond Rules, and directing their publication for public comment in the Texas Register
- b) Presentation, discussion, and possible action on the proposed repeal of 10 TAC Chapter 11 concerning the Housing Tax Credit Program Qualified Allocation Plan, proposed new 10 TAC Chapter 11 concerning the Housing Tax Credit Program Qualified Allocation Plan, and directing their publication for public comment in the Texas Register
- c) Presentation, discussion, and possible action on an order adopting new 10 TAC §1.8, Plan Requirements, Process, and Approval Criteria for Properties Designated for Camping by Political Subdivisions for Homeless Individuals, and directing its publication for adoption in the Texas Register

Teresa Morales
Director of
Multifamily Bonds

Brooke Boston
Deputy Director of
Programs

ITEM 9: ASSET MANAGEMENT

- a) Presentation, Discussion, and Possible Action regarding a workout for La Esperanza Del Rio (HOME #1002040)
- b) Presentation, discussion, and possible action regarding an increase to the Housing Tax Credit amount

Rosalio Banuelos
Director of Asset
Management

18614	Springs Apartments	Balch Springs
16429	Pointe at Crestmont	Houston

ITEM 10: MULTIFAMILY FINANCE

- a) Presentation, Discussion, and Possible Action on a waiver relating to 10 TAC §11.101(b)(2), related to Development Size Limitations for Bluff View Apartments in Boerne
- b) Presentation, discussion and possible action regarding eligibility under 10 TAC §11.101(b)(1)(C) related to Ineligibility of Developments within Certain School Attendance Zones for Marine Park Apartments in Fort Worth
- c) Presentation, discussion, and possible action regarding the issuance of Determination Notices for 4% Housing Tax Credit Applications

Teresa Morales
Director of
Multifamily Bonds

21451	Horizon Pointe	San Antonio
21450	W. Leo Daniels	Houston

- d) Presentation, Discussion and Possible Action Relating to the Use of 2022 Credit Ceiling to Provide Allocations of Credits to 2021 Competitive Housing Tax Credit Applicants Negatively Impacted by Department Ministerial Error

Brooke Boston
Deputy Director
of Programs

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):

Leo Vasquez
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 Nancy Dennis, at 512-475-3959 or Relay Texas at 1-800-735-2989, at least five days before the meeting so that appropriate arrangements can be made. Non-English speaking individuals who require interpreters for this meeting should contact 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

1u

BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION
SEPTEMBER 2, 2021

Presentation, discussion, and possible action to amend the 2021-1 and 2021-3 Multifamily Direct Loan Notices of Funding Availability

RECOMMENDED ACTION

WHEREAS, the Governing Board approved publication of the Multifamily Direct Loan (MFDL) 2021-3 NOFA on June 17, 2021, in response to need expressed by previously approved Low Income Housing Tax Credit (LIHTC) applicants for gap financing to cover increased costs of construction caused by the COVID-19 pandemic;

WHEREAS, certain 2021-3 Applications do not qualify for National Housing Trust Fund (NHTF), but could qualify for HOME Investment Partnerships Program (HOME) funding due to HOME's less restrictive income limits or because the site is ineligible for NHTF;

WHEREAS, staff recommends transferring \$11,000,000 in HOME funds from the 2021-1 NOFA to the 2021-3 NOFA, effective immediately;

WHEREAS, current Applicants under the 2021-3 NOFA (21-3 Applicants or Applications) are limited to 2019 and 2020 approved LIHTC applicants;

WHEREAS, staff recommends approving eligibility under the 2021-3 NOFA for 2019 and 2020 Direct Loan-only Applicants because they have also experienced construction price increases;

WHEREAS, staff recommends providing for three set-asides within the NOFA to facilitate the orderly allocation of the funds that are or may become available under this NOFA, to further the Department purposes set forth at Tex. Gov't Code §2306.001, and to provide immediate funding availability to address the exigent need for Supportive Housing;

WHEREAS, staff recommends a General Set-Aside, to be funded with \$31,575,662 of NHTF from the 2021-3 NOFA and \$6,000,000 of HOME funds from the 2021-1 NOFA, where MFDL units are income and rent restricted to no greater than 30% of the Area Median Income (AMI), in order to facilitate and further the Department's purpose of providing affordable housing for Extremely Low-Income Texans;

WHEREAS, staff recommends a HOME Set-Aside, to be funded with \$5,000,000 in HOME funds from the 2021-1 NOFA and where MFDL units are distributed among income levels up to 80% AMI and rent levels up to High HOME rents;

WHEREAS, there is exigent need for supportive housing for Chronically Homeless individuals within the State, and a ready inventory of commercial space that may be readily converted to serve this population in an efficient and cost-effective manner;

WHEREAS, staff recommends a Supportive Housing Set-Aside, to be funded with \$6,000,000

in NHTF funds from the 2021-3 NOFA, and where at least 40% of the total units have a preference for households that contain at least one member who is Chronically Homeless, as that term is defined by HUD, in order to provide a means for the development community to address the exigent need for immediate, permanent housing in many areas of the State, and to further the purpose of addressing the problem of homelessness in Texas;

WHEREAS, applications received on or before September 1, 2021, will be placed in the General Set-Aside;

WHEREAS, due to concerns regarding the potential risk of federal fund repayment requirements if HUD environmental regulations governing Direct Loan programs are violated, this NOFA currently considers all developments under construction as ineligible, except where the only construction has been for necessary health and safety repairs;

WHEREAS, this risk is somewhat mitigated where Developments under construction have previously received environmental clearance required under other federal programs (“Part 50” or “Part 58” reviews);

WHEREAS, HUD has confirmed that under the HOME program, the prior Responsible Entity must bear the burden of additional clearance requirements and that HUD strongly recommended that NHTF Developments cease construction for the duration of the environmental review and clearance process;

WHEREAS, staff recommends that Applications that have started construction and have prior clearance under 24 CFR Part 50 or Part 58 be eligible where the prior Responsible Entity agrees, by October 4, 2021, to perform additional clearance activities;

WHEREAS, in order to limit risk to the Department, NHTF Developments under construction must cease construction as of the date of application submission for the duration of the environmental review and clearance process and the Application would be subject to immediate termination if this requirement is violated in any way;

WHEREAS, because negotiations are continuing with the Federal Housing Administration (FHA) regarding FHA-required loan closing documents, staff recommends the Department reserve funds for FHA layered Applications under the 2021-3 NOFA through November 30, 2021, or other date approved by the Executive Director, but not later than February 28, 2022, and until the required documents are agreed upon, the Applicant may replace its FHA funds without getting a new Application Acceptance Date;

WHEREAS, extending the 2021-3 NOFA to October 15, 2021, will facilitate necessary adjustments to Applications that may move forward if the Board approves these amendments;

WHEREAS, waiver of certain non-regulatory and non-statutory requirements, along with application of certain alternative requirements, will allow for a more efficient and less expensive Application process; and

WHEREAS, staff recommends approval of the proposed Amendments to the 2021-1 and 2021-3 NOFAs, along with waiver of non-regulatory and non-statutory requirements as described in the NOFA.

NOW, therefore, it is hereby

RESOLVED, that the Executive Director is authorized to amend the 2021-1 and 2021-3 NOFAs, to put additional unprogrammed Departments funds into the NOFA before the next Board meeting and if applicable to further amend the NOFA to reflect the requirements of these additional fund sources;

FURTHER RESOLVED, that the General, HOME, and Supportive Housing Set-Asides be created and \$11,000,000 in HOME funds be transferred from the 2021-1 NOFA to the 2021-3 NOFA and, together with \$37,575,662 NHTF funding in the 2021-3 NOFA, be distributed as follows: General Set-Aside, \$31,756,662 in NHTF, \$6,000,000 in HOME; HOME Set-Aside, \$5,000,000 in HOME; Supportive Housing Set-Aside, \$6,000,000 in NHTF, provided that the Executive Director may also include unprogrammed funds in any Set-Aside at his discretion, and that funds will be divided as indicated in the NOFA if a Set-Aside is under- or oversubscribed on October 14, 2021; 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 post on the Department's website and to publish a notification in the *Texas Register* these amendments and to make any technical corrections or perform such other acts as may be necessary to effectuate the foregoing.

Background

The Board approved the 2021-3 NOFA on June 17, 2021, to provide relief from severe construction cost overruns experienced by LIHTC approved developments resulting from material shortages caused by COVID-19. Eleven applications were received between July 16 and August 23, 2021, and more applications are reportedly in process as demonstrated by calls to Department staff.

2021-3 MFDL Applications as of August 23, 2021							
TDHCA #	Property Name	Property City	Property County	Region	Direct Loan Request	Target Population	Total Units
21502	Lockwood South Apartments	Houston	Harris	6	\$ 1,300,000	General	80
21503	Connect South Apartments	Houston	Harris	6	\$ 3,000,000	General	77
21504	Palladium Fain Street Apartments	Fort Worth	Tarrant	3	\$ 528,735	General	90
21507	Westwind of Dumas	Dumas	Moore	1	\$ 1,100,000	General	64
21508	Arbor Park	Austin	Travis	7	\$ 2,222,900	Elderly	147
21509	Ella Grand	Houston	Harris	6	\$ 2,180,000	Elderly	145
21505	Vernon Pioneer Crossing	Vernon	Wilbarger	2	\$ 1,050,000	Elderly	64
21506	The Commons at St. Anthony's	Amarillo	Potter	1	\$ 2,000,000	Elderly	124
21510	Avanti Viking Hills	Waco	McLennan	8	\$ 4,500,000	General	82
21511	Lofts at Temple Medical Center	Temple	Bell	8	\$ 1,740,490	Elderly	140
21512	Dallas Stemmons Apartments	Dallas	Dallas	3	\$ 540,000	General	87
Total Amount Requested					\$ 20,162,125	Total Units	1,100

The 2021-3 NOFA contains \$37,575,662 in Program Year 2021 national Housing Trust Fund (NHTF), \$17,413,537 of which remained unrequested as of August 23, 2021. The early review of applications has resulted in some 2021-3 Applications being unable to meet NHTF requirements, while others may not be financially feasible due to NHTF requirements, once all reviews are completed. Since the primary intent of the 2021-3 NOFA is to assist 2019 and 2020 Applicants that have experienced increased costs due to the COVID-19 pandemic, an alternative Multifamily Direct Loan funding source that will assist 2021-3 Applications unqualified for NHTF but still suffering from severe cost overruns is needed. Adding HOME funds will expand the number of Developments that might be assisted under this NOFA, though HOME funds are prohibited to fund Applications within the Participating Jurisdictions within the State, in keeping with Tex. Gov't Code §2306.111(c)(1).

Palladium at Fain Street and Dallas Stemmons Apartments¹ have requested that staff amend this NOFA to provide a means for assisting 2021-3 Applications under construction, and staff believes there are a similarly situated Developments also impacted that would apply if eligible.

That these Applications require financial assistance is undisputed, but their need must be weighed against any risk the Department might incur if federal environmental regulations are not followed. Developments subject to Part 58, without a prior federally required environmental clearance may not be eligible, as the risk is too great; HUD has specifically communicated that they believe this would be a violation of the NEPA requirements. Staff has conferred with HUD environmental staff to further quantify the risk associated with three scenarios for 2021-3 Applications subject to Part 58 where the Developments are already under construction and have previous environmental clearance under Part 50 or Part 58 regulations. HUD has confirmed that we may offer

¹ If this amendment is adopted by the Board, per 10 TAC §13.1(c) these Applications will receive a new Application Acceptance Date of September 2, 2021, because they were not eligible to apply under the NOFA previously.

a partial solution where the original agency that provided environmental clearance, also known as the “Responsible Entity” would agree to make a determination of supplemental funding or perform a re-evaluation of the original review; if the Responsible Entity agreed and the review was favorably reported, or cleared, the Development could proceed with funding the Application.

HUD staff also indicated that NHTF funds were better suited for Developments that have closed or are under construction, likely because NHTF is outcome driven through goals stated in the NHTF Allocation Plan and is not a “Federal Action”. NHTF does not have the same environmental review requirements as other federal sources that are subject to Federal Actions such as appropriation.² Also, the NHTF has no required public comment period, which reduces the necessary time for review. HUD further suggested that the Department could mitigate remaining risk by requiring construction to cease and requiring Applicants to accept the risk of failure to clear. Construction would have to cease upon submission of an Application to the Department until the Department issues clearance. This timeframe is significantly shorter than for HOME, so the “downtime” for contractors and subcontractors would also be reduced. By also placing the burden on the 2021-3 Applicant to accept the full risk where a 2021-3 Development fails to receive environmental clearance, the Department would be exposed to no more risk than under the regular environmental review process (where construction has not commenced).

For both HOME and NHTF Developments that have started construction, the Department will not recommend the Applicant for an award until the environmental review and clearance process is completed. Funds will be held in reserve for these applications, until November 30, 2021, or such other date allowed for good cause by the Executive Director, but in no case later than February 28, 2022.

Staff believes these revisions will serve to improve the Department’s ability to assist Developments in need of gap financing to move forward, while maintaining the Department’s ability to commit and expend MFDL funds in keeping with program requirements.

² NHTF allocations do not constitute a Federal Action because NHTF funds are not appropriated by Congress, but rather annually transferred to HUD from the Federal Housing Finance Administration, as required by NHTF enabling legislation and regulations.²



TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
MULTIFAMILY DIRECT LOAN
2021-3 NOTICE OF FUNDING AVAILABILITY (NOFA)
1st Amendment
EFFECTIVE September 3, 2021

- 1) **Summary.** This Amendment increases the funding and sources available, creates Set-Asides, provides for circumstances under which Developments in Construction may apply for funding, and ancillary revisions by amending Sections 1 through 7. The Texas Department of Housing and Community Affairs (the Department) announces the availability of ~~\$3748,575,662~~ ~~of National Housing Trust Fund (NHTF)~~¹ for the development of affordable multifamily rental housing for low-income Texans. Applicants in the General or HOME Set-Aside must have received a Low Income Housing Tax Credit allocation in 2019 or 2020, or have received an NHTF award under a 2019 or 2020 NOFA. The maximum Application request is \$5,000,000, unless the Application qualifies for the Supportive Housing Set-Aside, in which case the maximum request is \$6,000,000. Applications under the 2021-3 NOFA will be accepted from June 21, 2021, through October 15, 2021 (if sufficient funds remain). Developments that receive funds under this NOFA will be considered 2021 Developments on the Department's Site Inventory, unless the Development also receives force majeure treatment under 10 TAC §11.6(5).

The capitalized words in this NOFA, and the availability and use of these funds are subject to the following rules, as applicable:

- a. Texas Administrative Code (with the exception of waivers in Section 3 of this NOFA)
10 TAC Chapter 1 (Administration)
10 TAC Chapter 2 (Enforcement)
10 TAC Chapter 10 (Uniform Multifamily Rules)
10 TAC Chapter 11 (Qualified Allocation Plan)
10 TAC Chapter 12 (Multifamily Housing Revenue Bonds)
10 TAC Chapter 13 (Multifamily Direct Loan Rule)
[http://texreg.sos.state.tx.us/public/readtac\\$ext.ViewTAC?tac_view=3&ti=10&pt=1](http://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=3&ti=10&pt=1)

- b. Texas Government Code
Tex. Gov't. Code Chapter 2306
<http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.2306.htm>
- c. U.S. Department of Housing and Urban Development (HUD) Program Regulations

24 CFR Part 92 (HOME)
24 CFR Part 93 ([Housing Trust Fund Interim Rule](#))
- d. Fair Housing
Federal Fair Housing Act, 42 U.S.C. 3601-19. <https://www.tdhca.state.tx.us/fair-housing/index.htm>
- e. Other Federal laws and regulations that apply:

Environmental Compliance

All federal sources must have some type of environmental review in accordance with

24 CFR Part 9258 (HOME)

24 CFR Part 93 (NHTF)

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

Minimizing Resident Displacement

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

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

Employment Opportunities

NHTF requires compliance with 24 CFR Part 135 (Section 3).

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

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

If Federal regulations or subsequent guidance imposes additional requirements, such Federal regulations or guidance shall govern.

- f. HUD approval of an amendment to the 2020 Action Plan and HUD approval of the 2021 Action Plan may be required prior to the Department awarding funds. ~~Such approval is anticipated to occur by September 1, 2021.~~ The amendments to the Consolidated Plan/Action Plan required by the original NOFA were accepted by HUD on August 24, 2021.

2) Priorities

- a. Applications submitted by July 20, 2021, that request less than RAF amount in Attachment A for the region in which the Development Site is located will have an

- Application Acceptance Date of July 20, 2021. Applications submitted by July 20, 2021, that request greater than RAF amount in Attachment A for the region in which the Development Site is located or if there were insufficient funds to award an application under Priority 2a, will have an Application Acceptance Date of July 21, 2021.
- b. Applications in the General Set-Aside received between July 21 and October 5~~15~~, 2021 will have an Application Acceptance Date the later of July 22, 2021, or the business day the Application is received.
 - c. Applications received under the Supportive Housing Set-Aside will have an Application Acceptance Date of the latter of September 17, 2021, or the business day the Application is received.
 - d. Applications received under the HOME Set-Aside will have an Application Acceptance Date of the latter of September 17, 2021, or the business day the Application is received.
 - e. All Application Acceptance Dates will be determined in accordance with 10 TAC §13.5(b).
 - f. Per 10 TAC §13.1(c), Applications granted an administrative waiver by the Governing Board will have a new Application Acceptance Date of the date the rule waiver was granted (if an amendment to the Consolidated Plan/Action Plan is not required) or the date that the Consolidated Plan/Action Plan amendment is approved by HUD.

3) Set-Asides³

- a. General Set-Aside. NHTF and HOME are available in this Set-Aside. Eligible units are limited to 30% Rent and Household Income. Per 10 TAC §13.5(g), the Department will decide in its sole authority which fund source is recommended for an award to the Applicant.
- b. Supportive Housing Set-Aside. The NHTF will be reserved for Supportive Housing Adaptive Reuse Developments, that are not layered with federal historic tax credits, -that will provide a preference for households with at least one member that meets the definition of Chronically Homeless at 24 CFR §576.8 (or subsequent HUD definition) for 40% or more of the total Units. Unrequested funds in this Set-Aside remaining after October 13, 2021, will be automatically moved to a Set-Aside that is oversubscribed or divided between the General Set-Aside and the HOME Set-Aside, if both are over-subscribed.
- f.c. HOME Set-Aside. To apply in this Set-Aside, the Applicant must receive written notice from the Department that its Application in the General Set-Aside is infeasible and would not be recommended for an award. For all Applicants that have an Application Acceptance Date before August 30, 2021, the Multifamily Finance Division will provide this notice on or before September 9, 2021.⁴ The Applicant can then choose to withdraw the General Set-Aside Application and apply in the HOME Set-Aside or may appeal this determination in accordance with 10 TAC §1.7. Applicants in this Set-Aside may have

³ Under Tex. Gov't Code §2306.111(c)(1), HOME funding is geographically limited to areas of the State located outside of 41 urban-cities, counties, and one consortium areas that receive a direct allocation of HOME funds from HUD, commonly known as Participating Jurisdictions, unless waived by the Governor.

⁴ The Application could still be determined infeasible after this date by Real Estate Analysis Division or not be recommended for an award by the Executive Award Recommendation Committee.

units up to 80% AMI, but must have the income distribution required under 10 TAC §11.204(8)(D). If this Set-Aside has unrequested funds on October 13, 2021, the Department will automatically move the remaining funds into the General Set-Aside.

34) Limitations, Waivers, and Alternative Requirements

- a. The amount of funding that may be requested is limited to: the documented increase in Building Costs from the previous Application, within the limitations of 10 TAC §13.3(e) related to Ineligible Costs; the documented costs of compliance with Housing Trust Fund regulations at 24 CFR Part 92 and 93 (that are not already required by the funding sources identified as part of the ~~2019~~LIHTC or ~~2020 LIHTC~~NHTF award); and the documented costs of compliance with the Uniform Relocation Act/104d (that are not already required by the funding sources identified as part of the ~~2019 or 2020~~ LIHTC or NHTF award).
- b. The Developer Fee may not increase, and the deferred Developer Fee may not decrease from the original Real Estate Analysis report.
- c. For HOME, a choice-limiting action may not have occurred, except for site acquisition that was completed before the contemplation of the submission of the multifamily application, except where the Application has prior environmental clearance under 24 CFR Part 50 or Part 58, and where the prior 24 CFR 50 or 58 "Responsible Entity" agrees in writing by October 4, 2021, to make a determination of supplemental funding or perform a re-evaluation of the original review.
- d. For NHTF, if construction has started (except for necessary health and safety repairs) the Applicant must cease construction at application submission until environmental clearance is received, a period which could last 120 or more days; Applications will not be recommended for an award if they do not meet Department standards for environmental clearance, and will be denied further consideration for Direct Loan funds.
- e. Texas Administrative Code waivers and Alternative Requirements ~~provided for in this NOFA~~for the HOME and General Set-Asides:
 - i. 10 TAC §11.101(a)(2) related to Undesirable Risk Features, to the extent that the undesirable feature was disclosed at original Application;
 - ii. 10 TAC §11.101(a)(3)(B)(iii) related to blight and 10 TAC §11.01(a)(3)(B)(iv) related to schools, including disclosure requirements, to the extent that the risk factor was disclosed at original Application;
 - iii. 10 TAC §11.205 related to Required Third Party Reports, with the exception that the Department may request updates to any Report deemed necessary to evaluate an Application under this NOFA;
 - iv. 10 TAC §13.1(c)(1) related to Waivers for Layered Developments, instead Applicant requested Waivers will be treated under 10 TAC §13.1(c)(2);
 - v. 10 TAC §13.4(s)(1)(A)(ii)(III) related to 30% units restricted by Housing Tax Credits;
 - vi. 10 TAC §13.5(c) related to Market Analysis; 10 TAC §13.5(g)(2) and (3)(A)-(C) related to eligibility determinations;
 - ~~vii.~~ 10 TAC §13.5(i) related to Effective Rules, only to the extent that the requirements of the applicable 2019 or 2020 QAP requirements for prior LIHTC or Multifamily Direct Loan awards will instead be utilized 10 TAC §11.101(4)

Mandatory Development Amenities, 10 TAC §11.101(5) Common Amenities, 10 TAC §11.101(6) Unit Requirements, and 10 TAC §11.101(7) Resident Supportive Services will apply.

~~viii-vii.~~ 10 TAC §13.6 relating to scoring, only to the extent that scoring in 10 TAC §11.9 will not apply.

viii. 10 TAC §13.8(a)(2) relating to the requirement that HOME loans be structured as fully repayable (must pay and only as described in Section 5 of this NOFA).

ix. 10 TAC §13.11(c)(2) relating to environmental review, the 90-day requirement will be 30 days from the Application Acceptance Date.

f. Texas Administrative Code waivers and Alternative Requirements in the Supportive Housing Set-Aside

i. A waiver of 10 TAC §13.3(d)(2)(A)

ii. For NHTF purposes only, the Department may choose to identify this activity as other than New Construction, despite the language in 10 TAC §11.1(d).

45) Loan Terms

a. Construction-to-Permanent Loans in the General Set-Aside and the Supportive Housing Set-Aside. Loans will be structured as deferred-forgivable, deferred-payable, Surplus Cash (sometimes referred to as cash-flow), or with must pay monthly provisions, as required to optimize assistance to the Development, as recommended by Real Estate Analysis (REA). For Federal Housing Administration layered transactions subject to the MAP Guide, only the Surplus Cash option is available. The term of the loan and the amortization period (not to exceed 40 years) will match any superior debt, with an interest rate as low as 0% interest.⁵

b. Construction to Permanent Loans in the HOME Set-Aside. Applicants may only apply for loans structures allowed under 10 TAC §13.8(a)(2) with a 2.5% interest rate, even if sources and uses appear unbalanced. REA may recommend a lower interest rate, a deferred-forgivable, or a deferred payable option, as required to meet the federal rules or the Administrative Rules.

~~b.c.~~ Construction-Only Loans. Requests structured as construction-only loans will have an interest rate of 0% with the principal amount of the Direct Loan due upon the end of the construction loan term as established in 10 TAC §13.8(e)(1).

6) Maximum Per Unit Subsidy Limits and Maximum Rehabilitation Per-Unit Subsidy Limits.

The maximum per unit subsidy limits that an Applicant can use to determine the amount of Direct Loan funds they may request are listed in the 2021 Maximum Per Unit Subsidy Limits table provided in this Section 446:

⁵ The Department does not currently have an agreement with FHA regarding its Subordination Agreement or Riders and thus at present cannot make awards to Applications layered with FHA funds that are subject to the MAP Guide in the permanent financing structure. The Department will reserve funds for these Developments through at least November 30, 2021, (or other date approved by the Executive Director, but not later than February 28, 2022). While the Department does not have an approved agreement with FHA, the Applicant may replace its FHA funds without getting receiving a new Application Acceptance Date.

2021 Maximum Per Unit Subsidy Limits ⁶		
Bedrooms	Non-elevator property	Elevator-served property
0 bedroom	\$145,685	\$153,314
1 bedroom	\$167,978	\$175,752
2 bedroom	\$202,586	\$213,718
3 bedroom	\$259, 203 20	\$276,482
4 bedroom or more	\$288,893	\$303,490

Smaller per unit subsidies are allowable and ~~incentivized~~incentivized as point scoring items in 10 TAC §13.6. Once the Applicant commits a number of Direct-Loan Units in the Application, the number may be raised, at Department request, to account for a change in Development costs or to account for other federal funding, but the number may not be lowered.

7) Application Submission Requirements.

- a. **Application Acceptance Period.** Applications under this NOFA will be accepted starting at 8:00 a.m. Austin local time on June 21, 2021, through October 5~~15~~, 2021 at 5:00 p.m. Austin local time (if sufficient funds remain). **Applications requesting rule waivers or amendment to the Consolidated Plan or -Action Plan will be accepted through September 17, 2021, at 5:00 p.m. Austin local time.** An Applicant may have only one active Application per Development at a time under this or any other Department NOFA.
- b. **Application Submission Materials.** All Application materials including manuals, NOFAs, program guidelines, and rules will be available on the Department’s website at <https://www.tdhca.state.tx.us/multifamily/apply-for-funds.htm>. Applications will be required to adhere to the requirements in effect at the time of the Application submission including any requirements of federal rules that may apply and subsequent guidance provided by HUD. Waiver of specific rules is made through this NOFA and accompanying Board Action Item.
- c. The following Application materials are required for the **HOME and General Set-Aside 2021-3 NOFA.**
 - i. Fully executed 2021 Development Owner Certification, Applicant Eligibility Certification(s), and Multifamily Direct Loan Certification;
 - ii. Tab 6b – Multifamily Direct Loan Self-score;
 - iii. Tab 7, Sections 7 and 8 - **Floodplain**, Prime Farmland Designation, Site and Neighborhood Standards;
 - iv. Tabs 11 and 12, Section 3 Site Information Form Part III and Support Documentation to the extent that it might have changed from the original Application, and if the Applicant does not own the property the contract for sale with the required language in 10 TAC §13.5(e).
 - v. Tab 17 - Development Narrative, including description of any value – engineering from the original Application, the loan type requested, and if requesting a deferred-forgivable loan, a description of how the loan

⁶ These limits are inclusive of any federal fund source in the Development.

- is treated with respect to Eligible Basis;
- vi. Tab 19, Section 2 – Rent Levels of Residents;
 - vii. Tab 21 – Occupied Developments, Uniform Relocation Act section, if applicable;
 - viii. Tab 22 – Architectural Drawings, only to the extent that they may have changed from the original Application;
 - ix. Tab 23 – Building/Unit Configuration, only to the extent that they may have changed from the original Application;
 - x. Tab 23 - Rent Schedule reflecting 2021 rent limits;
 - xi. Tab 26 – Annual Operating Expenses;
 - xii. Tab 27 – 15 Year Rental Housing Operating Pro Forma;
 - xiii. Tab 30 – Development Cost Schedule supported by a draft Construction Contract and Schedule of Values;
 - xiv. Tab 31 – Schedule of Sources reflecting current financing structure, including required Match Funds proposed to offset development cost, as applicable
 - xv. Tab 32 – MF Direct Loan Financial Capacity;
 - xvi. Tab 33 – Match Funds;
 - xvii. Tab 35 – Supporting Documents evidencing the current financing as shown by executed loan documents or current term sheets, as applicable;

~~xviii.~~ Tab 41 – Applications involving one or more nonprofit organization, housing finance corporation, governmental entity, public housing, or public facility corporation in Control should submit the printout showing the that the most recent Single Audit or Audits required by 2 CFR §200.501 was submitted to the Federal Audit Clearinghouse; if not required to have a federal Single Audit, but required to have a State Single Audit, a copy of the State Single Audit, or a statement that the entity/entities are not required to have a Single Audit;

~~xix-xviii.~~ Amendment request, if applicable per the Post Award Activities Manual; and

~~xx-xix.~~ Additional information as requested by the Department in its sole discretion.

d. Applicants in the Supportive Housing Set-Aside must submit a full Application.



TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
MULTIFAMILY DIRECT LOAN
2021-1 NOTICE OF FUNDING AVAILABILITY (NOFA)
3rd Amendment
Effective September 3, 2021

1) Summary. This Amendment transfers \$11,000,000 in HOME funds to 2021-3 NOFA by amending Sections 1 and 2. The Texas Department of Housing and Community Affairs (the Department) announces the availability of ~~\$26,288,876~~\$16,740,258 in HOME funds¹ and of ~~\$9,465,974~~\$5,025,974 in National Housing Trust Fund (NHTF)² for the development of affordable multifamily rental housing for low-income Texans. Applicants under the 2021-1 NOFA will be accepted from December 11, 2020, through October 5, 2021 (if sufficient funds remain). Any funds remaining unrequested after close of business on October 5, 2021, will automatically transfer to the 2021-3 NOFA to be distributed in accordance with its stated requirements in the discretion of the Executive Director. The availability and use of these funds are subject to the following rules, as applicable:

a. Texas Administrative Code

10 TAC Chapter 1 (Administration)

10 TAC Chapter 2 (Enforcement)

10 TAC Chapter 10 (Uniform Multifamily Rules)

10 TAC Chapter 11 (Qualified Allocation Plan)

10 TAC Chapter 12 (Multifamily Housing Revenue Bonds)

10 TAC Chapter 13 (Multifamily Direct Loan Rule)

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

b. Texas Government Code

Tex. Gov't. Code Chapter 2306

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

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

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

- c. U.S. Department of Housing and Urban Development (HUD) Program Regulations
24 CFR Part 92 ([HOME Investment Partnerships Program Final Rule](#))
24 CFR Part 93 ([Housing Trust Fund Interim Rule](#))

- d. Fair Housing
Federal Fair Housing Act, 42 U.S.C. 3601-19.
<https://www.tdhca.state.tx.us/fair-housing/index.htm>

- e. Other Federal laws and regulations may that apply depending on funding source:

Environmental Compliance

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

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

Minimizing Resident Displacement

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

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

Labor Standards

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

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

Employment Opportunities

HOME, and NHTF require compliance with 24 CFR Part 135 (Section 3).

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

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

If HOME or NHTF funds are awarded and Federal regulations or subsequent guidance imposes additional requirements, such Federal regulations or guidance shall govern.

- f. HUD approval of an amendment to the 2020 Action Plan is required prior to contracting with NHTF funds.

2) Set-Asides. All HOME funds will be subject to the Regional Allocation Formula (RAF, located in Attachment A) until January 12, 2021, and then available on a statewide basis. Applications

under any and all Set-Asides may or may not be layered with 9% or 4% Housing Tax Credits (HTC). The funds made available under this NOFA are available under the following Set-Asides:

- a. **Community Housing Development Organization (CHDO) Set-Aside.** At least \$5,451,382 in HOME funds are reserved for nonprofit organizations that can be certified as Community Housing Development Organizations (CHDOs).
- b. **Soft Repayment Set-Aside.** \$9,465,974 in NHTF is available in this Set-Aside. Applicants within this Set-Aside must restrict rent and income for all Direct Loan-assisted units to 30% as defined in 24 CFR Part 93.
- c. **General Set-Aside.** HOME funds in the amount of ~~6~~ \$16,740,258 is available in this Set-Aside. To qualify for Preservation under this Set-Aside, the Application must be for a Development qualifying as Class A or Class B under Texas Government Code §2306.802 located on the Development site.

Set-Aside	Eligible Activities	Fund Source and Amount Available		Maximum Request ³
CHDO, Including Preservation	NC, A/R, R	HOME	\$5,451,382	\$3,000,000
Soft Repayment	NC, A/R, R	NHTF	\$5,025,974 \$9,465,974	\$3,000,000
General, Including Preservation	NC, A/R, R	HOME	\$16,740,258 \$26,288,876	\$5,000,000

Key:

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

A/R – Acquisition/Rehabilitation

R – Rehabilitation

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

1v

PULLED FROM THE AGENDA

1w

BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION
SEPTEMBER 2, 2021

Presentation, discussion, and possible action on a waiver of 10 TAC §13.3(d)(2)(A) for Commons at St. Anthony's, Amarillo

RECOMMENDED ACTION

WHEREAS, the Department has received Application #21506 (St. Anthony's) requesting Multifamily Direct Loan (Direct Loan) funds under the 2021-3 NOFA for Adaptive Reuse of an historic building that was part of the first hospital in Amarillo;

WHEREAS, 10 TAC §13.3(d)(2)(A) lists Adaptive Reuse Developments as an ineligible activity;

WHEREAS, this rule is intended to ensure the Department's adherence to Direct Loan requirements and safeguard its ability to timely commit funds, as the multi-tiered ownership structures that have typically been utilized to maximize the financial benefits to purchasers of the historic tax credits and housing tax credits often do not align with Direct Loan requirements, and the prolonged National Park Service approval process has impeded the Department's ability to timely commit funds;

WHEREAS, St. Anthony's will employ a single-tier investment financing model to avoid conflict with requirements of Direct Loan funds;

WHEREAS, the architectural plans have not yet been reviewed for compliance with the Department of the Interior's Historic Rehabilitation Standards;

WHEREAS, St. Anthony's has requested a waiver of 10 TAC §13.3(d)(2)(A) in accordance with 10 TAC §11.207(1) and (2) as a result of the limited development opportunities in downtown Amarillo that could support an Elderly population;

WHEREAS, staff finds that the need for the waiver was not preventable given the development opportunities in the North Heights neighborhood of Amarillo, where this Development will be located;

WHEREAS, this Development is integral to a locally driven, comprehensive redevelopment effort for the North Heights neighborhood; and

WHEREAS, staff believes that, by granting this waiver, the Department will better serve the policies and purposes articulated in Tex. Gov't Code, §§2306.001 with respect to providing for the housing needs of Texans of modest means and contributing to the preservation, development, and redevelopment of neighborhoods and communities;

NOW, therefore, it is hereby

RESOLVED, a waiver of 10 TAC §13.3(d)(2)(A) is hereby granted on the condition that, if awarded, the Development is able to provide by the Contract Execution Deadline, architectural plans that meet all federal and state requirements ; and

FURTHER RESOLVED, that if awarded in regards to the requirements of the federal funding source, the Department may choose to identify this activity as other than New Construction, despite the language in 10 TAC §11.1(d). It still will remain New Construction for the purposes of the tax credit program.

BACKGROUND

St. Anthony's is a proposed 124-unit Adaptive Reuse Development planned to serve an Elderly population in the North Heights neighborhood of Amarillo. The proposal will include 36 efficiency, 45 one-bedroom, and 43 two-bedroom units. KRS Housing, LLC and Commonwealth Development Corporation of America are co-developers. It was approved for 9% HTC on July 22, 2020, and has experienced construction cost increases out of the Applicant's control.

This request is to waive the prohibition on Adaptive Reuse proposals contained in the MFDL rule at 10 TAC 13(d)(2)(A). The prohibition was put in place because (1) the ownership structures of Adaptive Reuse proposals have typically conflicted with federal rules governing MFDL programs; and (2) historic tax credits have a very lengthy approval process that can endanger the Department's ability to commit funds. In this instance, the Applicant has organized its ownership to negate the Department's first concern, as described in greater detail below. The Department's second concern is mitigated by the amount of funds currently committed, along with the expected pipeline of approved transactions pending that may be used for the approximately \$11 million that remains to be committed by August 12, 2022, along with the strength and experience of the development team.

The typical "master lease" historic tax credit ownership structure typically utilized for historic tax credit transactions conflicts with the Direct Loan requirement that tenants lease directly from the Direct Loan borrower. Here, the ownership structure is organized with a single tier (or direct investment) structure for the sale of the historic tax credits to the investor, avoiding the need for a master lease. This structure is no different than the sale of low-income housing tax credits to the investor. A single entity - St. Anthony's Amarillo Housing 20, LP – will own the historic

property and incur all the expenditures. The tax credit investor will have the majority ownership of partnership of 99.99% and the general partner retains a .01 percent interest.

The timeline for the National Park Service to finalize their construction requirements remains a concern as it relates to the Department's ability to meet its obligations deadlines, but this concern is somewhat mitigated by the fact that nearly a quarter of funding for 2020 is committed,ⁱ that there are a number of robust proposals in the NHTF pipeline under both the 2021-1 and 2021-3 NOFA, and the considerable experience of the development team.

An additional consideration is the impact this Development will have on the community in which it will be located. The proposed Development was initiated by the North Heights Advisory Association as a neighborhood plan "Project in Motion." The plan, adopted in 2017, included several strategies for revitalization, including amending incompatible zoning districts, protecting historic character, and maximizing opportunities for redevelopment.

Comprehensive rezoning is currently underway, and two new developments have been completed since adoption of the Project in Motion plan, including a 12-unit duplex community and, most recently, the North Heights Linen Service, completed in June 2021, which is a 30,000-square-foot facility serving as a place for hospitals, medical facilities and hospitality entities to have mass laundry services. The North Heights Linen Service is the only facility in the Texas Panhandle certified to accommodate healthcare linens, services previously provided to local facilities by companies in Oklahoma and New Mexico. It is expected to employ 130 people, with added employment incentives for local residents.

ⁱ \$3,000,000 of the Program Year 2020 allocation of \$13,460,505.48 is committed. If awarded NHTF funds, the Contract Execution Deadline is anticipated to be July 29, 2022.

TRUE CASA CONSULTING, LLC

July 20, 2021

Ms. Marni Holloway
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, TX 78701-2410

DELIVERY BY EMAIL: marni.holloway@tdhca.state.tx.us

Re: Commons at St. Anthony's, TDHCA #20042
Waiver of Rules

Dear Ms. Holloway:

On behalf of St. Anthony's Amarillo Housing 20, LP (the "Applicant"), please accept this letter as a request of waiver for §13.3 (d)(2)(A) of the 2021 Multifamily Direct Loan Rule which states that Adaptive Reuse Developments are considered an "Ineligible Activity." The Commons at St. Anthony's is a 124 senior apartment development located in Amarillo (Region 1 Urban) that received an award of 2020 9% HTC's as TDHCA #20042. The Development meets the definition of Adaptive Reuse in 10 TAC §11.1(d)(1) as the apartment community will be constructed within a portion of the historic St. Anthony's Hospital, a building dating back to the early 1900's and the first hospital to serve Amarillo.

The Commons at St. Anthony's has experienced significant cost overruns due to steeply rising material prices, snarled supply chains and staffing caused by a confluence of factors including the presidentially declared disasters of both the Texas SEVERE WINTER STORMS (4586-DR-TX) and Texas COVID-19 PANDEMIC (DR-4485-TX.) In an effort to keep the Commons at St. Anthony's development financially viable, the Applicant will be submitting an Application for funding under 2021-3 NOFA for National Housing Trust Fund funding through the Multifamily Direct Loan program.

We ask that a waiver of §13.3 (d)(2)(A) be granted to consider The Commons at St. Anthony's as an Adaptive Reuse to be eligible to apply for National Housing Trust Fund funding under the 2021-3 NOFA. It is our understanding the ineligibility of Adaptive Reuse in the Multifamily Direct Loan Rule is based on the master lease structures that are frequently used by historic tax credit investors in which the property is master leased to an investor. In this structure, there can be multiple parties within ownership and they can change through the partnership life.

While The Commons at St. Anthony's will be receiving both Federal and State historic tax credits, it is important to note that the Development will be utilizing a single tier (or direct investment) structure for the sale of the historic tax credits to the investor. This structure is no different than the sale of low-income housing tax credits to the investor. A single entity - St. Anthony's Amarillo Housing 20, LP - will own the historic property and incur all the rehabilitation expenditures. The tax credit investor will have the majority ownership of partnership of 99.99% and the general partner retains a .01 percent interest. The ownership structure as represented in the Application remains unchanged.

TRUE CASA CONSULTING, LLC

Need for Waiver is Not Within the Control of the Applicant

The Development has succumbed to increased construction costs caused by the duality of the presidentially declared disasters due to COVID and the severe winter freeze. These natural disasters and the construction markets response is completely outside the control of the Applicant. In order for the Development to apply for funds made available by TDHCA for this exact cause in the 2021-3 NOFA, the Commons at St. Anthony's must be found eligible to apply.

The definition of Adaptive Reuse is a TDHCA-defined term in 10 TAC §11.1(d)(1). The National Housing Trust Fund does not provide a definition of "adaptive reuse" nor is the term included in the entirety of its rule. For purposes of the National Housing Trust Fund, the development fits the "Eligible Activities" as laid out in §93.200 of the National Housing Trust Fund Interim Rule (24 CFR Part 93.)

*(a)(1) HTF funds may be used for the **production**, preservation, and rehabilitation of affordable rental housing and affordable housing for first-time homebuyers through the acquisition (including assistance to homebuyers), new construction, reconstruction, or rehabilitation of nonluxury housing with suitable amenities, including real property acquisition, site improvements, **conversion**, demolition, and other expenses, including financing costs, relocation expenses of any displaced persons, families, businesses, or organizations; for operating costs of HTF-assisted rental housing; and for reasonable administrative and planning costs.*

We ask that TDHCA consider the reason why "Adaptive Reuse" is considered ineligible in the Multifamily Direct Loan Rule and note that the Commons at St. Anthony's will be using a straightforward, single-tier investment of the historic tax credits that will not require a lease-structure or ownership change that could conflict with the National Housing Trust Fund rules.

The waiver better serves the policies and purposes articulated in Tex. Gov't Code §§2306.001, 2306.002, 2306.359, and 2306.6701 than not granting the waiver

In §2306.001, the very first purpose listed for TDHCA is to "assist local governments in providing essential public services for their residents." The third purpose is "contribute to the preservation, development, and redevelopment of neighborhoods and communities..." The Commons at St. Anthony's, achieves both of these purposes by providing redeveloping the vacant St. Anthony Hospital into 124-units of high-quality rental housing affordable to seniors in Amarillo, TX. The Commons at St. Anthony's is located within the North Heights Neighborhood Association where there are multiple, local investment and development strategies in place to both direct investment to this historic area of Amarillo, while also preserving affordable housing opportunities. With the MFDL funding, the Commons at St. Anthony's will be rehabilitated, preserved and rebirthed while allowing the City of Amarillo to offer this critical housing resource for lower income seniors.

We appreciate the thoughtful consideration of this waiver as it allows this critical housing resource to continue moving forward with the planned rehabilitation. Please feel free to contact me at (512) 203-4417 with any questions.

Best,
Jennifer Hicks, Consultant

4a

BOARD REPORT
MULTIFAMILY FINANCE DIVISION
SEPTEMBER 2, 2021

Report regarding the 2021 Competitive Housing Tax Credit awards

At the meeting held on July 22, 2021, the Texas Department of Housing and Community Affairs (TDHCA) Governing Board approved a list of Applications recommended for Final Commitments of Housing Tax Credits from the 2021 State Competitive Housing Credit Ceiling. Notably, the Board’s approval was conditioned upon a number of factors, including “completion of any other reviews required to ensure compliance with the applicable rules and requirements for the Competitive Housing Tax Credit Program.” The Board approved the recommended action item; however, upon review to ensure compliance with statutory restrictions, staff identified that there were two types of ministerial errors that impacted a number of the Applications that had been recommended for award relating to the At-Risk and Urban and Rural subregions. The errors did not involve the evaluation, scoring, or underwriting of the applications, themselves.

At-Risk Set-Aside

The first issue relates to the At-Risk Set-Aside. The QAP, implementing statutory requirements, requires that the Department set aside for eligible at-risk developments not less than 15% of the housing tax credits available for allocation in the calendar year. In the awards made by the Board on July 22, 2021, that amount had not been met.

To ensure the correct volume of At-Risk Applications is awarded and the statutory requirement achieved, one Application below will be added to the award list in order to reach the required 15%. While this award will be issued a Commitment Notice, it will still be completely reviewed first.

At-Risk	21312	SavannahPark of Keene (Keene)	Rural	Elderly	\$392,000
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Rural Allocation

Tex. Gov’t Code §2306.111(d)(3)) requires that at least 20% of the credits made available are allocated to Applications in Rural Areas. An error was made within the spreadsheet used to determine the recommended Applications within all set-asides & subregions. The Rural and Urban designations of several Applications in the At-Risk Set-Aside were inadvertently changed, which made the calculations reflect that a higher total credit amount had been achieved for Rural Applications than was accurate. This error was carried throughout all remaining steps in the collapse process, resulting in an insufficient credit total being recommended to Rural Applications on the award log presented at the Board meeting. Because the incorrect workbook led staff to believe that sufficient awards had been made in Rural subregions to achieve the 20% requirement, three Urban Applications were presented on the award log for which those credits now need to be distributed to Rural Allocations. Those Urban Applications are listed below. Commitment Notices from the 2021 Credit Ceiling are not able to be issued, though these applications will be retained on the 2021 waiting list.

Region 7	21063	Parker Apartments (Austin)	Urban	General	\$1,500,000
Region 8	21318	Cypress Creek Temple (Temple)	Urban	General	\$1,500,000
Region 12	21317	San Angelo Terrace (San Angelo)	Urban	General	\$1,328,167

To ensure the correct volume of rural Applications is awarded and the statutory requirement achieved, three Applications below will be added to the award list in order to reach the required Rural 20%. While each of these awards will be issued a Commitment Notice from the 2021 Housing Tax Credit Ceiling to ensure the statutory rural requirements are met, any applications that have not been completely reviewed first will have reviews completed.

Region 4	21099	Marshall Crossing (Marshall)	Rural	Elderly	\$1,041,113
Region 5	21221	Providence on Park (Lumberton)	Rural	Elderly	\$1,324,086.00
Region 11	21219	Eagles Gate Apartments (Eagle Pass)	Rural	General	\$967,455.00

8b

BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION
SEPTEMBER 2, 2021

Presentation, discussion, and possible action on the proposed repeal of 10 TAC Chapter 11 concerning the Housing Tax Credit Program Qualified Allocation Plan, proposed new 10 TAC Chapter 11 concerning the Housing Tax Credit Program Qualified Allocation Plan, and directing their publication for public comment in the *Texas Register*

RECOMMENDED ACTION

WHEREAS, the Texas Department of Housing and Community Affairs (the Department) is authorized by Tex. Gov't Code Ch. 2306, Subchapter DD, to make Housing Tax Credit allocations for the State of Texas;

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

WHEREAS, the Department, as required by §42(m)(1) of the Internal Revenue Code and Tex. Gov't Code §2306.67022, developed this proposed Qualified Allocation Plan (QAP) to establish the procedures and requirements relating to an allocation of Housing Tax Credits;

WHEREAS, upon approval of the proposed QAP, the rule will be made available for public comment in the *Texas Register* through October 8, 2021, and then returned to the Board for final approval; and

WHEREAS, pursuant to Tex. Gov't Code §2306.6724, the Board shall adopt a proposed Qualified Allocation Plan no later than September 30 and, on or before November 15, submit it to the Governor, to approve, reject, or modify and approve not later than December 1;

NOW, therefore, it is hereby

RESOLVED, that the proposed repeal of 10 TAC Chapter 11, and a proposed new 10 TAC Chapter 11 concerning the Housing Tax Credit Qualified Allocation Plan together with the preambles presented to this meeting, are hereby approved for publication in the *Texas Register* for public comment; and

FURTHER RESOLVED, that the Executive Director and his designees be and each of them are hereby authorized, empowered, and directed, for and on behalf of the Department, to cause the proposed Qualified Allocation Plan, together with the changes, if any, made at this meeting and the preambles, in the form presented to this meeting, to be published in the *Texas Register* for public comment and, in connection therewith, make such non-substantive technical

corrections, including any required revisions to the preambles, as they may deem necessary to effectuate the foregoing.

BACKGROUND

General Information: Attached to this Board Action Request is the Qualified Allocation Plan (QAP), which reflects staff's recommendations for the Board's consideration. The attached QAP identifies the differences between the 2021 QAP and the proposed 2022 QAP in blackline format. The QAP submitted to the *Texas Register* will be a proposed new version of the 2022 QAP, and will not identify the changes between 2021 and 2022. However, the Department's Public Comment page will include a blackline version of the proposed 2022 QAP as approved by the Board to facilitate stakeholders' engagement with the changes.

A Rules Committee meeting was held on August 6, 2021, during which Committee members received comment from the public regarding potential changes for the QAP. The draft 2022 QAP presented to the Board today incorporates the changes the Rules Committee instructed staff to bring forward for consideration by the Board, as well as other changes.

Due to timing and staff constraints, it was not possible to publish a staff draft. The draft QAP presented to the Board at this meeting has not received early scrutiny by stakeholders.

Rule-Making Timeline: Upon Board approval, the proposed 2022 QAP will be posted to the Department's Public Comment website on September 7, 2021, and published in the *Texas Register* on September 17, 2021. Public comment will be accepted between September 17, 2021, and October 8, 2021. Staff will then consider and prepare reasoned responses to public comment as part of the final action on the QAP that will be brought before the Board on November 10, 2021 for approval. Subsequently, the QAP will be submitted to the Office of the Governor not later than November 15, 2021, for him to approve, approve with changes, or reject. Upon the Governor's approval, approval with modifications, or rejection, which must occur no later than December 1, 2021, the adopted 2022 QAP will be published in the *Texas Register* and posted to the Department's website.

Summary of Proposed Changes: While not inclusive of all changes proposed, a description of the more significant recommendations that are considered changes of policy are described below. There are multiple modifications that allow for the issuance of a Determination Notice without Board approval for 4% Housing Tax Credits, as approved by the Board at its meeting on April 8, 2021. There are multiple additions to the QAP to allow for the use of 2022 Supplemental Competitive Housing Tax Credits (2022 Supplemental HTC) for support of 2019 and 2020 9% Developments that have been negatively impacted by the COVID-19 pandemic.

10 TAC Chapter 11, Subchapter A

§11.1(d) – Definitions. (2) The definition of Administrative Deficiency has been modified to allow the use of Administrative Deficiency throughout the Affordability Period, and to allow staff to take action without issuance of an Administrative Deficiency. (5) The definition of Applicable Percentage was revised to reflect changes to IRS Code. (19) The definition of Commitment Notice was changed to reflect changes in other parts of the QAP. (27) The definition of Contract was changed to differentiate it from Commitment. (30) The definition of Control was revised to include a requirement that persons

with Control of a Development must be identified in an Application. (38) The definition of Development was revised to add clarifications regarding a scattered site Development. (51) Existing Residential Development was revised to include any type of residential dwelling. (88, 123) The definitions of Original Application and Supplemental Credits were added to accommodate terms used in relation to the 2022 Supplemental HTC. (139) The definition of Unit Type was revised to remove the statement that a half bathroom does not constitute a change in Unit Type.

§11.2 – Program Calendar. This section is modified to reflect dates for the 2022 Application round, and (b)(4) Resolutions Delivery Date was modified to allow for the submission of required resolutions prior to the issuance of a Determination Notice.

§11.3 Housing De-Concentration Factors

(b)(1), (d)(1)(B), (f) and (g) reflect how the factors are affected by the 2022 Supplemental HTC Applications.

§11.4 Tax Credit Request, Award Limits and Increase in Eligible Basis

§11.4(a) reflects how the Credit limit is affected by the 2022 Supplemental HTC Applications. To serve as a disincentive for applicants asking for more than is necessary, for each dollar of supplemental allocation received by a developer, their developer cap under the 2022 Competitive Cycle will be reduced by \$1.50.

§11.4(b) The maximum Application amount is increased to \$2 million and clarification is added on how the elderly maximum in some subregions is affected by the 2022 Supplemental HTC Applications.

§11.5 Competitive HTC Set-Asides.

The Nonprofit, USDA, and At-Risk Set-asides reflect how the set-asides are affected by the 2022 Supplemental HTC Applications. Supplemental Credits issued by the Board will be attributed to each 2022 Set-aside for the 2022 Application round as appropriate (for instance, for a 2020 development awarded out of the 2020 Non-Profit Set-Aside, now receiving \$100,000 in Supplemental Credits, \$100,000 would be attributed to the 2022 Non-Profit Set-Aside).

§11.6 Competitive HTC Allocation Process

Regional Allocation Formula, Elderly Developments, Statewide Collapse and Force Majeure reflect how they are affected by the 2022 Supplemental HTC Applications.

§11.8 Pre-Application Requirements

11.8 (b)(2) Reference to a reasonable search is removed to better meet statutory requirements.

§11.9 – Competitive HTC Selection Criteria. Staff has made several changes to this section noted below.

§11.9(a) — *General Information.* The limitation on use of an Administrative Deficiency if no supporting documentation is submitted has been removed.

§11.9(c)(6)(C) — *Residents with Special Housing Needs.* Paragraph is added to provide one point for proximity to veterans medical providers as required by HB 1558.

§11.9(c)(7) — *Proximity to Job Areas.* The first paragraph is edited to reflect other changes for this scoring item.

§11.9(c)(7)(A) — *Proximity to Urban Core.* This scoring items has been removed; the remaining item, as

modified, effectively replaces it.

§11.9(c)(7)(A) (previously (B)) – Proximity to Jobs. The radius from the proposed Development site was increased from one mile to two miles in municipalities with population over 500,000. The radius was increased to 4 miles in municipalities with population less than 500,000 or in unincorporated areas.

§11.9(d)(5)(A) – Letter from a State Representative. Revision allows for submission of a letter from a State Representative using alternative, verifiable methods.

§11.9(d)(7) – Concerted Revitalization Plan. This scoring item has been significantly modified to ease the time-consuming nature of the reviews and to ease the process for applicants. The revision provides more points for a development in a QCT as required by Section 42 IRC.

§11.9(e)(2) – Cost per Square Foot. Costs were increased by 5% across all categories. Staff based this increase on measuring the CPI change from November 2020 to present, which (not seasonally adjusted) is 4.9%.

§11.9(e)(7) – Right of First Refusal. Provision was added to grant three points for Developments comprised of single-family detached homes that will provide residents with a right of first refusal at the end of the Compliance Period.

§11.10 Third Party Request for Administrative Deficiency for Competitive HTC Applications. This section was modified to clarify matters that may be considered a Third Party Request for Administrative Deficiency, how staff will respond to the requests, and resulting potential Board actions.

10 TAC Chapter 11, Subchapter B

§11.101 – Site and Development Requirements and Restrictions. Staff has made several changes to this section.

§11.101(a)(2) Undesirable Site Features. Provision is added making proposed sites that would violate a Joint Land Use Study for a military installation ineligible.

§11.101(a)(3) Neighborhood Risk Factors. Because TEA will not be publishing school ratings for the 2020-2021 academic year requirements to provide mitigation for schools is suspended for 2022.

§11.101(b)(1)(ii) Development Requirements and Restrictions. Developments where site features require basement splits will not be required to have an elevator if no resident will have to climb more than two stories to reach a unit or common area.

§11.101(b)(2) Development Size Limitations. Modified to allow Tax Exempt Bond Developments involving new construction or adaptive reuse to meet capture rate requirements rather than a maximum 120 units.

§11.101(b)(4) Mandatory Development Amenities. Added language regarding certain amenities that are not eligible for Multifamily Direct Loan funding.

§11.101(b)(5)(B) Common Amenities. Added language to require non-contiguous single-family sites to provide a combination of unit and common amenities to reach the appropriate points level.

§11.101(b)(6)(B) Unit, Development Construction, and Energy and Water Efficiency Features. Increased the number of points required for Multifamily Direct Loan-only Applications by one point, to resolve a conflict with Rehabilitation and Supportive Housing Developments in the same section.

10 TAC Chapter 11, Subchapter C

§11.201(2)(A) and (B) – Filing of Application for Tax-Exempt Bond Developments. Instructions for Lottery and Non-Lottery Applicants filing an Application are modified for clarity and to reflect current processes.

§11.201(2)(C) – Filing of Applications for Direct Loan. Applicants are informed of Application requirements in the Direct Loan Rule and applicable Notice of Funding Availability.

§11.201(3) Certification of Tax Exempt Bond Applications with New Docket Numbers. The section has been struck, as it is not applicable to current process.

§11.201(5) – Evaluation Process. Adds a requirement that a scoring notice will be sent to an Applicant 21 days prior to the final Board approval of awards.

§11.201(6)(B) – Order of review of Applications under various Programs. Excess language has been removed so this section reflects current process.

§11.201(7)(A) – Deficiency Process. Language is added to allow extension as a reasonable accommodation.

§11.201(7)(B) – Deficiency Process. Clarification added that a point deduction for failure to timely respond does not impact the Pre-Application score.

§11.203(1)(B) Public Notifications. Reasonable search provision removed to meet statutory requirements.

§11.204(4)(C) – Notice, Hearing, and Resolution for Tax-Exempt Bond Developments. Extraneous language is removed.

§11.204(7)(A) – Non-Department Debt Financing. Language is added to clarify that only the income and rent restrictions that impact Units also restricted by the Department will appear in the LURA.

§11.204(7)(A)(ii)(I) - Non-Department Debt Financing. Language is added to allow for lender acknowledgement in forms other than a signed letter.

§11.204(7)(A)(iii) - Non-Department Debt Financing. Applicants with certain outstanding USDA loans will be required to complete a new Application exhibit to support accurate Underwriting.

§11.204(7)(B) - Gap Financing. Applicants will be required to show that they have made application for funds from an available source.

§11.204(10)(E) – Site Control. Modified for Tax-Exempt Bond Applications to require certification that the site control submitted to the Texas Bond Review Board continues to be valid.

§11.204(12) – Title Commitment/Policy. A Title Commitment will not be required for Tax-Exempt Bond Developments that are not layered with Direct Loan or where the Department is not the issuer.

§11.204(13)(B) – Organizational Charts. Investor group entities that appear in the Ownership Organizational Charts must provide evidence of SEC registration and that these types of entities are not eligible to apply for Direct Loans (because they cannot provide the necessary information required by HUD to check the Suspended and Debarred Listing).

§11.204(14) – Nonprofit Ownership. Tax-Exempt Bond Applications may provide a copy of the inducement resolution rather a board resolution.

§11.204(15) - Feasibility Report. Tax-Exempt Bond Applications are required to provide only a survey.

§11.204(15)(B) - Feasibility Report. Description of environmental conditions and local design restrictions is added to topics that must be considered in the executive summary.

§11.205(3) – Scope and Cost Review. For Tax-Exempt Bond Developments that do not include a request for Direct Loan or where the Department is not the bond issuer, a Scope and Cost Review will not be required.

§11.205(4) – Appraisal. If an Application includes a Market Analysis, an appraisal is not required if no acquisition costs are entered in the development cost schedule.

§11.207 – Waiver of Rules. Language is added to expand the ability of staff to initiate a waiver request, unnecessary language is removed, and language is added that allows the Board to grant a waiver that will provide a forward commitment if there are extenuating or unforeseen circumstances.

10 TAC Chapter 11, Subchapter D, Underwriting, and Loan Policy

§11.302 (d)(1)(B) – Miscellaneous Income. Income from tenant-based vouchers will not be considered.

§11.302 (d)(2)(B) – Management Fee. Management Fees outside of the 4% - 6% range must be documented.

§11.302 (d)(3) – Net Operating Income. For certain Tax-Exempt Bond Developments, the Applicant's NOI will generally be considered reasonable.

§11.302 (e) – Total Housing Development Costs. For Competitive Housing Tax Credit Applications, the Underwriter will adjust a line item to meet program rules, but will not make other adjustments to meet feasibility requirements.

§11.302 (e)(1)(A)(ii) – Acquisition Cost. An appraisal is not required if the land or building is being donated to the proposed Development.

§11.302 (e)(7)(B) – Developer Fee. The higher Developer Fee allowance for smaller Developments is removed.

§ 11.302 (e)(9) – Reserves. Up to 12 months of stabilized operating expense and debt service will be allowed.

§11.302 (e)(10) – Soft Cost. For certain Tax-Exempt Bond Developments, the Applicant’s Soft Costs will generally be characterized as reasonable.

§11.302 (g)(4) – Direct Loans. The standards applied to Applications will also be applied to requests for subordination or refinance.

§11.302 (i)(1) – Gross Capture Rate. Changes refine the Gross Capture Rate for Developments of differing sizes.

§11.302 (i)(4) – Long Term Feasibility. Distinction is made for Negative Cash flow during years two through fifteen for Applications that do not include a Direct Loan request.

§11.306(k) Scope of Work Narrative. Description is added of the Scope of Work Narrative required for certain Tax-Exempt Bond Developments in place of the previously-required Scope and Cost Review.

10 TAC Chapter 11, Subchapter E

§11.901 – Fee Schedule. Language is added requiring Applicants to pay any insufficient funds fees charged to the Department.

§11.901(7) - Tax Exempt Bond Development Determination Notice Fee. The time frame for request of a refund of the Fee is tied to the Certificate of Reservation deadline, to better capture the timing of bond closing requirements.

§11.901(19) – Determination Notice Reinstatement Fee. The fee has been removed.

§11.901(19)(ii) – Appraisal Review Fee. New language provides for submission of the Appraisal Review Fee for Tax-Exempt Bond Development Applicants, includes provision for refund if the Third Party Appraisal Review is not conducted, and adds the amount of the fee.

§11.902(f) - Appeals Process. Language is added to clarify how Competitive HTC appeals will be handled if there is insufficient time for the Executive Director to respond prior to the late July Board meeting.

§11.905. General Information for Commitments or Determination Notices.

§11.906. Commitment and Determination Notice General Requirements and Required Documentation.

§11.907. Carryover Agreement General Requirements and Required Documentation.

These three sections are moved in part or wholly from 10 TAC §10.400, the Asset Management Rules, in order to reflect current process. Changes are made to §11.906 to reflect current process for administrative issuance of Determination Notices.

SUBCHAPTER F. SUPPLEMENTAL HOUSING TAX CREDITS

Over the last six to twelve months, there have been increases nationally in construction costs that have prompted Texas tax credit developers to request that TDHCA use a portion of the 2022 credit

ceiling to make supplemental allocations to help stabilize their 2019 and 2020 HTC developments. Subchapter F of the QAP provides a method to do so. The key components of the subchapter are:

- From past experience TDHCA has learned that giving one development two allocations of credits from different years can be problematic and cumbersome for the property and for the Compliance and Asset Management teams at TDHCA. To mitigate that challenge and limit the burden on TDHCA staff, the draft QAP reflects that each Development that receives a Supplemental Allocation will 'return' their 2019/2020 credits through force majeure provisions, and receive a 'new' 2022 allocation that includes the original amount, plus the supplemental increase.
- To minimize other processes in statute or rule being triggered, requests for supplemental allocations are not considered to be new applications, but are considered 'supplements' to the original application that was awarded credits in either 2019 or 2020. Requests are also not considered to be amendments.
- Because each Application has already been determined to meet threshold and scoring documentation in the year of their award, those items are considered satisfied for the 2022 credits. This includes notifications, submission of any local resolutions that may have been needed, etc.
- \$5 million is being allotted for these requests. That \$5 million will be regionally allocated into subregions consistent with the allocation methodology typically used for credits with a reduced floor of \$40,000 for subregions since the floor of \$600,000 is not appropriate for a total of only \$5 million. Requests will be allotted within each subregion and region using the Applicant's final score from the year in which they received their Original award. Staff will follow the same collapse methodology as a typical award cycle. Board approval of these requests is tentatively planning to occur in April 2022.
- Requests are limited to 15% of their Original Allocation amount. Requests are only permitted to reflect revisions to the financing components of the application, and to reaffirm certifications made in the Original Application. Other application changes that would typically prompt an Amendment process and review under statute are not permitted and must be submitted separately using the normal amendment process.
- Requests will be evaluated by TDHCA underwriters who will determine the amount of Supplemental credits allowable. Certain restrictions are placed on the requests preventing the applicants from increasing their developer fee or reducing how much developer fee is deferred.

Attachment 1: Preamble, including required analysis, for proposed repeal of 10 TAC Chapter 11, Qualified Allocation Plan

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of 10 TAC Chapter 11, Qualified Allocation Plan (QAP). The purpose of the proposed repeal is to eliminate an outdated rule while adopting a new updated rule under separate action.

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

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

1. Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the proposed 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 proposed 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 or 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, concerning the allocation of LIHTC.

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

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

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

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

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX GOV'T CODE §2007.043.

The repeal does not contemplate 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 also 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 has determined that for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 17, 2021, to October 8, 2021, to receive stakeholder comment on the proposed repealed section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Matthew Griego, QAP Public Comment, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 475-1895, attn: Matthew Griego, QAP Public Comments, or by email to htc.public-comment@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. Austin local time OCTOBER 8, 2021.

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

10 TAC Chapter 11, Qualified Allocation Plan

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))

§11.204 Required Documentation for Application Submission

§11.205 Required Third Party Reports

§11.206 Board Decisions (§§2306.6725(c); 2306.6731; and 42(m)(1)(A)(iv))

§11.207 Waiver of Rules

SUBCHAPTER D

§11.301 General Provisions

§11.302 Underwriting Rules and Guidelines

§11.303 Market Analysis Rules and Guidelines

§11.304 Appraisal Rules and Guidelines

§11.305 Environmental Site Assessment Rules and Guidelines

§11.306 Property Condition Assessment Guidelines

SUBCHAPTER E

§11.901 Fee Schedule

§11.902 Appeals Process

§11.903 Adherence to Obligations

§11.904 Alternative Dispute Resolution (ADR) Policy

Attachment 2 Preamble, including required analysis, for proposed new 10 TAC Chapter 11, Qualified Allocation Plan

The Texas Department of Housing and Community Affairs (the “Department”) proposes new 10 TAC Chapter 11, Qualified Allocation Plan (QAP). The purpose of the proposed new section is to provide compliance with Tex. Gov’t Code §2306.67022 and to update the rule to: clarify multiple definitions; update the Program Calendar; add provision for Developments comprised of single family homes intended for ownership in the Competitive Housing Tax Credit Program; remove a scoring item that generally duplicates another and expands the radius for Proximity to Jobs so that more potential Development sites will be competitive; add a scoring item related to proximity to veterans’ health care; simplify the requirements for a Concerted Revitalization Plan; allow for increased costs in scoring; revise timelines and requirements associated with Tax-Exempt Bond Developments; add provisions for Commitments, Determination Notices, and Carryover Agreements; provide for the use of 2022 Competitive Housing Tax Credits to assist 2019 and 2020 Competitive Housing Tax Credit Applicants negatively impacted by the COVID-19 pandemic and; specify provisions for termination for Applications seeking Tax-Exempt Bond or Direct Loan funds.

Tex. Gov’t Code §2001.0045(b) does not apply to the rule proposed for action for two reasons: 1) the state’s adoption of the QAP is necessary to comply with IRC §42; and 2) the state’s adoption of the QAP is necessary to comply with Tex. Gov’t Code §2306.67022. The Department has analyzed this proposed rulemaking and the analysis is described below for each category of analysis performed.

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

Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the proposed 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) and other Multifamily Development programs.
2. The new rule does not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.
3. The rule changes do not require additional future legislative appropriations.
4. The rule changes will not result in any increases in fees. The proposed rule removes a Determination Notice Reinstatement Fee.
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 sought to clarify Application requirements.

Some “expansions” are offset by corresponding “contractions” in the rules, compared to the 2021 QAP. Notably, the Department has sought to remove superfluous language wherever possible and to consolidate rules to reflect current process. A new subchapter is added to provide assistance to 2019 and 2020 Competitive Housing Tax Credit Applications negatively impacted by cost increases associated with the COVID-19 pandemic.

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 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.

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 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, or Direct Loans. 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 1,285 rural communities potentially subject to the proposed rule for which the economic impact of the rule is projected to be \$0. The proposed rule places no financial burdens on rural communities, as the costs associated with submitting an Application are born entirely by private parties. If anything, a rural community securing a LIHTC Development will experience an economic benefit, not least among which is the potential increased property tax revenue from a large multifamily Development.

3. The Department has determined that because there are rural tax credit awardees, this program helps promote construction activities and long term tax base in rural areas of Texas. Aside from the

fees and costs associated with submitting an Application, there is a probable positive economic effect on small or micro-businesses or rural communities that receive LIHTC awards and successfully use those awards to construct multifamily housing, although the specific impact is not able to be quantified in advance.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX GOV'T CODE §2007.043. The proposed rule does not contemplate or 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 new rule on particular geographic regions. If anything, positive effects will ensue in those communities where developers receive LIHTC awards.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX GOV'T CODE §2001.024(a)(5). 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 will be an updated and more germane rule for administering the allocation of LIHTC with considerations made for applicants as it relates to the impact of the COVID-19 pandemic on the application process. There is no change to the economic cost to any individuals required to comply with the new section because the same processes described by the rule have already been in place through the rule found at this section being repealed. The average cost of filing an application remains between \$50,000 and \$60,000, which may vary depending on the specific type of application, location of the development site, and other non-state of Texas funding sources utilized. The proposed rules do not, on average, result in an increased cost of filing an application as compared to the existing program rules.

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 new rule does not have any foreseeable implications related to costs or revenues of the state or local governments because the same processes described by the rule have already been in place through the rule found at this section being repealed. If anything, Departmental revenues may increase due to a comparatively higher volume of Applications, which slightly increases the amount of fees TDHCA

receives.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 17, 2021, to October 8, 2021, to receive stakeholder comment on the new proposed sections. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Matthew Griego, QAP Public Comment, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 475-1895, attn: Matthew Griego, QAP Public Comments, or by email to htc.public-comment@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. Austin local time October 8, 2021.

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.

TITLE 10 COMMUNITY DEVELOPMENT

PART 1 TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 11 QUALIFIED ALLOCATION PLAN (QAP)

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 Housing Tax Credits and the issuance of Determination Notices for ~~and~~ non-Competitive Housing Tax Credits. The federal laws providing for the awarding and allocation of Competitive Housing Tax Credits and issuance of Determination Notices for non-Competitive 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 Competitive Housing Tax Credits and issuance of Determination Notices for non-Competitive 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 of this part~~ (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 and §42(m)(1)(B) of the Code. Unless otherwise specified, certain provisions in sections §11.1 - §11.4 also apply to non-Competitive Housing Tax Credits. Subchapters B - 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 of this part~~ (relating to Administration), Chapter 2 ~~of this title of this part~~ (relating to Enforcement), Chapter 10 ~~of this title of this part~~ (relating to Uniform Multifamily Rules), Chapter 12 ~~of this title of this part~~ (relating to Multifamily Housing Revenue Bond Rules), Chapter 13 ~~of this title of this part~~ (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 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 of this part (relating to Reasonable Accommodation Requests to the Department). As a result of the highly competitive nature of applying for Competitive 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 least 75% of the original building remains at completion of the proposed Development. Ancillary non-residential buildings, such as a clubhouse, leasing office 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 is required~~ 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 after award or allocation and throughout the Affordability Period ~~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 may issue an Administrative Deficiency or take action without 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~~ four percent for 30% present value credits, ~~unless fixed by Congress, pursuant to Code, §42(b) for the month in Department's Credit Underwriting Analysis Report is finalized.~~

(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 --A document that may be issued to an awardee of a Direct Loan before the issuance of a ~~Commitment or Contract~~ which preliminarily sets forth the terms and conditions under which the Direct Loan will be made available. An Award Letter will typically be contingent on the awardee satisfying certain requirements prior to executing a ~~Commitment 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)~~ §11.907 of this Title of this part (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 Notice (also referred to as ~~Contract~~ Commitment)--An agreement issued pursuant to §11.905(a) of this part (relating to General Information for Commitments or Determination Notices), legally binding written contract, setting forth the terms and conditions under which Competitive Housing tax Tax credits Credits, loans, grants, or other sources of funds or financial assistance from the Department will be made available. A Commitment or Commitment Notice does not mean commitment of federal funds under the Direct Loan Program.

(20) Commitment of Funds--Occurs after the Development is approved by the Board and once a ~~Contract Commitment or Award Letter~~ 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)~~--Sometimes referred to as Competitive HTC. Tax credits available from the State 9% 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--A legally binding agreement between the Development Owner and the Department, setting forth the terms and conditions under which Multifamily Direct Loan Program funds will be made available. 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 "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. Persons with Control of a Development must be identified in the Application. 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)).

(A) Development will be considered to be scattered site if the property where buildings or amenities are located do not share a common boundary and there is no accessible pedestrian route that the Development Owner controls (transportation in a motor vehicle will not meet the requirement for an accessible route).

(B) A Development for which several parcels comprise the Development Site and are separated only by a private road controlled by the Development Owner, or a public road or similar barrier where the Development Owner has an agreement with the public entity for at least the term of the LURA stating that the accessible pedestrian route will remain, is considered contiguous.

(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 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 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 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 (NSP), National Housing Trust Fund (NHTF), 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~~ of this part (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 any type of existing residential dwelling 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 and the Board, if applicable, 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 and NHTF 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 (also referred to as a Rent Restricted 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. The Manual is not a rule and is provided only as good faith guidance and assistance.

(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) Original Application--The Competitive HTC Application submitted and approved in 2019 or 2020 for an awarded Development as it relates to a request made for a Supplemental 2022 Allocation.

(89) Owner--See Development Owner.

(890) 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.

(910) 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.

(924) Physical Needs Assessment--See Scope and Cost Review.

(932) 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.

(943) 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.

(954) 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.

(965) Preservation--Activities that extend the Affordability Period for rent-restricted Developments that are at risk of losing low-income use restrictions or subsidies.

(976) 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.

(987) Primary Market Area (PMA)--See Primary Market.

(998) 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.

(10099) 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.

(1010) 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.

(1024) 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.

(1032) 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~~ of this part (relating to Qualified Contract Requirements).

(1043) Qualified Contract Request (Request)--A request containing all information and items required by the Department relating to a Qualified Contract.

(1054) Qualified Entity--Any entity permitted under Code, §42(i)(7)(A) and any entity controlled by such a qualified entity.

(1065) 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.

(1076) 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.

(1087) 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.

(1098) 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)) Reconstructed Units will be considered New Construction for purposes of calculating the Replacement Reserves under 10 TAC §11.302(d)(2)(I). More specifically, Rehabilitation is the repair, refurbishment or replacement of existing mechanical 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.

(11009) 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.

(111~~0~~) Report--See Underwriting Report.

(112~~1~~) Request--See Qualified Contract Request.

(113~~2~~) 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.

(114~~3~~) 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.

(115~~4~~) 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) of this chapter.

(116~~5~~) 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.

(117~~6~~) Scoring Notice--Notification provided to an Applicant of the score for their Application after ~~staff~~Staff review. More than one Scoring Notice may be issued for ~~ana~~ Competitive HTC or a Direct Loan Application.

(117~~8~~) 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.

(1198) 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.

(12019) Site Work--Materials and labor for the horizontal construction generally including excavation, grading, paving, underground utilities, and site amenities.

(1210) State Housing Credit Ceiling--The aggregate amount of Competitive 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.

(1221) 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.

(123) Supplemental Credits--2022 Housing Tax Credits awarded through Subchapter F of this chapter to assist 2019 and 2020 Competitive Housing Tax Credit Developments.

(1242) Supportive Housing--A residential rental Development and Target Population meeting the requirements of subparagraphs (A) - (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;

(iii) provide evidence of a history of fundraising activities reasonably deemed to be sufficient to address any unanticipated operating losses;

(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; and

(v) have Tenant Selection Criteria that fully comply with §10.802 ~~of this title~~ of this part (regarding Written Policies and Procedures), which require a process for evaluation of prospective residents

against a clear set of credit, criminal conviction, and prior eviction history that may disqualify a potential resident. This process must also follow § 1.204 of this title of this part (regarding Reasonable Accommodations).

(I) The criminal screening criteria must not allow residents to reside in the Development who are subject to a lifetime sex offender registration requirement; and provide at least, for:

(-a-) Temporary denial for a minimum of seven years from the date of conviction based on criminal history at application or recertification of any felony conviction for murder related offense, sexual assault, kidnapping, arson, or manufacture of a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802); and

(-b-) Temporary denial for a minimum of three years from the date of conviction based on criminal history at application or recertification of any felony conviction for aggravated assault, robbery, drug possession, or drug distribution.

(II) The criminal screening criteria must include provisions for approving applications and recertification despite the tenant's criminal history on the basis of mitigation evidence. Applicants/tenants must be provided written notice of their ability to provide materials that support mitigation. Mitigation may be provided during initial tenant application or upon appeal after denial. Mitigation may include personal statements/certifications, documented drug/alcohol treatment, participation in case management, letters of recommendation from mental health professionals, employers, case managers, or others with personal knowledge of the tenant. In addition, the criteria must include provision for individual review of permanent or temporary denials if the conviction is more than 7 years old, or if the applicant/resident is over 50 years of age, and the prospective resident has no additional felony convictions in the last 7 years. The criteria must prohibit consideration of any previously accepted criminal history or mitigation at recertification, unless new information becomes available. Criminal screening criteria and mitigation must conform to federal regulations and official guidance, including HUD's 2016 Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records.

(III) Disqualifications in a property's Tenant Selection Criteria 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 other required criteria). As part of the appeal process the prospective resident must be allowed to demonstrate that information in a third party database is incorrect.

(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, 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 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 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, or a deferred-forgivable or deferred-payable construction-to-permanent Direct Loan from the Department, with any debt containing foreclosure provisions or debt that contains scheduled or periodic repayment provisions. A loan from a local government or instrumentality of local government is permissible if it is a deferred-forgivable or deferred-payable construction-to-permanent loan, with no foreclosure provisions or scheduled or periodic repayment provisions, and a maturity date after the end of the Affordability Period. For tax credit applications only, permanent foreclosable debt that contains scheduled or periodic repayment provisions (including payments subject to available cash-flow) is permissible if sourced by federal funds and otherwise structured to meet valid debt requirements for tax credit eligible basis considerations. In addition, permanent foreclosable, cash-flow debt provided by an Affiliate is permissible if originally sourced from charitable contributions or pass-through local government funds and the foreclosure provisions are triggered only by default on non-monetary default provisions. Developments meeting these requirements are not subject to §11.302(i)(4) & (5) of Subchapter D of this chapter (relating to Underwriting and Loan Policy). 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 Work Out Development ~~an approved by the 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 project-based operating subsidies for 25% of the Units evidenced by an executed agreement with an unaffiliated or governmental third party able to make that commitment, and meet all of the criteria in subclauses (I) - (VII) 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 1/2 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 will have a comprehensive written eviction prevention policy that includes an appeal process; and

(VII) 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.

(F) Supportive housing Units included in an otherwise non-Supportive Housing Development do not meet the requirements of this definition.

(1235) 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 of this part~~ (relating to Compliance Monitoring), and published on the Department's web site (www.tdhca.state.tx.us).

(1264) 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.

(1275) Tax-Exempt Bond Development--A Development requesting or having been issued a Determination Notice for 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.~~

(1286) 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.

(1297) 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.

(13028) 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.

(13129) 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.

(1320) U.S. Department of Agriculture (USDA)--Texas Rural Development Office (TRDO) serving the State of Texas.

(1334) 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.

(1342) Underwriter--The author(s) of the Underwriting Report.

(1353) 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.

(1364) 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 of this part~~ (relating to Multifamily Housing Bond Rules and Multifamily Direct Loan Rule, respectively) that may, but are not required to, be used, ~~(but are not required to be used),~~ to satisfy the requirements of the applicable rule.

(1375) Uniform Physical Condition Standards (UPCS)--As developed by the Real Estate Assessment Center of HUD.

(1386) 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.

(1397) 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.

(14038) 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.

(14139) 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.

(1420) Utility Allowance--The estimate of tenant-paid utilities made in accordance with Treasury Regulation, §1.42-10 and §10.614 of this Title of this part (relating to Utility Allowances).

(1431) Work Out Development--A financially distressed Development for which the Owner 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 of the year prior to Application, 2020, 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 a Competitive HTC 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~~^{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.

§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
01/04/2021 <u>01/03/2022</u>	Application Acceptance Period Begins. Public Comment period starts.
01/08/2021 <u>01/07/2022</u>	Pre-Application Final Delivery Date (including waiver requests).
02/15/2021 <u>2022</u>	Deadline for submission of Application for .ftp access if pre-application not submitted.
03/01/2021 <u>2022</u>	<p>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).</p> <p>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).</p>
04/01/2021 <u>2022</u>	Market Analysis Delivery Date pursuant to §11.205 of this chapter.
05/03/2021 <u>05/06/2022</u>	Deadline for Third Party Request for Administrative Deficiency.
Mid-May 2020 <u>2022</u>	Scoring Notices Issued for Majority of Applications Considered "Competitive."

Deadline	Documentation Required
06/18/2021 <u>06/17/2022</u>	Public comment to be included in the Board materials relating to presentation for awards are due in accordance with 10 TAC §1.10.
June 2021 <u>2022</u>	On or before June 30, publication of the list of Eligible Applications for Consideration for Award in July.
July 2021 <u>July 2022</u>	On or before July 31, Board issuance of Final Awards.
Mid-August	Commitments are Issued.
11/01/ 2021 <u>2022</u>	Carryover Documentation Delivery Date.
11/30/ 2021 <u>2022</u>	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/ 2022 <u>2023</u>	10% Test Documentation Delivery Date.
12/31/ 2023 <u>2024</u>	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-~~only- Development Application 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 published 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 deadlines will generally be defined in the applicable NOFA and for Tax-Exempt Bond Developments, such deadlines are more fully explained in §11.201 of this chapter (relating to Procedural Requirements for Application Submission).~~

(2) Administrative Deficiency Response Deadline. Such deadline shall be five business days after the date on the deficiency notice, unless extended as provided for in 10 TAC §11.201(7) related to the

Deficiency Process.

(3) 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 (if applicable)~~). For Direct Loan Applications, the Third Party reports meeting ~~specific the~~ requirements described in §11.205 of this chapter must be submitted ~~with the Application~~ in order for ~~the Application to be considered~~ ~~it to be considered a complete Application~~ complete, 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.

(4) 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 or prior to the issuance of the Determination Notice, as applicable. ~~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.

(5) 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, or from the Development Site of a Supplemental Allocation of 2022 credits, within said county that is awarded in the same calendar year. If two or more Applications or Supplemental Allocations are submitted that would violate §2306.6711(f), the Supplemental Allocation of 2022 credits will be the one considered eligible, and the other Applications will not be reviewed; if there is no Supplemental Allocation of 2022 credits, the lower scoring of the Applications 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 HTC 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 Direct Loan Development~~ Application Dates and Deadlines), as applicable.

(d) One Mile Three Year Rule (Competitive HTC 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, or a Supplemental Allocation of 2022 credits, 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 subparagraphs (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 reflected in the Department's current Site Demographic Characteristics Report shall be considered ineligible unless the Governing Body of the appropriate municipality or county containing the Development has 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~~ Application Dates and Deadlines, as applicable.

(f) 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, including Supplemental Allocations of 2022 credits, regardless of the Applicant(s), are proposing Developments serving the same Target Population on sites separated by 1,000 feet or less, the Supplemental Allocation of 2022 credits will be the one considered eligible, and the other Applications will not be reviewed; if there is no Supplemental Allocation of 2022 credits, the lower scoring of the 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.

(g) One Award per Census Tract Limitation (Competitive HTC Only). If two or more Competitive HTC Applications including Supplemental Allocations of 2022 credits, are proposing Developments in the same census tract in an urban subregion, the Supplemental Allocation of 2022 credits will be the one considered eligible, and the other Applications will not be reviewed; if there is no Supplemental Allocation of 2022 credits, the lower scoring of the 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 and Increase in Eligible Basis

(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. Any Supplemental Allocation of credits awarded to such parties will carry a value of \$1.50 for every \$1.00 Supplemental Allocation awarded when calculating the \$3 million maximum for all 2022 Applications. 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 ~~whichever is less.~~ 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; Supplemental Allocations made from the 2022 ceiling to Elderly Developments in such tracts will be included in calculating the allocated Elderly credits in that region, thereby reducing the available credits for Elderly Developments in that region for 2022 Competitive HTC Applications. 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 30% in Eligible Basis provided they meet the criteria identified in paragraphs (1) - (4) of this subsection. 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 determined by the Department, 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. 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 reflected in the Department's current Site Demographic Characteristics Report. New Construction or Adaptive Reuse Developments located in a QCT that has in excess of 20% Housing Tax Credit Units per total households are not eligible 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 the Development is located in a census tract 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 no objection to the Application. Rehabilitation Developments where this rule is triggered located in a QCT with 20% or greater Housing Tax Credit Units per total households are eligible for the boost and are not required to obtain such a resolution from the Governing Body. An acceptable, but not required, form of resolution may be obtained in the Multifamily Uniform 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 Application Dates and Deadlines, as applicable. The Application must include a 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 as determined by the Secretary of HUD) that has high construction, land and utility costs relative to the AMGI. The Application must include the SADDA map that clearly shows the proposed Development is located within the boundaries of a SADDA; or

(3) For Competitive ~~Housing Tax Credits~~ HTC only, 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)(1242)(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). Pursuant to Internal Revenue Service Announcement 2021-10, the boundaries of the Opportunity Zone are unaffected by 2020 Decennial Census changes.

(4) For Tax-Exempt Bond Developments, as a general rule, a QCT or SADDA 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. The Department acknowledges guidance

contained in the Federal Register regarding effective dates of QCT and SADDA designations. Pursuant to the Federal Register Notice, unless federal guidance states otherwise, complete-HTC Applications (including all Third Party Reports) with a corresponding Certificate of Reservation that are submitted to the Department in the year the QCT or SADDA designation is effective may be underwritten to include the 30% boost, provided ~~there are no changes that would affect the materiality of the submission. Pursuant to the Federal Register Notice, a complete application (as defined in the Notice) may~~ was also be submitted to the bond issuer, in lieu of the Department, in the year the QCT or SADDA designation is effective. Where this is the case, the-HTC Application must contain a certification from the issuer that speaks to the date on which such complete application (as defined in the Notice) was submitted. If the issuer is a member of the organizational structure then such certification must come from the bond counsel to the issuer. ~~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.~~

§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 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). The Supplemental Allocation amount for any Qualified Nonprofit Developments receiving a Supplemental Allocation from the 2022 ceiling will be attributed to the 2022 Nonprofit Set-Aside. 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 or to 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. The Supplemental Allocation amount for any USDA Developments receiving a Supplemental Allocation from the 2022 ceiling will be attributed to the 2022 USDA Set-Aside. 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). The Supplemental Allocation amount for any At-Risk Developments receiving a Supplemental Allocation from the 2022 ceiling will be attributed to the 2022 At-Risk Set-Aside. 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 (12 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 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; and

(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 during the Application Round 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, ~~2020~~of each year, 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. Any 2022 credits designated for the purpose of Supplemental Allocations, but not awarded to Supplemental Allocations through the process described in Subchapter F of this chapter, will be added to the total pool of credits available for the Application Round and the Regional Allocation Formula updated to reflect such increases.

(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) - (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. The Supplemental Allocation amount for any Supplemental Allocations made in such a county to an Elderly Development will be attributed to the total of 2022 credits made to Elderly Developments for that Uniform State Service Region.

(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, and any remaining credits from the 2022 Supplemental Allocation, 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, and as reduced by any 2022 Supplemental Allocations made meeting these criteria as provided in §11.4(b) of this subchapter, 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 ~~2022~~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 changes to the Application as necessary to ensure to the extent possible 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 HTC's 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 2019 and 2020 Applications requesting Supplemental Allocations under Subchapter F of this chapter to address unforeseen cost increases are deemed to have met the requirements of this paragraph. 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~~-feasible 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~~ of this part (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, 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 zone of an elementary school, a middle school or a high school that has a TEA Accountability Rating of D for the most recent year available prior to Application and an Improvement Required Rating for the most recent available year preceding or a TEA Accountability Rating of F for the most recent year available prior to Application and a Met Standard Rating by the Texas Education Agency for the most recent available year preceding.

(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 30 days prior to the beginning of the Application Acceptance Period whose boundaries include the entire proposed Development.

(B) Notification Recipients. No later than the date the pre-application is submitted, notification must be sent to all of the 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. Regardless of the method of delivery, the Applicant must provide an accurate mailing address in the Pre-application. 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, the boundaries of 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 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 constitutes notification.

(i) Neighborhood Organizations on record with the state or county 30 days prior to the beginning of the Application Acceptance Period whose boundaries include the entire proposed Development Site;

(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.

(d) Applicants that may be requesting a Multifamily Direct Loan from the Department may submit a Request for Preliminary Determination on or before February 12, 2011. The results of evaluation of the Request may be used as evidence of review of the Development and the Principals for purposes of scoring under 10 TAC §11.9(e)(1)(E). Submission of a Request for Preliminary Determination does not obligate the Applicant to request Multifamily Direct Loan funds with their full 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. If the Development involves both Rehabilitation and Reconstruction or New Construction, the Reconstruction or New Construction Units must meet these requirements.

(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 of this part~~ (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 and Supportive Housing 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 or nonprofit, only for Cash Flow or Developer Fee; the total ownership percentage must still equal 50%, even if it is only attributable to one of the two categories.

(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 or Affiliate, including the spouse, of any other Principal of the Applicant, Developer or Guarantor (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, Developer or Guarantor (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 (13 points); 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 Supportive 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 resident supportive services, which are listed in §11.101(b)(7) of this chapter and meet the requirements of that section. ; 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 for median household income that has a poverty rate of less than the greater of 20% or the median poverty rate for the region, 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) - (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 2 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).

(IV) The Development Site is located within 2 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).

(V) The Development Site is located within 4 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 3 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, 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 2 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 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 6 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 2 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. A facility that is primarily a restaurant or bar with recreational facilities is not eligible. (1 point)

(XII) Development Site is within 2 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).

(XIII) Development Site is within 2 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).

(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 most recently available rating. (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) - (XIV) of this clause.

(I) The Development Site is located within 5 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 5 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 5 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 5 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, 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 5 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 5 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 4 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. A facility that is primarily a restaurant or bar with recreational facilities is not eligible. (1 point).

(XI) Development Site is within 4 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 4 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 most recently available rating. (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~~ in the Site Demographic Characteristics Report (4 points);

(D) For areas not scoring points for subparagraph (C), 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~~ in 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~~ in 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 up to three (3) points by serving Residents with Special Housing Needs.

(A) 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 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)

(B) If the Development has committed units under 10 TAC 11.9(c)(6)(A), the Development must commit at least an additional 2% of the total Units to Persons referred from the Continuum of Care or local homeless service providers to be made available for those experiencing homelessness. Rejection of an applicant's tenancy for those referred may not be for reasons of credit history or prior rental payment history. Throughout the Compliance Period, unless otherwise permitted by the Department, the Development Owner agrees to specifically market the 2% of Units through the Continuum of Care and other homelessness providers local to the Development Site. In addition, the Department will require an initial minimum twelve-month period in Urban subregions, and an initial six-month period in Rural subregions, during which Units must either be occupied by Persons referred from the Continuum of Care or local homeless service providers, or held vacant, unless the Units receive HOME funds from any source. After the initial twelve-month or six-month period, the Development Owner will no longer be required to hold Units vacant but will be required to continue to provide quarterly notifications to the Continuum of Care and other homeless service providers local to the Development Site on the availability of Units at the Development Site. Applications in the At-risk or USDA set asides are not eligible for this scoring item. Developments are not eligible under this paragraph unless points have also been selected under 10 TAC 11.9(c)(6)(A). (1 point)

(C) If the Development is located in a county with a population of 1 million or more, but less than 4 million, and is located not more than two miles from a veterans hospital, veterans affairs medical center, or veterans affairs health care center, and agrees to provide a preference for leasing units in the development to low income veterans. (1 point)

(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).~~ 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 2018 data set will be used, unless a newer data set is posted to the US Census website on or before October 1, 2021. The Development will use 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.

~~(A) Proximity to the Urban Core. A Development in a Place, as defined by the US Census Bureau, with a population over 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 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. For Development Sites within the boundaries of a municipality of 500,000 or more, or the unincorporated areas of a county with a population of 1 million or more. A Development may qualify for points under this subparagraph if it meets one of the criteria in clauses (i) - (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 2017 data set will be used, unless a newer data set is posted to the US Census website on or before October 1, 2020. The Development will use 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~~ 2 miles of 16,500 jobs. (6 points)

(ii) The Development is located within ~~2 miles~~ 1 mile of 13,500 jobs. (5 points)

(iii) The Development is located within ~~2 miles~~ 1 mile of 10,500 jobs. (4 points)

(iv) The Development is located within ~~2 miles~~ 1 mile of 7,500 jobs. (3 points)

(v) The Development is located within ~~2 miles~~ 1 mile of 4,500 jobs. (2 points)

(vi) The Development is located within ~~2 miles~~ 1 mile of 2,000 jobs. (1 point)

(B) For Development Sites within the boundaries of a municipality of 499,999 or less, or the

unincorporated areas of a county with a population of less than 1 million. A Development may qualify for points under this subparagraph if it meets one of the criteria in clauses (i) - (vi) of this subparagraph.

(i) The Development is located within 4 miles of 16,500 jobs. (6 points)

(ii) The Development is located within 4 miles of 13,500 jobs. (5 points)

(iii) The Development is located within 4 miles of 10,500 jobs. (4 points)

(iv) The Development is located within 4 miles of 7,500 jobs. (3 points)

(v) The Development is located within 4 miles of 4,500 jobs. (2 points)

(vi) The Development is located within 4 miles of 2,000 jobs. (1 point)

(8) Readiness to proceed in disaster impacted counties. Due to uncertainty linked to the COVID-19 pandemic, scoring for all Applicants under this item is suspended (no points may be requested, nor will they be awarded) for ~~2022~~2021 HTC Applications. 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 four years preceding December 1, 2021~~0~~. Federal Emergency Management Agency declarations that apply to the entire state at any point in time prior to Application do not apply. The Applicant must provide 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." Applications in the At-Risk or USDA Set-asides are not eligible for these points. (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 (FHAAT) form on file, any current Analysis of Impediments to Fair Housing Choice, or any current plans such as one year action plans or five year consolidated plans for HUD block grant funds, such as HOME or CDBG funds.~~ 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 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 -. In addition, the Neighborhood Organization must be on record 30 days prior to the beginning of the Application Acceptance period 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 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, 2022. 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 or submitted in such a manner as to verify the sender, 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 from State Representatives 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 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, 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), 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 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 chapter 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 geographically located within an distinct area that was once vital and has lapsed into a condition requiring concerted revitalization, and where for which a concerted revitalization plan (plan or CRP) has been developed and published by the municipality.~~executed.~~

(ii) A plan may consist of one or ~~more~~^{two}, but complementary, local planning documents that together have been approved by the municipality as a plan to revitalize the ~~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, including a consolidated plan or one-year action plan required to receive HUD funds by itself, does not equate to a concerted revitalization plan unless evidence is presented that additional efforts have been undertaken to meet the requirements in clause (iii) of this subparagraph.

(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.~~
(iv) 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 published ~~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 or commercial blight, streets infrastructure neglect, 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) If the Application includes an acceptable Concerted Revitalization Plan, up to seven (7) points will be awarded ~~based on~~ as follows:

(I) the proposed Development Site is located within a Qualified Census Tract (7 points); or

(II) the proposed Development Site is not located with a Qualified Census Tract (5 points).

~~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) The development is in a location that would score at least five (5) points under Opportunity Index, §11.9(e)(4)(B), except for the criteria found in §11.9(e)(4)(A) and subparagraphs §11.9(e)(4)(A)(i) and §11.9(e)(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 and occupied 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 from Undesirable Site Features or Neighborhood Risk Factors. (47 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 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:

(A) If the letter evidences review of the Development alone it will receive twenty-four (24) points; or

(B) If the letter is from the Third Party permanent lender and evidences review of the Development and the Principals, it will receive twenty-six (26) points; or

(C) If the Development is Supportive Housing and meets the requirements of 10 TAC §11.1(d)(1242)(E)(i), it will receive twenty-six (26) points; or

(D) If the Development is part of the USDA set-aside and meets the requirements of 10 TAC §11.5(2) and the letter is from the Third Party construction lender, and evidences review of the Development and the Principals, it will receive twenty-six (26) points; or

(E) If the Department is the only permanent lender, and the Application includes the evaluation of the Request for Preliminary Determination submitted under 10 TAC §11.8(d), 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 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 ~~\$82.67~~\$78.73 per square foot;

(ii) the voluntary Eligible Building Cost per square foot is less than ~~\$88.58~~\$84.36 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 ~~\$106.29~~\$101.23 per square foot; or

(iv) the voluntary Eligible Hard Cost per square foot is less than ~~\$118.10~~\$112.48 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 \$84.36 per square foot;

(ii) the voluntary Eligible Building Cost per square foot is less than ~~\$94.48~~\$89.98 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 ~~\$112.19~~\$106.85 per square foot; or

(iv) the voluntary Eligible Hard Cost per square foot is less than ~~\$124.01~~\$118.10 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 ~~\$106.29~~\$101.23 per square foot; or

(ii) the voluntary Eligible Hard Cost is less than ~~\$129.91~~\$123.72 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 ~~\$118.10~~\$112.48 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 ~~\$153.53~~\$146.22 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 ~~\$153.53~~\$146.22 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, 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; and

(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 zone of an elementary school, a middle school or a high school that has a TEA Accountability Rating of D for the most recent year available prior to Application and an Improvement Required Rating for the most recent available year preceding or a TEA Accountability Rating of F for the most recent year available prior to Application and a Met Standard Rating by the Texas Education Agency for the most recent available year preceding.

(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))

(A) 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 of this part (relating to Right of First Refusal) and §10.408 of this title of this part (relating to Qualified Contract Requirements).

(B) The Development is designed as single-family detached homes and commits to offer a right of

first refusal to tenants of the property to purchase the dwelling at the end of the Compliance Period. A de minimus amount of a participating tenant's rent may be attributed to the purchase of a Unit. Such commitment will be reflected in the LURA for the Development. The Applicant must provide a description of how they will implement the 'rent-to-own' activity, how they will make tenants aware of the opportunity, and how they will implement the right at the end of the Compliance Period. Such a Development may not be layered with National Housing Trust Funds. (3 points)

(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, 2021. (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 federal commitment or expenditure requirements, deadlines to enter into a Contract or close a Direct Loan, or did not meet 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 or violates the Adherence to Obligations.

§11.10 Third Party Request for Administrative Deficiency for Competitive HTC Applications

(a) 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. While an Administrative Deficiency may be issued as the result of an RFAD, not all RFADs will result in an

Administrative Deficiency being issued.

(b) ~~s~~Staff will consider ~~the~~ each RFAD received 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.

(c) ~~If the assertion(s) in the RFAD have been addressed through the~~ describe matters that are part of the Application review process, and the RFAD does not contain new information not present in the Application, staff will not review or act on it.

(d) The RFAD and any testimony presented to the Board regarding the result of an 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.

(e) 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. An RFAD that expresses the requestor's opinion will not be considered.

(f) 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. 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.

~~(g)~~ The results of a RFAD may not be appealed by the Requestor requestor, and testimony to the Board arguing staff's determination will not be considered unless the requestor can show that staff failed to follow the applicable rule.

(h) 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.

(h) 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 NHTF funds from the Department must also meet the federal environmental provisions under 24 CFR §93.301(f)(1)(vi). Applicants requesting HOME or NSP1 PI funds from the Department 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, to the extent NHTF is not being requested from the Department, 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. 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. 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 a request for pre-determination 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 may be submitted prior to Application submission. ~~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 Undesirable Site Features become available while the 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 deficiency or termination.

(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), excluding parking areas, 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;

(K) Development Sites that would violate a Joint Land Use Study for any military Installation; or

~~(L)~~ 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 may be submitted prior to Application submission, 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. Mitigation to be considered by staff, including those allowed in subparagraph (C) of this paragraph, are identified in subparagraph (D) 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, 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 TEA Accountability Rating of D for the most recent year available prior to Application and an Improvement Required Rating for the most recent available year preceding or a TEA Accountability Rating of F for the most recent year available prior to Application and a Met Standard Rating by the Texas Education Agency for the most recent available year preceding. 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. 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 Acceptance 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, but are still required to provide rating information in the Application and disclose the presence of the Neighborhood Risk Factor.

(C) Should any of the neighborhood risk factors described in subparagraph (B)(ii)-(iv) 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, if such information pertains to the Neighborhood Risk Factor(s) disclosed, and mitigation pursuant to subparagraph (D) of this paragraph 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. Due to TEA not releasing Accountability Ratings for the 2020-2021 school year school closures as a result of COVID-19, mitigation for schools as described in subparagraphs (C) and (D) of this paragraph is not required for Applications submitted in 20222021.

(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 received a TEA Accountability Rating of D for the most recent year available prior to Application and an Improvement Required Rating for the most recent available year preceding or a TEA Accountability Rating of F for the most recent year available prior to Application and a Met Standard Rating by the Texas Education Agency for the most recent available year preceding, 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 should 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. Due to TEA not releasing Accountability Ratings for the 2020-2021 school year ~~school closures~~ as a result of COVID-19, mitigation for schools as described in subparagraphs (C) and (D) of this paragraph is not required for Applications submitted in 2022-2024.

(i) mitigation for Developments in a census tract that has a poverty rate that exceeds 40% may include a resolution from the Governing Body of the appropriate municipality or county containing the Development, acknowledging the high poverty rate and authorizing the Development to move forward. A Neighborhood Risk Factors Report is not required to be submitted, the resolution alone will suffice. If the Development is located in the ETJ, the resolution would need to come from the county.

(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 ~~2019 and 2020~~ calendar year previous to the year of Application. 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 or private investment. Acceptable mitigation to address extensive blight should include a plan, whereby it is contemplated such blight 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 TEA Accountability Rating of D for the most recent year available prior to Application and an Improvement Required Rating for the most recent available year preceding or a TEA Accountability Rating of F for the most recent year available prior to Application and a Met Standard Rating by the Texas Education Agency for the most recent available year preceding 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 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, including 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.

(4) Site and Neighborhood Standards (Direct Loan only). A New Construction Development requesting federal funds must meet the Site and Neighborhood Standards in 24 CFR §983.57(e)(2) or (3). A Development requesting NHTF funds that meets the federal definition of reconstruction in 24 CFR §93.2 must also meet these standards.

(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. Developments where topography or other characteristics of the Site require basement splits such that a tenant will not have to climb more than two stories to fully utilize their Unit and all Development amenities, will not require 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~~ of this part (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, 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. Any Development that falls within the attendance zone of a school that has a TEA Accountability Rating of F for the most recent year available prior to Application and an Improvement Required Rating for the most recent available year preceding 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 must meet the Development size limitation and corresponding capture rate requirements in §11.302(i)(1)(C) of this chapter. ~~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 Rehabilitation amounts identified in subparagraphs (A), (B) or (C) of this paragraph. For Tax-Exempt Bond Developments that include existing USDA funding that is continuing or new USDA funding, staff

may consider the cost standard under subparagraph (A) of this paragraph on a case-by-case basis.

(A) For Housing Tax Credit Developments under the USDA Set-Aside the 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 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 Rehabilitation will involve at least \$30,000 per Unit in Building Costs and Site Work; or

(C) For all other Developments, the 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 or National Park Service, as applicable. Applicants for Multifamily Direct Loans should be aware that certain amenities are not eligible for Direct Loan funding, including without limitation, detached community spaces, furnishings, swimming pools, athletic courts, and playgrounds, as more fully described at §13.3 of this part, relating to General Loan Requirements.

(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. A Development composed of non-contiguous single family sites must provide a combination of unit and common amenities to equal the appropriate points under (A) for the Development size. 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, regardless of resident access to the amenity in another phase. 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-) - (-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-) - (-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 for Competitive HTC Applications. ~~or Determination Notice, as applicable.~~

(-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 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 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; ping pong table; or similar equipment 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 contains the 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, covered pavilion, or pergola with 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~~ with advanced telecommunications capacity as determined under 47 U.S.C. 1302 or more with coverage throughout the clubhouse or community building (1 point);

(XI) High-speed Wi-Fi with advanced telecommunications capacity as determined under 47 U.S.C. 1302 ~~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 or secure package room. Automated Package Lockers or secure package room 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. If the Development involves both Rehabilitation and Reconstruction or New Construction, the Reconstruction or New Construction Units must meet these requirements.

(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)~~ five (5) 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-)-(-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 or locally approved greywater collection system (0.5 points).

(7) Resident Supportive Services. The resident 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~~ of this part (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 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 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~~of this part (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~~of this part (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, assuming all the Units have similar features 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 5:00 p.m. on the third business day following the date of the deficiency notice 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. The PDF copy and Excel copy of the Application must match, if variations exist between the two copies, an Administrative Deficiency will be issued for the Applicant to identify which document to rely on. 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. At the option of the bond issuer, an Applicant may participate. Applicants participating in the TBRB lottery for private activity bond volume cap. Applicants should refer to the TBRB website or discuss with their issuer or TBRB staff, the deadlines regarding lottery participation and the timing for the issuance of the Certificate of Reservation based on lottery results. Depending on the Priority designation of the application filed with TBRB, the Application submission requirements to the Department under (i) or (ii) must be met.

(i) Priority 1 or 2 applications: ~~and whose~~ If the Certificate of Reservation will be issued in January, the Applicant may submit the complete Application, including all required Third Party Reports, accompanied by the Application Fee described in §11.901 of this chapter as early as the beginning of December, to be tentatively scheduled for the March Board meeting or March target date for the issuance of the Determination Notice, as applicable. The Application must be submitted using the Draft Uniform Application released by the Department for the upcoming program year. The Applicant may choose to only submit the complete Application (excluding all required Third Party Reports), for purposes of meeting TBRB requirements to have the Certificate of Reservation issued. In this case, the Application will not be scheduled for a Board meeting or target date for the issuance of the Determination Notice, as applicable, until such time the Third Party Reports have been submitted, which should be on the fifth of the month. The Application may be scheduled for a Board meeting at which the decision to have the Determination Notice administratively issued would be made, or the target date for the issuance of the Determination Notice, as applicable, approximately 90 days following the submission of such Third Party Reports. If the fifth day falls on a weekend or holiday, the submission deadline shall be on the next business day. For Third Party Reports that are submitted after the fifth of the month, it will be staff's discretion as to which Board meeting the Application will be presented, or target date for the issuance of the Determination Notice, as applicable. ~~Staff 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.~~; or

(ii) Priority 3 applications: Once the Certificate of Reservation has been issued, the same Application submission requirements as indicated in (i) apply. Specifically, an Applicant may submit the Application including or excluding the Third Party Reports, however, only after the Application is considered complete (i.e. Application Fee and all Third Party Reports) will staff schedule the Application for a Board meeting or target date for the issuance of the Determination Notice. The timing of when a Priority 3 Application is submitted to the Department is up to the Applicant and if not submitted on the fifth of the month, it will be staff's discretion as to which Board meeting the Application will be presented, or target date for the administrative issuance of the Determination Notice, as applicable.

(iii) For those that participate in the Lottery but are not successful (i.e. a Certificate of Reservation

will not be issued in January, but at some other time), the Application may not be submitted until a Certificate of Reservation has been issued (i.e. Priority 3 applications) or TBRB has sent an email stating the application is next in line (i.e. Priority 1 or 2), but the Certificate of Reservation cannot be issued until the Application is submitted.

(B) Non-Lottery Applications.

(i) Applications designated as Priority 1 or 2 by the TBRB must submit the Application Fee described in §11.901 of this chapter and the complete Application, with the exception of the Third Party Reports, before the Certificate of Reservation can be issued by the TBRB. The Third Party Reports, if not submitted with the Application to meet the TBRB submission requirement, must then be submitted on the fifth day of the month and the Application may be scheduled for a Board meeting at which the decision to have the issue a Determination Notice issued would be made, or the target date for the administrative issuance of the Determination Notice, as applicable, 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. Applicants may not be allowed to submit the Application until notice from TBRB that the application is next in line to receive a Certificate of Reservation; or

(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 or administrative issuance of the Determination Notice, as applicable.

(iii) If, as of November, 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 ~~2023~~²⁰²². The determination as to whether a ~~2022~~²⁰²¹ Application can be submitted and supplemented with ~~2023~~²⁰²² 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. This process is only applicable to those applications that have also been submitted as part of the 2023 PAB Lottery and receive a favorable lottery number such that a Certificate of Reservation will be issued in January 2023. If a Certificate of Reservation is not issued in January 2023, whether part of the PAB Lottery or not, then the submitted Application will be considered withdrawn by staff and will not continue to be processed.

(C) The Department will require at least 90 days to review an Application unless staff can complete its evaluation in sufficient time for earlier consideration. An Applicant should expect this timeline to apply regardless of whether the Board will need to approve the issuance of the Determination Notice or it is determined that staff can issue the Determination Notice administratively for a particular 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, the need to resolve Administrative Deficiencies and changes made by an Applicant after the Application has been reviewed by staff may require additional time to review. Moreover, such review period may be longer depending on the volume of Applications under review and statutory program timing constraints associated with such Applications. ~~and the~~ 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.~~

(E) Withdrawal of Certificate of Reservation. Applicants are required to notify the Department before 5:00 p.m. on the business day after the Certificate of Reservation is withdrawn if the Application is still under review by the Department. If, by the fifth business day following the withdrawal, a new Certificate of Reservation is not issued, the Application will be suspended. If a new Certificate of Reservation is not issued by 5:00 p.m. on the fifth business day following the date of the suspension, the Application will be terminated. Applicants must ensure once a Certificate of Reservation is issued, the Application as submitted is complete and all respective parts of the Development are in process such that closing under the Certificate of Reservation is achievable. Once a new Certificate of Reservation is issued, it will be at the Department's discretion to determine whether the existing Application can still be utilized for purposes of review or if a new Application, including payment of another Application Fee, must be submitted due to material changes. The Department will not prioritize the processing of the new Application over other Applications under review once a new Certificate of Reservation is issued, regardless of the stage of review the Application was in prior to termination, or that it maintain the originally selected Board meeting or targeted administrative issuance date for the Determination Notice, as applicable. ~~for consideration of the Housing Tax Credits.~~

~~(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. Upon the issuance of the Certificate of Reservation and corresponding new docket number, the Applicant must submit the Request for Determination Notice Reinstatement form along with the Determination Notice Reinstatement Fee described in §11.901 of this chapter. The Applicant should allow at least 30 days for staff review. The Application must 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; or~~

~~(B) 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.-~~

(C) Direct Loan Applications must be submitted in accordance with the requirements in this chapter, 10 TAC §13.5, and the applicable Notice of Funding Availability (NOFA).

(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. To the extent a Direct Loan award is returned after Board approval, penalties may be imposed on the Applicant and Affiliates in accordance with 10 TAC §13.11(a).

(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~~of this part (relating to Multifamily Direct Loan Rule) as applicable. 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). The reviews by the Multifamily Finance Division and the Real Estate Analysis Division will be conducted to meet the requirements of the Program or NOFA under which the Application was submitted. Applications will undergo a previous participation review in accordance with Chapter 1, Subchapter C ~~of this title~~of this part (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 may provide a scoring notice reflecting such score to the Applicant which will trigger appeal rights and corresponding deadlines pursuant to Tex. Gov't. Code §2306.6715 and §11.902 of this chapter (relating to Appeals Process). For an Application for which the selection criteria are reviewed, the scoring notice for the Application will be sent to the Applicant no later than 21 days prior to the final Board approval of awards.

(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. ~~In general, those with statutory or more restrictive deadlines will be prioritized for review and processing ahead of those that are not subject to the same constraints. Due to the statutory constraints on the award and allocation of competitive tax credits, should any non-Competitive Housing Tax Credit Applications received during the competitive tax credit round include a request to be placed on the May, June, or July Board agendas, such Applications must be complete, including Third Party Reports that meet the requirements under the Underwriting and Loan Policy Rules, and the Applicant must not have submitted (outside of any request by staff via an Administrative Deficiency) revisions to the Application subsequent to its review by staff that would necessitate another review of the Application. 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. In the event doing so could jeopardize the Applicant's ability to obtain a Determination Notice prior to the expiration of the Certificate of Reservation, the Department assumes no liability.~~

(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. 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 and must be uploaded to the Application's ServU http file. Emailed responses will not be accepted. 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, or an extension is requested as a reasonable accommodation. 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. Points deducted for failure to timely respond to a deficiency will not impact the Pre-Application score. 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) Applicants may not use the Deficiency Process to increase a scoring item's points or to change any aspect of the proposed Development, financing structure, or other element of the Application. 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-only 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, on the fifth business day following the date of the suspension notice, there are deficiencies that remain unresolved, the Application may be terminated and the Applicant will be provided notice to that effect. For purposes of priority under the Direct Loan set-asides, if the outstanding item(s) are resolved during the suspension period, the date by which the final deficient 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. Should an Applicant still desire to move forward with the Development after Termination, a completely new Application must 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, which will have a new Application Acceptance Date.

(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 the U.S. government'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~~ of this part (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 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 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, ~~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 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 in office at the time the Application is submitted. Note that between the time of pre-application (if made) and full Application, 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 of this part 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~~consideration 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 FHA/ST 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 ~~2014-2020~~2015-2021, which may be submitted as acceptable evidence of this requirement. Experience of multiple parties may not be aggregated to meet this requirement.

(A) A natural Person, with control of the Development who intends and has the ability to remain in control through placement in service, who is also a Principal of the Developer, Development Owner, or General Partner must establish that they have experience that has included the development and placement in service of 150 units or more. Applicants requesting Multifamily Direct Loan funds only may meet the alternative requirement at §13.5(h)(1) ~~of this title~~of this part (relating to Experience). An agreement between a HUB listed as a participant on a previous Application and the person in control of that same Application does not meet this requirement. 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~~ of this part (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 that impact the Units also restricted by the Department will be reflected in the LURA. Financing amounts must be consistent throughout the Application and acceptable documentation shall include those described in clauses (i) - (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 or otherwise acknowledged 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 estimated ~~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 the outstanding loan balance on a specified date and confirming that it has been provided with the Preliminary Assessment Tool has been submitted by the Applicant to USDA. The loan amount that is reported on the Schedule of Sources (tab 31 in the MF Uniform Application) and that is used to determine the acquisition cost must be the Applicant's estimate of the projected outstanding loan balance at the time of closing as calculated on the USDA Principal Balance Amortization exhibit.

(iv) For Direct Loan Applications or Tax-Exempt Bond Developments with TDHCA as the issuer that Applications utilizing utilize 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 to an available fund source. 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 of this part (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 meet the requirements of clauses (i) – (vi) of this subparagraph. The income and corresponding rent restrictions will be reflected in the LURA.

(i) indicate the type of Unit ~~restriction designation~~ based on the Unit's rent and income restrictions;

(ii) reflect the rent and utility limits available at the time the Application is submitted; (iii) reflect gross rents that 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;

(iv) have a Unit mix and net rentable square footages that are consistent with the site plan and architectural drawings;

(v) if applying for Direct Loan funds:

(I) Direct Loan-restricted Units will generally be designated "floating" unless specifically disallowed under the program specific rules;

(II) if HOME, TCAP RF, and/or NSP PI are the anticipated fund source, the Application must have at least 90% of the Direct Loan-restricted Units be available to households or families whose incomes do not exceed 60% of the Area Median Income;

(III) in which HOME or TCAP RF are the anticipated fund source have at least 20% of the Direct Loan-restricted Units available to households or families whose incomes do not exceed 50% of the Area Median Income;

(IV) in which NHTF is the anticipated fund source, have 100% of the Direct Loan-restricted Units available to households or families whose incomes do not exceed the greater of 30% of the Area Median Income or whose income is at or below the poverty line;

(V) in which NSP PI is the anticipated fund source, have at least 25% of the Direct Loan-restricted Units available to households or families whose incomes do not exceed 50% of the Area Median Income; and

(vi) if proposing 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 and the source of their cost estimate. 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. 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 of this part (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~~ Unit Type 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. To meet the requirements of subparagraph (B) of this paragraph, Tax-Exempt Bond Lottery Applications ~~Developments~~ must certify in the Application that the have-Site Control submitted with the TBRB application for the Certificate of Reservation to be issued is still 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 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 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, Determination Notice or Contract (as applicable).

(E) If control of the entire proposed Development Site requires that a plat or right of way be vacated to remove a right of way or similar dedication, 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, ~~Determination Notice~~ or Contract (as applicable).

(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. Letters evidencing zoning status must be no more than 6-months old at Application submission, except where such evidence is for an area where there is no zoning and such letters must be updated annually by the political subdivision.

(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. Tax-Exempt Bond Developments that do not include a request for Direct Loan or include the Department as the bond issuer are exempt from this requirement.

(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~~ 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. Investor group entities must provide evidence of U.S. Securities and Exchange Commission (SEC) registration; Applicants with these types of entities in the Organizational Chart are not eligible to apply for Direct Loan funds.

(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 of this part~~ (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 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. For Tax-Exempt Bond Developments, a copy of the executed inducement resolution will meet the resolution requirement in this paragraph.

(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 their respective chapters 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. Acquisition and Rehabilitation Applications are exempted from this requirement. If an Application involves Acquisition and Rehabilitation along with other activities, the Feasibility Report is required for the entire Development. Tax-Exempt Bond Developments that do not include a request for Direct Loan or where the Department is not the bond issuer, only subparagraph (D) is required to be submitted.

(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, including but not limited to; Critical Water Quality Zones, habitat protection requirements, construction for environmental conditions (wind, hurricane, flood), local design restrictions.

(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 (excluding those for Rehabilitation Developments) may not be older than 24 months from the beginning of the Application Acceptance Period.

(E) Preliminary site plan for New Construction or Adaptive Reuse Developments 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 of this part (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. For Rehabilitation (excluding Reconstruction) and Adaptive Reuse Tax-Exempt Bond Developments that do not include a request for Direct Loan or where the Department is not the bond issuer, a Scope and Cost Review prepared by a Third Party is not required. The application must include a Scope of Work Narrative as described in §11.306(k) of this chapter.

(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. Notwithstanding the foregoing, if the Application contains a Market Analysis and the appraisal is not required to fulfill purposes other than establishing the value of land or buildings, an appraisal is not required if no acquisition costs are entered in the development cost schedule.

§11.206 Board Decisions (§§2306.6725(c);2306.6731; and 42(m)(1)(A)(iv))

The Board's decisions regarding awards or the issuance of Determination Notices, if applicable, 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 of this part~~ (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~~ Housing Tax Credit or Direct Loan 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 from the Board 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~~ to remedy an error in the QAP or other Multifamily rules, provide necessary relief in response to a natural disaster, or address facets of an Application or Development that have not been contemplated. ~~Where appropriate, the Applicant must submit with the requested waiver any plans for mitigation or alternative solutions with the waiver request.~~ Any such request for waiver submitted by an Applicant 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 or is due to an overwhelming need. ~~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, unless the Applicant demonstrates that all potential options have been exhausted 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, unless due to extenuating and unforeseen circumstances as determined by the Board, 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. Tenant-based vouchers or tenant-based rental assistance are not included as Income.

(iv) Utility Allowances. The Utility Allowances used in underwriting must be in compliance with all applicable federal guidance, and §10.614 of this title of this part (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 \$20-30 per Unit per month range. Projected income from tenant-based rental assistance will not be considered. 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. The Underwriter will use the Applicant's proposed Management Fee if it is within the range of 4% to 6% of EGI. A proposed fee outside of this range must be documented. 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~~ of this part (relating to Documentation Submission Requirements at Commitment of Funds). At the underwriter's discretion, such documentation may be required prior to Commitment or Determination Notice 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. For Tax-Exempt Bond Developments that do not include a request for Direct Loan or where the Department is not the bond issuer, the Underwriter will not develop independent estimates of EGI, Total Operating Expenses, or NOI. The Applicant's NOI will generally be characterized as reasonable, subject to review for compliance with Underwriting Rules and Guidelines.

(4) Debt Coverage Ratio. DCR is calculated by dividing NOI by the sum of the debt service payments on all permanent or foreclosable lien(s) with scheduled and periodic payment requirements, including any required debt service on a Direct Loan subject to the applicable Notice of Funding Availability (NOFA) or other program requirements, and any on-going loan related fees such as credit enhancement fees or loan servicing fees. If executed loan documents do not exist, loan terms including principal and 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 minimum 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 the base rate index or

methodology for determining the variable 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 Direct Loans will be fully amortized over the same period as the permanent lender 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 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 priority order presented in subclauses (I) - (IV) of this clause subject to Direct Loan NOFA requirements and program rules:

(I) A reduction to the interest rate of a Direct Loan;

(II) An increase in the amortization period of a Direct Loan;

(III) A reduction in the principal amount of a Direct Loan; and

(IV) 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 priority order presented in subclauses (I) - (III) of this clause subject to Direct Loan NOFA requirements and program rules:

(I) an increase to the interest rate of a Direct Loan up to the lesser of the maximum interest rate pursuant to a Direct Loan NOFA or the interest rate on any senior permanent debt or if no senior permanent debt a market rate determined by the Underwriter based on current market interest rates;

(II) or a decrease in the amortization period on a Direct Loan but not less than 30 years;

(III) an assumed increase in the permanent loan amount for non-Department proposed financing 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 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. For Competitive Housing Tax Credit Applications, the Underwriter will adjust an Applicant's cost schedule line item to meet program rules. Underwriter will not make subsequent adjustments to the application to meet feasibility requirements as a result of the initial adjustment required to meet program rules.

(1) Acquisition Costs.

(A) Land, Reconstruction, and Adaptive Reuse Acquisition.

(i) For a non-identity of interest acquisition of land, or a Reconstruction or Adaptive Reuse Development, the underwritten acquisition cost will be the amount(s) reflected in the Site Control document(s) for the Property. At Cost Certification, the acquisition cost used will be the actual amount

paid as verified by the settlement statement.

(ii) For an identify of interest acquisition of land, or a Reconstruction or Adaptive Reuse Development, the underwritten acquisition cost will be the lesser of the amount reflected in the Site Control documents for the property or the appraised value as determined by an appraisal that meets the requirements of §11.304 of this chapter (relating to Appraisal Rules and Guidelines). An appraisal is not required if the land or building are donated to the proposed Development, and no costs of acquisition appear on the Development Cost Schedule. An acquisition will be considered an identity of interest transaction when an Affiliate of the seller is an Affiliate of, or 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 the legal or beneficial ownership of the property or any portion thereof or interest therein regardless of ownership percentage, control or profit participation prior to the first day of the Application Acceptance Period or in the case of a tax-exempt bond or 4% tax credit application the Application Date.

(iii) For all identity of interest acquisitions, the cost used at cost certification will be limited to the acquisition cost underwritten in the initial Underwriting of the Application.

(iv) In cases where more land will 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 acquisition cost that will be allocated to the proposed Development Site will be based on an appraisal containing segregated values for the total acreage to be acquired, the acreage for the Development Site and the remainder acreage. The Underwriter will not utilize a prorated value greater than the total amount in the Site Control document(s).

(B) Acquisition and Rehabilitation. The underwritten acquisition cost for an Acquisition and Rehabilitation Development will be the appraised value as determined by an appraisal that meets the requirements of §11.304 of this chapter (relating to Appraisal Rules and Guidelines).

(C) USDA Rehabilitation Developments. The underwritten acquisition cost for developments financed by USDA will be the transfer value approved by USDA.

(D) Eligible Basis on Acquisition of Buildings. Building acquisition cost included in Eligible Basis is limited to the appraised value of the buildings, exclusive of land value, as determined by the appraisal

(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, and 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 if adequately described and substantiated in the SCR report 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. If the Development is an additional phase, proposed by any Principal of the existing tax credit Development, the Developer Fee may not exceed 15%, regardless of the number of Units.

(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 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) 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.

(D) 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~~ presented in the Applicant's ~~project cost~~ Development Cost Schedule ~~schedule if it is within the range of two to six months up to twelve months~~ of stabilized operating expenses plus debt service. (up to twenty-four months for USDA or HUD-financed rehabilitation transactions). Reserve amounts exceeding these limits will be excluded from Total Housing Development Costs. 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~~ of this part (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 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. For Tax-Exempt Bond Developments that do not include a request for Direct Loan or where the Department is not the bond issuer, the Underwriter will not develop independent estimates for Building Cost or Soft Costs. The Applicant's Total Housing Development Cost and Total Eligible Cost will generally be characterized as reasonable, subject to review for compliance with Underwriting Rules and Guidelines.

(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~~ of this part (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 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) Direct Loans. In accordance with the requirements of 24 CFR §§92.250 and 93.300(b), a request for a Direct Loan will not be recommended for approval if the first year stabilized pro forma Cash Flow, after deducting any payment due to the Developer on a deferred developer fee loan and scheduled payments on cash flow loans, divided by the Development Owner's equity exceeds 10%, or a higher amount not to exceed 12% may be approved by the underwriter for unique ownership capital structures or as allowed by a federally insured loan program. For this purpose, Cash Flow may be adjusted downward by the Applicant electing to commit any Cash Flow in excess of the limitation to a special reserve account, in accordance with 10 TAC §10.404(d). For capital structures without Development Owner equity, a maximum of 75% of on-going Cash Flow, after deducting any payment due to the Developer on a deferred developer fee loan and scheduled payments on cash flow loans, may be distributed to the Development Owner and the remaining 25% must be deposited to a special reserve account, in accordance with 10 TAC §10.404(d). If the Direct Loan is not recommended for approval, the remaining feasibility considerations under this section will be based on a revised sources schedule that does not contain the Direct Loan. This standard will also be used when the Development Owner is seeking approval for a request for a subordination agreement or a refinance.

(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. 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) or (4) 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 band 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%;~~

(i) contains total units of 120 or less, and the Gross Capture Rate or any AMGI band capture rate exceeds 30%; or

(ii) contains more than 120 total units, and the Gross Capture Rate or any AMGI band capture rate exceeds 10%; 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) 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).

(4) 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 at any time during years two through fifteen; or

(B) Negative Cash Flow at any time (throughout the term of a Direct Loan), or at any time during years two through fifteen for applications that do not include a request for a Direct Loan.

(5) Exceptions. The infeasibility conclusions will not apply if:

(A) The Executive Director of the Department finds that documentation submitted by the Applicant at the request of the Underwriter will support unique circumstances that will provide mitigation.

(B) Developments not meeting the requirements of one or more of paragraphs (3)(A) or (4) 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 (4)(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 meets the requirements under §11.1(1242)(E)(i) as Supportive Housing and there is an irrevocable commitment, as evidenced by resolution from the sponsor's governing board, to fund operating deficits over the entire Affordability Period; 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; (iii) Comparable Units in previously approved Developments in the PMA that have not achieved 90% occupancy for a minimum of 90 days; and

(iv) proposed and Unstabilized Comparable Units that are located in close proximity to the subject PMA if they are likely to share eligible demand or if the PMAs have overlapping census tracts. Underwriter may require Market Analyst to run a combined PMA including eligible demand and Relevant Supply from the combined census tracts; the Gross Capture Rate generated from the combined PMA must meet the feasibility criteria as defined in §11.302(i).

(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.

(1) 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 be prepared by a general certified appraiser by the Texas Appraisal Licensing and Certification Board. 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.

(2) Appraisals received by the Department for Applications to be underwritten will be reviewed in accordance with USPAP Standard 3 and Standard 4. The reviewing appraiser will be selected by the Department from an approved list of review appraisers. If the reviewing appraiser disagrees with the conclusions or value(s) determined by the appraiser, the Underwriter will reconcile the appraisal and appraisal review and determine the appropriate value conclusions to be used in the underwriting analysis.

(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 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 any 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 the appraisal. 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 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) 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 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.

(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 and potentially impact costs. 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. It is the responsibility of the Applicant to inform the report author of those requirements in the scope of work; 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 Reduction 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~~ of this part (relating to Site and Development Requirements and Restrictions) 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 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.

(j) The SCR report must include the Department's SCR Compliance checklist containing the signatures of both the Applicant and SCR author.

(k) Scope of Work Narrative. For Tax-Exempt Bond Developments that do not include a request for Direct Loan or where the Department is not the bond issuer, a Scope and Cost Review prepared by a Third Party is not required. The application must provide a Scope of Work Narrative, consisting of:

- (1) A detailed description 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;
- (2) For historic structures, a description of each aspect of the building(s) that qualifies it as historic, including a narrative explaining how the scope of work relates to maintaining the historic designation of the Development; and
- (3) a narrative of the consolidated scope of work for the proposed rehabilitation for each major system and components.

SUBCHAPTER E FEE SCHEDULE, APPEALS, AND OTHER PROVISIONS

§11.901 Fee Schedule

Any unpaid 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. Applicants will be required to pay any insufficient payment fees charged to the Department by the State Comptroller. The Executive Director may extend the deadline for specific extenuating and extraordinary circumstances, unless prohibited by other parts of this Chapter, 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. For Competitive HTC Applications, 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 (68) and (79) 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. 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. 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 ~~3060~~ 3060 days after the Certificate of Reservation deadline. 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 than what was reflected in the Determination Notice 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.

(9) 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 for Competitive HTC Applications. 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 Housing Tax Credit~~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.

~~(19) Determination Notice Reinstatement Fee. 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. Prior to the re-issuance of the Determination Notice, the Applicant must submit a \$1,000 fee for staff review and processing of the Certification of Tax Exempt Bond Applications with New Docket Numbers in accordance with §11.201(2)(E) of this chapter.~~

~~(1920) Appraisal Review Fee.~~

~~(i) Competitive HTC Applications. Applicants required to submit an Appraisal must submit an Appraisal Review Fee or priority Applications on or before the Market Analysis Delivery Date, in an amount to be provided to the Applicant by the Department no later than seven days prior to the date the fee is due, and not to exceed \$6,000. If an Application becomes a priority Application after the Market Analysis Delivery Date, the Appraisal Review Fee is due within 7 calendar days of publication of the updated Application Log.~~

~~(ii) Tax-Exempt Bond Developments. Applicants required to submit an Appraisal must submit the Appraisal Review Fee with the Application. For Applications that are withdrawn prior to the Third Party Appraisal Review, the Appraisal Review Fee will be refunded upon request.~~

~~(iii) The Appraisal Review Fee will be \$1,875 per Application.~~

§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~~ layered with a Competitive HTC Application), an Applicant or Development Owner may appeal decisions made by the Department pursuant to §1.7 ~~of this title~~ of this part (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) If there is insufficient time for the Executive Director to respond to a Competitive Housing Tax Credit Application appeal prior to the agenda being posted for the July Board meeting at which awards from the Application Round will be made, the appeal may be posted to the Board agenda prior to the Executive Director's issuance of a response.

(fg) 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.

(gh) The decision of the Board regarding an appeal is the final decision of the Department.

(hi) 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 of this part~~ (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; 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 of this part~~ (relating to Alternative Dispute Resolution).

~~§10.401~~ §11.905. General Information for Commitments or Determination Notices ~~Requirements and Documentation.~~

(a) A Commitment or Determination Notice shall not be issued with respect to any Development for

an unnecessary amount in accordance with §42(m)(2)(A) or where the cost for the total development, acquisition, construction or rehabilitation exceeds the limitations established by the Department and the Board.

(b) All Commitments or Determination Notices, whether reflected in the Commitment or Determination Notice or not, are made subject to full compliance with all applicable provisions of law and the Department's rules, all provisions of Commitment, Determination Notice, and Contract, satisfactory completion of underwriting, and satisfactory resolution of any conditions of underwriting, award, and administrative deficiencies.

(c) The Department shall notify, in writing, the mayor, county judge, or other appropriate official of the municipality or county, as applicable, in which the Development is located informing him/her of the Board's issuance of a Commitment Notice, as applicable.

(d) The Department may cancel a Commitment, Determination Notice or Carryover Allocation prior to the issuance of IRS Form(s) 8609 (for Housing Tax Credits) or completion of construction with respect to a Development and/or apply administrative penalties if:

(1) The Applicant, Development Owner, or the Development, as applicable, fails after written notice and a reasonable opportunity to cure, to meet any of the conditions of such Commitment, Determination Notice or Carryover Allocation or any of the undertakings and commitments made by the Development Owner in the Application process for the Development;

(2) Any material statement or representation made by the Development Owner or made with respect to the Development Owner or the Development is untrue or misleading;

(3) An event occurs with respect to the Applicant or the Development Owner which would have made the Application ineligible for funding pursuant to Subchapter C of Chapter 11 ~~of this title~~of this part (relating to Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules) if such event had occurred prior to issuance of the Commitment, Determination Notice or Carryover Allocation; or

(4) The Applicant, Development Owner, or the Development, as applicable, fails after written notice and a reasonable opportunity to cure, to comply with this chapter or other applicable Department rules, procedures, or requirements of the Department.

§10.40211.906. Housing Tax Credit and Tax Exempt Bond Developments Commitment and Determination Notice General Requirements and Required Documentation.

(a) Commitment. For Competitive HTC Developments, the Department shall issue a Commitment to the Development Owner which shall confirm that the Board has approved the Application and state the Department's commitment to make a Housing Credit Allocation to the Development Owner in a specified amount, subject to the feasibility determination described in Chapter 11, Subchapter D ~~of this title~~of this part (relating to Underwriting and Loan Policy) and the determination that the Development satisfies the requirements of this chapter and other applicable Department rules. The Commitment shall expire on the date specified therein, which shall be 30 calendar days from the effective date, unless the Development Owner indicates acceptance by executing the Commitment, pays the required fee specified in §11.901 ~~of this title~~of this part (relating to Fee Schedule, Appeals, and other Provisions), and satisfies any conditions set forth therein by the Department. The Commitment expiration date may not be extended.

(b) Determination Notices. For Tax Exempt Bond Developments, the Department shall issue a Determination Notice which shall confirm ~~the Board's determination~~ that the Development satisfies the requirements of this chapter as applicable and other applicable Department rules in accordance with the §42(m)(1)(D) of the Internal Revenue Code (the Code). The Determination Notice shall also state the Department's determination of a specific amount of housing tax credits that the Development may be eligible for, subject to the requirements set forth in the Department's rules, as applicable. The Determination Notice shall expire on the date specified therein, which shall be 30 calendar days from the effective date, unless the Development Owner indicates acceptance by executing the Determination Notice, pays the required fee specified in Chapter 11, Subchapter E ~~of this title~~of this part, and satisfies any conditions set forth therein by the Department. The Determination Notice expiration date may not be extended. ~~The Determination Notice will be rescinded if the Tax Exempt Bonds are not closed within the timeframe provided for by the Board on its approval of the Determination Notice, by the expiration of the Certificate of Reservation associated with the Determination Notice, or if there are material changes to the financing or Development as determined by the Department pursuant to its rules and any conditions of approval included in the Board approval or underwriting report. If the requirements of the Determination Notice, and any conditions of the Determination Notice are met, the Determination Notice shall be valid for a period of one year from the effective date of the Determination Notice, without distinction between a Certificate of Reservation or Traditional Carryforward Reservation. In instances where the Certificate of Reservation is withdrawn after the Determination Notice has been issued and a new Certification of Reservation is issued, staff will not re-issue the Determination Notice. After one year from the effective date of the Determination Notice, if a new Certificate of Reservation or Traditional Carryforward Reservation is issued, the Applicant will be required to contact the Department in order to have a new Determination Notice issued and a new Application must be submitted. Such Application submission must meet the requirements of §11.201(2) of this chapter (relating to Procedural Requirements for Application Submission). If more than a year has not passed from the effective date of the Determination Notice, yet an Applicant desires to have a new Determination Notice issued that reflects a different recommended credit amount, then a new Application must be submitted that meets the requirements of §11.201(2).~~

(c) Documentation Submission Requirements at Commitment of Funds. No later than the expiration date of the Commitment (or no later than December 31 for Competitive HTC Applications, whichever is earlier) or Determination Notice, the documentation described in paragraphs (1) - (6) of this subsection must be provided. Failure to provide these documents may cause the Commitment or Determination Notice to be rescinded:

(1) For entities formed outside the state of Texas, evidence that the entity filed a Certificate of Application for foreign qualification in Texas, a Franchise Tax Account Status from the Texas Comptroller of Public Accounts, and a Certificate of Fact from the Office of the Secretary of State. If the entity is newly registered in Texas and the Franchise Tax Account Status or Certificate of Fact are not available, a statement can be provided to that effect;

(2) For Texas entities, a copy of the Certificate of Filing for the Certificate of Formation from the Office of the Secretary of State; a Certificate of Fact from the Secretary of State, and a Franchise Tax Account Status from the Texas Comptroller of Public Accounts. If the entity is newly registered and the Certificate of Fact and the Franchise Tax Account Status are not available, a statement can be provided to that effect;

(3) Evidence that the signer(s) of the Commitment or Determination Notice have sufficient authority

to sign on behalf of the Applicant in the form of a corporate resolution which indicates the sub-entity in Control consistent with the entity contemplated and described in the Application;

(4) Evidence of final zoning that was proposed or needed to be changed pursuant to the Development plan;

(5) Evidence of satisfaction of any conditions identified in the Credit Underwriting Analysis Report, any conditions from the Executive Award Review and Advisory Committee as provided for in 10 TAC Chapter 1, Subchapter C (relating to Previous Participation and Executive Award Review and Advisory Committee), or any other conditions of the award required to be met at Commitment or Determination Notice; and

(6) Documentation of any changes to representations made in the Application subject to §10.405 of this subchapter (relating to Amendments and Extensions).

(7) For Applications underwritten with a property tax exemption, documentation must be submitted in the form of a letter from an attorney identifying the statutory basis for the exemption and indicating that the exemption is reasonably achievable, subject to appraisal district review. Additionally, any Development with a proposed Payment in Lieu of Taxes (PILOT) agreement must provide evidence regarding the statutory basis for the PILOT and its terms.

(de) Post Bond Closing Documentation Requirements. Regardless of the issuer of the bonds, no later than 60 calendar days following closing on the bonds, the Development Owner must submit the documentation in paragraphs (1) - (5) of this subsection.

(1) Training certificate(s) from a Department approved "property owner and manager Fair Housing trainer" showing that the Development Owner and on-site or regional property manager has attended and passed at least five hours of Fair Housing training. The certificate(s) must not be older than two years from the date of submission and must verify that all parts or phases of the offered training have been completed; two certificates supplied for the same part or phase of an offered training will not be counted towards the five hour required minimum, even if they were attended on different dates;

(2) A training certificate from a Department approved "architect and engineer Fair Housing trainer" showing that the lead architect or engineer responsible for certifying compliance with the Department's accessibility and construction standards has attended and passed at least five hours of Fair Housing training. The certificate must not be older than two years from the date of submission and must verify that all parts or phases of the offered training have been completed; two certificates supplied for the same part or phase of an offered training will not be counted towards the five hour required minimum, even if they were attended on different dates;

(3) Evidence that the financing has closed, such as an executed settlement statement;

(4) A confirmation from the Compliance Division evidencing receipt of the CMTS Filing Agreement form pursuant to §10.607(a) of this chapter; and

(5) An initial construction status report consisting of items from paragraphs (1) – (5) of §10.402(h) of this subchapter (relating to Construction Status Reports).

§11.907. Carryover Agreement General Requirements and Required Documentation.

(a) Carryover (Competitive HTC Only). All Developments that received a Commitment, and will not be placed in service and receive IRS Form(s) 8609 in the year the Commitment was issued, must submit the Carryover documentation, in the form prescribed by the Department in the Carryover Manual, no later than the Carryover Documentation Delivery Date as identified in §11.2 of this part (relating to Program Calendar for Competitive Housing Tax Credits) of the year in which the Commitment is issued pursuant to §42(h)(1)(C) of the Code.

(1) Commitments for credits will be terminated if the Carryover documentation has not been received by this deadline, unless an extension has been approved. This termination is subject to right of appeal directly to the Board, and if so determined by the Board, immediately upon final termination by the Board, staff is directed to award the credits to other qualified Applicants on the approved waiting list.

(2) If the interim or permanent financing structure, syndication rate, amount of debt or syndication proceeds are finalized but different at the time of Carryover from what was proposed in the original Application, applicable documentation of such changes must be provided and the Development may be re-evaluated by the Department for a reduction of credit or change in conditions.

(3) All Carryover Allocations will be contingent upon the Development Owner providing evidence that they have and will maintain Site Control through the 10% Test or through the anticipated closing date, whichever is earlier. For purposes of this paragraph, any changes to the Development Site acreage between Application and Carryover must be addressed by written explanation or, as appropriate, in accordance with §10.405 of this Part (relating to Amendments and Extensions).

(4) Confirmation of the right to transact business in Texas, as evidenced by the Franchise Tax Account Status (the equivalent of the prior Certificate of Account Status) from the Texas Comptroller of Public Accounts and a Certificate of Fact from the Office of the Secretary of State must be submitted with the Carryover Allocation.

SUBCHAPTER F. SUPPLEMENTAL HOUSING TAX CREDITS

§11.501 General

(a) This subchapter applies only to 2022 Housing Tax Credits (HTC) requested to supplement Competitive HTC awards from the 2019 and 2020 ceilings, hereinafter referred to as Supplemental Credits.

(b) Submissions required to make such a request are considered a supplement to the Original Application. Requests for Supplemental Allocations are not considered Applications under the 2022 HTC Competitive Cycle nor are they part of the 2022 Application Round.

(c) Requests for Supplemental Allocations are not considered an Amendment to the Original Application. Requests for Supplemental Allocations may only include the items described in this subchapter, and submissions may not include changes to the Application that would be classified as an Amendment under §10.405 of this part (relating to Amendments and Extensions). Applicants that have Application changes that would constitute an Amendment must pursue approval of those changes separately by following the process for Amendments identified in §10.405 of this part. Issuance of a Supplemental Allocation does not constitute implicit approval of any items that may require approval as an Amendment.

(d) Any and all required notifications, submissions, satisfaction of deadlines, resolutions required in association with Housing De-concentration Factors and satisfaction of Housing De-concentration

Factor requirements, or resolution of any deficiencies, undertaken by an Applicant in association with their Original Application were satisfactorily addressed in the year of the Original Application, as evidenced by having received an allocation, and are considered by extension to have been sufficiently satisfied for the Supplemental Credits with no further actions required by the Applicant.

(e) Funding decisions, satisfaction of deadlines, or other Departmental processes that were undertaken in the award year are considered, by extension, to have been sufficiently satisfied for the Supplemental Credits.

(f) Developments that have Placed in Service are not eligible to receive Supplemental Credits.

(g) Except where preempted by federal or state law, the Qualified Allocation Plan (QAP) for the year of the original award will continue to apply. Proposed Developments and Applications will maintain their eligibility determinations from the Original Application, along with having met threshold requirements under 10 TAC Subchapters B and C, unless specifically stated otherwise in this Subchapter.

(h) All awards of Supplemental Credits will constitute the Department’s approval of the original allocation being qualified for Force Majeure and the original allocation will be accompanied with Force Majeure treatment. The previously-executed Carryover Allocation Agreement will be void and a new Carryover Allocation Agreement will be issued that reflects a new total allocation that includes the full amount of the original award plus any Supplemental Credits awarded. 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.

§11.502. Program Calendar for Supplemental Housing Tax Credits

Supplemental 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.

<u>Deadline</u>	<u>Documentation Required</u>
<u>01/03/2022</u>	<u>Begin accepting Supplemental Credit requests.</u>
<u>April Board meeting (est.)</u>	<u>Board approval of Supplemental Allocations under this Subchapter.</u>
<u>05/01/21 (est.)</u>	<u>Commitments for Supplemental Allocations are Issued.</u>
<u>05/15/21 (est.)</u>	<u>Commitment Fees for the Supplemental Allocation and any conditions of the credit Allocation are to be met.</u>
<u>11/01/2022</u>	<u>Carryover Documentation Delivery Date.</u>
<u>11/30/2022</u>	<u>Deadline for closing under §11.9(c)(8) (if applicable) (not subject to an</u>

<u>Deadline</u>	<u>Documentation Required</u>
	<u>extension under 10 TAC §11.2(a) pursuant to the requirements of 10 TAC §11.9(c)(8).</u>
<u>Determined by Board Action</u>	<u>10% Test Documentation Delivery Date.</u>
<u>Determined by Board Action</u>	<u>Placement in Service.</u>
<u>Five business days after the date on the Deficiency Notice (without incurring point loss)</u>	<u>Administrative Deficiency Response Deadline (unless an extension has been granted).</u>

§11.503 Maximum Supplemental Housing Tax Credits, Requests and Award Limits

(a) The maximum amount available for allocation of Supplemental Credits will be \$5,000,000. This maximum may not provide sufficient credits to fully fund all requests for Supplemental Allocations. If there are any Supplemental Credits still available after all requests have been considered, the remainder will be transferred to the 2022 Competitive Housing Tax Credit ceiling. A waitlist will be maintained for Supplemental Credit requests not having received a Supplemental Allocation; however, Supplemental Allocations will be made from the waitlist only to the extent that an allocation of Supplemental Credits is returned. Applications for which a request for Supplemental Credits was submitted will not be eligible to receive an allocation from the 2022 Competitive Housing Tax Credit ceiling.

(b) Maximum Supplemental Request Limit for any given Development. An Applicant may not request more than 15% more credits than their Original allocation. For all requests, the Department will consider the amount in the funding request of the 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. (§2306.6711(b)).

(c) Increase in Eligible Basis (30% Boost). Applications having received an increase in Eligible Basis in their Original Application are determined by the Department, on the basis of having been previously determined eligible for this purpose, to be eligible for the basis boost for the Supplemental Allocation. However, staff will not recommend a Supplemental Allocation that would cause the Development to be over sourced, as determined by the Department, 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.

§11.504 Competitive HTC Set-Asides. (§2306.111(d))

All Supplemental Allocation amounts will be associated with the Set-Aside for which the Original allocation qualified. Developments having been awarded under a set-aside in 2019 or 2020 will be considered to meet the set-aside requirements for that same set-aside in 2022. Supplemental Credits issued by the Board will be attributed to each 2022 Set-aside for the 2022 Application round as appropriate (for instance, for a 2020

development awarded out of the 2020 Non-Profit Set-Aside, now receiving \$100,000 in Supplemental Credits, \$100,000 would be attributed to the 2022 Non-Profit Set-Aside).

§11.505 Supplemental Credit Allocation Process

This section identifies the general allocation process and the methodology by which awards under the Supplemental Credit Ceiling are made.

(a) Regional Allocation Formula. The Department shall initially make available in each Rural Area and Urban Area of each Uniform State Service Region (subregion) Supplemental Credits consistent with the Regional Allocation Formula developed in compliance with Tex. Gov't Code §2306.1115; however, consistent with the total amount available being significantly less than the Credit Ceiling, the Department shall initially make available in each Rural Area and Urban Area of each Uniform State Service Region (subregion) Supplemental Credits in an amount not less than \$40,000.

(b) The Award Recommendation Methodology and Collapse described in 10 TAC §11.6(3) will apply to the Supplemental HTC credit allocations.

(c) Supplemental Credit Selection Criteria. The final score from the Original Application will be utilized for ranking purposes of the Supplemental Credit Applications.

(d) Third Party Requests for Administrative Deficiency. Due to the nature of the Supplemental Credit process and reliance on the Original Application and scores, the Third Party Request for Administrative Deficiency process will not be utilized during the Supplement Allocation process under this Subchapter.

§11.506 Procedural Requirements for Supplemental Credit Application Submission

(a) The procedures and requirements of 10 TAC §11.201 will generally apply to the Supplemental Credit Application, unless otherwise specified in this Subchapter.

(b) The Original Application will be relied upon, as deemed final and reviewed by staff as part of the original award; the request for Supplemental Credits must only include the items authorized in this subchapter. Architectural drawings, or other documents that relate to changes to the Application other than revisions to the financing structure may not be submitted. The Applicant must submit the required documents as a single PDF document, which will be incorporated into the Original Application by staff, and become the full request for Supplemental Allocation.

§11.507 Required Documentation for Supplemental Credit Application Submission

The purpose of this section is to identify the threshold documentation that is specific to the request for Supplemental Allocation submission, unless specifically indicated or otherwise required by Department rule. Only those documents listed herein may be submitted.

(a) 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. Applicants must certify that there has been no change to the Applicant Eligibility or Original Owner Certification since

the Original Application was submitted.

(b) Site Requirements and Restrictions. The Applicant must certify that there have been no changes from the Original Application that would require additional disclosure or mitigation, or render the proposed Development Site ineligible. Any change must be addressed under the requirements of 10 TAC §10.405, relating to Amendments and Extensions.

(c) Financing Requirements. Supplemental Credit Applications must include updated exhibits and supporting information required under 10 TAC §11.204(7), along with construction contracts or contractor bids with a detailed schedule of values to support the Development Cost Schedule. Supplemental Credit Applications that include Rehabilitation or Adaptive Reuse activities must include a letter from the Original Application Scope and Cost Review provider certifying that the scope of the project has not changed from the Original Application; the Development Cost Schedule must be supported by either (a) construction contracts or contractor bids, or (b) an updated Scope and Cost Review Supplement. The Financing Narrative should describe changes to the financial structure of the Supplemental Credit Application since the Original Application was submitted. Applicants should utilize 2021 rents in their updated exhibits; any resulting changes to operating expenses must include an explanation and rationale for the changes.

(d) Site Control. Applicants must certify that there has been no change to Site Control, other than extensions or purchase by the Applicant, since the Original Application was submitted. If the nature of Site Control has changed, Supplemental Credit Applicants must submit the appropriate documentation as described in 10 TAC §11.204(10).

(e) Zoning. (§2306.6705(5)) If the zoning status of the Development has changed since the Original Application, the Supplemental Credit Application must include all requirements of 10 TAC §11.204(11)

§11.508 Supplemental Credit Applications Underwriting and Loan Policy

Changes to a Development's financing structure do not constitute an Amendment. Requests for Supplemental Credits will only be reviewed for items addressed in this subchapter. In requests for Supplemental Credits the Total Developer Fee and Developer Fee included in Eligible Basis cannot exceed the Developer Fee amounts in the published Real Estate Analysis report for the Original Application. Requests may not reduce the Deferred Developer Fee from the amount included in the published Real Estate Analysis report for the Original Application. The Real Estate Analysis Division will publish a memo for the Supplemental allocation serving as a supplement to the report for the Original Application.

§11.509 Supplemental Credit Fee Schedule

Supplemental Credit Commitment Fee. No later than the expiration date in the Commitment, a fee equal to 4% of the annual Supplemental Housing Credit Allocation amount must be submitted. If the Development Owner has paid the fee and returns the credits by November 1 of the current Application Round, then a refund of 50% of the Commitment Fee may be issued upon request.

8c

BOARD ACTION REQUEST

EXECUTIVE DIVISION

SEPTEMBER 2, 2021

Presentation, discussion, and possible action on an order adopting new 10 TAC §1.8, Plan Requirements, Process, and Approval Criteria for Properties Designated for Camping by Political Subdivisions for Homeless Individuals, and directing its publication for adoption in the *Texas Register*

RECOMMENDED ACTION

WHEREAS, the 87th Texas Legislature, Regular Session passed House Bill (HB) 1925 which established new Subchapter PP of Chapter 2306 of the Texas Government Code, entitled Property Designated by Political Subdivision for Camping by Homeless Individuals;

WHEREAS, Subchapter PP provides that a political subdivision may not designate a property to be used by homeless individuals to camp unless the Texas Department of Housing and Community Affairs (the Department) has approved a plan as further described by Subchapter PP;

WHEREAS, the Department seeks to implement clear objective guidance for political subdivisions on how they can submit such plans, what they must include in the plans, and the criteria by which such plans may be approved;

WHEREAS, on July 8, 2021, the Board approved a draft of the proposed new rule which was published in the *Texas Register* and for which public comment was accepted from July 23, 2021, through August 23, 2021; and

WHEREAS, public comment was received, staff has considered the comment, and a rule is now proposed for the Board to adopt;

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 new 10 TAC §1.8, Plan Requirements, Process and Approval Criteria for Properties Designated for Camping by Political Subdivisions for Homeless Individuals, in the form presented to this meeting, to be adopted and submitted to 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 and any requested revisions to the preambles.

BACKGROUND

During the 87th Regular Legislative Session, the Texas Legislature passed HB1925 which established prohibitions on camping in public places, created a criminal offense in Texas Penal Code for prohibited camping, and established new Subchapter PP of Chapter 2306 of the Texas Government Code, entitled Property Designated by Political Subdivision for Camping by Homeless Individuals. Governor Greg Abbott signed the bill into law on June 15, 2021.

The new Subchapter PP provides that a political subdivision may not designate a property to be used by homeless individuals to camp unless the Texas Department of Housing and Community Affairs (the Department) has approved a plan as further described by Subchapter PP. The bill becomes effective on September 1, 2021. Staff feels it is critically important to adopt a rule that provides clear objective guidance on:

- how political subdivisions can submit such plans,
- content of the plans,
- the process to be used for submission and review of plans, and
- the criteria by which such plans may be approved or denied.

The Department intends to also make available, by the time the rule is adopted, a plan template for use by political subdivisions, and an informational webpage within the Department's website outlining the process, required forms and frequently asked questions. Staff suggests that submitted plans, and the Department's final determination on those plans, will also be posted on this webpage.

The draft rule was released for public comment and comment was accepted from Friday, July 23, 2021, through Monday, August 23, 2021. Comment was received from ten commenters and their comments as well as staff's response are provided in the preambles following.

Preamble adopting new 10 TAC §1.8, Plan Requirements, Process and Approval Criteria for Properties Designated for Camping by Political Subdivisions for Homeless Individuals

The Texas Department of Housing and Community Affairs (the Department or TDHCA) adopts new 10 TAC §1.8, Plan Requirements, Process and Approval Criteria for Properties Designated for Camping Political Subdivisions for Homeless Individuals. The purpose of the rule is to implement new requirements established by the 87th Regular Texas Legislature that establishes in Chapter 2306, Texas Government Code, new Subchapter PP. Subchapter PP provides that a political subdivision may not designate a property to be used by homeless individuals to camp unless the Department has approved a plan as further described by Subchapter PP. The rule provides clear objective guidance for political subdivisions on how they can submit such plans, the content of the plans, how plans will be reviewed, and the criteria by which such plans will be approved. The Department has analyzed this rulemaking action and the analysis is described below for each category of analysis performed.

Tex. Gov't Code §2001.0045(b) does not apply to the rule. §2001.0045(c)(9) provides that the requirements of the section do not apply to a rule that is “necessary to implement legislation, unless the legislature specifically states this section applies to the rule.”

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 rule will be in effect, the rule does not create or eliminate a government program, but only provides the process and framework for how a political subdivision may submit a plan to designate a property to be used by homeless individuals to camp, what must be included in the plan, and provides how the Department will review and approve such plans.

2. The enacted law does create additional work associated with the review and processing of such plans, however the rule only formalizes the process created by statute. Therefore, the rule does not require a change in work that will require the creation of new employee positions, nor will the rule reduce work load to a degree that any existing employee positions are eliminated.

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

4. The 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 rule is creating a new regulation; the regulation is applicable only to those political subdivisions seeking to obtain plan approval to designate a property to be used by homeless individuals to camp.

6. The action will not repeal any rule.

7. The rule will increase the number of individuals subject to the rule's applicability as the rule currently does not exist. When adopted, those political subdivisions seeking such plan approvals will become subject to the rule's applicability.

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

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

The Department has evaluated this rule and determined that the rule 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 rule does not contemplate or authorize a taking by the Department, therefore no Takings Impact Assessment is required.

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

The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect 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 rule is in effect, the public benefit anticipated as a result of the rule would be the provision of a clear policy for how a political subdivision may designate a property to be used by homeless individuals to camp through submission of a plan to the Department. The rule provides clear guidance for political subdivisions on how they can submit such plans, what must be included in the plan, how plans will be reviewed, and the criteria by which such plans will be approved. There will not be economic costs to individuals required to comply with the 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 rule is in effect, enforcing or administering the rule has minimal implications related to costs or revenues of the state or local governments. There may be negligible costs associated with the time required of a political subdivision to prepare and submit the plan, and respond to questions from the Department, but these processes and costs are necessary to ensure implementation of the newly enacted law. All costs are borne by the political subdivision.

SUMMARY OF PUBLIC COMMENT. Public comment was received from July 23, 2021, to August 23, 2021. Comment received is summarized herein and a reasoned response provided. Comment was received from the ten commenters listed: Commenter 1, Dianna Grey, City of Austin Homeless Strategy Officer; Commenter 2, Steve & Amy Bresnen, Bresnen Associates; Commenter 3, Michael Nichols, President and CEO, Coalition for the Homeless; Commenter 4, Tanya Lavelle, Policy Specialist, Disability Rights Texas (DRTx); Commenter 5, Matthew Mollica, Executive Director, Ending Community Homelessness Coalition (ECHO); Commenter 6, Daniel Buckley, Deputy City Manager, City of Galveston; Commenter 7, Kate Goodrich, Jackson Walker LLP; Commenter 8, Matthew Lovitt, Policy Fellow, National Alliance on Mental Illness (NAMI); Commenter 9, Eric Samuels, President & CEO, Texas Homeless Network (THN); and Commenter 10, Mary Wilbanks.

General Comments

Commenter 2 felt that the rule may be unnecessarily restrictive in some areas which may drive up expenses. Those comments are provided in greater detail under specific sections below.

Staff Response: The specific comments and examples provided by Commenter 2 are addressed in the following responses.

Commenter 2 stated that because Chapter 2306, Texas Government Code, does not define what 'designate' means when it comes to a property being designated by a municipality for the purpose of camping by homeless individuals, the City of Austin effectively 'designated' much of the city for homeless camping when it repealed its ordinance prohibiting such camping. While Government Code provides the Texas Attorney General and Texas Comptroller of Public Accounts with authority to take actions against a political subdivision, HB 1925 did not provide the Department with enforcement authority; therefore, the commenter felt that a municipality could elect to take no affirmative action to designate any properties for camping and simply ignore the requirement to submit a plan, and thereby avoid negative consequences. They felt that to make sure there is a clear sharing of information between TDHCA and the agencies with enforcement authority under the statute, the rule should include language as follows: "When the Department receives information that a political subdivision is allowing camping by homeless people in a public place that is not the subject of a plan approved under this section, the Department will refer the information to the Attorney General's Office for possible action under Chapter 364, Local Government Code, or other law."

Staff Response: Staff concurs. Responsive language is added in the rule in new subsection (g).

Commenter 2 suggests that throughout the rule any reference to calendar days should be replaced with business days.

Staff Response: Calendar days are less subject to interpretation; no edits are proposed in response to this comment.

Commenter 4 notes that their comments do not address the legality of the enabling legislation, nor the plan, and the implications related to the Americans with Disabilities Act as Amended by the Amendments Act of 2008 (ADA) and Section 504 of the Rehabilitation Act of 1973. They state that they reserve the right to address any issues of legality at a later time.

Staff Response: The public comment period on a proposed rule is to allow interested persons a reasonable opportunity to submit their views and argument regarding the substance of a proposed rule, and to allow the agency to consider the submissions about the proposed rule. This comment, regarding reservations as to the legality of the enabling statute of the proposed rule, is not a comment on the rule, itself. Accordingly, no edits are proposed in response to this comment.

Commenter 4 provided data from the 2020 HUD Point in Time count to document that Texas has a homelessness problem and provided some of the attributes of those counted as homeless. They noted that the typical HUD Point in Time count is widely accepted as undercounting homeless individuals and also noted that there are many homeless who have a disability.

Staff Response: Staff appreciates the information provided as context for the comments submitted. No edits are proposed in response to this comment.

Commenters 3 and 9, both commenting from the perspective of the Continuums of Care, noted that the plan has no requirements relating to the political subdivision needing to work with the local Continuum of Care (CoC) or the CoC-designated lead for that geographic area. Both commenters felt that the CoC should be a required part of the planning and decision-making as a municipality develops its proposal for a property. Commenter 5 also indicated their support throughout the rule for required coordination with the local CoC.

Staff Response: While the Department hopes that political subdivisions take the thoughtful planning steps of consulting with their local CoC, the Department does not support adding CoC coordination as a minimum requirement that may be burdensome for a jurisdiction or would

prevent an otherwise acceptable plan from being approved. No edits are proposed in response to this comment. The specific comments and examples provided by Commenters 3 and 9 are addressed in the following sections.

Commenter 4 suggests that many of their concerns with the plan (rule) would be mitigated by a requirement that political subdivisions work with their own ADA coordinators before submitting a plan to TDHCA for a site; they noted that public entities with over 50 employees are required to employ an ADA coordinator.

Staff Response: While staff appreciates the perspective in which this comment was made, the Department is concerned that adding such a requirement will add delay and challenges for local political subdivisions. No edits are proposed in response to this comment.

Commenter 4 noted that the rule did not provide for how a public entity or individual could request a modification under the ADA and the Rehabilitation Act.

Staff Response: The Department does have a rule addressing how a reasonable accommodation request can be made to the Department. Staff agrees that the proposed rule did not clearly refer to the applicability of that rule in the plan process. §1.8(d)(2)(D) has been revised to add a provision addressing this.

Commenter 4 states that the plan does not address the increased housing instability resulting from the COVID-19 pandemic. They noted: “If political subdivisions must turn to campsites to provide a modicum of shelter and stability to people facing homelessness, including people with disabilities, TDHCA should do everything in its power to create a plan [rule] that will allow political subdivisions to support every person who is unsheltered as easily and fairly as possible.”

Staff Response: While true that the rule does not explicitly mention the pandemic, the rule is drafted intentionally with flexibility for political subdivisions to be able to address their local homelessness needs through camping, including their homelessness needs derived from the pandemic. The rule in no way limits to what extent a political subdivision may use camping as a solution to homelessness in their community. No edits are proposed in response to this comment.

Commenter 5 provides a contextual comment, expressing a belief that government-sanctioned encampments do not reduce and end homelessness and could make it more difficult for communities to focus on lasting solutions. They note that solutions in one community do not work in another community.

Staff Response: Staff appreciates the context provided. No edits are proposed in response to this comment

Commenter 6, as a small city, feels the requirements of HB 1925 create an unfunded mandate. The commenter noted several instances of this relating to the roles public safety will be required to fulfill, custody and storage of property, and documentation of the belongings of homeless individuals.

Staff Response: TDHCA is only tasked with implementing one of the components of HB 1925, which is approving plans for properties designated for camping. TDHCA has no oversight or authority as it relates to the issues raised by Commenter 6 and is not in a position to provide answers on components of the legislation for which the Department is not involved. No edits are proposed in response to this comment.

§1.8(b) Applicability

Commenter 6 points out that HB 1925 provides that camping in relation to an emergency shelter during a disaster is allowable with consent given by the political subdivision, however the rule does not address whether such emergency shelter must be contemplated in a plan submitted to TDHCA. They suggest that the rule should explicitly clarify the plan requirements that do not apply to camping for households displaced after a natural disaster.

Staff Response: There are four situations noted in HB 1925 in which a political subdivision can allow camping without it being a violation of the camping prohibition: recreational purposes, purposes for which a plan has been approved by TDHCA, camping in compliance with a beach access plan, and in cases relating to emergency shelter during a disaster. Because these factors are listed separately from the reference to camping plans approved by TDHCA, staff does not believe that the other three situations listed require reference or inclusion in the camping plans. Staff has added a clarification in the rule regarding those excluded situations.

§1.8(c) Definitions

Commenters 3 and 9 suggest adding a definition relating to the CoC.

Staff Response: While the Department hopes that political subdivisions take the thoughtful planning steps of consulting with their local CoC, the Department does not support adding CoC coordination as a minimum requirement, therefore no definition needs to be added.

Commenter 6 notes that the rule does not define ‘homeless’ which is needed to differentiate between persons who are homeless and persons who are displaced due to a natural disaster. They also note that the rule references ‘camp’ as defined by Section 48.05 of the Penal Code, a citation not found in the Penal Code.

Staff Response: TDHCA does not feel that the term ‘homeless’ needs a definition for purposes of this rule. The plan requirements focus primarily on an eligible use of a public space, not on explicitly who may, or may not, be able to use the approved site. TDHCA feels that to define the term ‘homeless’ may inadvertently limit political jurisdiction’s ability to flexibly use their approved sites. As it relates to the comment that the term ‘camp’ is not defined in Penal Code, that is incorrect. HB 1925 amended the Penal Code to include this definition; while not reflected in the posted Texas Statutes online at this time because the enacted laws have not yet been included in the published Penal Code, the definition has been enacted and the citation is correct. No revisions are made to the rule in response to this comment.

§1.8(d)(2) Review Process

Commenter 10 does not feel five calendar days to address deficiencies is sufficient, particularly if those days fall on a weekend.

Staff Response: While staff appreciates this comment, the Department is required by statute to approve plans within 30 days of receipt. Without a fairly prompt deficiency period, that is not achievable. It should be noted that plans can be resubmitted as often as possible, so if a political subdivision is unable to respond to a deficiency, they can withdraw their plan and resubmit with the required information when they have it ready. No edits are proposed in response to this comment.

§1.8(e) Threshold Plan Requirements Overall

Commenter 1 notes that mobile clinics are an eligible source of health service provision in the draft rule, but that mobile indigent service providers are not listed as eligible. They request that mobile providers be specifically included in this category. While the commenter submitted this under subsection (f), the portion of the rule that addresses this is in subsection (e).

Staff Response: Staff concurs that mobile service providers should also be allowable for indigent services. The revision to include this is now reflected in the rule at §1.8(e)(4)(B)(i).

Commenters 3 and 9 both suggest requiring as a threshold plan requirement that the political subdivision include a letter in the plan from their local CoC verifying that the political subdivision collaborated with the CoC in the development of the plan and selection of the proposed site.

Staff Response: While the Department hopes that political subdivisions take the thoughtful planning steps of consulting with their local CoC, the Department does not support adding CoC coordination, or requiring a letter from the CoC, as a minimum requirement that may be burdensome for a jurisdiction or would prevent an otherwise acceptable plan from being approved.

Commenter 8 noted that the required submission information in subsection (e) provided a high degree of uniformity in the information requested and they appreciated the depth and degree of information the rule requires of a political subdivisions. However they are concerned with disparities in the information requested regarding the fourth factor, law enforcement. They note that this section of the rule requests a comparative analysis on the resources provided for the area, is required to address added resources specifically to address the site, and to explain any lower than typical law enforcement coverage in the area. They feel that this is a higher standard for the law enforcement component of the rule which may create an oversubscription of law enforcement in the services provide to campsite residents; by the plans requiring this higher level of attention it may lead to unnecessary criminal justice involvement for campsite residents and greater rates of incarceration. "Once involved with criminal justice system, individuals living with mental illness, homeless or otherwise, often experience worsened mental health outcomes and higher rates of recidivism." They felt this could be addressed by applying the same level of rigor from the other factors to the law enforcement item; however, commenter prefers that the comparative analysis suggested for law enforcement relative to other areas of the community be applied to the other four factors by comparing other potential sites.

Staff Response: While staff appreciates the value of comparative analysis and would hope that political subdivisions apply a strong level of comparative scrutiny in their selection of sites, staff does not recommend that this heightened level of scrutiny be provided in the plan submission for all factors. To apply a comparative analysis requirement for all factors may be unnecessarily burdensome. No revisions are made to the proposed rule in response to this comment.

§1.8(e)(3), Estimated Number of Campers

Commenters 3 and 9 suggest that the estimated number of campers to be located at the proposed site needs to have been agreed upon by the local CoC or CoC-designated lead.

Staff Response: While the Department hopes that political subdivisions take the thoughtful planning steps of consulting with their local CoC and coordinate on accurate estimates on the number of campers for a proposed site, the Department does not support adding CoC coordination as a minimum requirement that may be burdensome for a jurisdiction or would

prevent an otherwise acceptable plan from being approved. No revisions are made to the proposed rule in response to this comment.

§1.8(e)(4)(A) and (E), Health Care and Mental Health Services

Commenter 4 states that the rule intrinsically inter-links and targets people with disabilities because it specifies a need for health services and coordination with Local Mental Health Authorities that applies only to persons with disabilities.

Staff Response: The wording of the statute requires coordination with the Local Mental Health Authority. No revisions are made to the proposed rule in response to this comment.

Commenter 7 noted that this section requires that communication have taken place with the Texas Department of Health and Human Services (HHS) to ascertain availability of access to Medicaid services; commenter asked whether HHS has already established a process for the communication and what both the Political Subdivision and/or HHS need to include to meet this requirement.

Staff Response: TDHCA does not believe that the rule requires HHS to establish a process for this issue. This section was intentionally written to allow a summary of a conversation with HHS to satisfy the requirement. A formal process or written communication is not required. Staff recommends no changes in response to this comment to retain flexibility for both Political Subdivisions and HHS.

§1.8(e)(4)(B) Indigent Services

Commenters 3 and 9 suggest requiring that the description of indigent services to be provided at the property be written in collaboration with the local CoC or CoC-designated lead.

Staff Response: While the Department hopes that political subdivisions take the thoughtful planning steps of consulting with their local CoC on indigent services, the Department does not support adding CoC coordination as a minimum requirement that may be burdensome for a jurisdiction or would prevent an otherwise acceptable plan from being approved.

Commenter 5 suggests that any services provided at a sanctioned site be consistent with a Housing First model to connect people with low-barrier housing.

Staff Response: While staff appreciates this comment, staff does not support requiring restrictions on the type of service delivery provided, as some communities may elect not to adhere to a Housing First model and should not have an otherwise acceptable Plan denied.

Commenter 7 suggested that because indigent services are not defined, all organizations in the city providing services to people experiencing homelessness would meet the standard for this section and be considered indigent services.

Staff Response: The Department uses the term 'indigent services' in this section because that terminology is used in the statute. The Department has intentionally not defined 'indigent services' so as to not limit what could possibly be included in this category. While staff agrees with the commenter that any organizations in a city providing homeless services would be considered a provider of indigent services, those organizations may not be the only indigent service providers in a community. There may be other organizations that would be considered indigent service providers that are not providing homeless services (such as community action agencies, food banks, health clinics, etc.). No edits are proposed in response to this comment.

§1.8(e)(4)(C)(i) and (iii), Transportation

Commenter 2 noted that the sentence in §1.8(e)(4)(C)(i), “Transportation provided by a homeless service provider is not considered public transportation” may be too restrictive. If a homeless service provider is a municipality or working under contract with a municipality, it would be unnecessarily limiting to exclude their provision of transportation services. “It would make sense to allow them to obtain such services via paid contracts or services donated to the political subdivision, such as by a church or other nonprofit.”

Staff Response: Staff concurs that this may limit creative solutions to transportation. The sentence has been deleted from the rule.

Commenter 2 also suggested removing the clause in §1.8(e)(4)(C)(iii) that required that the description of the closest public transportation spot or station have “a sidewalk for pedestrians”. Commenter 2 felt this may eliminate sites that would allow safe passage for pedestrians but do not have sidewalks. They thought the Department should not be put in the position of having to enforce such details. Alternatively, Commenter 4 felt that the rule does not require the plan to include anything about accessibility or the ADA requirements for transportation. They suggest that to serve persons with disabilities, political subdivisions be required to coordinate with local transportation authorities to provide fully accessible transportation options, as well as to ensure that ADA modification requests can be entertained for transportation services.

Staff Response: Staff has revised the language in the rule to include “or an alternative pathway identified by the Political Subdivision” to increase potential eligible sites. Nothing in this rule alters, reduces, or supplants a Political Subdivision’s obligations under the ADA.

§1.8(e)(4)(D), Law Enforcement

Commenter 5 suggests that people experiencing homelessness have a mistrust of law enforcement and law enforcement agencies are not trained to respond to crises using best practices in trauma-informed care and can thus escalate situations. The commenter suggests removing the clause that references “any added resources” and replacing it with “a written plan limiting the presence of law enforcement at the site and detailing how trauma-informed responders, such as social workers or rapid crisis response teams, will be engaged as primary responders to crises involving people living at the site”.

Staff Response: While staff appreciates this comment, staff does not support requiring restrictions on the approaches to law enforcement that some communities may elect, as not all jurisdictions will agree with the limitation of law enforcement at the site, and should not have an otherwise acceptable Plan denied. No revisions have been made to the rule in response to this comment.

§1.8(f) Evaluation Criteria

Commenter 1 felt that the way the criteria for each of the five evaluative factors were detailed would make it unlikely for local governments to be able to submit a compliant plan. Commenter 1 also suggested adding more specificity about plan requirements (which were then detailed further and are described elsewhere in comment summary).

Staff Response: The specific comments and examples provided by Commenter 1 are addressed in the following specific summaries.

Commenter 1 felt that the criteria for Local Health Care, Indigent Services and Mental Health were very similar (example given was that county indigent healthcare programs are listed as

acceptable health care provider) and it was suggested that these might become mutually exclusive. Commenter suggested that adding language addressing similarities and overlapping services between the providers for Health Care and Indigent Services would provide greater clarity.

Staff Response: While staff appreciates this perspective, in practice there are overlaps among providers and between health and non-health indigent services. To restrict these sections to be mutually exclusive may limit a political subdivisions ability to meet multiple criteria. Staff believes the rule as drafted provides sufficient detail while allowing creative, and/or overlapping service provision among categories. No revisions are proposed in response to this comment.

Commenter 1 also asked that greater detail and specificity be added for the 'proof' of the criteria. They felt it was unclear what level of specificity would be required and whether the Department would want short simple statements or complex explanations, particularly given the limits on the length of the plan.

Staff Response: While staff appreciates this perspective, the risk of adding too much specificity in the rule is that it will become overly complicated and require political subdivisions to meet burdensome requirements. The page limit is intended to be a guide to how extensive the responsive content needs to be. Staff believes the rule as drafted provides sufficient detail to let political subdivisions know what is required while allowing flexibility in their Plans. No revisions are proposed in response to this comment.

Commenter 2 felt that in categories (A),(B) and (C), the rule's 90% threshold of eligibility is too restrictive and will lead to plan rejections when there is substantial need for designated camping sites. They also note that it will be difficult, if not impossible, to determine that these requirements are met. There may be limited data available on the proposed camper population and a municipality will take on unnecessary administrative expense to try to measure and meet the requirement. Commenter 2 suggested that if there must be a threshold, no more than 50% be used; however they prefer that a blanket description which echoes the statutory terms be used to leave the Department with discretion to evaluate each plan on an individual basis.

Staff Response: Staff agrees that having excessive standards or standards that are unmeasurable create programmatic inefficiencies. To address that the 90% is excessive, the percentage for each of these three factors has been revised to 50% in the rule. Additionally, to make it clear that this is not expected to be a monitored deliverable, but instead is an important goal and focus for the site, the language has been clarified to reflect that the Political Jurisdiction needs to commit to a goal of 50%.

Commenter 5 notes that the rule in both paragraphs (A) and (B) of this section are too restrictive. The provisions regarding proximity to services drastically limit options for sites. They note that limiting locations to only a few eligible areas restricts the options a homeless individual will have in choosing where to go. They specifically suggest that an option be added to these two categories that the services can be provided onsite to take advantage of mobile service options that providers may already have.

Staff Response: Staff concurs that an on-site offer of services should also be allowable. Revisions as noted are made in sections (A) and (B). It should be noted that Commenter 5's proposed language (not the comment) did indicate that indigent services provided on-site include housing assessments. Staff did not include that revision, as housing assessments may be one offered type of indigent services, but the Department does not want to add further restrictions or requirements on what services must be provided.

Commenter 10 notes that sites that would meet all of the evaluative criteria are likely to be located where the neighboring residents are likely to oppose the use of a property for this purpose.

Staff Response: While staff agrees that sites proximate to services and transportation may prompt opposition, the Department does not believe that this means the standards should be lowered; the provision and proximity of services is critical to fulfilling the statutory requirements and assisting persons addressed by the statutorily-required plan.

§1.8(f)(1)(A) Criteria relating to Local Health Care

Commenters 1 and 10 noted that requiring that health care services and mental health services be available at little or no cost for at least 90% of Proposed News campers would place the burden of health care expenses on local governments because the availability of Medicaid is a state function, is not within the control of a local government, and has stringent eligibility requirements and barriers that result in a relatively small portion of those experiencing homelessness receiving Medicaid-funded services. Commenter 10 also pointed out that the provision of Medicaid services assumes that the person has a valid ID and has been approved for Medicaid.

Staff Response: As noted in the comment above that suggested that a lower threshold be used, staff has revised this from a requirement to a goal and reduced the goal from 90% to 50% which both address this comment as well.

Commenter 1 also noted that the Evaluative Criteria for this item alludes to ‘little cost’ for the Medicaid managed care insurance coverage and/or other providers that may require a copay. Commenter recommends defining what constitutes ‘little’ cost.

Staff Response: Staff has revised to instead reference little “or low” cost, but is not electing to provide any more specific of a standard that may only create burdensome administrative challenges for the Political Jurisdiction.

§1.8(f)(1)(B) Criteria relating to Indigent Services

Commenter 1 notes that mobile clinics are an eligible source of service provision for health providers in the draft rule, but are not included in the list of possible indigent service providers. They request that mobile providers be specifically included in this category for approval. Commenter 1 also specifically requests that the ability to rely on mobile services is noted in the plan submission requirements, but it is not actually stated in the evaluation criteria in subsection (f) that the mobile services are acceptable to meet the criteria.

Staff Response: Staff concurs that mobile service providers should also be allowable for indigent services. Staff concurs that the requirements need to reflect the acceptability of mobile clinics within the requirements in subsection (f). To address this comment, responsive edits have been made to (e)(4)(B)(i), (f)(1)(A) and (f)(1)(B) to tie together what is requested in the plan with the approval criteria.

Commenter 2 requests that the criteria for indigent services include access to sanitation, including restrooms and showers. They noted: “homeless people who are camping often do not have access to restrooms and showers, which often leads to urinating and defecating in public.” While not stated in the statute, they felt the Legislature did not desire to see plans approved that do not have such basic services as sanitation available to the indigent households.

Staff Response: Staff concurs that this is a basic necessity for any site and is a logical outgrowth of indigent services. This has been added, not as a component of indigent services, but as a requirement for the site in new subsection (e)(7), as demonstrated by information from the Political Jurisdiction.

§1.8(f)(1)(C) Criteria relating to Transportation

Commenter 10 felt that the transportation requirement of running six days per week was too stringent and that many cities have limited weekend public transportation.

Staff Response: Staff appreciates the comment, but feels access to transportation is critical and does not recommend revisions to this standard.

§1.8(f)(1)(D) Criteria relating to Local Law Enforcement Resources

Commenters 1 and 4 felt that the rule's allusion to demographics in the law enforcement section 'requires a local government to make a determination about law enforcement based on the encampment demographics'. Commenter 4 notes that the rule places unnecessary emphasis in the plan on the availability of additional law enforcement resources that may be needed; in doing so the rule stigmatizes homelessness as a criminal act and perpetuates a stereotype of those who are homeless as criminals.

Staff Response: The reference in the rule regarding demographics in the law enforcement section does not reference the demographics of the encampment, but to the demographics of the law enforcement beat/area in which the encampment would reside. The rule states that the law enforcement resources for the law enforcement beat/area containing the site be similar to law enforcement resources for other beats/areas of similar demographics. This is comparing two beats with similar demographics within the whole municipality and stating that the law enforcement resources be similar. Nowhere in the rule is reference to the demographics of the camp residents mentioned. No revisions are proposed in response to these comments; although, more flexibility has been provided to Political Subdivisions as a result of another commenter.

Commenter 2 noted that the rule requires that law enforcement resources be on par with other areas within the political subdivision. They suggest adding language such as "unless the political subdivision provides a specific plan for security in and around the property that reasonably meets the need for law enforcement services in that area". This will allow political subdivisions to tailor security needs.

Staff Response: Staff concurs that flexibility is needed for political subdivisions. Responsive language has been added to this section.

Commenter 6 notes that availability of law enforcement personnel in the aftermath of a disaster may be severely limited and requiring that camping by those displaced have a similar level of law enforcement presence may be challenging. The commenter requested an exception in the case of displaced persons camping due to emergency response.

Staff Response: As noted earlier in the section on Applicability, camping approved by a political subdivision in response to a natural disaster is excluded from the plan requirements. This has been revised in the rule in subsection (b).

§1.8(f)(2), Plan Approval

Commenters 3 and 9 suggest that the CoC needs to be an integral part in the determination of whether a political subdivision has met the correct number of required factors. They suggest adding that the plan be approved when their local CoC or CoC-designated lead agrees in writing. *Staff Response:* While the Department encourages political subdivisions to submit plans that the local CoC finds satisfy all of the evaluation factors, the Department does not support adding this level of CoC approval to the process, nor did the statute contemplate CoC being a required component in the plan approval process. No revisions are made in response to this comment.

General Comments regarding Civil Rights Laws

Commenter 1 and 4 raise concerns that the proposed rule makes assumptions about the individuals experiencing homelessness that will utilize the site. They felt this was particularly true with the rule's focus on law enforcement needs, primary care, and behavioral health resources. Commenter 1 also is concerned that the proposed rule could create a scenario where compliance with the rule will conflict with the State's and a municipality's obligation to comply with the Fair Housing Act by fundamentally limiting where people can live based on their health and/or disability status.

Commenters 1 and 4 felt that the rule's allusion to demographics in the law enforcement section 'requires a local government to make a determination about law enforcement based on the encampment demographics'. Commenter 4 notes that the rule places unnecessary emphasis in the plan on the availability of additional law enforcement resources that may be needed; in doing so the rule stigmatizes homelessness as a criminal act and perpetuates a stereotype of those who are homeless as criminals. Commenter 4 notes that "...because there is no way for persons with disabilities who are experiencing homelessness to request modifications to this plan, a law enforcement-heavy approach rather than a civil approach through an ADA coordinator or other civil public entity department or office will result in persons with disabilities being incarcerated or institutionalized rates through no fault of their own other than they are homeless due to their disabilities." The commenter suggests that TDHCA place more emphasis on civil and social services aimed at limiting interactions with law enforcement, including working with an ADA Coordinator.

Commenter 4 notes that "...because there is no way for persons with disabilities who are experiencing homelessness to request modifications to this plan, a law enforcement-heavy approach rather than a civil approach through an ADA coordinator or other civil public entity department or office will result in persons with disabilities being incarcerated or institutionalized rates through no fault of their own other than they are homeless due to their disabilities." The commenter suggests that TDHCA place more emphasis on civil and social services aimed at limiting interactions with law enforcement, including working with an ADA Coordinator.

Commenter 1 felt that requiring siting to be proximate to health care 'means the government is assuming that the individuals who will reside at the site are disabled.' They also felt that because clinics that accept Medicaid or provide health/mental health services at no cost are typically located in low-income areas, encampments could be concentrated in underprivileged areas.

Staff Response: The rule is implementing HB 1925, enacted by the 87th Texas Legislature (Regular Session), which provides the five evaluative criteria to be considered in a plan. It does not supplant any civil rights law or any other laws that political subdivisions must follow, including but not limited to requests for reasonable accommodations and modifications. No revisions to this rule have been made in response to these comments.

STATUTORY AUTHORITY. The rule is adopted pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules and Tex. Gov't Code §§2306.1121-1124, which establish Subchapter PP requiring the plan process covered by the rule. Except as described herein the rule affect no other code, article, or statute.

§1.8, Plan Requirements, Process and Approval Criteria for Properties Designated for Camping by Political Subdivisions for Homeless Individuals

(a) Purpose.

Subchapter PP of Chapter 2306, Texas Government Code, Property Designated by Political Subdivision for Camping by Homeless Individuals, was enacted in September 2021. §2306.1122 provides that a Political Subdivision may not designate a property to be used by homeless individuals to Camp unless the Department has approved a Plan as further described by Subchapter PP. This rule provides the Department's policies for such Plans, including the process for Plan submission, Plan requirements, the review process, and the criteria by which a Plan will be reviewed by the Department.

(b) Applicability.

(1) This rule applies only to the designation and use of a property designated for camping by homeless individuals that first begins that use on or after September 1, 2021, except that the rule and requirements of Subchapter PP, Chapter 2306, Texas Government Code, do not apply to a Proposed Property to be located on/in a Public Park. Public Parks are ineligible to be used as a Camp by homeless individuals per Subchapter PP, Chapter 2306, Texas Government Code.

(2) The designation and use of a Proposed Property described by Subchapter PP, Chapter 2306, Government Code that first began before September 1, 2021, is governed by the law in effect when the designation and use first began, and the former law is continued in effect for that purpose.

(3) A Political Subdivision that designated a property to be used by homeless individuals to Camp before September 1, 2021, may apply on or after that date for approval of a Plan pursuant to this section.

(4) A Political Subdivision that authorizes camping under the authority of §48.05(d)(1), (3) or (4), Texas Penal Code, are not required to submit a Plan for those instances.

(c) Definitions.

(1) Camp--Has the meaning assigned by Section 48.05 of the Texas Penal Code.

(2) Department--the Texas Department of Housing and Community Affairs.

(3) Plan--Specifically an application drafted by a Political Subdivision, submitted to the Department by the Political Subdivision, with the intention of meeting the requirements provided for in subsection (e) of this Section (relating to Threshold Plan Requirements).

(4) Plan Determination Notice--the notification provided by the Department to the Political Subdivision stating a Plan's Approval or Denial.

(5) Political Subdivision--a local government as defined in Chapter 2306, Texas Government Code.

(6) Proposed New Campers--Homeless individuals that the Political Subdivision intends to allow to Camp at the Proposed Property for which a Plan is submitted.

(7) Proposed Property--that property proposed for use for Proposed New Campers and submitted in the Plan, owned, controlled, leased, or managed by the Political Subdivision.

(8) Public Park--Any parcel of land dedicated and used as parkland, or land owned by a political subdivision that is used for a park or recreational purpose that is under the control of the political subdivision, which is designated by the political subdivision.

(d) Plan Process.

(1) Submission.

(A) Plans may be submitted at any time. Plan resubmissions may also be submitted at any time.

(B) All Plans must be submitted electronically to campingplans@tdhca.state.tx.us.

(C) At least one designated email address must be provided by the Political Subdivision; all communications from the Department to the Political Subdivision regarding the Plan will be sent to that email address. No communication will be sent by traditional postal delivery methods. Up to two email contacts may be provided.

(2) Review Process.

(A) Upon receipt, Department staff will send a confirmation email receipt to the designated email address and initiate review of the Plan. The Plan will be reviewed first to determine that all information specified in subsection (e) of this Section (relating to Threshold Plan Requirements) have been included and that sufficient information has been provided by which to evaluate the Plan against the Plan Criteria provided for in subsection (f) of this Section (relating to Plan Criteria).

(B) If a Plan as submitted does not sufficiently meet the requirements of §2306.1123, Texas Government Code, and subsection (e) of this Section, or does not provide sufficient explanation by which to assess the Plan Criteria provided for in subsection (f) of this Section, staff will issue the Political Subdivision a notice of deficiency. The Political Subdivision will have five calendar days to fully respond to all items requested in the deficiency notice.

(i) For a Political Subdivision that satisfies all requested deficiencies by the end of the five calendar day period, the review will proceed.

(ii) For a Political Subdivisions that does not satisfy all requested deficiencies by the end of the five calendar day period, no further review will occur. A Plan Determination Notice will be issued notifying the Political Subdivision that its Plan has been denied and stating the reason for the denial. The Political Subdivision may resubmit a Plan at any time after receiving a Plan Determination Notice.

(C) Plan Determination Notice.

(i) Upon completion of the review by staff, the Political Subdivision will be notified that its Plan has been Approved or Denied in a Plan Determination Notice.

(ii) Not later than the 30th day after the date the Department receives a plan or resubmitted Plan, the Department will make a final determination regarding approval of the Plan and send a Plan Determination Notice to the Political Subdivision. For a Political Subdivision that had a deficiency notice issued, and that satisfied all requested deficiencies by the end of the five calendar day period, the Department will strive to still issue a final determination notice by the 30th day from the date the Plan was originally received, however the date of issuance of the Plan Determination Notice may extend past the 30th day by the number of days taken by the Political Subdivision to resolve the deficiencies.

(iii) A Political Subdivision may appeal the decision in the Plan Determination Notice using the appeal process outlined in §1.7 of this Chapter (relating to Appeals Process).

(D) Reasonable Accommodations may be requested from the Department as reflected in §1.1 of this subchapter.

(e) Threshold Plan Requirements.

A Plan submitted for approval to the Department must include all of the following items for the property for which the Plan is being submitted:

(1) pertinent contact information for the Political Subdivision as specified by the Department in its Plan template;

(2) the physical address or if there is no physical address the legal description of the property;

(3) the estimated number of Proposed New Campers to be located at the Proposed Property;

(4) a description with respect to the property of the following five evaluative factors that addresses all of the requirements below:

(A) Local Health Care. Provide:

(i) A description of the availability of local health care for Proposed New Campers, including access to Medicaid services and mental health services;

(ii) A description of the specific providers of the local health care and mental health services available to Proposed New Campers. Local health/mental health care service providers do not include hospitals or other emergency medical assistance, but contemplate access to ongoing and routine health and mental health care. Providers of such services can include, but are not limited to: local health clinics, local mental health authorities, mobile clinics that have the location in their service area, and county indigent healthcare programs;

(iii) A description or copy of a communication from the Texas Department of Health and Human Services specific to the Political Subdivision and specific to the population of homeless individuals must be provided to establish the availability of access to Medicaid services;

(iv) A map or clear written description of the geographic proximity (in miles) of each of those providers to the Proposed Property;

(v) The cost of such care and services, whether those costs will be borne by the Proposed New Campers or an alternative source, and if an alternative source, then what that source is; and

(vi) A description of any limitations on eligibility that each or any of the providers may have in place that could preclude Proposed New Campers from receiving such care and services from the specific providers.

(B) Indigent Services. Provide:

(i) A description of the availability of indigent services for Proposed New Campers. For purposes of this factor, indigent services are any services that assist individuals or households in poverty with their access to basic human needs and supports. Indigent service providers include, but are not limited to: community action agencies, area agencies on aging, mobile indigent service providers that have the location in their service area; and local nonprofit or faith-based organizations providing such indigent services;

(ii) A description of the specific providers of the services and what services they provide;

(iii) A map or clear written description of the geographic proximity (in miles) of each of those providers to the Proposed Property; and

(iv) A description of any limitations on eligibility that each or any the providers may have in place that could preclude Proposed New Campers from receiving such services from the specific providers.

(C) Public Transportation. Provide:

(i) A description of the availability of reasonably affordable public transportation for Proposed New Campers. ~~Transportation provided by a homeless service provider is not~~

~~considered public transportation.~~ Reasonably affordable for the purposes of this section means the rate for public transportation for the majority of users of that public transportation; if for instance the standard bus fare in an area is \$2 per ride, then that rate is considered the reasonable affordable rate for the Proposed Property; Proposed New Campers should not have to pay a rate higher than that standard fare;

(ii) A description of the specific providers of the public transportation services and their prices;

(iii) A description of the closest proximity of the property to a specified entrance to a public transportation stop or station, with a sidewalk or an alternative pathway identified by the Political Subdivision for pedestrians, including a map of the closest stop and public transportation route shown in relation to the Proposed Property;

(iv) A description of the route schedule of the closest proximate public transportation route; and

(v) If public transportation is available upon demand at the property location, identification of any limitations on eligibility that each or any of the providers may have in place that could preclude Proposed New Campers from receiving such transportation services from that specific on-demand provider.

(D) Law Enforcement Resources. Provide:

(i) A description of the local law enforcement resources in the area;

(ii) The description should include a brief explanation of which local law enforcement patrol beat covers the Proposed Property;

(iii) A description of local law enforcement resources and local coverage in several other census tracts or law enforcement beats/areas with similar demographics to that of the beat/area of the Proposed Property to provide a comparative picture;

(iv) a description of any added resources for the area or proposed specifically for the property, and how proximate those resources are; and

(v) any explanation of reduced (or lower than typical of similar demographic areas) local law enforcement coverage in the area.

(E) Coordination with Local Mental Health Authority. Provide:

(i) A description of the steps the Political Subdivision has taken to coordinate with the Local Mental Health Authority to provide services for any Proposed New Campers; and

(ii) A description must include documentation of meetings or conversations, dates when they occurred, any coordination steps resulting from the conversations, and whether any ongoing coordination is intended for the Proposed Property.

(5) The Political Subdivision must provide evidence that establishes that the property is not a Public Park. Evidence must include documentation addressing the definition of a Public Park as defined in subsection (c)(8) of this Section.

(6) Plans should be limited in length. Plans in excess of 15 pages of text, not including documentation and attachments, will not be reviewed.

(7) The Political Subdivision must include documentation that the site will include basic human sanitation services including toilets, sinks, and showers. Such facilities may be temporary fixtures such as portable or mobile toilets, sinks and showers.

~~(8)~~ Any Plan that is a resubmission of a denied Plan, submitted again for the same Proposed Property, must include a short summary at the front of the Plan explaining what has been changed in the resubmitted Plan from the original denied Plan.

(f) Plan Criteria

(1) Approval. In no case will a Plan be approved if the Department has determined that the Proposed Property referenced in a Plan is a Public Park as defined in subsection (c)(6) of this Section. Plans for other properties will be approved if the following five factors are satisfied:

(A) Local health care, including access to Medicaid services (or other comparable health services) and mental health services, are within one mile of the Proposed Property, are accessible via public transportation, can be provided on-site by qualified providers, or transportation is provided (which includes mobile clinics that have the location in their service area), and the Political Jurisdiction commits to a goal that such services are expected to be available at little, low or no cost for at least 50%90% of Proposed New Campers (some limited exceptions from providers as may be described in accordance with (d)(5)(A)(v) of this section will not preclude approval for this factor);

(B) There are indigent services providers that have locations within one mile of the Proposed Property, are accessible via public transportation, can provide services on-site, or transportation is provided (which includes mobile indigent service providers that have the location in their service area), and the Political Subdivision commits to a goal that such services are available for at least 50%90% of Proposed New Campers are expected to be eligible;

(C) The property is within 1/2 mile or less from a public transportation stop or station that has scheduled service at least several times per day for at least six days per week, or there is on demand public transportation available, and the Political Subdivision commits to a goal estimates that at least 50%90% of the Proposed New Campers are eligible for that on-demand public transportation;

(D) The local law enforcement resources for the patrol zone or precinct that includes the Proposed Property are not materially less than those available in other zones or precincts of the local law enforcement entity, unless the Political Subdivision provides a specific plan for security in and around the property that the Political Subdivision has determined is appropriate for law enforcement services in that area; and

(E) the Political Subdivision has had at least one meeting to discuss initial steps and coordination with the Local Mental Health Authority, specific to this particular Proposed Property and the volume/service needs of Proposed New Campers.

(2) A Plan that meets at least four of the five factors in paragraph (1) of this subsection, may be approved if significant and sufficient mitigation is provided that delivers similarly comprehensive resources as required, to justify how the remaining factor not met will still be sufficiently addressed through some other means.

(3) Denial.

An Application that does not meet all of the requirements in paragraph (1) of this subsection, or that does not meet the requirements of paragraph (2) of this paragraph will be issued a Plan Determination Notice within 30 days of Plan application (which may be extended by the amount of calendar days the Political Subdivision took to respond to deficiencies) reflecting denial.

(g) Information Sharing.

When the Department receives a complaint under §1.2 of this subchapter or information that a Political Subdivision is allowing camping by homeless individuals on a property that is not the subject of a Plan approved under this section, the Department will refer such information to the Office of the Attorney General, for possible action under Chapter 364, Local Government Code, or other law.



City of Austin

P.O. Box 1088, Austin, TX 78767-1088

August 23, 2021

Texas Department of Housing and Community Affairs

Attn: Brooke Boston

Rules Comments

P.O. Box 13941

Austin, Texas 78711-3941

Email: brooke.boston@tdhca.state.tx.us

Re: Proposed 10 TAC §1.8, Plan Requirements, Process and Approval Criteria for Properties Designated for Camping by Political Subdivisions for Homeless Individuals

The City of Austin appreciates the opportunity to submit feedback on proposed rule 10 TAC §1.8, Plan Requirements, Process and Approval Criteria for Properties Designated for Camping by Political Subdivisions for Homeless Individuals.

The City shares the goal of ensuring adequate access to services and other supports for persons experiencing homelessness. However, the City would like to share some concerns about some of the specific requirements as well as the possible discriminatory impact of the proposed rule.

Concerns about Evaluation Criteria

The proposed rule requires a local government to meet four of five evaluative factors regarding local health care and mental health care services, indigent services, public transportation, local law enforcement resources, and coordination the local mental health authority. However, criteria specific to those factors will make it unlikely that local governments in the state would be able to submit a plan that complies with the requirements.

Section (f) (1) (A) of the proposed rule requires that local health care, including access to Medicaid services (or other comparable health services) and mental health services are “available at little or no cost for at least 90% of Proposed New Campers. The availability of Medicaid is a state function, and access to providers accepting Medicaid is largely out of the control of local governments. Stringent eligibility requirements, along with substantial barriers to establishing and maintaining enrollment result in a relatively small portion of people experiencing homelessness receiving Medicaid-funded services. As such, health care services would likely have to be locally funded. Additionally, Medicaid managed care insurance coverage and/or other providers may require a co-pay but the rule does not define “little” cost. Of the five evaluative criteria, Section (f) (1) (A) and Section (f) (1) (B), concerning health care and mental health services and indigent services, are very similar. For example, county indigent healthcare programs are listed as acceptable health care

*The City of Austin is committed to compliance with the Americans with Disabilities Act.
Reasonable modifications and equal access to communications will be provided upon request.*

providers. It may be possible for the two criteria to become mutually exclusive. **Adding more specificity about plan requirements, defining what constitutes “little” cost for services and adding language addressing similarities and overlapping services between providers described under Sections (e) (4) (A) and (e) (4) (B) would provide clarity for evaluators and applicants.**

Section (f) (1) (A) and Section (f) (1) (B) of the proposed rule require that health care, mental health care and indigent services be “within one mile of the Proposed Property, are accessible via public transportation, or transportation is provided.” Mobile clinics that have the encampment location in their service area are listed as possible health or mental health providers in the Threshold Plan Requirements in Section (e), but are not included in the list of possible indigent services providers. As such, it is not clear that any mobile providers who come to the encampments would be acceptable under the proposed criteria. **The City respectfully requests that mobile providers are specifically included in the criteria for approval.**

The City also asks that additional details and clarification regarding proof of specific criteria be included in the proposed rule language. For example, it is unclear what level of specificity will be required in a plan submitted by a local government. As currently drafted, the proposed rule limits the length of the plan but does not explain how much information is required. For this reason, the rule is unclear as to whether the Department will require short and simple statements or complex explanations.

Fair Housing Concerns

The City has concerns that the proposed rule makes assumptions about the individuals experiencing homelessness who will utilize the site. This is particularly true with the proposed rule’s focus on law enforcement needs and primary care and behavioral health resources. The City is also concerned that the proposed rule could create a scenario where compliance with the rule will conflict with the State’s and a municipality’s obligation to comply with the Fair Housing Act by fundamentally limiting where people can live based on their health and/or disability status.

The demographics of potential tenants or occupants is not a standard that the City uses when it decides whether housing is compatible with or should be available in a particular part of the City. However, the proposed rule requires a local government to make a determination about law enforcement based on the encampment demographics. This presents a risk that housing will be made available to them on unequal terms based on race or disability status.

Under the Fair Housing Act, if an entity regards an individual as disabled, even if they are not, then treating them differently can be discrimination based on disability. Requiring a local government to make a site decision based on proximity to local health care and mental health services means that the government is assuming that the individuals who will reside at the site are disabled. Additionally, such assumptions could result in different terms or conditions because of a disability. Lastly, as clinics that accept Medicaid or provide health / mental health services at little to no cost are typically located in low-income areas, encampments could functionally be concentrated in

underprivileged areas, which runs counter to the Fair Housing Act and TDHCA's policy goals around de-concentration of poverty.

Thank you for the opportunity to provide feedback on Proposed 10 TAC §1.8, Plan Requirements, Process and Approval Criteria for Properties Designated for Camping by Political Subdivisions for Homeless Individuals. The City appreciates your consideration of the concerns raised in these comments as you continue your review of the proposed rule.

Sincerely,

A handwritten signature in blue ink, appearing to read "Dianna Grey", with a stylized flourish at the end.

Dianna Grey
Homeless Strategy Officer
Homeless Strategy Division
Austin Public Health

BresnenAssociates

August 19, 2021

Texas Department of Housing and Community Affairs
ATTN: Brooke Boston
Rules Comments
P.O. Box 13941
Austin, Texas 78711-3941

Via email: brooke.boston@tdhca.state.tx.us

Re: Proposed Rule 10 T.A.C. §1.8: implementing House Bill 1925, 87th Legislature, Regular Session (the "Act")

Dear Ms. Boston:

Below are comments submitted by us, as members of the public, regarding the Texas Department of Housing and Community Affairs (TDHCA) Proposed Rule 10 T.A.C. §1.8, governing plan requirements and related processes for properties to be designated by political subdivisions for camping by homeless individuals.

In general, we support the proposed rules, although we believe several provisions are unnecessarily restrictive of the discretion of the Department or political subdivisions and will drive expenses that could be used to improve services and the properties designated.

We would like to see changes made before final adoption as follows:

1. Section 2306.1121(a), Government Code, (effective September 1, 2021) prohibits a local government from "designating" a property to be used for camping by homeless individuals without having a plan for the property approved by TDHCA. Chapter 2306 does not define the term "designate." Effectively, the City of Austin "designated" almost the entire territory of the city for homeless camping when it repealed its ordinance prohibiting such camping. In addition to enacting the plan requirements of Chapter 2306, H.B. 1925 made such camping illegal as a matter of state law and authorized the Attorney General and Comptroller to take actions against a political subdivision that adopts a contrary policy. Read too narrowly, Chapter 2306 would allow a political subdivision to do nothing--i.e., take no affirmative action that designates a property for camping and simply ignore it--and, by not submitting a plan, avoid any negative consequences (at least as far as action by TDHCA is concerned).

We realize TDHCA was not given enforcement authority with regard to illegal camping but rather was charged with approving or denying "plans" submitted by a political subdivision. To assist in vindicating the *entire* Act, we recommend adding an appropriately-numbered provision something like:

311 West 5th #1002 Austin, Texas 78701

Amy: 512.507.7602
Steve: 512.917.0011

amy.bresnen@gmail.com
steve@bresnenassociates.com

"When the Department receives information that a political subdivision is allowing camping by homeless people in a public place that is not the subject of a plan approved under this section, the Department will refer the information to the Attorney General's Office for possible action under Chapter 364, Local Government Code, or other law."

2. §2306.1123(b)(2), Government Code, requires plans to contain provisions for the "indigent services." We request that the term "indigent services" include access to sanitation, including restrooms and showers." From personal experience and our active support of H.B. 1925 during its passage, we know that homeless people who are camping often do not have access to restrooms and showers, which often leads to urinating and defecating in public. This is humiliating for the homeless and noxious to the public from a public safety and aesthetic point of view. We seriously doubt the Legislature desired to see plans approved that do not have such basic services as sanitation available to these indigent persons.
3. In proposed Subsection (e)(4)(C)(i) a sentence says "Transportation provided by homeless service providers is not considered public transportation." While we are not certain what "homeless service providers" are being referred to, providers may be agencies within a political subdivision or operating under a contract with a political subdivision. It would be unnecessarily limiting to exclude providers that meet those descriptions. If a political subdivision does not currently provide transportation in-house, it would make sense to allow them to obtain such services via paid contracts or services donated to the political subdivision, such as by a church or other nonprofit.
4. In proposed Subsection (e)(4)(C)(iii), we suggest striking the words "with a sidewalk for pedestrians." This language is too restrictive and may eliminate sites that allow safe passage for pedestrians but do not have sidewalks. In addition, we do not recommend the Department put itself into the position of having to enforce such details.
5. In §(f)(1)(A), (B), and (C), the proposed rules set a 90% threshold of eligibility of proposed new campers for a plan to be approved. This high level of eligibility is too restrictive and will unnecessarily lead to plan rejections where there is a substantial need for designated camping sites. It will also be difficult, if not impossible, for political subdivisions to determine these eligibility requirements. By definition almost, the population at issue may have little or no history available to a political subdivision to make such a determination and the costs of doing so to the political subdivision will impose unnecessary administrative expense at the cost of services that could be provided. If there must be a threshold, we suggest no more than 50%, but would prefer a blanket description that repeats statutory terms as needed and leave to the Department the discretion to address these issues plan-by-plan.

Ms. Brooke Boston
August 19, 2021
Page 3

6. In §(f)(1)(D), the proposed rule requires law enforcement resources on a par with other areas within the political subdivision. We suggest adding language such as "unless the political subdivision provides a specific plan for security in and around the property that reasonably meets the need for law enforcement services in that area." The agency needs discretion, as do political subdivisions, to tailor security needs to the specifics of a given property.
7. In those parts of the rule that set timelines for action by those submitting plans or by the Department, we suggest using "business days" rather than "calendar days."

Please do not hesitate to contact one of us should you have any questions.

Thanks for your service to Texas.

Sincerely,



Amy Bresnen
Attorney at Law



Steve Bresnen
Attorney at Law



Texas Department of Housing and Community Affairs
Attn: Ms. Brooke Boston
Rules Comments
P.O. Box 13941
Austin, TX 78711

Re: Commenting on the TDHCA Governing Board Approved Draft of 10 TAC §1.8, Plan Requirements, Process and Approval Criteria for Properties Designated for Camping by Political Subdivisions for Homeless Individuals

Ms. Boston:

On behalf of the Coalition for the Homeless of Houston/Harris County, the lead agency of The Way Home Continuum of Care (the collaborative effort to prevent and end homelessness in Harris, Fort Bend, and Montgomery counties, Texas), I am registering my comments on the proposed TDHCA Governing Board Approved Draft of 10 TAC §1.8, Plan Requirements, Process and Approval Criteria for Properties Designated for Camping by Political Subdivisions for Homeless Individuals.

In summary, we applaud the inclusion of requirements focusing on providing adequate service and support for people experiencing homelessness, especially those with disabilities. However, the proposed plan does not outline requirements that political subdivisions work with the local Continuum of Care (CoC) or the CoC-designated lead to prevent and end homelessness for that geographic area.

The local CoC or the CoC-designated lead should be a required part of the planning and decision-making as a political subdivision develops a proposal to designate a property for camping by people experiencing homelessness. We propose the following to satisfy adequate inclusion of the local the local CoC or the CoC-designated lead in this process:

(1) CoC or CoC-designated lead term should be included in Subsection (c) Definitions.

Language to add: Page 4, Subsection (c) add term "CoC or CoC-designated lead" and definition: "The local Continuum of Care (CoC) Lead Agency or governance body, or a representative identified by the CoC."

(2) Submission of a signed letter verifying that the Political Subdivision collaborated with the CoC or CoC-designated lead in the development of a plan establishing properties to be designated for camping for Homeless Individuals should be included in Subsection (e) Threshold Plan Requirements.

Language to add: Page 6, Subsection (e) add item "A letter with the signature of the executive (e.g., CEO, Executive Director, or Local Homeless Coalition President/Chair) of the local CoC or CoC-designated lead that



verifies the Political Subdivision collaborated with the CoC or CoC-designated lead on the development of the Plan.”

(3) The political subdivision should consult with and obtain written agreement with the local CoC or the CoC-designated lead on the estimated number of proposed new campers to be located at the proposed property should be included in Subsection **(e) Threshold Plan Requirements.**

Language to add: Page 6, Subsection (e)(3): after “the estimated number of Proposed New Campers to be located at the Proposed Property” add this, “that is agreed on by the local CoC or CoC-designated lead;”

(4) The description for indigent services to be provided at the property should be written in collaboration with the local CoC or the CoC-designated lead in Subsection **(e) Threshold Plan Requirements.**

Language to add: Page 6, Subsection (e)(4)(B)(i): after “A description of the availability of indigent services for Proposed New Campers” add this, “written in collaboration with the local CoC or CoC-designated lead.”

(5) The CoC or CoC-designated lead is an integral part in the determination of whether a political subdivision meets the correct number of required factors as outlined in Subsection **(f) Plan Criteria (E)(2).** And whether any proposed mitigation, to deliver similarly comprehensive resources as required, to justify how the remaining factor not met will still be sufficiently addressed through other means.

Language to add: Page 8, Subsection **(f) Plan Criteria (E)(2)**: after “A Plan that meets at least four of the five factors in paragraph (1) of this subsection, may be approved if significant and sufficient mitigation is provided that delivers similarly comprehensive resources as required, to justify how the remaining factor not met will still be sufficiently addressed through some other means” add this, “that the CoC or CoC-designated lead agrees with in writing.”

Thank you for the opportunity to comment on this proposal for Plan Requirements, Process and Approval Criteria for Properties Designated for Camping by Political Subdivisions for Homeless Individuals

Sincerely,

Michael Nichols
President & CEO

The Coalition for the Homeless of Houston/Harris County, lead agency to The Way Home Continuum of Care



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August 23, 2021

Disability Rights Texas (DRTx) is the federally designated Protection and Advocacy (P&A) agency for persons with disabilities in Texas. We provide a wide range of services for people with disabilities to ensure that their rights are upheld and that they are not discriminated against on the basis of their disability. We also work to ensure that the needs of people with disabilities are met so that they can live as independently and fully as possible as they decide. We provide comments below regarding the Texas Department of Housing and Community Affairs (TDHCA) draft of 10 Texas Administrative Code §1.8 Plan Requirements, Process and Approval Criteria for Properties Designated for Camping by Political Subdivisions for Homeless Individuals per TDHCA's request for comments during its rulemaking process which include concerns about the proposed plan and the plan's impact on persons with disabilities.

Enabling Legislation and the Americans with Disabilities Act as Amended by the Amendments Act of 2008 (ADA) and Section 504 of the Rehabilitation Act of 1973

For the purposes of this comment submission, DRTx does not specifically address the legality of the enabling legislation of this plan, HB 1925 passed by the 87th legislature, nor the plan itself, and the implications related to the Americans with Disabilities Act as Amended by the Amendments Act of 2008 (ADA) and Section 504 of the Rehabilitation Act of 1973 (Rehab Act). DRTx reserves the right to address any issues of legality, whatever that might be, at a later time.

Homelessness in Texas is Increasing, Including People with Disabilities

Texas has a homelessness problem. The Department of Housing and Urban Affairs (HUD) Annual Homeless Assessment Report found that, in 2020, Texas had one of the highest increases in homelessness nationally at 5.3%. According to the Texas Homeless Network Point in Time Count, on a given night in 2020 27,229 people were experiencing homelessness. Of those people, 49% were unsheltered and 4,033 people were chronically homeless. The Point in Time Count survey reported that 4,893 people experienced serious mental illness and 3,145 had a substance use disorder, making up about 30% of those experiencing homelessness on a given night in Texas. However, it is widely accepted that this number is much higher because it relies on self-reporting, something that some people are uncomfortable with. These numbers illustrate just how many people experiencing homelessness have a disability.

No Plan Requirement for ADA Coordinator Involvement in Plan Participation to Handle Modification Requests Needed

Public entities with over 50 employees are required to employ an ADA coordinator, and it is best practice for smaller entities (those with fewer than 50 employees) to do the same. These

coordinators provide invaluable guidance on protecting and furthering the needs of people with disabilities. The coordinators should be trained regarding the ADA and should handle modification requests and other issues related to the ADA made by the public. Many of the concerns we have with this plan would be mitigated by a requirement that political subdivisions work with their ADA coordinators before submitting any plan to TDHCA regarding a campsite.

TDHCA's Plan Specifically Targets To Persons with Disabilities

TDHCA's plan requires that political subdivisions secure mental health services for residents of the proposed campsite by coordinating with Local Mental Health Authorities (LMHAs). This plan therefore intrinsically inter-links and targets people with disabilities because it specifies a need for health services that applies only to persons with disabilities qualified under the ADA and Rehab Act.

Law Enforcement Requirement for the Proposed Plan by Local Political Subdivisions Raises Implications of Stereotypes and Criminalization of the Homelessness Population, and Therefore Persons with Disabilities

Though a requirement per the enabling legislation, this plan places unnecessary emphasis on the availability of law enforcement resources in the area of a proposed camp; a prime example is the requirement that a political subdivision describe any *additional* law enforcement resources they plan to add to cover the area of the proposed camp. By focusing so heavily on law enforcement resources, this plan stigmatizes homelessness as, in and of itself, a criminal act. Additionally, such emphasis on law enforcement perpetuates the stereotype of people experiencing homelessness as being criminals. Criminal involvement serves to retraumatize people, and because there is no way for persons with disabilities who are experiencing homelessness to request modifications to this plan, a law enforcement-heavy approach rather than a civil approach through an ADA coordinator or other civil public entity department or office will result in persons with disabilities being incarcerated or institutionalized at disproportionate rates through no fault of their own other than they are homeless due to their disabilities.

To mitigate the negative impacts a law enforcement-heavy approach could have on people with disabilities experiencing homelessness, we recommend that TDHCA place more emphasis on civil and social services aimed at limiting interactions with law enforcement, including working with an ADA Coordinator.

Transportation Requirement

We appreciate the emphasis this plan places on the affordability of available transportation near proposed campsites. However, this plan does not include anything about accessibility or make any reference to the ADA requirements for transportation and the implementing regulations of ADA transportation by the U.S. Department of Transportation via the Federal Transit Administration. To serve persons with disabilities experiencing homelessness, political subdivisions should be required to coordinate with local transportation authorities to provide fully accessible options, as well as ensure that ADA modification requests can be entertained to transportation services. An ADA Coordinator could assist with this process.

Application Process Lacks Provision for Political Subdivisions to Request Modifications under the ADA and 504 for Its Plans as well as Modification Support Requests under the ADA and 504 from Persons with Disabilities

The application process laid out in TDHCA's plan lacks any provision for a public entity or individual in need of a modification under the ADA and the Rehab Act to a political subdivision's plan to make the request under the ADA and Rehab Act to TDHCA's plan. There will eventually be provisions of TDHCA's implemented plan that will need to be modified based on the needs of persons with disabilities, who, as stated above, disproportionately constitute a significant portion of the homeless population.

This Plan Does Not Address Increased Housing Instability Resulting From the COVID-19 Pandemic

Every day at DRTx we see what the COVID-19 pandemic does to the housing stability of people with disabilities. There has been an uptick in illegal evictions of people with disabilities due to circumstances out of their control. People with disabilities face high rates of job loss, either due to their inability to risk being infected by the virus or their places of employment shutting down. Because of this higher rate of unemployment and job loss due to COVID-19's barriers, persons with disabilities risk falling into homelessness. The U.S. Department of Housing and Urban Development recognized that their most recent homelessness statistics do not reflect impacts of the pandemic, but once they do, numbers will increase.

COVID-19 has not gone away, and its effects will be felt for years to come. If political subdivisions must turn to campsites to provide a modicum of shelter and stability to people facing homelessness, including people with disabilities, TDHCA should do everything in its power to create a plan that will allow political subdivisions to support every person who is unsheltered as easily and fairly as possible.

*Please contact Tanya Lavelle, Policy Specialist at DRTx with questions
tlavelle@disabilityrightstx.org*



August 23, 2021

Texas Department of Housing and Community Affairs

Attn: Brooke Boston

Rules Comments

P.O. Box 13941

Austin, Texas 78711-3941

Comments on the TDHCA Governing Board Approved Draft of 10 TAC §1.8, Plan Requirements, Process and Approval Criteria for Properties Designated for Camping by Political Subdivisions for Homeless Individuals

Ms. Boston:

On behalf of the Ending Community Homelessness Coalition (ECHO), the Continuum of Care lead agency in Austin/Travis County, we are writing to add our comments to the TDHCA Governing Board Approved Draft of 10 TAC §1.8, Plan Requirements, Process and Approval Criteria for Properties Designated for Camping by Political Subdivisions for Homeless Individuals.

First, we would like to emphasize that sanctioned encampments do not end homelessness and can, in fact, make it more difficult for communities to focus their attention on lasting solutions like increasing access to safe, stable housing by syphoning off already-limited resources and creating the illusion that a community is reducing homelessness ([USICH, 2018](#)). Statewide criminalization of basic human acts like sleeping, as HB 1925 imposes, limits the ability of localities to implement the solutions necessary to connect people to safe, stable places to live. Consistent with the value our state leaders place on local control, we believe blanket policies like HB 1925 and this resulting sanctioned encampment rule deny municipalities the ability to do what is best for the people who live in their jurisdictions, such as allowing people to meet their basic needs in public spaces or, in the case a community decides to designate space as a safe encampment site, considering parkland for this use. Amarillo isn't Austin, and what works for one won't necessarily work for the other. However, we recognize the reality that the encampment ban and sanctioned site rules will be implemented and thus would like to provide the following comments.

This proposed rule is unnecessarily restrictive. The provisions regarding proximity of services to a proposed site drastically limit the areas in a community that can qualify for a sanctioned site. People experiencing homelessness who set up their own encampments often do so because the location makes sense for them: it may be close to their job, to their friends and family, and to the communities where they feel most at home. Imposing distance requirements for service providers will require political subdivisions to move people away from the areas they want to live in. Not only does this prevent people from accessing the services they want, it strips them of a fundamental piece of their humanity: self-determination. If we're not able to provide housing for everyone who needs it, the very least we can do as a state and as individual communities is to not restrict access to places and services that allow someone to meet their basic human needs in a dignified way. Given that many service providers are experienced at providing mobile services, political subdivisions should have the

option to provide services on site rather than at a separate location. On **pages 7 and 8, subsection (f)(1)(A) and (B)**, amend as follows (in **bold**):

- (A) Local health care, including access to Medicaid services (or other comparable health services) and mental health services, are within one mile of the Proposed Property **or can be provided on-site by qualified providers**, are accessible via public transportation, or transportation is provided, and are expected to be available at little or no cost for at least 90% of Proposed New Campers (some limited exceptions from providers as may be described in accordance with (d)(5)(A)(v) of this section will not preclude approval for this factor);
- (B) There are indigent services providers that have locations within one mile of the Proposed Property **or can provide services including housing assessments on-site**, are accessible via public transportation, or transportation is provided, and 90% of Proposed New Campers are expected to be eligible;

As encampments do not contribute to the goal of reducing and ending homelessness, political subdivisions should ensure that any services provided at a sanctioned site are consistent with a Housing First model to connect people quickly to low-barrier housing that ends their homelessness. On **page 6, subsection (e)(B)**, add language:

(v) A summary of the ways in which the services provided at a sanctioned site adhere to a Housing First model of service delivery and the ways in which providers are committed to connecting people living at the site to stable housing.

Often, people experiencing homelessness have a justified mistrust of law enforcement. As communities are now required to enforce bans on public camping using law enforcement resources, that mistrust is likely to grow. Further, law enforcement agencies are not trained to respond to crises using best practices in trauma-informed care and can thus serve to escalate situations involving unhoused people experiencing trauma rather than resolve them. On **page 6, subsection (e)(D)**, replace language:

(iv) ~~a description of any added resources for the area or proposed specifically for the property, and how proximate those resources are~~ a written plan limiting the presence of law enforcement at the site and detailing how trauma-informed responders, such as social workers or rapid crisis response teams, will be engaged as primary responders to crises involving people living at the site;

Finally, we would also like to express support for the public comments submitted for this rule by our partners at the Texas Homeless Network. Local CoC lead agencies should be consulted regarding any decisions about sanctioned encampments and the services provided there to ensure the plans contribute to a community's overall goals of reducing and ending homelessness.

Thank you for the opportunity to provide comment on this proposed rule.

Sincerely,

Members of ECHO's Advocacy Committee

Matthew Mollica, ECHO Executive Director

Signature: *Matthew Mollica*
Matthew Mollica (Aug 23, 2021 15:26 CDT)

Email: matthewmollica@austinecho.org



City of Galveston

OFFICE OF THE CITY MANAGER

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citymanager@galvestontx.gov | 409-797-3520

August 23, 2021

Texas Department of Housing and Community Affairs
Attn: Brooke Boston
Rules Comments
P.O. Box 13941
Austin, Texas 78711-3941

Dear Ms. Boston,

The City of Galveston appreciates the opportunity to provide written comments on the proposed rule, 10 TAC §1.8, Plan Requirements, Process and Approval Criteria for Properties Designated for Camping by Political Subdivisions for Homeless Individuals, that was approved by the Texas Department of Housing and Community Affairs (TDHCA) Governing Board on July 8, 2021. As a coastal community tourist destination that is subject to major storms and hurricanes, the proposed rule leaves the City of Galveston open to many enforcement challenges and unanswered questions.

Unfunded Mandate

As a small city with a population of slightly over 53,000 residents, the City of Galveston (the “City”) operates with limited public funds to provide core services that maintain public safety and infrastructure of the community. City public safety services are stretched thin when serving a community impacted by over 7 million tourists a year. Core services are further constrained by the 3.5 percent limitation on property tax General Fund revenues. Public safety, street maintenance and infrastructure make up 74 percent of the City’s General Fund budget.

Enactment of HB 1925, imposes a homeless camping ban that places additional pressures on law enforcement and unfunded mandates on financially strapped small cities with limited resources. Effective September 1, 2021, police officers are placed in the middle of a difficult homeless population condition with the expectation of being prepared to offer service referrals to individuals violating the camping ban while meeting expanding law enforcement responsibilities.

Actions required by the state related to custody and storage of property adds significant costs and work for the City with no additional funds provided. The new homeless camping law raises many questions regarding the treatment of property collected from homeless individuals found violating the law. First, who defines “property” versus “junk?” Second, how should the police officer document every single item in an overloaded shopping cart? Third, how should items be stored, particularly in cases involving biohazard items? Fourth, where should such items be stored? The proposed rule fails to address these questions as well.



Definitions

An additional concern for the City, the proposed rule fails to provide a definition of “homeless.” Clarity is needed in the proposed rule to differentiate between persons who are “homeless” and “displaced.” Following Hurricane Ike, an encampment was created by the Red Cross on school property that housed people who were temporarily displaced. HB 1925 defines “camp” to mean residing temporarily in a place with shelter. However, the proposed rule draws upon a “camp” definition cited in Section 48.05 of the Penal Code, a citation not found in the current Penal Code.

Additionally, H.B. 1925, amends the Penal Code by identifying camping related to emergency shelter during a disaster as a purpose allowable with consent given by an officer or agency of a political subdivision (Sec. 48.05(d)(4)). However, the proposed rule is silent on whether such emergency shelter must be included in a plan submitted to TDHCA for approval. Policy gaps and contradictions raise the critical need for the proposed rule to explicitly clarify the plan requirements do not apply to the opening of a camping area needed for a determinant number of days (60, 120, 180, or 240 days) for individuals displaced after a natural disaster.

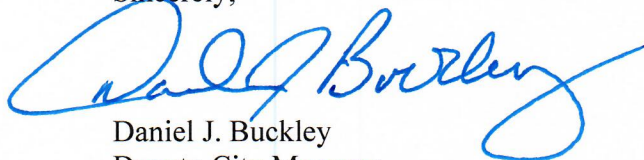
Law Enforcement Resources

The TDHCA proposed rule sets forth five evaluative factors that must be described in a plan submittal for areas to be designated homeless camping, including the following: Local Health Care; Indigent Services, Public Transportation; Law Enforcement Resources; and Coordination with Local mental Health Authority. Availability and close proximity of services may vary widely for small cities. A major concern for the City of Galveston is the mandate that local law enforcement resources for the patrol zone or precinct that includes the “Proposed Property” are not materially less than those available in other zones or precincts of the local enforcement entity.

Depending upon the severity of a major storm or hurricane, available local law enforcement personnel may be severely compromised because of the lack of accessibility to Galveston Island for those police officers who live on the mainland. Under these circumstances, law enforcement resources are rationed as needed and often require significant overtime demands for available police officers. Without an exception provided for encampments of displaced persons following a natural disaster, a plan submittal that requires the proposed criteria for service levels and accessibility places an unreasonable burden on a small city recovering from a major storm or hurricane.

In summary, the City of Galveston is concerned that without more explicit definition of critical terms and responsibilities, small cities, especially those vulnerable to natural disasters, could be subject to unfair punitive actions imposed by the state.

Sincerely,



Daniel J. Buckley
Deputy City Manager

Brooke Boston

From: Goodrich, Kate <kgoodrich@jw.com>
Sent: Wednesday, August 11, 2021 8:46 AM
To: Brooke Boston
Cc: Rose, Denise
Subject: Clarifications from TDHCA?

Good morning Brooke,

We represent a mid-sized city in Texas, and we would like to submit some questions to TDHCA for clarification on their behalf re: the encampment ban.

1. Question: Since HHS is another state division, it is not clearly defined what their process is to respond to a letter of this type of request from the City. Is it already an established process or is it new to HHS? How does HHS respond? What must be included by the City in the request and what will HHS have to include to meet this requirement?

Cite Reference:

e.4(A)(iii)

(iii) A description or copy of a communication from the Texas Department of Health and Human Services specific to the Political Subdivision and specific to the population of homeless individuals must be provided to establish the availability of access to Medicaid services;

2. Question: We are fairly confident that you mean service providers, but we would still like to seek clarification. Indigent Services is not defined in (c) Definitions nor is it clear in the section what are indigent services if these services are different from all services. Is it appropriate to define all the organizations in the City providing services to people experiencing homelessness as meeting the standard in this guideline?

Cite Reference:

e.4.(B). Indigent Services.

Thank you so much for this opportunity to seek clarity. We sincerely appreciate it. You can respond to us and we will make sure that the appropriate representatives from the City receive the answers.

Kate Goodrich | Governmental Affairs Consultant
100 Congress Avenue Suite 1100 | Austin, TX | 78701
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July 26, 2021

Texas Department of Housing & Community Affairs
Attn: Brook Boston, Rule Comments
PO Box 13941
Austin, TX 78711-3941

Via email to: brooke.boston@tdhca.state.tx.us

Re Comments on Proposed TDHCA/H.B. 1925 Rule

Dear Ms. Boston,

Thank you for providing NAMI Texas—the Texas affiliate of the National Alliance on Mental Illness—the opportunity to comment on proposed rules regarding the process and approval criteria for properties designated for camping by political subdivisions for homeless individuals.

NAMI Texas is a 501(c)3 nonprofit organization founded by volunteers in 1984. NAMI Texas is affiliated with the National Alliance on Mental Illness (NAMI) and has 27 local affiliates throughout Texas. NAMI Texas has nearly 2,000 members made up of individuals living with mental illness, family members, friends, and professionals. Its purpose is to help improve the lives of people affected by mental illness through education, support, and advocacy.

Comment: Require political subdivisions to conduct a comparative analysis on ALL threshold plan requirements.

10 TAC §1.8(e)(4) requires political subdivisions to include detailed information on four evaluative factors pertaining to services available to campers in the vicinity of proposed properties designated for camping for individuals experiencing homelessness—health care, indigent services, public transportation, and law enforcement. The proposed rule provides a high degree of uniformity in the information requested regarding the health care, indigent services, and public transportation evaluative factors. The information that political subdivisions are required to provide regarding health, indigent services, and public transportation include:

- 1) a description of the availability of said services,
- 2) a description of the specific service providers,
- 3) the proximity of the service providers to the proposed campsite, and
- 4) service eligibility limitations.

We appreciate the depth and degree of information the proposed rule requires political subdivisions to provide regarding health care, indigent services, and public transportation when proposing properties designated for camping for individuals experiencing homelessness.

However, we are concerned about disparities in the information requested regarding the fourth evaluative factor—local law enforcement resources. The proposed rule requires political subdivisions to:

- 1) conduct a comparative analysis on law enforcement resources for the area of the proposed property relative to other areas with similar demographics,
- 2) provide a description of resourced added or proposed specifically for the purposes of accommodating residents of the campsite, and
- 3) explain any lower than typical law enforcement coverage in the area.

We believe that establishing a higher standard for assessment of the law enforcement evaluative factor in the threshold requirements for a plan proposal may contribute to an oversubscription of law enforcement in the services provided to campsite residents. In other words, greater scrutiny of available law enforcement resources by TDHCA in the plan review process may influence political subdivisions to increase law enforcement patrol on or around campsites, which may lead to unnecessary criminal justice involvement for campsite residents.

Individuals experiencing homelessness are disproportionately impacted by mental illness. Similarly, mental illness is overrepresented in the criminal justice system. Further, adverse and often tragic outcomes in interactions between individuals experiencing a mental health crisis and law enforcement are well documented. Once involved with criminal justice system, individuals living with mental illness, homeless or otherwise, often experience worsened mental health outcomes and higher rates of recidivism.

Simply, to establish a higher standard for the assessment of law enforcement resources relative to the availability of health care, indigent services, and public transportation for campsite residents may inadvertently contribute to greater rates of incarceration for individuals experiencing mental illness.

One solution to our concern may be to create uniformity in the methodological rigor applied to the assessment of all four service-related evaluative factors—health care, indigent services, public transportation, and law enforcement. This could be accomplished by applying the same or similar description requirements utilized for health care, indigent services, and public transportation to the law enforcement factor.

Alternatively, and preferably, the proposed rule should include threshold plan requirements that require political subdivisions to conduct a comparative analysis on the health care, indigent services, and public transportation factors, similar to that which is done for law enforcement.

In conjunction with the law enforcement factor, requiring political subdivisions to conduct a comparative analysis on the access and availability of health care, indigent services, and public transportation in close proximity to a proposed campsite relative to other potential sites would



help to ensure that campsite residents, especially those living with mental illness, have ample access to the services needed to exit homelessness and avoid unnecessary criminal justice involvement.

Thank you for the opportunity to provide comment on Proposed TCHCA/H.B. 1925 Rule

Sincerely,

Matthew Lovitt
Peer Policy Fellow

National Alliance on Mental Illness (NAMI) Texas
P.O. Box 300817
Austin, TX 78703
Ph: (512) 693-2000
Em: peerpolicy.fellow@namitexas.org



Board of Directors

August 23, 2021

Officers

Chair
Todd Shell
Houston

Texas Department of Housing and Community Affairs
Attn: Brooke Boston
Rules Comments
P.O. Box 13941
Austin, Texas 78711-3941

Vice Chair
Ben King
Houston

Re: Commenting on the TDHCA Governing Board Approved Draft of 10 TAC §1.8, Plan Requirements, Process and Approval Criteria for Properties Designated for Camping by Political Subdivisions for Homeless Individuals

Secretary
Taylor Cook
Austin

Ms. Boston:

Treasurer
Natalie Hicks
Austin

On behalf of Texas Homeless Network and Texas Continuums of Care (CoC), I am registering my comments on the proposed TDHCA Governing Board Approved Draft of 10 TAC §1.8, Plan Requirements, Process and Approval Criteria for Properties Designated for Camping by Political Subdivisions for Homeless Individuals.

Members

Paul Charles
Houston

In summary, we applaud the inclusion of requirements focusing on providing adequate service and support for people experiencing homelessness, especially those with disabilities. However, the proposed plan does not outline requirements that political subdivisions work with the local Continuum of Care (CoC) or the CoC designated lead to prevent and end homelessness for that geographic area.

Melissa
Escamilla
McAllen

Tamara Foster
Houston

The local CoC or the CoC designated lead should be a required part of the planning and decision making as a political subdivision develops a proposal to designate a property for camping by people experiencing homelessness. Therefore, we propose the following to satisfy adequate inclusion of the local the local CoC or the CoC designated lead in this process:

Benjamin Jules
Houston

Daniel Kuehn
Austin

- CoC or CoC designated lead term should be included in Subsection **(c) Definitions.**

Ben Nakhaima
Austin

Nathan Pisik
Austin

Language to add: Page 4, Subsection (c) add term "CoC or CoC designated lead" and definition: Lead representative identified by the Continuum of Care (CoC) or Local Homeless Coalition governing board.

Jo Schaeffer
Austin

- Submission of a signed letter verifying that the Political Subdivision collaborated with the CoC or CoC designated lead in the development of a plan establishing properties to be designated for camping for Homeless Individuals should be included in Subsection **(e) Threshold Plan Requirements.**

Heather Slay
Austin

President & CEO

Eric Samuels

Language to add: Page 6, Subsection (e) add item "A letter with the signature of the executive (e.g., CEO, Executive Director, or Local Homeless Coalition President/Chair) of the local CoC or CoC designated lead that verifies the Political Subdivision collaborated with the CoC or CoC designated lead on the development of the Plan."

- The political subdivision should consult with and obtain written agreement with the local CoC or the CoC designated lead on the estimated number of proposed new campers to be located at the proposed property should be included in Subsection **(e) Threshold Plan Requirements**.

Language to add: Page 6, Subsection (e)(3): after "the estimated number of Proposed New Campers to be located at the Proposed Property" add this, "that is agreed on by the local CoC or CoC designated lead;."

- The description for indigent services to be provided at the property should be written in collaboration with the local CoC or the CoC designated lead in Subsection **(e) Threshold Plan Requirements**.

Language to add: Page 6, Subsection (e)(4)(B)(i): after "A description of the availability of indigent services for Proposed New Campers" add this, "written in collaboration with the local CoC or CoC designated lead."

- The CoC or CoC designated lead is an integral part in the determination of whether a political subdivision meets the correct number of required factors as outlined in Subsection **(f) Plan Criteria (E)(2)**. And whether any proposed mitigation, to deliver similarly comprehensive resources as required, to justify how the remaining factor not met will still be sufficiently addressed through other means.

Language to add: Page 8, Subsection **(f) Plan Criteria (E)(2)**: after "A Plan that meets at least four of the five factors in paragraph (1) of this subsection, may be approved if significant and sufficient mitigation is provided that delivers similarly comprehensive resources as required, to justify how the remaining factor not met will still be sufficiently addressed through some other means" add this, "that the CoC or CoC designated lead agrees with in writing."

Thank you for the opportunity to comment on this proposal for Plan Requirements, Process and Approval Criteria for Properties Designated for Camping by Political Subdivisions for Homeless Individuals.

Sincerely,



Eric Samuels
President/CEO
Texas Homeless Network

Brooke Boston

From: Mary B Wilbanks <marybethcatcreek@gmail.com>
Sent: Wednesday, July 28, 2021 8:36 PM
To: Brooke Boston
Subject: Re: Comments on §1.8, Criteria for Properties Designated for Camping

I am a private citizen representing myself.

Mary Wilbanks.

Comments below:

I want to comment on 10 TAC 1.8 regarding the properties for camping.

The five calendar days to address deficiency is too short. It is not a reasonable amount of time to address deficiencies, especially if the calendar days fall on weekends when employees of political entities are not working.

The plan assumes that the political entity has the resources to provide health care to homeless persons, and in addition, it mentions access to Medicaid services. The provision of Medicaid services assumes that the person in need of help has a valid ID and Medicaid was approved for these individuals. This will remain a challenge for these individuals. In addition, the rule assumes the political entities have the resources to address health needs and mental health needs without additional funding, which is another challenge.

In addition, the rules have stipulated the location of the proposed property to be near resources that will help these individuals. It has to be within one mile of local health care, indigent care, accessible via public transportation, Unfortunately, such a location will likely be where the neighboring residents are likely to oppose the attempt to use such a property to house homeless individuals.

The transportation requirement (running 6 days a week) is also too stringent. Many cities have very limited, if any, public transportation that runs on weekends to begin with.

On Wed, Jul 28, 2021 at 8:35 PM Mary B Wilbanks <marybethcatcreek@gmail.com> wrote:

I want to comment on 10 TAC 1.8 regarding the properties for camping.

The five calendar days to address deficiency is too short. It is not a reasonable amount of time to address deficiencies, especially if the calendar days fall on weekends when employees of political entities are not working.

The plan assumes that the political entity has the resources to provide health care to homeless persons, and in addition, it mentions access to Medicaid services. The provision of Medicaid services assumes that the person in need of help has a valid ID and Medicaid was approved for these individuals. This will remain a challenge for these individuals. In addition, the rule assumes the political entities have the resources to address health needs and mental health needs without additional funding, which is another challenge.

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The transportation requirement (running 6 days a week) is also too stringent. Many cities have very limited, if any, public transportation that runs on weekends to begin with.

10d

BOARD ACTION REQUEST

MULTIFAMILY FINANCE DIVISION

SEPTEMBER 2, 2021

Presentation, Discussion and Possible Action Relating to the Use of 2022 Credit Ceiling to Provide Allocations of Credits to 2021 Competitive Housing Tax Credit Applicants Negatively Impacted by Department Ministerial Error

RECOMMENDED ACTION

WHEREAS, the Board is required by Tex. Gov't Code §2306.6724(f) to “issue final commitments for allocations of housing tax credits each year in accordance with the qualified allocation plan not later than July 31”;

WHEREAS, the Board is required by Tex. Gov't Code §2306.6711(c) to “establish a waiting list of additional Applications ranked by score in descending order of priority based on set-aside categories and regional allocation goals” concurrently with the initial issuance of commitments for Competitive Housing Tax Credits;

WHEREAS, the Board approved a list of Applications recommended for Final Commitments of Housing Tax Credits (HTC) from the 2021 State Competitive Housing Credit Ceiling at the meeting on July 22, 2021;

WHEREAS, the Board approval was conditioned upon a number of factors, including “completion of any other reviews required to ensure compliance with the applicable rules and requirements for the Competitive Housing Tax Credit Program.”;

WHEREAS, staff review to ensure compliance with statutory restrictions identified errors that impact a number of the Applications that had been recommended for award relating to the At-Risk Set-Aside and Urban and Rural subregions;

WHEREAS, a commitment of credits from the 2022 Competitive Housing Tax Credit ceiling to those Applications that have been negatively impacted by this ministerial error will allow the Applications to move forward and prevent negative economic impact;

WHEREAS, recognizing the tension between the conditional approval of the negatively impacted applications in July, the identification of the ministerial errors that required removal of applications from the award list, and the rule provision of 10 TAC §11.207(3), which states “The Board may not grant a waiver to provide directly or implicitly any forward commitments or to waive any requirement contained in statute,” a waiver of this rule would be required to take action to award 2022 Competitive Housing Tax Credits prospectively to assist the

Applications that otherwise would not receive credits due to statutory requirements;

WHEREAS, there is no restriction in Texas statute or federal code that would prevent the Board from taking the proposed action;

WHEREAS, the commitment of 2022 HTC to these Applications will impact the availability of HTC for new 2022 Applications;

WHEREAS, staff proposes the waiver of the language in 10 TAC §11.207(3) regarding forward commitments, and commitment of 2022 HTC to the Applications negatively impacted by the ministerial error be conditionally approved; and

WHEREAS, if approved by the Board, the negatively impacted applicants would receive a conditional 2022 commitment notice, meaning that these applications would maintain their position on the 2021 waiting list, and if the 2021 credits become available through the ordinary operation of the 2021 waiting list prior to December 31, 2021, then they would be issued a 2021 commitment and the 2022 commitment would be cancelled.

NOW, therefore, it is hereby

RESOLVED, that the waiver of the language in 10 TAC §11.207(3) regarding forward commitments, such that the described forward commitments can be made to the negatively impacted applications is hereby approved;

FURTHER RESOLVED, that the list of recommended Applications for forward Commitments of Housing Tax Credits from the 2022 State Competitive Housing Credit Ceiling are hereby approved in the form presented at this meeting;; and

FURTHER RESOLVED, that the Board's approval is conditioned upon the completion of underwriting, the imposing of all conditions of underwriting, the imposing of the conditions recommended by the Executive Award Review and Advisory Committee and those resulting from staff review, the completion of any other reviews required to ensure compliance with the applicable rules and requirements for the Competitive Housing Tax Credit Program, the above-described condition regarding the availability of credits via the 2021 waiting list, and any other special conditions the Board may consider appropriate.

BACKGROUND

At the meeting held on July 22, 2021, the Texas Department of Housing and Community Affairs (TDHCA) Governing Board approved a list of Applications recommended for Final Commitments of Housing Tax Credits from the 2021 State Competitive Housing Credit Ceiling. Notably, the Board's approval was conditioned upon a number of factors, including "completion of any other reviews required to ensure compliance with the applicable rules and requirements for the Competitive Housing Tax Credit Program." The Board approved the recommended action item; however, upon review to ensure compliance with statutory restrictions, staff identified that there were two types of ministerial errors that impacted a number of the Applications that had been recommended for award relating to the At-Risk and Urban and Rural subregions. The errors do not involve the evaluation, scoring, or underwriting of the applications, themselves.

At-Risk Set-Aside

The first issue relates to the At-Risk Set-Aside. The QAP, implementing statutory requirements, requires that the Department set aside for eligible at-risk developments not less than 15% of the housing tax credits available for allocation in the calendar year. In the awards made by the Board on July 22, 2021, that amount had not been met.

To ensure the correct volume of At-Risk Applications is awarded and the statutory requirement achieved, one Application below will be added to the award list in order to reach the required 15%. While this award will be issued a Commitment Notice, it will still be completely reviewed first.

At-Risk	21312	Savannah Park of Keene (Keene)	Rural	Elderly	\$392,000
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Rural Allocation

Tex. Gov't Code §2306.111(d)(3) requires that at least 20% of the credits made available are allocated to Applications in Rural Areas. An error was made within the spreadsheet used to determine the recommended Applications within all set-asides & subregions. The Rural and Urban designations of several Applications in the At-Risk Set-Aside were inadvertently changed, which made the calculations reflect that a higher total credit amount had been achieved for Rural Applications than was accurate. This error was carried throughout all remaining steps in the collapse process, resulting in an insufficient credit total being recommended to Rural Applications on the award log presented at the Board meeting. Because the incorrect workbook led staff to believe that sufficient awards had been made in Rural subregions to achieve the 20% requirement, three Urban Applications were presented on the award log for which those credits now need to be distributed to Rural Allocations. Those Urban Applications are listed below. Commitment Notices from the 2021 Credit Ceiling are not able to be issued.

Region 7	21063	Parker Apartments (Austin)	Urban	General	\$1,500,000
Region 8	21318	Cypress Creek Temple (Temple)	Urban	General	\$1,500,000
Region 12	21317	San Angelo Terrace (San Angelo)	Urban	General	\$1,328,167

To ensure the correct volume of rural Applications is awarded and the statutory requirement

achieved, three Applications below will be added to the award list in order to reach the required Rural 20%. While each of these awards will be issued a Commitment Notice from the 2021 Housing Tax Credit Ceiling to ensure the statutory rural requirements are met, any applications that have not been completely reviewed first will have reviews completed.

Region 4	21099	Marshall Crossing (Marshall)	Rural	Elderly	\$1,041,113
Region 5	21221	Providence on Park (Lumberton)	Rural	Elderly	\$1,324,086.00
Region 11	21219	Eagles Gate Apartments (Eagle Pass)	Rural	General	\$967,455.00

FORWARD COMMITMENTS

The three applications not able to receive a 2021 Credit Ceiling Commitment Notice – Parker Apartments, Cypress Creek Temple, and San Angelo Terrace totaling credits of \$4,328,167 – may have relied on the fact that the Board conditionally approved their applications at the July 22nd Board meeting. Whereas there is no legal obligation recognized that would require providing credits to these applications under these circumstances, Staff recognizes the tension between the conditional approval of the negatively impacted applications in July, and the identification of the ministerial errors that required removal of these applications from the award list. A conditional commitment of credits from the 2022 Competitive Housing Tax Credit ceiling, contingent on the applicants not receiving 2021 credits via the waiting list, could mitigate any negative economic impact.

While there is no restriction in Texas statute or federal code that would prevent the Board from taking the proposed action, the QAP, at 10 TAC §11.207(3) states: “The Board may not grant a waiver to provide directly or implicitly any forward commitments or to waive any requirement contained in statute.” A waiver of this section would allow the Board to take action to assist the Applications that otherwise would not receive credits due to statutory requirements.

In light of the Department’s ministerial error, staff proposes the waiver of 10 TAC §11.207(3) and the commitment of \$4,328,167 in 2022 HTC to the Applications negatively impacted by the ministerial error. Because a forward Commitment effectively advances the award to the next year, requirements of the 2022 QAP will apply to these Applications, including:

1. The Applications will each be attributed to the respective 2022 Set-asides and Subregions of the Applications, in order to meet the requirements of 10 TAC §11.6(1) and Tex. Gov't Code §2306.1115 for 2022.
2. All dates and deadlines under 10 TAC §11.2 in the 2022 QAP will be applicable to these 3 applications.
3. The forward Commitments will be included in calculations of the \$3 million maximum for 2022 for each Applicant, as described in 10 TAC §11.4(a).

It should be noted that staff had initially determined that during the review of the USDA and At-Risk Set-Asides, three Applications would not be receiving Commitments. However, it has been determined that those Applications were correctly included on the Award Log at the meeting on July 22, 2021, and will be receiving Commitments. Those correctly awarded Applications are:

21157	Katy Manor Apartments	Urban	General	\$476,081
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21151	Colorado City Apartments	Rural	General	\$312,529
21150	Big Lake Seniors Apartments	Rural	Elderly	\$211,841

A corrected 2021 Award Log and Waitlist, reflecting the three conditional Forward Commitments, is attached reflective of this action.



**Texas Department of Housing and Community Affairs
2021 Competitive (9%) Housing Tax Credit (HTC) Program
Awards and Waiting List**

Construction Types:
NC=New Construction
Recon=Reconstruction
Rehab=Rehabilitation
AcR=Acquisition/Rehabilitation

Secondary Types:
ADR=Adaptive Reuse
SS=Scattered Site
AdPh=Additional Phase

Where applications are indicated as "Not Recommended", a negative Compliance assessment under Tex. Gov't Code §2306.057, was accepted by the Board at its meeting on June 17, 2021.

The list of recommended awards and applications that remain on the waiting list is organized by region and subregion. Applicants selecting the At-Risk/USDA Set-Asides are listed first and are organized by best possible score rather than by region. Detailed information about each Application and instructions regarding how to interpret the information presented here is included in previously posted logs on the Department's website.

The status is reflected as "C" for complete or "UR" for under review.
PPR = Previous Participation Review

Application Number	Development Name	Development Address	City	ZIP Code	County	Region	Urban/Rural	At-Risk USDA	Nonprofit	Construction Type	Low-Income Units	Market Rate Units	Total Units	Target Population (Supp. Hsg. = SH)	Recommended Award / HTC Request	Direct Loan	Applicant Contact Name	Census Tract(s)	Best Possible Score	10 TAC 11.7(1) Part 1	10 TAC 11.7(1) Part 2	10 TAC 11.7(2)	Recommendation	Review Status	PPR Status	Underwriting Status	
At-Risk Set-Aside																											
21228	El Jardin	1114 E Levee St	Brownsville	78520	Cameron	11	Urban	X	X	NC	44	0	44	General	1,180,840		Carla Mancha	48061014001	166				Award	C	C	C	
21017	Hughes House	4830 E. Rosedale Street and 4830 E. Rosedale Street	Fort Worth	76105	Tarrant	3	Urban	X	X	Recon	145	65	210	General	2,000,000		Mary-Margaret Lemons	48439103601	164				Award	C	C	C	
21117	Montrose Valley Apartments	2200 Montrose Place	Belton	76513	Bell	8	Urban	X		AcR	142	0	142	General	1,452,135		Josefina Garcia	48027021700	164				Award	C	C	C	
21176	Mill Run	55 Mill Run Circle	Elkhart	75839	Anderson	4	Rural	X		AcR	52	2	54	General	614,956		Devin Baker	48001951000	164				Award	C	C	C	
21118	Cherry Village Apartments	724 E Avenue N	Belton	76513	Bell	8	Urban	X		AcR	80	0	80	General	822,000		Josefina Garcia	48027021500	164				Award	C	C	C	
21119	Cedar Grove Estates I and II	1000 S 8th St; 306 W Avenue C	Buckholts; Rosebud	76518; 765	Milam; Falls	8	Rural	X		AcR	32	0	32	General	352,429		Josefina Garcia	48331950100; 48	164				Award	C	C	C	
21164	Town Oaks Apartments	120 Waters Street	Kenedy	78119	Karnes	9	Rural	X		AcR	46	2	48	General	545,000		Dennis Hoover	48255970300	164				Award	C	C	C	
21175	Wells Manor	6 Wright Patman Drive / 70 M	Wells	75976	Cherokee	4	Rural	X		AcR	53	1	54	General	646,500		Devin Baker	48073951100	164				Award	C	C	C	
21185	Weslaco Village	1601 S. Bridge Ave.	Weslaco	78596	Hidalgo	11	Urban	X	X	Recon	44	6	50	General	1,210,000		Bradford McMurray	48215022701	164				Award	UR	C	UR	
21220	Longview Square	1600 and 1602 Pine Tree Rd.	Longview	75604	Gregg	4	Urban	X	X	AcR	120	0	120	General	1,392,854		Miranda Sprague	48183000700	164				Award	C	C	C	
21148	William Booth Apartments	808 Frawley Street	Houston	77009	Harris	6	Urban	X		AcR	63	1	64	Elderly	871,608		Tracey Fine	48201210600	163				Award	C	C	C	
21038	Houston 150 Bayou Apartments	Approx. 6970 Portwest Drive	Houston	77024	Harris	6	Urban	X		NC	150	0	150	General	2,000,000		Mark Rogers	48201510900	163				Award	C	C	UR	
21157	Katy Manor Apartments	5360 East 5th Street	Katy	77493	Harris	6	Urban	X		AcR	48	0	48	General	476,081		Melissa Baughman	48201542700	163				Award	C	C	C	
21151	Colorado City Apartments	2330 N. Highway 208	Colorado City	79512	Mitchell	2	Rural	X		AcR	31	1	32	General	312,529		Murray Calhoun	48335950200	163				Award	C	C	C	
21150	Big Lake Seniors Apartments	1304 Vicky Street	Big Lake	76932	Reagan	12	Rural	X		AcR	19	1	20	Elderly	211,841		Murray Calhoun	48383950100	163				Award	C	C	C	
21312	SavannahPark of Keene	213 W. 4th Street	Keene	76059	Johnson	3	Rural	X		AcR	36	0	36	Elderly	392,000		Corey Farmer	48251130304	162				Award	C	C	UR	
21156	Bayshore Manor and Bay View Ap	138 Sandpiper Circle	Palacios	77465	Matagorda	6	Rural	X		AcR	56	0	56	General	517,641		Melissa Baughman	48321730600	162					C	C	C	
21058	Evening Star Apartments	11800 S. Glen Drive	Houston	77099	Harris	6	Urban	X		AcR	61	1	62	Elderly	660,000		Tracey Fine	48201453403	162					UR	C	UR	
21034	Oasis Springs	401 N. Panna Maria, 302 E. Br	Karnes City; Kenedy	78118; 781	Karnes	9	Rural	X	X	Recon	72	8	80	General	900,000		Nathan Joseph	48255970200; 48	161								
21311	SavannahPark of Crosbyton	1204 E. Hwy US-82	Crosbyton	79322	Crosby	1	Rural	X		AcR	24	0	24	Elderly	265,000		Corey Farmer	48107950100	159								
21206	Woodcrest	2550 W 8th Street	Odessa	79763	Ector	12	Urban	X		Recon	80	0	80	General	1,626,015		Melissa Fisher	48135001100	159								
Estimated At-Risk Available											\$14,377,867																
USDA Set-Aside											\$4,135,906																
Region 1/Rural																											
21051	Canyon Lofts	SEC 13th Ave and 18th St	Canyon	79015	Randall	1	Rural			NC	65	7	72	Elderly	1,079,569		Daniel Sailler	48381021801	166				Award	C	C	C	
Estimated Amount Available											\$743,276																
Total HTCs Requested											1,079,569																
Region 1/Urban																											
21235	Inn Town Lofts	1202 Main Street	Lubbock	79401	Lubbock	1	Urban			NC	56	0	56	General	1,270,819		Matthew Rieger	48303000700	172				Award	C	C	C	
Estimated Amount Available											\$1,289,463																
Total HTCs Requested											1,270,819																
Region 2/Rural																											
21116	Sweetwater Station	1105 E. Broadway Ave. & 212	Sweetwater	79556	Nolan	2	Rural			NC	52	0	52	Elderly	900,000		Brian Kimes	48353950200	164				Award	C	C	C	
21040	Burkburnett Royal Garden	~350 DW Taylor (South of 109	Burkburnett	76354	Wichita	2	Rural			NC	43	6	49	General	600,000		Noor Jooma	48485013501	161								Award would violate \$3m limit
Estimated Amount Available											\$600,000																
Total HTCs Requested											1,500,000																

Application Number	Development Name	Development Address	City	ZIP Code	County	Region	Urban/Rural	At-Risk USDA	Nonprofit	Construction Type	Low-Income Units	Market Rate Units	Total Units	Target Population (Supp. Hsg. = SH)	Recommended Award / HTC Request	Direct Loan	Applicant Contact Name	Census Tract(s)	Best Possible Score	10 TAC 11.7(1) Part 1	10 TAC 11.7(1) Part 2	10 TAC 11.7(2)	Recommendation	Review Status	PPR Status	Underwriting Status	
Region 2/Urban																											
21104	Heritage at Abilene	1101 S 9th St	Abilene	79602	Taylor	2	Urban			NC	29	0	29	Elderly	600,000		Matt Gillam	48441011900	172				Award	C	C	C	
21030	Abilene Pioneer Crossing	149-182 Eplens Ct	Abilene	79605	Taylor	2	Urban			NC	72	8	80	General	946,000		Noor Jooma	48441011400	166					C	C	UR	
Estimated Amount Available		\$639,787												Total HTCs Requested												946,000	
Region 3/Rural																											
21158	Juniper Pointe Apartments	SW of Village Dr and CR 151	Kaufman	75142	Kaufman	3	Rural			NC	54	18	72	General	910,554		Justin Zimmerman	48257051202	165				Award	C	C	C	
Estimated Amount Available		\$615,524												Total HTCs Requested												910,554	
Region 3/Urban																											
21081	Kiva East	SWQ East Side Ave and S Fitz Dallas		75226	Dallas	3	Urban			NC	71	16	87	General	1,500,000		Lisa Stephens	48113001502	172	Highest Scoring CRP			Award	C	C	C	
21145	Mariposa Apartment Homes at Co	4.5 Acres Near the NEC of Con Plano		75024	Collin	3	Urban			NC	108	72	180	Elderly	1,500,000		Stuart Shaw	48085031656	172				Award	C	C	C	
21087	The Versia	NWC Grove St and S Story Rd	Irving	75060	Dallas	3	Urban			NC	78	0	78	Elderly	1,500,000		Sally Gaskin	48113015306	172				Award	C	C	C	
21136	Oaklawn Place	5717-5725 Sadler Circle	Dallas	75235	Dallas	3	Urban	X		NC	84	0	84	Elderly	1,448,770		Victor Smeltz	48113000406	171				Award	C	C	UR	
21015	Embree Eastside	1010 State Hwy 66	Garland	75040	Dallas	3	Urban			NC	80	27	107	General	1,495,914		Thomas E. Huth	48113018203	171				Award	C	C	C	
21208	Parmore Jupiter Road	SWQ of E Parker Rd and Jupite Plano		75074	Collin	3	Urban			NC	80	20	100	Elderly	1,411,815		Payton Mayes	48085032012	171				Award	C	C	C	
21093	Parkside on Carrier	1217 S. Carrier Parkway	Grand Prairie	75051	Dallas	3	Urban			NC	38	0	38	Elderly	782,000		Brian Kimes	48113016201	171				Award	C	C	C	
21004	Skyline at Cedar Crest	2720 East Kiest Blvd	Dallas	75216	Dallas	3	Urban	X		NC	85	22	107	General	1,500,000		Eleanor M.C. Fanning	48113008603	171				Award	C	C	C	
21053	Reserve at Shiloh	1102 N Shiloh Road	Garland	75042	Dallas	3	Urban			NC	74	32	106	General	1,260,000		Brian McGeedy	48113018900	171				Award	C	C	C	
21061	Magnolia Lofts	300 E Magnolia Avenue	Fort Worth	76104	Tarrant	3	Urban			NC	60	7	67	General	1,500,000		Jason Arechiga	48439123500	171				Award	C	C	C	
21078	Clifton Riverside	2400 Block of E Belknap St	Fort Worth	76111	Tarrant	3	Urban			NC	79	15	94	General	1,500,000		Matt Gillam	48439101202	163				Award	UR	UR	UR	
21139	Cypress Creek Apartment Homes	11520 North Central Expressw	Dallas	75243	Dallas	3	Urban			NC	103	86	189	General	1,500,000		Zachary Krochtengel	48113007805	155				Award	C	C	UR	
21109	The Residence at Sycamore Creek	701 Dairy Rd	Garland	75040	Dallas	3	Urban			NC	60	0	60	Elderly	1,158,455		Matt Gillam	48113018204	171							2 mile same year: 21015	
21181	The Heights at MacArthur	400 S. MacArthur Blvd.	Irving	75060	Dallas	3	Urban			NC	76	0	76	General	1,500,000		Adrian Iglesias	48113014901	171							2 mile same year: 21087	
21007	Retta Street Lofts	2904 East Belknap Street	Fort Worth	76111	Tarrant	3	Urban	X		NC	63	7	70	Elderly	1,095,000		Eleanor M.C. Fanning	48439101202	171							Exceeds Elderly Max	
21263	Crossroads Apartments	Approx. 1105 E. Lancaster Ave	Fort Worth	76102	Tarrant	3	Urban	X		NC	61	7	68	SH	928,630	X	Don Shisler	48439101700	170							2 mile same year: 21061	
21149	Residences at Alpha	5353 Alpha Road	Dallas	75240	Dallas	3	Urban			NC	80	20	100	Elderly	1,500,000		Gary Lacey	48113013626	163							Exceeds Elderly Max	
21144	Mariposa Apartment Homes at Pl	Near the NWC of West Plano F Plano		75093	Collin	3	Urban			NC	108	72	180	Elderly	1,500,000		Zachary Krochtengel	48085031649	156							Exceeds Elderly Max	
Estimated Amount Available		\$16,899,634				Elderly Max \$6,962,073								Total HTCs Requested												24,580,584	
Region 4/Rural																											
21054	Reserve at Palestine	3310 S. Loop 256	Palestine	75801	Anderson	4	Rural			NC	80	0	80	Elderly	1,260,000		Brian McGeedy	48001950901	167				Award	C	C	C	
21099	Marshall Crossing	SEQ Decker Dr and East End Bl	Marshall	75672	Harrison	4	Rural			NC	44	4	48	Elderly	1,041,113		Michael Fogel	48203020502	166				Award				
21258	Mt. Pleasant Senior	Tennison Road	Mt Pleasant	75455	Titus	4	Rural			NC	34	2	36	Elderly	663,018		Emanuel H. Glockzin, Jr.	48449950800	165					UR	C	UR	
21254	Tenninson Road Housing	North Side of Tenninson Rd	Mt Pleasant	75455	Titus	4	Rural			NC	41	3	44	General	842,283		Emanuel H Glockzin, Jr	48449950800	165								
21055	Reserve at Jacksonville	Approx 905 Andrews Street (fk	Jacksonville	75766	Cherokee	4	Rural			NC	72	0	72	Elderly	1,100,000		Brian McGeedy	48078950600	165								Award would violate \$3mil limit
Estimated Amount Available		\$1,435,491												Total HTCs Requested												4,906,414	
Region 4/Urban																											
21101	Longview Crossing	SWQ E Hawkins Pkwy and Goc Longview		75605	Gregg	4	Urban			NC	60	0	60	Elderly	976,694		Michael Fogel	48183000200	168				Award	C	C	C	
21095	Porter Place	411 Porter Lane	Longview	75605	Gregg	4	Urban			NC	62	0	62	Elderly	1,191,000		Brian Kimes	48183000200	168								Same census tract: 21101
21092	Scenic Park Apartments	641 ESE Loop 323	Tyler	75703	Smith	4	Urban			NC	60	0	60	General	1,241,604		Vaughn C. Zimmerman	48423002004	168					UR	C	UR	
21298	The Magnolia Gardens	North side of Magnolia Ln at C Longview		75605	Gregg	4	Urban			NC	65	0	65	Elderly	1,234,409		Rick J. Deyoe	48183000401	167								
Estimated Amount Available		\$1,389,125												Total HTCs Requested												4,643,707	
Region 5/Rural																											
21032	Royal Gardens Lufkin	Approximately 110 Harmony F Lufkin		75901	Angelina	5	Rural			NC	72	8	80	General	1,069,042		Noor Jooma	48005000800	167				Award	C	C	C	
21056	Reserve at Lufkin	Approx. 2123 S. 1st Street	Lufkin	75901	Angelina	5	Rural			NC	72	0	72	Elderly	1,060,000		Brian McGeedy	48005000800	167								Award would violate \$3mil limit
21221	Providence on Park	Southwest Quadrant of Park R Lumberton		77657	Hardin	5	Rural	X		NC	80	0	80	Elderly	1,324,086		Miranda Sprague	48199030502	151				Award				
Estimated Amount Available		\$1,084,599												Total HTCs Requested												3,453,128	

Application Number	Development Name	Development Address	City	ZIP Code	County	Region	Urban/Rural	At-Risk USDA	Nonprofit	Construction Type	Low-Income Units	Market Rate Units	Total Units	Target Population (Supp. Hsg. = SH)	Recommended Award / HTC Request	Direct Loan	Applicant Contact Name	Census Tract(s)	Best Possible Score	10 TAC 11.7(1) Part 1	10 TAC 11.7(1) Part 2	10 TAC 11.7(2)	Recommendation	Review Status	PPR Status	Underwriting Status		
Region 5/Urban																												
21033	Beaumont Pioneer Crossing	Approx. 9449 US-287 South	Beaumont	77708	Jefferson	5	Urban			NC	72	10	82	General	984,000		Noor Jooma	48245000101	139				Award	C	C	C		
Estimated Amount Available		\$1,001,516											Total HTCs Requested	984,000														
Region 6/Rural																												
21003	Tomball Senior Village	SEC of Medical Complex Drive	Tomball	77377	Harris	6	Rural		X	NC	50	9	59	Elderly	900,000		JOT Couch	48201555501	167				Award	C	C	C		
21160	Amber Ridge Apartments	Woodway Dr and Hwy 288	Angleton	77515	Brazoria	6	Rural			NC	42	6	48	General	600,000		Vaughn Zimmerman	48039662100	165									
Estimated Amount Available		\$600,000											Total HTCs Requested	1,500,000														
Region 6/Urban																												
21006	Westheimer Garden Villas	5811 Winsome Lane	Houston	77057	Harris	6	Urban		X	NC	82	3	85	Elderly	1,499,558		Russ Michaels	48201432001	171	Highest Scoring CRP		Award	C	C	C			
21100	Hawthorn Terrace	Approximately 3103 Hayes Ro.	Houston	77082	Harris	6	Urban			NC	79	11	90	Elderly	1,500,000		J. Steve Ford	48201452100	171				Award	C	C	C		
21020	Huntington at Bay Area	SE corner of Bay Area Blvd & S	Houston	77058	Harris	6	Urban			NC	88	60	148	Elderly	1,500,000		Mark Musemeche	48201341100	171				Award	C	C	C		
21292	Campanile on Minimax	SEC of Minimax Dr. & West Lo	Houston	77008	Harris	6	Urban			NC	93	24	117	Elderly	1,500,000		Les Kilday	48201511001	171				Award	C	C	C		
21264	Acadia Terrace	Appr. 6002 Rogerdale	Houston	77072	Harris	6	Urban			NC	79	41	120	General	1,500,000		J. Steve Ford	48201452300	171				Award	C	C	C		
21035	Manson Place	SWQ of Reeves Steet & Scott	Houston	77004	Harris	6	Urban			NC	74	2	76	General	1,500,000		Scott Puffer	48201312400	171				Award	C	C	C		
21132	OST Lofts	5520 Old Spanish Trail	Houston	77023	Harris	6	Urban			NC	109	21	130	General	1,500,000		Donna Rickenbacker	48201311800	170				Award	C	C	C		
21245	The Rushmore	800 Highway 6 South	Houston	77079	Harris	6	Urban			NC	85	16	101	General	1,500,000		Randy Rieger	48201454400	168				Award	C	C	C		
21026	Vista at Park Place	NWQ of Park Place Blvd. and J	Houston	77087	Harris	6	Urban			NC	62	7	69	General	1,500,000		Dan Wilson	48201332900	168				Award	C	C	C		
21131	Boulevard 61	6101 Richmond Avenue	Houston	77057	Harris	6	Urban			NC	90	10	100	General	1,500,000	X	Janine Sisak	48201432702	163				Award	C	C	C		
21128	Fisher Street Apartments	909 Fisher St.	Houston	77018	Harris	6	Urban			NC	54	6	60	General	1,022,258		Lauren Avioli	48201531000	162									
21016	Houston Willow Chase Living	SEQ Breton Ridge Str and Willk	Houston	77070	Harris	6	Urban			NC	83	14	97	General	1,500,000		Thomas E. Huth	48201552700	154									
21111	Landmark at Montgomery	301 S 1st St.	Conroe	77301	Montgomery	6	Urban			NC	48	0	48	Elderly	877,082		Matt Gillam	48339693101	171					Exceeds Elderly Max				
21027	New Hope Housing Ennis	Approximately 1846 Ennis Stre	Houston	77003	Harris	6	Urban		X	NC	112	0	112	Elderly	1,500,000		Joy Horak-Brown	48201310200	170					Exceeds Elderly Max				
21042	Cole Creek Estates	Approx. 6850 Gessner Road H	Houston	77040	Harris	6	Urban			NC	86	22	108	Elderly	1,477,651		Ryan Hettig	48201534203	169					Exceeds Elderly Max				
Estimated Amount Available		\$15,550,905	Elderly Max		\$6,585,808												Total HTCs Requested	21,376,549										
Region 7/Rural																												
21177	Carver Ridge Apartments	SEQ County Road 137 and Cou Hutto		78634	Williamson	7	Rural			NC	48	12	60	General	900,000		Justin Zimmerman	48491020809	164				Award	C	C	C		
21080	Kodu Crossing	NW quadrant of Don Currie Dr Jarrell		76537	Williamson	7	Rural			NC	60	20	80	Elderly	900,000		Ina Spokas	48491021603	164									
Estimated Amount Available		\$600,000											Total HTCs Requested	1,800,000														
Region 7/Urban																												
21070	Saison North	10010 N Capital of Texas Hwy	Austin	78759	Travis	7	Urban			NC	82	34	116	General	1,500,000		Megan Lasch	48453001753	172				Award	C	C	C		
21075	June West	NWC W Koenig Ln and Grover	Austin	78756	Travis	7	Urban			NC	80	0	80	General	1,500,000		Lisa Stephens	48453001505	171				Award	C	C	C		
21063	Parker Apartments	2105 Parker Lane	Austin	78741	Travis	7	Urban		X	NC	135	0	135	General	1,500,000		Walter Moreau	48453002315	171				22FC	C	C	C		
21046	Village Square	115 East St Elmo Road	Austin	78745	Travis	7	Urban			NC	100	0	100	General	1,500,000		Christopher Shear	48453002403	171									
21047	Anderson Creek	Approx 1701 E Anderson Lane	Austin	78752	Travis	7	Urban			NC	89	0	89	General	1,500,000		Christopher Shear	48453001811	170									
21031	Libertad Austin	900 Gardner Road	Austin	78721	Travis	7	Urban			NC	140	0	140	General	1,500,000	X	Rick Manzardo	48453002111	169									
Estimated Amount Available		\$4,438,365	Elderly Max		\$1,646,633												Total HTCs Requested	9,000,000										
Region 8/Rural																												
Estimated Amount Available		\$724,159											Total HTCs Requested	-														
Region 8/Urban																												
21121	Paige Estates	826 South 11th Street	Waco	76706	McLennan	8	Urban			NC	64	0	64	Elderly	1,122,000		Brian Kimes	48309000400	169				Award	C	C	C		
21168	5th Street Lofts	705-721 S 5th St. & 702-726 S	Waco	76706	McLennan	8	Urban			NC	92	10	102	General	1,475,694		Janine Sisak	48309000400	169				Same census tract: 21121					
21024	Freedom's Path at Waco	4800 Memorial Drive, Building	Waco	76711	McLennan	8	Urban		X	NC/ADR	34	0	34	SH	454,000		Craig Taylor	48309004300	168				Award	C	C	UR		
21318	Cypress Creek Temple	SWC of West Adams Avenue a Temple		76502	Bell	8	Urban			NC	90	90	180	General	1,500,000		Stuart Shaw	48027020300	51				22FC	C	C	UR		
Estimated Amount Available		\$2,356,371											Total HTCs Requested	4,551,694														

Application Number	Development Name	Development Address	City	ZIP Code	County	Region	Urban/Rural	At-Risk USDA	Nonprofit	Construction Type	Low-Income Units	Market Rate Units	Total Units	Target Population (Supp. Hsg. = SH)	Recommended Award / HTC Request	Direct Loan	Applicant Contact Name	Census Tract(s)	Best Possible Score	10 TAC 11.7(1) Part 1	10 TAC 11.7(1) Part 2	10 TAC 11.7(2)	Recommendation	Review Status	PPR Status	Underwriting Status	
Region 9/Rural																											
21114	The Reserves at Holdsworth	NWQ Paschal Ave and Holdsw	Kerrville	78028	Kerr	9	Rural			NC	32	4	36	General	900,000	X	Matt Gillam	48265960500	163				Award	C	C	C	
Estimated Amount Available		\$600,000											Total HTCs Requested	900,000													
Region 9/Urban																											
21187	Village at Perrin Beitel	2611 NE Loop 410	San Antonio	78217	Bexar	9	Urban	X	NC	80	12	92	General	1,500,000		Brad McMurray	48029121204	172				Award	C	C	C		
21289	Snowden Apartments	7223 Snowden Road	San Antonio	78240	Bexar	9	Urban	X	NC	135	0	135	Elderly	1,500,000		Timothy Alcott	48029181504	172				Award	C	C	C		
21002	Denver Heights Senior Village	W of SWC of MLK Dr. and Rob	San Antonio	78203	Bexar	9	Urban		NC	81	18	99	Elderly	1,500,000		Jervon Harris	48029130402	172				Exceeds Elderly Max					
21062	Ada Street Apartments	3618 S New Braunfels Avenue	San Antonio	78223	Bexar	9	Urban	X	NC	63	0	63	General	1,500,000		Jason Arechiga	48029140900	172				Award would violate \$3mil limit					
21064	Fiesta Trails	12485 W Interstate 10	San Antonio	78230	Bexar	9	Urban	X	NC	60	0	60	General	1,500,000		Jason Arechiga	48029181813	172				Award	C	C	C		
21023	Vista Med	4932 Research Dr.	San Antonio	78240	Bexar	9	Urban		NC	62	0	62	General	1,500,000		Dan Wilson	48029181404	171				2 mi same yr 21064					
21189	Village at Boyer	1510 Hoefgen Ave.	San Antonio	78210	Bexar	9	Urban	X	NC	86	0	86	General	1,500,000		Brad McMurray	48029140200	171				UR C					
21231	Four25 San Pedro	419 and 425 San Pedro	San Antonio	78212	Bexar	9	Urban		NC	80	0	80	General	1,500,000		Lucila Diaz	48029110700	171									
21190	Village at Medical Senior Apartme	5318 & 5326 Medical Dr.	San Antonio	78240	Bexar	9	Urban	X	NC	80	0	80	Elderly	1,500,000		Brad McMurray	48029181504	164				Exceeds Elderly Max					
Estimated Amount Available		\$5,643,097	Elderly Max		\$2,429,353											Total HTCs Requested	13,500,000										
Region 10/Rural																											
21290	FishPond at Alice	Approx. 300 & 320 E 3rd Stree	Alice	78332	Jim Wells	10	Rural		NC	67	2	69	Elderly	1,008,202		David Fournier	48249950400	165				Award	C	C	C		
21261	The Ponderosa	1907 N. Texas Blvd	Alice	78332	Jim Wells	10	Rural		NC	56	0	56	Elderly	1,064,977		Rick J. Deyoe	48249950400	163									
Estimated Amount Available		\$724,159											Total HTCs Requested	2,073,179													
Region 10/Urban																											
21186	Palms at Blucher Park	209 S. Carancahua & 209, 217,	Corpus Christi	78401	Nueces	10	Urban	X	NC	72	0	72	General	1,500,000		Bradford McMurray	48355006400	167				Award	C	C	C		
21275	Avanti Heritage Park	SWC of Fitzgerald St. and Cha	Corpus Christi	78401	Nueces	10	Urban		NC	69	5	74	General	1,383,899		Enrique Flores, IV	48355006400	166				Same census tract: 21186					
Estimated Amount Available		\$1,404,274											Total HTCs Requested	2,883,899													
Region 11/Rural																											
21052	Del Rio Lofts	Newton Dr approx 500' east of	Del Rio	78840	Val Verde	11	Rural		NC	55	6	61	General	1,006,603		Daniel Sailler	48465950400	167				Award	C	C	C		
21219	Eagles Gate Apartments	2420 El Indio Hwy	Eagle Pass	78852	Maverick	11	Rural		NC	48	0	48	General	967,455		Vaughn C. Zimmerman	48323950602	167				Award					
21260	Mountain View Villas	2100 Block eastside of	Del Rio	78840	Val Verde	11	Rural		NC	52	4	56	Elderly	1,006,603		Rick J. Deyoe	48465950800	166									
Estimated Amount Available		\$1,021,204											Total HTCs Requested	2,980,661													
Region 11/Urban																											
21039	Uvalde Villas	Uvalde Ave. (east of S 10th St.	McAllen	78503	Hidalgo	11	Urban		NC	96	6	102	General	1,500,000		Steve Lollis	48215021202	170				Award	C	C	C		
21048	Price Lofts	54 South Price Road	Brownsville	78521	Cameron	11	Urban		NC	81	7	88	General	1,500,000		Jake Mooney	48061013104	170				Award	C	C	C		
21274	Avanti Legacy Violet Parc	4601 N. McColl St.	McAllen	78504	Hidalgo	11	Urban		NC	80	4	84	Elderly	1,500,000		Enrique Flores, IV	48215020901	170				Award	C	C	C		
21069	Dahlia Villas	409 W. Sam Houston Blvd.	Pharr	78577	Hidalgo	11	Urban		NC	102	18	120	General	1,500,000		Steve Lollis	48215021404	169				Award	C	C	C		
21276	Avanti Legacy Springfield	SWQ of International Blvd. & S	Laredo	78045	Webb	11	Urban		NC	80	4	84	Elderly	1,500,000		Enrique Flores	48479001720	169				C C C					
21305	Jackson Road Apartments	2200 W Jackson Rd	McAllen	78503	Hidalgo	11	Urban		NC	80	0	80	General	1,500,000		Melissa Fisher	48215021202	168				Same census tract: 21039					
21259	Jackson Place Apartments	NEC of Jackson Street and Upl.	Edinburg	78539	Hidalgo	11	Urban		NC	80	2	82	Elderly	1,500,000		Rick J. Deyoe	48215023904	167									
21293	BCC Village TH	Mayorca Court at Mayorca Av	Brownsville	78526	Cameron	11	Urban		NC	9	27	36	General	243,845		Melissa Fisher	48061012613	165									
21230	Calle del Norte Apartments	210 Calle del Norte	Laredo	78041	Webb	11	Urban		NC	55	0	55	General	1,178,992		Justin Zimmerman	48479001718	164									
Estimated Amount Available		\$6,447,814											Total HTCs Requested	11,922,837													
Region 12/Rural																											
Estimated Amount Available		\$600,000											Total HTCs Requested	-													
Region 12/Urban																											
21113	San Angelo Crossing	NWQ Northwest Dr and W Ho	San Angelo	76901	Tom Green	12	Urban		NC	27	9	36	General	612,000		Michael Fogel	48451001101	165				Award	C	C	C		
21317	San Angelo Terrace	W side of Appaloosa Trail, S of	San Angelo	76904	Tom Green	12	Urban		NC	58	14	72	General	1,328,167		Michael Fogel	48451001707	139				22FC C C C					
Estimated Amount Available		\$903,082											Total HTCs Requested	1,940,167													
Region 13/Rural																											
21283	Hemley Palms	230 Hemley Road	Vinton	79821	El Paso	13	Rural		NC	48	0	48	General	900,000		R.L. Bowling, IV	48141010221	145				Award	C	C	C		
Estimated Amount Available		\$600,000											Total HTCs Requested	900,000													

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Region 13/Urban																											
21130	Sun Pointe	4647 Maxwell Ave	El Paso	79904	El Paso	13	Urban			X	AcR	146	0	146	General	1,230,369		Tom Deloye	48141000404	157				Award	C	C	C
21166	Mountain View Estates	approx 350 feet in the NWQ o	El Paso	79938	El Paso	13	Urban				NC	80	0	80	General	1,291,260		Roy Lopez	48141010339	152				Award	UR	C	UR
21167	Villas at Augusta	SWC of Augusta Drive and N Z	El Paso	79938	El Paso	13	Urban				NC	80	0	80	General	1,426,000		Roy Lopez	48141010341	142							
21284	Nevarez Palms II	220 N Nevarez Rd.	Socorro	79927	El Paso	13	Urban				NC	48	0	48	General	850,000		R.L. Bowling, IV	48141004002	119							
Estimated Amount Available		\$2,497,591												Total HTCs Requested		4,797,629											
Estimated Total Available		\$84,777,689		Applications:		121										Total Amount Requested: \$		142,850,819									