

BOARD BOOK OF NOVEMBER 9, 2017



J. B. Goodwin, Chair

Leslie Bingham Escareño, Vice-Chair

Paul Braden, Member

Asusena Reséndiz, Member

Sharon Thomason, Member

Leo Vasquez, III, Member

Texas Department of Housing and Community Affairs

PROGRAMMATIC IMPACT IN FISCAL YEAR 2016

The Texas Department of Housing and Community Affairs (“TDHCA”) is the State of Texas’ lead agency responsible for affordable housing and administers a statewide array of programs to help Texans become more independent and self-sufficient. Short descriptions and key impact measures for these programs – including the total number of households/individuals to be served and total funding either administered or pledged for Fiscal Year 2016 (September 1, 2015, through August 31, 2016) – are set out below:

Multifamily New Construction & Rehabilitation:

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

Total Households Served: 11,728

Total Funding: \$1,127,191,576

Single Family New Construction, Rehabilitation, Bootstrap, and Stabilization:

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

Total Households Served: 317

Total Funding: \$17,905,785

Single Family Homeownership Program & Homebuyer Assistance:

Provides down payment and closing cost assistance, mortgage loans, and mortgage credit certificates to eligible households through the HOME Homebuyer Assistance, My First Texas Home, and Mortgage Credit Certificates programs.

Total Households Served: 2,987

Total Funding: \$351,564,766

Rental Assistance:

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

Total Households Served: 1,287

Total Funding: 13,978,985

Weatherization Assistance Program:

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

Total Households Served: 3,384

Total Funding: \$20,656,298

Homelessness

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

Total Individuals Served: 33,297

Total Funding: \$13,076,967

Comprehensive Energy Assistance Program:

Provides energy utility bill assistance to households with an income at or below 150% federal poverty guidelines.

Total Households Served: 136,071

Total Funding: \$106,246,875

Community Services Block Grant:

Provides administrative support for essential services for low-income individuals through Community Action Agencies.

Total Individuals Served: 559,322

Total Funding: \$28,937,414

Source: This data comes from the TDHCA 2017 State Low Income Housing Plan and Annual Report and the Economic Indicators database. Multifamily New Construction & Rehab data come from the most recent award logs for FY2016.

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



**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
GOVERNING BOARD MEETING**

**A G E N D A
8:00 AM
November 9, 2017**

**John H. Reagan Building
JHR 140, 105 W 15th Street
Austin, Texas 78701**

CALL TO ORDER

ROLL CALL

J.B. Goodwin, Chair

CERTIFICATION OF QUORUM

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

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

CONSENT AGENDA

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

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

EXECUTIVE

- a) Presentation, discussion, and possible action on Board meeting minutes summary for July 27, 2017

J. Beau Eccles
General Counsel

POLICY AND PUBLIC AFFAIRS

- b) Presentation, discussion, and ratification of programmatic, contractual, and other actions taken by the Executive Director with respect to the use of state or federal funds for disaster response and recovery efforts related to Hurricane Harvey

Michael Lyttle
Chief

MULTIFAMILY FINANCE

- c) Presentation, discussion, and possible action on a waiver relating to 10 TAC §10.101(b)(2) of the Uniform Multifamily Rules concerning Development Size Limitations

Marni Holloway
Director

17623 LIV at Boerne

Boerne

17625 The Preserve at Hunters Crossing

Bastrop

- d) Presentation, discussion and possible action on Inducement Resolution No. 18-010 for Multifamily Housing Revenue Bonds Regarding Authorization for Filing Applications for Private Activity Bond Authority on the 2017 Waiting List

17625 The Preserve at Hunters Crossing

Bastrop

HOUSING RESOURCE CENTER

- e) Presentation, discussion, and possible action on a final amendment of the 2017 State of Texas Consolidated Plan: One-Year Action Plan

Elizabeth Yevich
Director

FINANCIAL SERVICES

- f) Presentation, discussion, and possible action to adopt a resolution regarding designating signature authority and superseding previous resolutions in this regard

David Cervantes
Chief Financial Officer

ASSET MANAGEMENT

- g) Presentation, discussion and possible action regarding a Material Amendments to the Housing Tax Credit Land Use Restriction Agreement
98009 Terrell Senior Terraces Terrell
02034 Terrell Senior Terraces II Terrell
- h) Presentation, discussion and possible action regarding a Change in Ownership Structure Prior to Issuance of IRS Forms 8609 and Amendments to Developer and Guarantor
14402 Bruton Apartments Dallas

Raquel Morales
Director

HOME AND HOMELESSNESS PROGRAMS

- i) Presentation, discussion, and possible action on awards for the 2017 HOME Investment Partnerships Program (“HOME”) Single Family Programs Homebuyer Assistance (“HBA”) and Tenant-Based Rental Assistance (“TBRA”) Open Cycle Notice of Funding Availability (“NOFA”)
- j) Presentation and discussion and possible action on a Policy Relating to the Initial Implementation of the Ending Homelessness Fund

Abigail Versyp
Acting Director

RULES

- k) Presentation, discussion, and possible action on Orders adopting amendments to 10 TAC Chapter 23, Single Family HOME Program Rules Subchapter B, Availability of Funds, Application Requirements, Review And Award Procedures, General Administrative Requirements, and Resale and Recapture of Funds, §23.25 concerning General Threshold and Selection Criteria; and Subchapter F, Tenant-Based Rental Assistance Program, §23.61 concerning Tenant-Based Rental Assistance (“TBRA”) General Requirements, and directing their publication in the *Texas Register*
- l) Presentation, discussion, and possible action on an order proposing actions to 10 TAC Chapter 10, Uniform Multifamily Rules including the: 1) proposed amendment in Subchapter H, Income and Rent Limits, of §10.1002, Definitions, 2) proposed amendment in Subchapter H, Income and Rent Limits, of §10.1005, HOME and NSP, and 3) an order proposing a new §10.1006 to Subchapter H concerning National Housing Trust Fund (NHTF), and directing its publication for public comment in the *Texas Register*
- m) Presentation, discussion, and possible action on an order adopting new 10 TAC Chapter 8, Section 811 Project Rental Assistance Program Rule, and directing that it be published for adoption in the *Texas Register*

Abigail Versyp
Acting Director,
HOME and
Homelessness
Programs

Patricia Murphy
Chief of Compliance

Brooke Boston
Deputy Executive
Director

CONSENT AGENDA REPORT ITEMS

ITEM 2: THE BOARD ACCEPTS THE FOLLOWING REPORTS:

- a) TDHCA Outreach Activities, (October-November)
- b) Report on the Department’s 4th Quarter Investment Report in accordance with the Public Funds Investment Act (“PFIA”)
- c) Report on the Department’s SFY 2017 draft Balance Sheet/Statement of Net Position for the year ended August 31, 2017
- d) Report on the Department’s 4th Quarter Investment Report relating to funds held under Bond Trust Indentures
- e) Report on the Department’s 2018 Multifamily Programs Application Manual

Michael Lyttle
Chief of External
Affairs

David Cervantes
Chief Financial Officer

Monica Galuski
Director, Bond Finance

Marni Holloway
Director, MF Finance

ACTION ITEMS

ITEM 3: HOME AND HOMELESSNESS PROGRAMS

- a) Presentation, discussion, and possible action on an appeal under 10 Texas Administrative Code §1.7, Staff Appeals, in regards to 2017 Emergency Solutions Grants Application Process, The Children's Center, Inc.
- b) Presentation, discussion, and possible action on an appeal under 10 Texas Administrative Code §1.7, Staff Appeals, in regards to 2017 Emergency Solutions Grants Application Process, Family Violence Prevention Services, Inc

Abigail Versyp
Acting Director

- c) Presentation, discussion, and possible action on Program Year 2017 Emergency Solutions Grants Program Awards and Program Year 2016 Emergency Solutions Grants Program Recaptured Funding Allocation

ITEM 4: MULTIFAMILY FINANCE

- a) Presentation, discussion, and possible action regarding a waiver of the extension prohibition in 10 TAC §10.402(a) and treatment of an extension under 10 TAC §10.405(c) of the Uniform Multifamily Rules
17363 Residences of Long Branch Rowlett
- b) Presentation, discussion and possible action on a Determination regarding Eligibility under 10 TAC §10.101(a)(4) related to Undesirable Neighborhood Characteristics for Villa Americana (#17411) in Houston
- c) Presentation, discussion and possible action on an appeal timely filed
17107 The Residence at Wolfforth Wolfforth

Marni Holloway
Director

ITEM 5: RULES

- a) Presentation, discussion, and possible action on an order adopting the amendment of 10 TAC Chapter 11 concerning the Housing Tax Credit Program Qualified Allocation Plan, and an order directing its publication in the *Texas Register*
- b) Presentation, discussion, and possible action on orders adopting the amendments of 10 TAC Chapter 10 Subchapter A, concerning General Information and Definitions; Subchapter B, concerning Site and Development Requirements and Restrictions; Subchapter C, concerning Application Submission Requirements, Ineligibility Criteria, Board Decisions, and Waiver of Rules; and Subchapter G, concerning Fee Schedule, Appeals, and Other Provisions; and directing their publication in the *Texas Register*

Marni Holloway
Director, MF Finance

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):

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

J.B. Goodwin
Chair

OPEN SESSION

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

ADJOURN

To access this agenda and details on each agenda item in the board book, please visit our website at www.tdhca.state.tx.us or contact Michael Lyttle, 512-475-4542, TDHCA, 221 East 11th Street, Austin, Texas 78701, and request the information.

If you would like to follow actions taken by the Governing Board during this meeting, please follow TDHCA account (@tdhca) on Twitter.

Individuals who require auxiliary aids, services or sign language interpreters for this meeting should contact Terri Roeber, ADA Responsible Employee, at 512-475-3959 or Relay Texas at 1-800-735-2989, at least three (3) 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 three (3) 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 tres días antes de la junta para hacer los preparativos apropiados.

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

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

De acuerdo con la sección 30.06 del código penal (ingreso sin autorización de un titular de una licencia con una pistola oculta), una persona con licencia según el subcapítulo h, capítulo 411, código del gobierno (ley sobre licencias para portar pistolas), no puede ingresar a esta propiedad con una pistola oculta.

Pursuant to Section 30.07, Penal Code (trespass by license holder with an openly carried handgun), a person licensed under Subchapter H, Chapter 411, Government Code (handgun licensing law), may not enter this property with a handgun that is carried openly.

De acuerdo con la sección 30.07 del código penal (ingreso sin autorización de un titular de una licencia con una pistola a la vista), una persona con licencia según el subcapítulo h, capítulo 411, código del gobierno (ley sobre licencias para portar pistolas), no puede ingresar a esta propiedad con una pistola a la vista.

NONE OF THESE RESTRICTIONS EXTEND BEYOND THIS ROOM ON THIS DATE AND DURING THE MEETING OF THE GOVERNING BOARD OF THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CONSENT AGENDA

1a

BOARD ACTION REQUEST

BOARD SECRETARY

NOVEMBER 9, 2017

Presentation, discussion, and possible action on Board meeting minutes summary for July 27, 2017

RECOMMENDED ACTION

Approve the Board meeting minutes summary for July 27, 2017

RESOLVED, that the Board meeting minutes summary for July 27, 2017, is hereby approved as presented.

Texas Department of Housing and Community Affairs Governing Board
Board Meeting Minutes Summary
July 27, 2017

On Thursday, the twenty-seventh day of July 2017, at 9:00 a.m., the regular meeting of the Governing Board (“Board”) of the Texas Department of Housing and Community Affairs (“TDHCA” or the “Department”) was held in Room JHR 140 of the John H. Reagan Building, 105 W. 15th Street, Austin, Texas.

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

- J.B. Goodwin
- Paul Braden
- Asusena Reséndiz
- Sharon Thomason
- Leo Vasquez

J.B. Goodwin served as Chair, and James “Beau” Eccles, TDHCA General Counsel, served as Secretary.

1) The Board unanimously approved the Consent Agenda as amended, with Item 1(m) – Presentation, discussion, and possible action on the proposed amendments to 10 TAC Chapter 24, Texas Bootstrap Loan Program Rule, and directing their publication for public comment in the *Texas Register* – removed from the Consent Agenda to be considered as an Action Item later in the meeting.

2) Chairman Goodwin exercised his discretion on consideration of the order of items on the agenda to take up Action Item 5(b) – Presentation, Discussion, and Possible Action regarding eligibility determination under 10 TAC §10.101(a)(2)(B), (F) and/or (K) for 2017 Housing Tax Credit (“HTC”) Applications for 17322 Provision at Wilcrest, Houston. The item was presented by TDHCA Multifamily Finance Director Marni Holloway with additional information from TDHCA Executive Director Tim Irvine and Mr. Eccles. Following public comment (listed below), the Board unanimously approved staff recommendation to find the site ineligible.

- Sarah Anderson, representing Provision at Wilcrest, testified in opposition to staff recommendation
- Jervon Harris, representing Provision at Wilcrest, testified in opposition to staff recommendation
- Toni Jackson, attorney for Jones Walker and representing Provision at Wilcrest, testified in opposition to staff recommendation
- Les Kilday, Kilday Operating LLC, testified in support of staff recommendation
- Barry Palmer, attorney for Coats Rose and representing Mr. Kilday, testified in support of staff recommendation

3) Chairman Goodwin exercised his discretion on consideration of the order of items on the agenda to take up Action Item 5(c) – Presentation, discussion, and possible action on timely filed appeals under 10 TAC §10.902 of the Department’s Multifamily Program Rules relating to appeals for:

17024 Dove Ranch, McAllen
17221 Twin Oaks, Mission
17251 Pine Terrace Apartments, Mount Pleasant

17255 Trinity Oaks Apartments, Sulphur Springs
17267 Industrial Lofts, McAllen
17278 Westwind of Paris, Paris
17290 Golden Trails, West
17297 Kountze Pioneer Crossing, Kountze
17305 Payton Senior, Killeen
17327 Legacy Trails of Lindale, Lindale
17331 Westwind of Killeen, Killeen
17388 West Pecan Village, McAllen
17390 Las Palomas, McAllen

Upon announcing that the sub items listed below were pulled from the agenda, Ms. Holloway presented the item with additional information from Mr. Irvine and Mr. Eccles.

17024 Dove Ranch, McAllen
17221 Twin Oaks, Mission
17251 Pine Terrace Apartments, Mount Pleasant
17255 Trinity Oaks Apartments, Sulphur Springs
17267 Industrial Lofts, McAllen
17278 Westwind of Paris, Paris
17290 Golden Trails, West
17331 Westwind of Killeen, Killeen

Following public comment (listed below), the Board unanimously denied staff recommendation on Kountze Pioneer Crossing; the museum portion of the West Pecan Village appeal; and the access to transportation portion of the Las Palomas appeal, and approved the appeals. The Board also unanimously approved staff recommendations to deny appeals on Payton Senior; Legacy Trails of Lindale; the crime and accessibility portions of West Pecan Village; and the crime rate portion of the Las Palomas appeal.

- The Honorable James White, State Representative for Texas House District 19, testified in opposition to staff recommendation on Kountze Pioneer Crossing
- Claire Palmer, attorney representing Kountze Pioneer Crossing, testified in opposition to staff recommendation
- Lora Myrick, BETCO Consulting, provided information on Kountze Pioneer Crossing
- Lisa Stephens, developer for Payton Senior, testified in opposition to staff recommendation on Payton Senior
- Kelly Garrett, developer, testified in support of staff recommendation on Payton Senior
- Zachary Krotchtengel, representing Westwood at Killeen, testified in support of staff recommendation on Payton Senior
- Adam Horton, developer for Four Corners Development, testified in opposition to staff recommendation on Legacy Trails of Lindale
- Cynthia Bast, attorney for Locke Lord and representing Legacy Trails of Lindale, testified in support of staff recommendation on Legacy Trails of Lindale
- Barry Palmer, attorney for Coats Rose and representing Four Corners Development, testified in opposition to staff recommendation on Legacy Trails of Lindale
- Donna Rickenbacker, Marque Development, provided information on Legacy Trails of Lindale

- Chaz Garrett, LKC Development and developer of Legacy Trails of Lindale, provided information on Legacy Trails of Lindale
- Kim Holiday, Four Corners Development, provided information on Legacy Trails of Lindale
- Michael Lyttle, TDHCA Chief of External Affairs, read a letter into the record from the Honorable R.D. “Bobby” Guerra, State Representative for Texas House District 41, in opposition to staff recommendation on West Pecan Village
- Ronnie Cruz, Housing Authority of McAllen, read letters into the record from Shirley Reed, President of South Texas College, and Michelle Leftwich, City of McAllen, providing information on West Pecan Village
- Cynthia Bast, attorney for Locke Lord and representing West Pecan Village, testified in opposition to staff recommendation on West Pecan Village
- Arnold Padilla, Housing Authority of McAllen, testified in opposition to staff recommendation
- Jed Brown, Brownstone Group and part of the applicant team for West Pecan Village, testified in opposition to staff recommendation on West Pecan Village
- Russ Michael Schmidtberger, attorney representing West Pecan Village, testified in opposition to staff recommendation on West Pecan Village
- Andres Medrano, M Group, testified in support of staff recommendation on West Pecan Village
- Barry Palmer, Coats Rose and representing Steve Wallace, testified in support of staff recommendation on West Pecan Village
- Michael Lyttle, TDHCA Chief of External Affairs, read a letter into the record from the Honorable R.D. “Bobby” Guerra, State Representative for Texas House District 41, in opposition to staff recommendation on Las Palomas
- Ronnie Cruz, Housing Authority of McAllen, read a letter into the record from Michelle Leftwich, City of McAllen, providing information on Las Palomas
- Jed Brown, Brownstone Group and part of the applicant team for Las Palomas, testified in opposition to staff recommendation on Las Palomas
- Russ Michael Schmidtberger, attorney representing Las Palomas, testified in opposition to staff recommendation on Las Palomas
- Barry Palmer, Coats Rose, testified in support of staff recommendation on Las Palomas
- Arnold Padilla, Housing Authority of McAllen, testified in opposition to staff recommendation
- Andres Medrano, M Group, testified in support of staff recommendation on Las Palomas
- Sally Birch, Structure Development, provided information on Las Palomas

4) At 12:35 p.m., the Board went into Executive Session and reconvened in open session at 1:40 p.m. No action was taken in Executive Session.

5) Following acknowledgement of public comment received (see below), the Board unanimously approved staff recommendation on Action Item 1(m) – Presentation, discussion, and possible action on the proposed amendments to 10 TAC Chapter 24, Texas Bootstrap Loan Program Rule, and directing their publication for public comment in the *Texas Register* – to amend the rules accordingly.

- Amy Ledbetter Parham, Texas Habitat for Humanity, registered in support of staff recommendation

6) Action Item 5(a) – Report on the 2018 Qualified Allocation Plan (“QAP”) Project – was presented by Ms. Holloway. The Board heard the report and took no action.

7) Action Item 5(d) – Presentation, discussion, and possible action regarding Awards of Direct Loan funds from the 2017-1 Multifamily Direct Loan Notice of Funding Availability to 9% Housing Tax Credit Layered Applications – was presented by Andrew Sinnott, TDHCA Multifamily Direct Loan Program Administrator. The Board unanimously approved staff recommendation to make the awards.

8) Action Item 5(e) – Presentation, discussion, and possible action regarding Section 811 Project Rental Assistance participation with 9% Housing Tax Credit Applications as required by 10 TAC §10.204(16) – was presented by Ms. Holloway. The Board unanimously approved staff recommendation on the awards and waiting list for applications which will provide Section 811 units.

9) Action Item 5(f) – Presentation, discussion, and possible action regarding Awards from the 2017 State Housing Credit Ceiling and Approval of the Waiting List for the 2017 Housing Tax Credit Application Round – was presented by Sharon Gamble, TDHCA 9% Competitive Housing Tax Credit Program Administrator, with additional information from Mr. Irvine and Mr. Eccles. Following public comment (listed below), the Board unanimously approved an amended staff recommendation on the award and waiting lists.

- Barry Palmer, Coats Rose attorney and representing the Housing Authority of the City of El Paso, testified in opposition to staff recommendation
- Jean Latsha, Pedcor Investments, provided information on application 17133 The Pointe at Rowlett

10) Action Item 3 – Report on the closing of the Department’s 2017 Series A Single Family Mortgage Revenue Bonds, 2017 Series B Single Family Mortgage Revenue Refunding Bonds (Taxable), and 2017 Series C Single Family Mortgage Revenue Bonds (Taxable) – was presented by Monica Galuski, TDHCA Director of Bond Finance, with additional information from Mr. Irvine. The Board heard the report and took no action.

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

There being no further business to come before the Board, the meeting adjourned at 2:30 p.m. The next meeting is set for Thursday, September 7, 2017.

Secretary

Approved:

Chair

1b

BOARD ACTION REQUEST

EXECUTIVE DIVISION

NOVEMBER 9, 2017

Presentation, discussion, and ratification of programmatic, contractual, and other actions taken by the Executive Director with respect to the use of state or federal funds for disaster response and recovery efforts related to Hurricane Harvey

RECOMMENDED ACTION

WHEREAS, on August 25, 2017, Hurricane Harvey (“Harvey”) made landfall in Texas as a Category 4 hurricane and remained within Texas for several days causing numerous counties to sustain significant and catastrophic damages;

WHEREAS, on September 7, 2017, through its approval of Action Item 3, the Board authorized the Executive Director to take prompt action as needed to provide disaster response and recovery efforts, conditioned on keeping the Chairman of this Governing Board and the Office of the Governor advised of matters being undertaken; **and bringing** actions taken under this authority to this Governing Board for ratification and adoption as the acts and deeds of this Governing Board; and

WHEREAS, the Chairman of the Governing Board and the Office of the Governor have been duly consulted of the action taken herein under this authority, and these items are now being presented for ratification and adoption;

NOW, therefore, it is hereby

RESOLVED, consistent with the authority provided by the Board on September 7, 2017, the following actions are hereby ratified and approved:

- Forbearance of HOME loan payments for Golden Manor Apartments for an initial period of three months.

BACKGROUND

Hurricane Harvey made landfall in Texas on August 25, 2017, and continued to hover over the state for several days. To date 41 counties have received presidential disaster declarations for individual assistance. The Department is committed to assisting in all ways possible. Typically in response to disasters (hurricanes, forest fires, tornadoes, etc.) disaster responsiveness via the Department progresses through several phases and accesses various programs at different points.

In the immediate response period, programs such as LIHEAP and Community Services Block Grant were channeled through the existing program network of providers to deliver immediate assistance including, but not limited to, such things as provision of food, clothes, fuel, temporary housing, and personal items.

In the short to mid-term those same subrecipients are able to continue providing ongoing CSBG eligible assistance. Additionally the Department may, through direct award to existing subrecipients or fast-response Notices of Funding Availability, offer funding opportunities to provide disaster related assistance through HOME (including tenant-based rental assistance), Emergency Solutions Grants, or Homeless Housing Services Program.

In the longer term, should any additional federal or state resources be appropriated for programs assigned to the Department, staff will develop and present future plans for the use of such funds for longer term recovery activities. Even if additional resources are not provided, the staff will assess current available funding for possible use of disaster recovery including the programs listed herein and the Housing Choice Voucher Program and the 811 Project Rental Assistance Program. Additionally, as the Department has a significant portfolio of single and multifamily loans, for which some of the properties are located in the affected counties, the Department may be able to alleviate households or properties immediate housing obligations through payment deferment or other remedies.

Forbearance of HOME loan payments for Golden Manor Apartments

Background: Golden Manor Apartments is a 40 unit multifamily development located in Bay City, Matagorda County, targeted toward the senior population. The Development was awarded both HTCs and HOME funds back in 2004 for the acquisition and rehabilitation of this Development. The HOME funds were awarded as a \$400,000 direct loan at 1% interest and 30-year amortization and term, with monthly P&I of \$1,286.56. The Development Owner, FDI-Golden Manor, Ltd. (Jim Fieser), has been current on all payments.

Asset Management received a request from the Development Owner requesting a deferral/forbearance of mortgage payments for a period of one year. According to the Director of Compliance at FDI Property Management (Pat Schroeder), half of the total units (20) and the office building were completely destroyed. The damage was reported to the Department and is included in the Casualty Loss list attached. Ms. Schroeder indicated that they have been unable to find people to bid the work to begin repairs to the property, and they've encountered difficulty in finding vendors and supplies to get repairs done. She also confirmed that they have submitted a claim to their property insurance company, and an adjuster has been out to the property, but they have yet to hear back from the insurance company. This property is also funded with a USDA first lien, and the owner representative indicated that USDA has agreed to defer mortgage payments as well as reserve deposits for a period of one year. Documentation of USDA's approval will be sent to the Department upon receipt by the owner.

At its September 2017 meeting the TDHCA Board through its approval of Action Item 3 granted authority for the Executive Director to "execute, deliver and cause action on Department loans and properties in the Department's single and/or multifamily portfolio granting deferments or other remedies necessary to assist the Department's borrowers." That same board action granted authority to the ED to approve a suspension or forbearance of up to three months initially for all loans in the affected counties. At the end of the initial three months, staff will review the loan for Golden Manor and determine the appropriate handling of this loan, which may include an additional extension of the forbearance period if additional information and evidence is provided to support the need for the additional extension. Alternatively, if the ED feels that a request for time beyond a three month forbearance would warrant Board approval, the Owner is not opposed to taking this matter before the Board.

Action Requested: Approval, by email, of a forbearance of HOME loan payments for Golden Manor Apartments for an initial period of three months. Thereafter, staff will review and discuss the progress the owner has made regarding repairs to the property and can recommend further extension of this forbearance period at that time, if needed.

1c

BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION
NOVEMBER 9, 2017

Presentation, discussion, and possible action on a waiver relating to 10 TAC §10.101(b)(2) of the Uniform Multifamily Rules concerning Development Size Limitations

RECOMMENDED ACTION

WHEREAS, new construction developments located in Rural Areas are limited to a maximum number of 80 units pursuant to 10 TAC §10.101(b)(2) of the Uniform Multifamily Rules;

WHEREAS, the Department received two waiver requests – one requesting approval to construct 140 units in Bastrop, Bastrop County and another requesting to construct 168 units in Boerne, Kendall County, both of which are considered Rural Areas pursuant to the 2017 Site Demographic Characteristics Report released by the Department;

WHEREAS, after a preliminary evaluation of the proposed primary market area, demand calculations, number of units proposed, drive times to major employers in the area and population trends of Bastrop and Boerne, staff believes granting these waivers supports the requirements articulated in 10 TAC §10.207 relating to waivers granted by the Board; and

WHEREAS, the granting of the waiver is specific to the facts and circumstances relating to these requests and information provided by the applicants; should those change at the time the housing tax credit application is submitted or should the application be submitted in a subsequent program year, a re-evaluation of the request may be warranted;

NOW, therefore, it is hereby

RESOLVED, that the waivers relating to 10 TAC §10.101(b)(2) of the Uniform Multifamily Rules concerning Development Size Limitations for the proposed developments in Bastrop and Boerne, as discussed herein, are hereby granted but could be re-evaluated based on information contained in the full application once submitted to the Department.

BACKGROUND

The Uniform Multifamily Rules contain a provision relating to limitations of the size of a development which reads in part “*New Construction or Adaptive Reuse Developments in Rural Areas are limited to a maximum of 80 Units. Other Developments do not have a limitation as to the maximum number of Units.*” This requirement stems, in part, from the definition of a Rural Development as found in Tex. Gov’t Code §2306.004(28-b), which reads “*a development or proposed development that is located in a rural area, other than rural new construction developments with more than 80 units.*” Staff believes that the definition represents a characterization of a development that would have greater implication under

the Competitive 9% HTC program considering the Rural Set-Aside and other provisions that relate to the scoring of a rural application. Under the Non-competitive 4% HTC program, set-aside and scoring provisions do not exist. However, the requirement in the rule that limits the size of multifamily developments in rural areas, regardless of funding source, is representative of Department policy in preventing the over-burdening of units in a rural area.

LIV at Boerne: The submitted request for this proposed development was represented to involve the new construction of 161 units located in Boerne, Kendall County and serve an elderly population. The proposed unit mix is to consist of 120 units at 60% of the Area Median Family Income and 41 units at market rate, with no income or rent restrictions. Boerne, which is part of the San Antonio-New Braunfels MSA, is located in the Texas Hill Country, off Interstate Highway 10 and approximately 30 miles northwest of San Antonio and has a population of 14,725, compared to 10,471 in 2010. Staff notes that the southern edge of the city limits of Boerne is approximately 3,800 feet from one of the northern most boundaries of the San Antonio city limits. If Boerne and San Antonio shared a boundary then Boerne would have been considered urban and a waiver would not be required.

In reviewing the request, a full market study was submitted that had been prepared for the benefit of the lender and was not reviewed by staff in substantive detail or for conformance to the Department's rules regarding market studies. Board action today is not approving the market study that is to be submitted with the full application. Staff believes the primary market area, as defined by the market analyst, generally represents where demand for these units would be originating, but believes slight modifications could more accurately include demand from the northern areas of San Antonio based on drive-times and easy access to major thoroughfares. The capture rate reflected in the market study was 7.7%, and it is important to note that in considering these projections staff expects the capture rate requirements to be within parameters required for an urban area, as opposed to a rural area, as articulated in 10 TAC §10.302(i)(1)(B) of the Underwriting and Loan Policy Rules.

As it relates to characteristics of Boerne, there is single family construction going in around the area and some market rate multifamily development, but there have been limited affordable developments, with the exception of a 48-unit general population development (Abbington Ranch) that received a 2017 Competitive HTC award. According to the applicant the rents in the area have exceeded many seniors ability to afford the high rents that currently exist in Boerne. There are high occupancy rates of other affordable senior properties in Boerne. The Department previously approved two elderly developments in Boerne in 2002 and 2007 for 100 units and 150 units, respectively. These developments are currently between 98% and 100% occupied and were approved before the 80-unit limitation was included in the Department's rules. There are characteristics of Boerne such as the amount of new retail and commercial development and its growth pattern that could be viewed as an urban area. According to the applicant, these characteristics, combined with the high occupancy rates of existing affordable housing demonstrate the demand for housing in the area, particularly the 161 units proposed, of which 120 will be rent and income restricted.

The general process for a waiver granted by the Board, as articulated under 10 TAC §10.207 of the Uniform Multifamily Rules, requires an applicant to demonstrate how, by not granting the waiver, the Department would not be meeting its policies and purposes under Tex. Gov't Code §2306. There has not been any new affordable senior housing built in Boerne since 2007 and the most

recent development was a 48-unit general population development awarded under the 9% Competitive program. Based on this, the need for affordable housing in the community will go unmet, which speaks to Tex. Gov't Code §2306.001(2). The proposed development would also serve to stimulate economic development in Boerne as articulated under Tex. Gov't Code §2306.002 and would maximize the number of affordable units added to the state's housing supply as identified under Tex. Gov't Code §2306.6701. Considering all of the aforementioned facts, staff believes Boerne has the characteristics that would be representative of an urban area, and that the area could support the number of units proposed by the applicant based on the preliminary information received.

The Preserve at Hunters Crossing: The submitted request for this proposed development was represented to involve the new construction of 140 units, all to be rent and income restricted at 60% of the Area Median Family Income, located in Bastrop, Bastrop County and serve a general population. Bastrop, which is part of the Austin-Round Rock MSA, is located off U.S Highway 71, approximately 25 miles southeast of Austin and has a population of 8,519, compared to 7,218 in 2010. Staff notes that the eastern most edge of the city limits of Austin (that has a population of approximately 950,000 people) is approximately 15 miles from one of the western most boundaries of the Bastrop city limits.

In reviewing the request, a full market study was submitted; however, it was not reviewed by staff in substantive detail or for conformance to the Department's rules regarding market studies. Board action today is not approving the market study that is to be submitted with the full application. While the provided primary market area looks to generally meet the requirements in rule and represents where some demand for these units would be originating, staff believes slight modifications could more accurately include significant demand from east Austin. This is based on commuting patterns for people that currently work in Bastrop but reside in Austin, which has been substantiated by Bastrop area representatives. The capture rate reflected in the market study was 9.5% which staff believes is overstated. It is important to note that in considering these projections staff expects the capture rate requirements to be within parameters required for an urban area, as opposed to a rural area, as articulated in 10 TAC §10.302(i)(1)(B) of the Underwriting and Loan Policy Rules.

As it relates to characteristics of Bastrop, there is single family construction going in around the area and some near-by market rate multifamily development, but there have been limited affordable developments, with the last general population development in 1995 for only 32 units. According to the market analyst, there are 258 affordable units in the PMA and 152 of those units are senior developments. There are characteristics of Bastrop including the retail and commercial development, its growth pattern and proximity to Austin that could be viewed as an urban area. According to the applicant, these characteristics, combined with the current insufficient supply of affordable housing for those who work in Bastrop demonstrate the demand for housing in the area, particularly the 140 units proposed. With major employers in the area (e.g. Bastrop ISD, Hyatt Lost Pines Resort, Bastrop County, MD Anderson Cancer Center) and more on the way (Seton Healthcare Family and Granite & Stone LLC) staff believes there could be demand for the proposed development.

The general process for a waiver granted by the Board, as articulated under 10 TAC §10.207 of the Uniform Multifamily Rules, requires an applicant to demonstrate how, by not granting the waiver, the Department would not be meeting its policies and purposes under Tex. Gov't Code Chapter 2306. There has not been any new affordable family housing built in Bastrop since 1995 and the

most recent development, was a 36-unit senior development awarded under the 9% Competitive program in 2012. Based on this, the need for affordable housing in the community will go unmet, which speaks to Tex. Gov't Code §2306.001(2). The proposed development would also serve to stimulate economic development in Bastrop as articulated under Tex. Gov't Code §2306.002 and would maximize the number of affordable units added to the state's housing supply as identified under Tex. Gov't Code §2306.6701. Considering all of the aforementioned facts, staff believes Bastrop has the characteristics that would be representative of an urban area, and that the area could support the number of units proposed by the applicant based on the preliminary information received.

With both of the aforementioned requests, it is important to note that the information evaluated by staff was preliminary in nature and in no way signifies an endorsement that the information contained in the market study is accurate or that it meets the Department's rules. The scope of this review was primarily to determine characteristics of Boerne and Bastrop, and whether such cities are indicative of the type of growth characteristic of an urban area. Staff believes that based on the aforementioned factors specific to each city, the areas have those characteristics; however, the specific number of units will need to be determined based on a thorough review of the full housing tax credit application, a market study that meets the Department's rules, capture rates as noted therein, a primary market area that most accurately reflects where the demand for the units proposed will be coming from, along with other factors evaluated by staff during the review process. That being said, should any of these factors change from what is ultimately submitted and reviewed by staff, it might necessitate a re-evaluation of the waiver requested.

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BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION
NOVEMBER 9, 2017

Presentation, discussion and possible action on Inducement Resolution No. 18-010 for Multifamily Housing Revenue Bonds Regarding Authorization for Filing Applications for Private Activity Bond Authority on the 2017 Waiting List

RECOMMENDED ACTION

WHEREAS, a bond pre-application, as further detailed below, was submitted to the Department for consideration of an inducement resolution;

WHEREAS, Board approval of the inducement resolution is the first step in the application process for a multifamily bond issuance by the Department; and

WHEREAS, approval of the inducement will allow staff to submit an application to the Bond Review Board (“BRB”) for the issuance of a Certificate of Reservation associated with the Development;

NOW, therefore, it is hereby

RESOLVED, that based on the foregoing, the Inducement Resolution No. 18-010 to proceed with the application submission to the BRB for possible receipt of State Volume Cap issuance authority under the Private Activity Bond Program for The Preserve at Hunters Crossing is hereby approved in the form presented to this meeting.

BACKGROUND

The BRB administers the state’s annual private activity bond authority for the State of Texas. The Department is an issuer of Private Activity Bonds and is required to induce an application for bonds prior to the submission to the BRB. Approval of the inducement resolution does not constitute approval of the Development but merely allows the Applicant the opportunity to move into the full application phase of the process. Once the application receives a Certificate of Reservation, the Applicant has 150 days to close on the private activity bonds.

During the 150-day process, the Department will review the complete application for compliance with the Department’s Rules, including but not limited to site eligibility and threshold as well as previous participation as it relates to previously funded developments through the Department. Staff notes that earlier on this Board agenda, the Board addressed a waiver relating to the 80-unit limitation for developments in a rural area which is associated with the pre-application that is the subject of this inducement resolution. During the review of the full application, staff will also underwrite the transaction and determine financial feasibility in accordance with the Real Estate Analysis Rules. Part of this evaluation will involve a review of the market study, as mentioned in the waiver request, and whether the submitted market study substantiates the need for more than 80 units in Bastrop. The Department will schedule and conduct a public hearing, and the complete application, including a transcript from the hearing, will then be

presented to the Board for a decision on the issuance of bonds as well as a determination on the amount of housing tax credits anticipated to be allocated to the development. This inducement resolution would reserve approximately \$13 million in private activity bond volume cap.

The Preserve at Hunters Crossing (17625)

This development is proposed to be located at the 200 block of Hunters Crossing Boulevard in Bastrop, Bastrop County, and includes the construction of 140 units serving the general population. This transaction is proposed to be Priority 2 with all of the units rent and income restricted at 60% of the Area Median Family Income (“AMFI”). The Department has not received any letters of support or opposition for this development.

RESOLUTION NO. 18-010

RESOLUTION DECLARING INTENT TO ISSUE MULTIFAMILY REVENUE BONDS WITH RESPECT TO RESIDENTIAL RENTAL DEVELOPMENTS; AUTHORIZING THE FILING OF ONE OR MORE APPLICATIONS FOR ALLOCATION OF PRIVATE ACTIVITY BONDS WITH THE TEXAS BOND REVIEW BOARD; AND AUTHORIZING OTHER ACTION RELATED THERETO

WHEREAS, the Texas Department of Housing and Community Affairs (the “Department”) has been duly created and organized pursuant to and in accordance with the provisions of Chapter 2306, Texas Government Code, as amended, (the “Act”) for the purpose, among others, of providing a means of financing the costs of residential ownership, development and rehabilitation that will provide decent, safe, and affordable living environments for persons and families of low, very low and extremely low income and families of moderate income (all as defined in the Act); and

WHEREAS, the Act authorizes the Department: (a) to make mortgage loans to housing sponsors to provide financing for multifamily residential rental housing in the State of Texas (the “State”) intended to be occupied by persons and families of low, very low and extremely low income and families of moderate income, as determined by the Department; (b) to issue its revenue bonds, for the purpose, among others, of obtaining funds to make such loans and provide financing, to establish necessary reserve funds and to pay administrative and other costs incurred in connection with the issuance of such bonds; and (c) to pledge all or any part of the revenues, receipts or resources of the Department, including the revenues and receipts to be received by the Department from such multifamily residential rental development loans, and to mortgage, pledge or grant security interests in such loans or other property of the Department in order to secure the payment of the principal or redemption price of and interest on such bonds; and

WHEREAS, it is proposed that the Department issue its revenue bonds in one or more series for the purpose of providing financing for the multifamily residential rental developments (the “Developments”) more fully described in Exhibit A attached hereto. The ownership of the Developments as more fully described in Exhibit A will consist of the applicable ownership entity and its principals or a related person (the “Owners”) within the meaning of the Internal Revenue Code of 1986, as amended (the “Code”); and

WHEREAS, the Owners have made not more than 60 days prior to the date hereof, payments with respect to the Developments and expect to make additional payments in the future and desire that they be reimbursed for such payments and other costs associated with the Developments from the proceeds of tax-exempt and taxable obligations to be issued by the Department subsequent to the date hereof; and

WHEREAS, the Owners have indicated their willingness to enter into contractual arrangements with the Department providing assurance satisfactory to the Department that the requirements of the Act and the Department will be satisfied and that the Developments will satisfy State law, Section 142(d) and other applicable Sections of the Code and Treasury Regulations; and

WHEREAS, the Department desires to reimburse the Owners for the costs associated with the Developments listed on Exhibit A attached hereto, but solely from and to the extent, if any, of the proceeds of tax-exempt and taxable obligations to be issued in one or more series to be issued subsequent to the date hereof; and

WHEREAS, at the request of the Owners, the Department reasonably expects to incur debt in the form of tax-exempt and taxable obligations for purposes of paying the costs of the Developments described on Exhibit A attached hereto; and

WHEREAS, in connection with the proposed issuance of the Bonds (defined below), the Department, as issuer of the Bonds, is required to submit for the Developments one or more Applications for Allocation of Private Activity Bonds or Applications for Carryforward for Private Activity Bonds (the "Application") with the Texas Bond Review Board (the "Bond Review Board") with respect to the tax-exempt Bonds to qualify for the Bond Review Board's Allocation Program in connection with the Bond Review Board's authority to administer the allocation of the authority of the State to issue private activity bonds; and

WHEREAS, the Governing Board of the Department (the "Board") has determined to declare its intent to issue its multifamily revenue bonds for the purpose of providing funds to the Owners to finance the Developments on the terms and conditions hereinafter set forth; NOW, THEREFORE,

BE IT RESOLVED BY THE GOVERNING BOARD OF THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS THAT:

ARTICLE 1

OFFICIAL INTENT; APPROVAL OF CERTAIN ACTIONS

Section 1.1. Authorization of Issue. The Department declares its intent to issue its Multifamily Housing Revenue Bonds (the "Bonds") in one or more series and in amounts estimated to be sufficient to (a) fund a loan or loans to the Owners to provide financing for the respective Developments in an aggregate principal amount not to exceed those amounts, corresponding to the Developments, set forth in Exhibit A; (b) fund a reserve fund with respect to the Bonds if needed; and (c) pay certain costs incurred in connection with the issuance of the Bonds. Such Bonds will be issued as qualified residential rental development bonds. Final approval of the Department to issue the Bonds shall be subject to: (i) the review by the Department's credit underwriters for financial feasibility; (ii) review by the Department's staff and legal counsel of compliance with federal income tax regulations and State law requirements regarding tenancy in the respective Development; (iii) approval by the Bond Review Board, if required; (iv) approval by the Attorney General of the State of Texas (the "Attorney General"); (v) satisfaction of the Board that the respective Development meets the Department's public policy criteria; and (vi) the ability of the Department to issue such Bonds in compliance with all federal and State laws applicable to the issuance of such Bonds.

Section 1.2. Terms of Bonds. The proposed Bonds shall be issuable only as fully registered bonds in authorized denominations to be determined by the Department; shall bear interest at a rate or rates to be determined by the Department; shall mature at a time to be determined by the Department but in no event later than 40 years after the date of issuance; and shall be subject to prior redemption upon such terms and conditions as may be determined by the Department.

Section 1.3. Reimbursement. The Department reasonably expects to reimburse the Owners for all costs that have been or will be paid subsequent to the date that is 60 days prior to the date hereof in connection with the acquisition of real property and construction of its Development and listed on Exhibit A attached hereto ("Costs of the Developments") from the proceeds of the Bonds, in an amount which is reasonably estimated to be sufficient: (a) to fund a loan to provide financing for the acquisition and construction or rehabilitation of its Development, including reimbursing the applicable Owner for all costs that have been or will be paid subsequent to the date that is 60 days prior to the date hereof in

connection with the acquisition and construction or rehabilitation of the Developments; (b) to fund any reserves that may be required for the benefit of the holders of the Bonds; and (c) to pay certain costs incurred in connection with the issuance of the Bonds.

Section 1.4. Principal Amount. Based on representations of the Owners, the Department reasonably expects that the maximum principal amount of debt issued to reimburse the Owners for the Costs of the Developments will not exceed the amount set forth in Exhibit A which corresponds to the applicable Development.

Section 1.5. Limited Obligations. The Owners may commence with the acquisition and construction or rehabilitation of the Developments, which Developments will be in furtherance of the public purposes of the Department as aforesaid. On or prior to the issuance of the Bonds, each Owner will enter into a loan agreement, on terms agreed to by the parties, on an installment payment basis with the Department under which the Department will make a loan to the applicable Owner for the purpose of reimbursing the Owner for the Costs of the Development and the Owner will make installment payments sufficient to pay the principal of and any premium and interest on the applicable Bonds. The proposed Bonds shall be special, limited obligations of the Department payable solely by the Department from or in connection with its loan or loans to the Owner to provide financing for its Development, and from such other revenues, receipts and resources of the Department as may be expressly pledged by the Department to secure the payment of the Bonds.

Section 1.6. The Developments. Substantially all of the proceeds of the Bonds shall be used to finance the Developments, which are to be occupied entirely by Eligible Tenants, as determined by the Department, and which are to be occupied partially by persons and families of low income such that the requirements of Section 142(d) of the Code are met for the period required by the Code.

Section 1.7. Payment of Bonds. The payment of the principal of and any premium and interest on the Bonds shall be made solely from moneys realized from the loan of the proceeds of the Bonds to reimburse the Owners for costs of its Development.

Section 1.8. Costs of Developments. The Costs of the Developments may include any cost of acquiring, constructing, reconstructing, improving, installing and expanding the Developments. Without limiting the generality of the foregoing, the Costs of the Developments shall specifically include the cost of the acquisition of all land, rights-of-way, property rights, easements and interests, the cost of all machinery and equipment, financing charges, inventory, raw materials and other supplies, research and development costs, interest prior to and during construction and for one year after completion of construction whether or not capitalized, necessary reserve funds, the cost of estimates and of engineering and legal services, plans, specifications, surveys, estimates of cost and of revenue, other expenses necessary or incident to determining the feasibility and practicability of acquiring, constructing, reconstructing, improving and expanding the Developments, administrative expenses and such other expenses as may be necessary or incident to the acquisition, construction, reconstruction, improvement and expansion of the Developments, the placing of the Developments in operation and that satisfy the Code and the Act. The Owners shall be responsible for and pay any costs of its Development incurred by it prior to issuance of the Bonds and will pay all costs of its Development which are not or cannot be paid or reimbursed from the proceeds of the Bonds.

Section 1.9. No Commitment to Issue Bonds. Neither the Owners nor any other party is entitled to rely on this Resolution as a commitment to issue the Bonds and to loan funds, and the Department reserves the right not to issue the Bonds either with or without cause and with or without notice, and in such event the Department shall not be subject to any liability or damages of any nature.

Neither the Owners nor any one claiming by, through or under the Owners shall have any claim against the Department whatsoever as a result of any decision by the Department not to issue the Bonds.

Section 1.10. Conditions Precedent. The issuance of the Bonds following final approval by the Board shall be further subject to, among other things: (a) the execution by the Owners and the Department of contractual arrangements, on terms agreed to by the parties, providing assurance satisfactory to the Department that all requirements of the Act will be satisfied and that the Development will satisfy the requirements of Section 142(d) of the Code (except for portions to be financed with taxable bonds); (b) the receipt of an opinion from Bracewell LLP or other nationally recognized bond counsel acceptable to the Department (“Bond Counsel”), substantially to the effect that the interest on the tax-exempt Bonds is excludable from gross income for federal income tax purposes under existing law; and (c) receipt of the approval of the Bond Review Board, if required, and the Attorney General.

Section 1.11. Authorization to Proceed. The Board hereby authorizes staff, Bond Counsel and other consultants to proceed with preparation of the Developments’ necessary review and legal documentation for the filing of one or more Applications and the issuance of the Bonds, subject to satisfaction of the conditions specified in this Resolution. The Board further authorizes staff, Bond Counsel and other consultants to re-submit an Application that was withdrawn by an Owner.

Section 1.12. Related Persons. The Department acknowledges that financing of all or any part of the Developments may be undertaken by any company or partnership that is a “related person” to the respective Owner within the meaning of the Code and applicable regulations promulgated pursuant thereto, including any entity controlled by or affiliated with the Owners.

Section 1.13. Declaration of Official Intent. This Resolution constitutes the Department’s official intent for expenditures on Costs of the Developments which will be reimbursed out of the issuance of the Bonds within the meaning of Sections 1.142-4(b) and 1.150-2, Title 26, Code of Federal Regulations, as amended, and applicable rulings of the Internal Revenue Service thereunder, to the end that the Bonds issued to reimburse Costs of the Developments may qualify for the exemption provisions of Section 142 of the Code, and that the interest on the Bonds (except for any taxable Bonds) will therefore be excludable from the gross incomes of the holders thereof under the provisions of Section 103(a)(1) of the Code.

Section 1.14. Execution and Delivery of Documents. The Authorized Representatives named in this Resolution are each hereby authorized to execute and deliver all Applications, certificates, documents, instruments, letters, notices, written requests and other papers, whether or not mentioned herein, as may be necessary or convenient to carry out or assist in carrying out the purposes of this Resolution.

Section 1.15. Authorized Representatives. The following persons are hereby named as authorized representatives of the Department for purposes of executing, attesting, affixing the Department’s seal to, and delivering the documents and instruments and taking the other actions referred to in this Article 1: the Chair or Vice Chair of the Board, the Executive Director of the Department, the Deputy Executive Directors of the Department, the Chief Financial Officer of the Department, the Director of Bond Finance of the Department, the Director of Texas Homeownership of the Department, the Director of Multifamily Finance of the Department and the Secretary or any Assistant Secretary to the Board. Such persons are referred to herein collectively as the “Authorized Representatives.” Any one of the Authorized Representatives is authorized to act individually as set forth in this Resolution.

ARTICLE 2

CERTAIN FINDINGS AND DETERMINATIONS

Section 2.1. Certain Findings Regarding Developments and Owners. The Board finds that:

- (a) the Developments are necessary to provide decent, safe and sanitary housing at rentals that individuals or families of low and very low income and families of moderate income can afford;
- (b) the Owners will supply, in their Development, well-planned and well-designed housing for individuals or families of low and very low income and families of moderate income;
- (c) the Owners are financially responsible;
- (d) the financing of the Developments is a public purpose and will provide a public benefit;
and
- (e) the Developments will be undertaken within the authority granted by the Act to the Department and the Owners.

Section 2.2. No Indebtedness of Certain Entities. The Board hereby finds, determines, recites and declares that the Bonds shall not constitute an indebtedness, liability, general, special or moral obligation or pledge or loan of the faith or credit or taxing power of the State, the Department or any other political subdivision or municipal or political corporation or governmental unit, nor shall the Bonds ever be deemed to be an obligation or agreement of any officer, director, agent or employee of the Department in his or her individual capacity, and none of such persons shall be subject to any personal liability by reason of the issuance of the Bonds. The Bonds will be a special limited obligation of the Department payable solely from amounts pledged for that purpose under the financing documents.

Section 2.3. Certain Findings with Respect to the Bonds. The Board hereby finds, determines, recites and declares that the issuance of the Bonds to provide financing for the Developments will promote the public purposes set forth in the Act, including, without limitation, assisting persons and families of low and very low income and families of moderate income to obtain decent, safe and sanitary housing at rentals they can afford.

ARTICLE 3

GENERAL PROVISIONS

Section 3.1. Books and Records. The Board hereby directs this Resolution to be made a part of the Department's books and records that are available for inspection by the general public.

Section 3.2. Notice of Meeting. This Resolution was considered and adopted at a meeting of the Board that was noticed, convened, and conducted in full compliance with the Texas Open Meetings Act, Chapter 551 of the Texas Government Code, and with §2306.032 of the Texas Government Code, regarding meetings of the Board.

Section 3.3. Effective Date. This Resolution shall be in full force and effect from and upon its adoption.

[Execution page follows]

PASSED AND APPROVED this 9th day of November, 2017.

[SEAL]

By: _____
Chair, Governing Board

ATTEST:

Secretary to the Governing Board

Signature Page to Inducement Resolution

EXHIBIT "A"

Description of the Owner and the Development

Project Name	Owner	Principals	Amount Not to Exceed
The Preserve at Hunters Crossing	The Preserve at Hunters Crossing, L.P., a Texas limited partnership	General Partner: OTM Preserve at Hunters Crossing GP, LLC, a Texas limited liability company	\$13,000,000
Costs: Construction of a 140-unit affordable, multifamily housing development to be known as The Preserve at Hunters Crossing, to be located in the 200 block of Hunters Crossing Blvd., Bastrop County, Bastrop, Texas 78602.			

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BOARD ACTION REQUEST
HOUSING RESOURCE CENTER
NOVEMBER 9, 2017

Presentation, discussion, and possible action on a final amendment of the 2017 State of Texas Consolidated Plan: One-Year Action Plan

RECOMMENDED ACTION

WHEREAS, the U.S. Department of Housing and Urban Development (“HUD”) requires the submission of a One-Year Action Plan in accordance with 24 CFR §91.320;

WHEREAS, the final 2017 State of Texas Consolidated Plan: One-Year Action Plan (“Plan”), which reports on the intended use of funds received by the State of Texas from HUD for Program Year (“PY”) 2017, beginning on February 1, 2017, and ending on January 31, 2018, was approved for submission to HUD at the Board meeting of June 29, 2017;

WHEREAS, the Plan was submitted to HUD on July 19, 2017;

WHEREAS, HUD published a Final Rule at 24 CFR Part 5 regarding the State’s obligation to Affirmatively Further Fair Housing (“AFFH”) and under this new rule, the citizen participation plan requirements in 24 CFR §91.115 have been revised accordingly; and

WHEREAS, staff prepared and released for public comment between September 8, 2017, and October 8, 2017, a draft amendment of the Plan which incorporates revised citizen participation requirements in accordance with 24 CFR §91.115, and no public comment was received;

NOW, therefore, it is hereby

RESOLVED, that the final Amended 2017 State of Texas Consolidated Plan: One-Year Action Plan, in the form presented to this meeting, is hereby approved and the Executive Director and his designees are each hereby authorized, empowered and directed, for and on behalf of the Department, to submit the final Amended 2017 State of Texas Consolidated Plan: One-Year Action Plan to HUD and, in connection therewith, to make such nonsubstantive grammatical and technical changes as they deem necessary or advisable.

BACKGROUND

The Texas Department of Housing and Community Affairs (“TDHCA”), Texas Department of Agriculture (“TDA”), and Texas Department of State Health Services (“DSHS”) prepared the 2017 State of Texas Consolidated Plan: One-Year Action Plan (“Plan”) in accordance with 24 CFR §91.320. TDHCA coordinates the preparation of the State of Texas Consolidated Plan documents. The Plan covers the State’s administration of the Community Development Block Grant Program (“CDBG”) by TDA, the Housing

Opportunities for Persons with AIDS Program (“HOPWA”) by DSHS, the Emergency Solutions Grant (“ESG”) Program, the HOME Investment Partnerships (“HOME”) Program, and the National Housing Trust Fund (“NHTF”) Program by TDHCA.

The Plan reflects the intended uses of funds received by the State of Texas from HUD for Program Year 2017. The Program Year begins on February 1, 2017, and ends on January 31, 2018. The Plan also illustrates the State’s strategies in addressing the priority needs and specific goals and objectives identified in the 2015-2019 State of Texas Consolidated Plan. The Plan was approved for submission to HUD at the Board meeting of June 29, 2017, submitted to HUD on July 19, 2017.

In July 2015, HUD published a Final Rule at 24 CFR Part 5 regarding the State’s obligation to Affirmatively Further Fair Housing (“AFFH”). Under this Final Rule, the citizen participation requirements in 24 CFR §91.115 have been revised accordingly to support the development of the Assessment of Fair Housing (“AFH”), which is anticipated to replace the Analysis of Impediments to Fair Housing Choice (“AI”).¹ According to HUD, the AFH planning process will help communities analyze challenges to fair housing choice and establish their own goals and priorities to address the fair housing barriers in their community. The revisions to 24 CFR §91.115 require the State to amend its citizen participation requirements, which are documented in the Plan.

As a result of the aforementioned revised requirements, staff developed a draft amendment of the Plan which incorporates the revised citizen participation requirements in accordance with 24 CFR §91.115. At the Board meeting of September 7, 2017, the draft amended Plan was approved for release for public comment from September 8, 2017, through October 8, 2017. No public comment was received during this time and no changes have been made to the final amended Plan, presented with this item.

This action seeks approval to submit the final amended 2017 One-Year Action Plan to HUD.² Staff recommends approval of this action.

¹ The Assessment Tool for the State has not yet been completed, and thus the AFH requirements have not yet been triggered.

2017 OYAP Amendment 1

The following sections from the final 2017 OYAP have been amended in this document in order to add citizen participation information related to fair housing found at 24 CFR §91.115:

- **AP-05 Executive Summary:** contains minor edits explaining the purpose of the amendment and listing the public comment period dates.
- **AP-10 Consultation:** Much of the required AFH information has been added to the Narrative section at the end of AP-10, as character counts are full in other sections.
- **AP-12 Participation:** minor edits have been made in AP-12 for AFH. Much detail has been added to the annual outreach chart.

Edits made here will be carried forward to the Draft 2018 OYAP, also under development.

AP-05 Executive Summary - 24 CFR 91.200(c), 91.220(b)

4. Summary of Citizen Participation Process and consultation process

Summary from citizen participation section of plan.

The State is committed to reaching out to and engaging in dialogue with the public in order to develop programmatic activities that are responsive to the various affordable housing needs of Texans. The State also solicits and receives input from governmental bodies, nonprofits, and community and faith-based groups. More information on the citizen participation, consultation, and public comment are included in the Consultation and Participation sections of the Plan.

The 2015-2019 Consolidated Plan, as adopted, substantial amendments, the OYAP, and the Consolidated Plan Annual Performance and Evaluation Report (“CAPER”) will be available to the public online at <http://www.tdhca.state.tx.us> and will have materials accessible to persons with disabilities, upon request.

The State recognizes that public participation and consultation are ongoing processes. During the development of the 2015-2019 Consolidated Plan, comprehensive outreach was conducted to gather input. This outreach continues through the development of each Annual Action Plan within the 5-year consolidated planning process. Following the release of HUD's Final Rule to Affirmatively Further Fair Housing, the State is undertaking to update the Citizen Participation Plan and Language Access Plan, as the State works towards the development of the Assessment of Fair Housing, anticipated to be due to HUD in approximately May 2019. [This amendment to the 2017 OYAP provides an update of the Citizen Participation Plan to describe consultation and citizen participation actions to affirmatively further fair housing per 24 CFR §91.110 and §91.115.](#)

5. Summary of public comments

This could be a brief narrative summary or reference an attached document from the Citizen Participation section of the Con Plan.

Following the release of the Draft 2017 OYAP, the Public Comment period was open from November 11, 2016, through December 15, 2016, and a public hearing was held on December 6, 2016, in Austin, TX. Public comment was solicited in person at the public hearing, in writing by email, fax, or mail. The State received three total comments from the following 10 organizations: Accessible Housing Austin!, Accessible Housing Resources, Inc., ADAPT of Texas, Coastal Bend Center for Independent Living, Coalition of Texans with Disabilities, Lifeworks, Motivation, Education & Training, Inc., Personal Attendants Coalition of Texas, Texas Association of Community Development Corporations, and the Texas State Independent Living Council. A summary of the comments received and reasoned responses are provided in *Attachment A: Public Comment and Reasoned Responses*.

A revised Draft 2017 OYAP was released for public comment from May 12, 2017, through June 12, 2017. Public comment was solicited in writing by email, fax, or mail. No public comments were received during the second round of public comment.

[An Amended 2017 OYAP was released for public comment from September 8, 2017, through October 8, 2017 and no public comment was received.](#)

6. Summary of comments or views not accepted and the reasons for not accepting them

A summary of the comments received and reasoned responses are provided in *Attachment A: Public Comment and Reasoned Responses*.

7. Summary

The consolidated planning process occurs once every five years, so creating a comprehensive 2015-2019 Consolidated Plan was vital for CDBG, HOME, ESG, HOPWA, and NHTF. Because of the Consolidated Plan's authority to govern these programs, research from multiple sources, including other government plans, peer-reviewed journals, news sources, and fact sheets were used; valuable public input was gathered through roundtable meetings, council/workgroup meetings, public hearings, online surveys, and an online forum; and an expansive public input process was included in the development of the Consolidated Plan. The 2015-2019 Consolidated Plan is now carried out through Annual Action Plans, which provide a concise summary of the actions, activities, and the specific federal and non-federal resources that the State plans to use each year to address the priority needs and specific goals identified by the Consolidated Plan.

AP-10 Consultation - 91.110, 91.300(b); 91.315(l)

1. Introduction

In an effort to gather information from diverse audiences, TDHCA uses different forms of technology to communicate efficiently, including online surveys, forums, social media, and email distribution. Online surveys foster an increased response rate of participants as well as facilitating data analysis, as illustrated in the ESG electronic survey, described below. Also, online forums are used in the development of program rules and distribution methods. Online forums are advertised at workgroups and committees as well as on social media. The availability of all these methods is communicated primarily via the TDHCA website, opt-in email distribution lists, ~~and~~ social media, and through announcement at meetings and conferences.

An online presence allows TDHCA to reach out to encourage participation and consultation. The Policy and Public Affairs Division of TDHCA has implemented a social media presence, specifically through Twitter, Facebook, YouTube, and Flickr. Numerous tweets and posts were sent out during the public input process on the development of the Plan. Furthermore, TDHCA sends out notices via voluntary email lists, where subscribed individuals and entities can receive email updates on TDHCA information, announcements, and trainings. Use of technology allows fast communication to a large audience.

In the consolidated planning process, the State encourages the participation of public and private organizations, including broadband internet service providers, organizations engaged in narrowing the digital divide, agencies whose primary responsibilities include the management of flood prone areas, public land or water resources, and emergency management agencies in the process of developing the consolidated plan.

Provide a concise summary of the state's activities to enhance coordination between public and assisted housing providers and private and governmental health, mental health and service agencies (91.215(l)).

The Texas Legislature has created the Housing and Health Services Coordinating Council which meets not less than quarterly and carries out a variety of coordinating, educational, analytical, and training efforts. This council is chaired by TDHCA's executive director and has representation from a wide array of agencies that provide health related services, as well as developers and advocates in different relevant sectors. It is supported administratively by TDHCA staff.

The State works to enhance coordination between public and assisted housing providers, and private and governmental health, mental health, and service agencies. For example, TDHCA staff routinely attends inter- and intra-agency meetings to educate and coordinate housing and services, as described in the following sections of the 2015-2019 Consolidated Plan: Strategic Plan Section 35, Anticipated Resources, and Action Plan Section 65, Homeless and Other Special Needs. The State is also a subrecipient of Money Follows the Persons funds via the Department of Aging and Disability Services

and of Section 811 funds – in both programs intensive coordination and collaboration is occurring relating to the interplay between health services and housing.

DSHS contracts with seven AAs across the State to provide administrative support in implementing the State's HOPWA formula program. AAs work with HIV Planning Councils in major metropolitan areas and with other organizations and stakeholders outside the major metropolitan areas to develop comprehensive HIV Services plans and needs assessments, which are developed through consultation with clients and other stakeholders through interviews, surveys, focus groups, and/or public hearings. AAs must communicate with stakeholders through disseminating written copies of services plans, posting the plans on the internet, town hall meetings, and advisory groups. Project Sponsors work closely with the local public housing authority offices to identify and establish relationships with other organizations that may have available resources. This ongoing collaboration provides access to organizations and programs, such as the housing choice vouchers; Continuum of Care ("CoC"); community health clinics; churches and private foundations; and Ryan White and HIV Planning Councils.

TDHCA launched its ~~new~~ fair housing email list in July 2014. This email list is for persons and organizations who wish to be updated on fair housing-related TDHCA news, event information, and announcements. Because of the time needed to sign up to the email list, other email lists were used to advertise consultations. However, fair housing organizations received notice of the consultations, as evidenced by their participation in the Online Forum and Single Family Roundtables.

TDA consults with local governments both in person and through web-based meetings. As a part of the traditional CDBG planning process, public hearings were held in each of the 24 Council of Government planning regions. Each Regional Review Committee, composed of local elected officials, discussed local funding priorities for the Community Development Fund and adopted scoring criteria to implement those priorities. Additionally, the Texas Rural Health and Economic Development Advisory Council (TRHED) met on September 16, 2015, and May 25, 2016, to discuss rural policy issues, as well as receive updates and proposed program changes for the state CDBG program.

Provide a concise summary of the state's activities to enhance coordination with local jurisdictions serving Colonias and organizations working within Colonias communities.

There are two main methods in which TDHCA coordinates its work with other colonia-serving entities. One relates to the Colonia SHC Program which funds specific Texas-border county governments with four-year contracts. Awards and funding associated with this program are reviewed and recommended by a Colonia Resident Advisory Group ("C-RAC"). The other coordination effort relates to a cross-agency effort organized by the Texas Secretary of State that generates structured communications and data collection in conjunction with other state agencies serving colonias with their respective programs. On a very frequent basis—weekly or more often—TDHCA provides guidance and oversight to the county governments with which TDHCA has executed SHC contracts. Somewhat less often, TDHCA provides guidance and technical assistance to the housing subgrantees with whom respective counties have contracted to achieve specific deliverables per their individualized SHC subcontracts. Every one to two

years, TDHCA organizes and implements a workshop for all eligible counties and their subgrantees to review rules and best practices and to exchange other program updates. Periodically, TDHCA convenes a meeting with the C-RAC, which is a group of colonia residents who live in the specific colonias served by the centers. This grass-roots-style committee approves contracts, evaluates county recommendations and provides TDHCA and the counties with guidance on programming and activities in the colonias. Lastly, approximately every two years, TDHCA updates its SHC Program rules, and initiates this process by first soliciting comment from the public at large for critiques of the current rules and suggestions for changes.

As a part of the processes discussed above, TDA met with elected officials from counties serving colonia areas. The local leaders discussed funding priorities for the Community Development Fund, including projects that could serve colonia areas.

On a quarterly basis, TDHCA and TDA convene with several other state agencies that directly serve colonia residents in the areas of utilities infrastructure, transportation infrastructure, water/water water, health services, housing, and consumer issues. This group is called the Colonia Interagency Infrastructure Coordination Work Group and is organized by the Texas Office of the Secretary of State's Colonia Initiatives Program. This group has been meeting regularly since approximately 2007 when Texas passed legislation requiring the systematic identification and classification of Texas colonias, and the tracking of colonia-serving state-funded projects. The overarching goal of the workgroup is to stop the proliferation of colonias and improve the health, safety, and quality of life for colonia residents in the Texas-Mexico border region. By classifying colonias based on their level of infrastructure and access to public health services, various state agencies, and the Texas Legislature are able to prioritize funding and target colonias with critical needs (Texas Office of the Secretary of State, 2010). Besides TDHCA and TDA, other agency members of this work group include the Texas Water Development Board ("TWDB"), the Texas Commission on Environmental Quality, the Texas Department of Transportation, HHSC, and the DSHS.

Further, to promote greater supply of rental housing for colonia residents and to enhance the availability of municipal services to colonias, TDHCA has scoring criteria in its Qualified Allocation Plan for properties proposed in colonias.

Describe coordination with the Continuum of Care and efforts to address the needs of homeless persons (particularly chronically homeless individuals and families, families with children, veterans, and unaccompanied youth) and persons at risk of homelessness.

ESG funds are released by Notice of Funding Availability ("NOFA") for an amount of available funding within each Continuum of Care ("CoC") region. Applicants within each CoC region either submit an application for ESG funding directly to TDHCA or to their CoC Lead Agency; if submitted to their CoC Lead, it is the CoC Lead that recommends ESG awards to TDHCA for their region. The CoC and ESG Subrecipients are required to interact on a number of levels. For example, the ESG Subrecipient is required to access the CoC's coordinated access which, per 24 CFR §578 is "designed to coordinate

program participant intake assessment and provision of referrals.” In this way, CoCs and ESG Subrecipients work together to address the needs of persons experiencing or at-risk of homelessness.

In 2016, TDHCA held a roundtable in the Wichita Falls/Wise, Palo Pinto, Wichita, and Archer Counties’ CoC with CoC member agencies and anti-poverty service providers to determine how ESG funding could be used. For 2015 and 2016 ESG application cycles, TDHCA received no applications from this CoC. Specifically for youth, the CoCs member agencies worked for several months in 2015 and 2016 to count and assess the needs of youth experiencing or at-risk of homelessness. Per the 84(R) Texas Legislative Session House Bill 679, TDHCA was required to conduct a count of youth experiencing homelessness. TDHCA contracted with the Texas Network of Youth Services (“TNOYS”) to engage communities to conduct the counts in conjunction with the HUD-required point in time counts or as a stand-alone youth count. As a result of the outreach, the CoC lead agencies or member agencies in 13 Texas communities focused on determining the number of youth experiencing homelessness or housing instability in their communities. The counts resulted in the submission of 1,007 surveys and were part of the statewide initiative called Youth Count Texas! (“YCTX”), conducted from October 2015 to March 2016.

The next phase of YCTX includes the analysis of the data collected by YCTX, along with Texas Education Agency (“TEA”), and Department of Family Protective Services (“DFPS”). TDHCA has contracted with the University of Houston to analyze the data and develop a strategic plan to address youth homelessness, per House Bill 679. As part of the outreach to develop the strategic plan, the University of Houston participated in sessions at the TNOYS conference in August 2016, and at the Texas Conference on Ending Homelessness (“TCEH”) in September 2016. The TCEH has the participation of many CoC member agencies.

Specifically for Veterans, TDHCA is conducting a study on Homelessness among Veterans, which is required per 84(R) Texas Legislative Session Senate Bill 1580. The study includes input received from roundtables at the TCEH in 2015 and at the Texas Veterans Commission Summit in 2016, during which over 100 participants gave recommendations on how to address Veteran homelessness.

In addition, the Texas Interagency Council for the Homeless (“TICH”) meets at least once a year with CoCs. The TICH was created in 1989 by the Texas Legislature to coordinate the State’s homeless resources and services. The TICH created a Youth Workgroup to give input into YCTX and a Veterans Workgroup to provide input into the Study on Homelessness among Veterans. The TICH Youth Workgroup includes DFPS, TEA, Texas Homeless Education Office, Texas Department of Juvenile Justice, and the Texas Health and Human Services Commission. The TICH Veteran Workgroup includes TDHCA, Texas Veteran Commission, Texas Health and Human Services enterprise agencies, Texas State Affordable Housing Corporation, and Texas Homeless Network. The TICH membership as a whole receives regular updates on YCTX and the Study on Homelessness among Veterans.

Describe consultation with the Continuum(s) of Care that serves the State in determining how to allocate ESG funds, develop performance standards for and evaluate outcomes of projects

and activities assisted by ESG funds, and develop funding, policies and procedures for the operation and administration of HMIS

In October 2016, TDHCA released a draft 2017 ESG NOFA for public comment. During the public comment period, TDHCA anticipates input from the CoCs and ESG subrecipients on how to allocate ESG funds and prioritize scoring, develop performance standards and evaluate outcomes, and develop funding, policies and procedures for HMIS.

The draft 2017 ESG NOFA may include additional points for domestic violence and legal service providers that work to integrate their programs into the CoCs coordinated access/centralized entry system. Several CoC member agencies have communicated to TDHCA that their coordinated access systems function through HMIS. Because domestic violence and legal service providers are not permitted to use HMIS per 24 CFR §576.400(f), those service providers could be excluded from the coordinated access system without a workaround of the current system. Additional points may be available for the purpose of integrating the domestic violence and legal service providers in coordinated access, with the understanding that information entered into an HMIS-comparable database must not be entered directly into or provided to an HMIS.

TDHCA hosted a roundtable to discuss the possibility of instituting sub-regions in the Balance of State CoC region. The Balance of State CoC is the largest CoC with over 200 counties. Through analysis of the last three years of ESG funding cycles, some areas in west and mid Texas have not received State ESG funding as they are competing against all counties in the BoS region. Currently the Balance of State CoC is the most competitive CoC region for ESG applications, with both the largest number of applicants and the highest-scoring applications. The implementation of regions within the Balance of State may encourage local providers in those areas to apply for ESG funding if the competition was limited to local areas.

TDHCA is working with the CoCs to revise the ESG scoring metrics in conjunction with the CoCs. TDHCA has received feedback that the CoC Program has certain targets for similar activities that are higher than ESG's targets. ESG Subrecipients that are CoC members are getting mixed messages by the HUD CoC Program giving different targets of acceptable percentages of goals reached than TDHCA. TDHCA will reevaluate its ESG Subrecipient performance and compare that performance to HUD's CoC targets to determine scoring criteria for the ESG awards.

Last year, TDHCA released a survey seeking program input from the CoCs. TDHCA plans to host an online forum instead of a survey for the 2017 ESG Program. Notice of the online forum will be sent out via email list announcement.

For 2016 ESG funds, TDHCA identified five CoC Lead Agencies that met specific pre-Application criteria and were used to manage a local competition for 2016 ESG funding: Metro Dallas Homeless Alliance for the Dallas City and County CoC; Tarrant County Homeless Coalition for the Fort Worth/Arlington/Tarrant

County CoC; El Paso Coalition for the Homeless for the El Paso City and County CoC; the City of Amarillo for Amarillo CoC; and Coalition for the Homeless of Houston/Harris County for City of Houston/Harris County CoC. TDHCA plans to release a Request for Applications for 2017 ESG Coordinators, which are lead agencies at the CoC that will run a local competition on behalf of TDHCA for ESG funds. In this way, the CoC lead agencies have authority to recommend allocations for ESG program funds and evaluate outcomes for ESG.

TDHCA consults with CoCs through involvement in the TICH and through participation in the TCEH. The TICH held a quarterly meeting on September 21, 2016, in conjunction with this conference. At the meeting, TDHCA sought public input from the TICH and CoC members on coordinated planning around homelessness issues.

2. Agencies, groups, organizations and others who participated in the process and consultations

Table 1 – Agencies, groups, organizations who participated

1	Agency/Group/Organization	TICH
	Agency/Group/Organization Type	Housing Services - Housing Services-Children Services-Elderly Persons Services-Persons with Disabilities Services-Victims of Domestic Violence Services-homeless Services-Health Services-Education Services-Employment Service-Fair Housing Services - Victims Health Agency Child Welfare Agency Other government - Federal Other government - State Other government - County Other government - Local
	What section of the Plan was addressed by Consultation?	Homeless Needs - Chronically homeless Homeless Needs - Families with children Homelessness Needs - Veterans Homelessness Needs - Unaccompanied youth Homelessness Strategy Non-Homeless Special Needs Anti-poverty Strategy
	Briefly describe how the Agency/Group/Organization was consulted. What are the anticipated outcomes of the consultation or areas for improved coordination?	Input on the 2017 OYAP will be sought at the January 2017 quarterly meeting of the Texas Interagency Council for the Homeless (TICH). The function of the TICH is to coordinate the state's resources and services to address homelessness. TICH serves as an advisory committee to TDHCA. Representatives from eleven state agencies sit on the council along with members appointed by the governor, lieutenant governor, and speaker of the house of representatives.

2	Agency/Group/Organization	Rural Health and Economic Development Advisory Council
	Agency/Group/Organization Type	Housing Services - Housing Services-Health Other government - State Other government - County Other government - Local Regional organization Planning organization Business and Civic Leaders
	What section of the Plan was addressed by Consultation?	Economic Development Anti-poverty Strategy CDBG Method of Distribution
	Briefly describe how the Agency/Group/Organization was consulted. What are the anticipated outcomes of the consultation or areas for improved coordination?	Details on the Rural Health and Economic Development Advisory Council fall meeting will be included in the final 2017 OYAP. Consisting of nine members, this council is tasked with identifying rural policy priorities and reviewing the effectiveness of existing rural programs. The council's Rural Policy plan focused on strategic initiatives for economic and community development, improvements to existing rural health care systems and recommendations for the use and allocation of Community Development Block Grant funding, which is used to make improvements in rural communities across Texas.

Identify any Agency Types not consulted and provide rationale for not consulting

As indicated in the Introduction, during the ongoing consultation and public participation process, Texas seeks input from a wide range of agency types.

Other local/regional/state/federal planning efforts considered when preparing the Plan

Name of Plan	Lead Organization	How do the goals of your Strategic Plan overlap with the goals of each plan?
Continuum of Care	Texas Homeless Network	Texas Homeless Network (THN) is a non-profit membership-based organization helping Texas communities prevent and end homelessness. THN provides training and technical assistance around the state of Texas helping service providers and communities better serve the homeless population with the end goal of preventing and ending homelessness.

Name of Plan	Lead Organization	How do the goals of your Strategic Plan overlap with the goals of each plan?
Pathways Home	TICH	Pathways Home presents findings which indicate that greater coordination of employment and health service resources with local housing programs would expand the State's capacity to prevent and end episodes of homelessness. In response to the study findings, Pathways Home proposes a framework to help more of the State's most vulnerable citizens to enter and remain in safe housing. A report is generated annually by the TICH that serves as a supplement to Pathways Home.

Table 2 – Other local / regional / federal planning efforts

Narrative

Since the consolidated planning process is an ongoing effort, the State continues to consult with agencies, groups, and organizations through the program year cycles for CDBG, ESG, HOME, NHTF and HOPWA, [and the development of HUD required fair housing documents.](#)

[In the development of HUD required fair housing documents, the State plans to consult with housing agencies administering public housing, Public Housing Authorities \(“PHAs”\), state-based and regionally-based organizations that represent protected class members and organizations that enforce fair housing laws, including agencies that participate in HUD’s Fair Housing Initiatives Program \(“FHIP”\) and HUD’s Fair Housing Assistance Program \(“FHAP”\). Further, the State will make available on TDHCA’s website HUD-provided data and supplemental information which the State intends to incorporate into these documents. At least three public hearings will be held before a HUD required Fair Housing document is published for comment.](#)

[If a material amendment of a HUD required fair housing documents is needed as described in 24 CFR 5.164, reasonable notice by publication on TDHCA’s website will be given, comments will be received for no less than 30 days after notice is given, and a public hearing will be optional, and will be held within the public comment period.](#)

[Language needs](#)

[The State conducted an analysis of eligible program participants with Limited English Proficiency \(“LEP”\). The analysis was performed for households at 200% poverty, roughly equivalent to 80% area median income statewide in Texas. The overwhelming need, at 74% of LEP persons, was for Spanish language translation. The state will translate vital documents into Spanish. The state will analyze market areas for program beneficiaries to determine if documents should be translated into additional languages. The state will apply four-factor analysis to consider the resources available and costs considering the frequency with which LEP persons come into contact with the program and the nature and importance of the program, activity, or service. The State will make reasonable efforts to provide language assistance to ensure meaningful access to participation by non-English speaking persons.](#)

AP-12 Participation - 91.115, 91.300(c)

1. Summary of citizen participation process/Efforts made to broaden citizen participation Summarize citizen participation process and how it impacted goal-setting

Encouragement of Public Participation

To reach minorities and non-English speaking residents, the Plan outreach follows [TDHCA's the State's Language Access Plan](#). Also, the notices are available in Spanish and English, per Tex. Gov't Code Chapter 2105. Translators will be made available at public meetings, if requested.

The State encourages the involvement of individuals of low incomes and persons with disabilities in the allocation of funds and planning process through regular meetings, including community-based institutions, consumer workgroups, and councils (many of these meetings are listed in the Strategic Plan Section 35 of the 2015-2019 Consolidated Plan). All public hearing locations are accessible to all who choose to attend. Comments can be submitted either at a public hearing or in writing via mail, fax, or email. Reasonable notice by publication on TDHCA's website at <http://www.tdhca.state.tx.us> will be given, and comments will be received for no less than 30 days after notice is given.

The State notifies residents in areas where CDBG funds are proposed for use by distributing information on public hearings through the CDBG email list from TDA. Information related to the Plan and opportunities for feedback are provided through webinars and web discussions that allowed participation by residents of rural areas without requiring travel to a central location. Regional public hearings held as part of the Regional Review Committee process also encouraged participation by CDBG stakeholders.

Public hearings

~~The Draft 2017 OYAP was released for a 30-day public comment period from November 11, 2016, to December 12, 2016. A public hearing was held in Austin on November 16, 2015. Constituents were encouraged to provide input regarding all programs in writing or at the public hearing.~~

~~The p~~Public hearing schedules ~~was~~are published in the Texas Register and on TDHCA's website at <http://www.tdhca.state.tx.us>, and ~~is~~are advertised by opt-in email distribution and during various workgroups and committee meetings. During the public comment period, printed copies of ~~the~~ draft Plans are available from TDHCA, and electronic copies may be available for download from TDHCA's website. Constituents are encouraged to provide input regarding all programs in writing or at the public hearings. See the Citizen Participation Outreach table below for details of annual outreach.

Criteria for Amendment to the Consolidated Plan

Substantial amendments will be considered if a new activity is developed for any of the funding sources or there is a change in method of distribution. If a substantial amendment is needed, reasonable notice by publication on TDHCA's website at <http://www.tdhca.state.tx.us> will be given, and comments will be received for no less than 30 days after notice is given. A public hearing will be optional.

Performance Report

The 2017 CAPER will analyze the results of the 2016 OYAP. Due to the short 90-day turnaround time of the end of the State's Program Year (1/31) and the due date of the CAPER, the public will be given reasonable notice by publication on TDHCA's website at <http://www.tdhca.state.tx.us>. Comment will be accepted for a minimum of 15 days. A public hearing will be optional.

One Year Action Plan

The draft One Year Action Plan ("OYAP") is released for public comment prior to HUD's release of actual annual allocation amounts, and the draft OYAP reflects estimated allocation amounts. Once HUD releases actual annual allocation amounts and prior to submission to HUD, proposed activities' budgets will be increased or decreased from the estimated funding levels to match actual allocation amounts, and proposed program goals will be adjusted proportionally or as otherwise described in the 2017 Action Plan.

[Complaints related to the Consolidated planning process follow the TDHCA complaint process, as defined by 10 Texas Administrative Code §1.2.](#)

[For details on the development of or amendments to HUD required Fair Housing document, see the AP-10 Narrative section above.](#)

2. Summary citizen participation process and efforts made to broaden citizen participation in Colonias

There are two main methods in which TDHCA coordinates its work with other colonia-serving entities. One relates to the Colonia Self Help Center Program which funds El Paso, Cameron/Willacy, Hidalgo, Starr, Webb, Maverick, and Val Verde counties with four-year contracts. Awards and funding associated with this program are reviewed and recommended by a Colonia Resident Advisory Group ("C-RAC"), which is a group of colonia residents who live in the specific service area served by the centers. The other coordination effort relates to a cross-agency effort organized by the Texas Secretary of State that generates structured communications and data collection in conjunction with other state agencies serving colonias with their respective programs.

TDHCA provides guidance, technical assistance and oversight to the units of local government with which TDHCA has executed SHC contracts. Technical assistance includes program administration, guidelines, requirements needed to fulfill contractual requirements in serving colonia residents with CDBG funding. Every one to two years, TDHCA organizes and implements a workshop for all eligible counties and their subgrantees to review rules, best practices, and exchange other program updates. Periodically, TDHCA convenes a meeting with C-RAC. This grass-roots-style committee considers contract proposals, approves contracts, evaluates county recommendations, and provides TDHCA and the

counties guidance on programming and activities in the colonias. Lastly, approximately every two years, TDHCA updates its SHC Program rules, and initiates this process by first soliciting comment from the public at large for critiques of the current rules and suggestions for changes.

As a part of the process discussed above, TDA met with elected officials from counties serving colonia areas. The local leaders discussed funding priorities for the Community Development Fund, including projects that could serve colonia areas.

On a quarterly basis, TDHCA and TDA convene with several other state agencies that directly serve colonia residents in the areas of utilities infrastructure, transportation infrastructure, water/water water, health services, housing, and consumer issues. This group is called the Colonia Interagency Infrastructure Coordination Work Group and is organized by the Texas Office of the Secretary of State's Colonia Initiatives Program. This group has been meeting regularly since approximately 2007 when Texas passed legislation requiring the systematic identification and classification of Texas colonias, and the tracking of colonia-serving state-funded projects. The overarching goal of the workgroup is to stop the proliferation of colonias and improve the health, safety, and quality of life for colonia residents in the Texas-Mexico border region. By classifying colonias based on their level of infrastructure and access to public health services, various state agencies, and the Texas Legislature are able to prioritize funding and target colonias with critical needs (Texas Office of the Secretary of State, 2010). Besides TDHCA and TDA, other agency members of this work group include the Texas Water Development Board ("TWDB"), the Texas Commission on Environmental Quality, the Texas Department of Transportation, HHSC, and DSHS.

Citizen Participation Outreach

Sort Order	Mode of Outreach	Target of Outreach	Summary of response/attendance	Summary of comments received	Summary of comments not accepted and reasons	URL (If applicable)
<u>1</u>	<u>Public Meeting – TDHCA Board Meeting</u>	<u>Non-targeted/broad community</u>	<u>The Draft 2017 OYAP was presented at the TDHCA Board meeting of November 10, 2016, and the Board approved its release for public comment.</u>	<u>Public comments are accepted at each meeting of the TDHCA Board in accordance with §2306.032(f) and §2306.066(d) of the Tex. Gov’t Code. No public comments were received for the Draft 2017 OYAP at the TDHCA Board meeting of November 10, 2016.</u>		<u>TDHCA’s board agenda and information is filed with the Texas Office of the Secretary of State (“SOS”) in advance of each meeting, in accordance with the Texas Open Meetings Act. Board materials are posted at http://www.tdhca.state.tx.us/board/meetings.htm.</u>
<u>2</u>	<u>Public Comment Period #1</u>	<u>Non-targeted/broad community</u>	<u>The Draft 2017 OYAP was released for a 30-day public comment period from November 14, 2016, to December 15, 2016.</u>	<u>The State received 3 total comments from 10 organizations. A summary of public comments and reasoned responses are provided in Attachment A.</u>		<u>Texas Register Announcement of public hearing and public comment period: https://www.sos.texas.gov/texreg/archive/November252016/In%20Addition/In%20Addition.html#117</u>

Sort Order	Mode of Outreach	Target of Outreach	Summary of response/attendance	Summary of comments received	Summary of comments not accepted and reasons	URL (If applicable)
<u>14</u>	Public Hearing	Non-targeted/broad community	The State held a public hearing on November 12, 2015 <u>December 6, 2016</u> to receive comments on the <u>Draft 2016</u> OYAP. Three individuals attended and no public comment was provided.	No public comments were received at the public hearing.		http://www.tdhca.state.tx.us/events/index.jsp?eventID=2328
<u>5</u>	<u>Public Meeting – TDHCA Board Meeting</u>	<u>Non-targeted/broad community</u>	<u>A summary of revisions was presented at the TDHCA Board meeting of March 23, 2017.</u>	<u>No public comments were received for proposed revisions to the Draft 2017 OYAP at the TDHCA Board meeting of March 23, 2017.</u>		http://www.tdhca.state.tx.us/board/meetings.htm
<u>6</u>	<u>Public Comment Period #2</u>	<u>Non-targeted/broad community</u>	<u>A Revised Draft 2017 OYAP was released for a 30-day comment period from May 12, 2017, to June 12, 2017.</u>	<u>No public comments were received.</u>		http://www.tdhca.state.tx.us/public-comment.htm

Sort Order	Mode of Outreach	Target of Outreach	Summary of response/attendance	Summary of comments received	Summary of comments not accepted and reasons	URL (If applicable)
<u>7</u>	<u>Public Meeting – TDHCA Board Meeting</u>	<u>Non-targeted/broad community</u>	<u>The Final 2017 OYAP was presented at the TDHCA Board meeting of June 22, 2017.</u>	<u>No public comments were received for the Final 2017 OYAP at the TDHCA Board meeting of June 22, 2017.</u>		http://www.tdhca.state.tx.us/board/meetings.htm
<u>82</u>	Internet Outreach	Non-targeted/broad community	TDHCA has a centralized webpage for public comment on all plans, reports, and program rules.	All public comments and reasoned responses are provided in the Public Comment Attachment.		http://www.tdhca.state.tx.us/public-comment.htm

Table 3 – Citizen Participation Outreach

1f

BOARD ACTION REQUEST

FINANCIAL ADMINISTRATION DIVISION

NOVEMBER 9, 2017

Presentation, discussion, and possible action to adopt a resolution regarding designating signature authority and superseding previous resolutions in this regard

RECOMMENDED ACTION

WHEREAS, the Texas Department of Housing and Community Affairs (the “Department”), a public and official governmental agency of the State of Texas, was created and organized pursuant to and in accordance with the provisions of Tex. Gov’t Code, Chapter 2306 (the “Code”), as amended;

WHEREAS, the Code authorizes the Department, among other things: (a) to make and acquire and finance, and to enter into advance commitments to make and acquire and finance, mortgage loans and finance, participating interests therein, secured by mortgages on residential housing in the State of Texas (the “State”); (b) to issue its bonds, for the purpose of, among other things, obtaining funds to acquire or finance such mortgage loans, to establish necessary reserve funds and to pay administrative and other costs incurred in connection with the issuance of such bonds; and (c) to pledge all or any part of the revenues receipts or resources of the Department, including the revenues and receipts to be received by the Department from such single family mortgage loans of participating interests, and to mortgage, pledge or grant security interests in such mortgages of participating interests, mortgage loans or other property of the Department, to secure the payment of the principal or redemption price of and interest on such bonds;

WHEREAS, on November 10, 2016, the Governing Board adopted a resolution designating signature authority to reflect the structure of the Department; and

WHEREAS, organizational and working title changes have occurred such that the Governing Board has now determined that its resolution adopted November 10, 2016, designating signature authority, should be superseded by a new resolution designating signature authority in order to conform to the Department’s current organizational structure, working titles, and operations;

NOW, THEREFORE, it is hereby

RESOLVED that the Governing Board makes changes to its resolution adopted November 10, 2016, as shown below.

SECTION 1- Supersession of the Prior Signature Authority. The Governing Board hereby supersedes its prior resolution, adopted November 14, 2016, designating signature authority by adopting this new resolution.

SECTION 2 – Designation of Signature Authority for Bond and Indentured-Related Transactions. The Governing Board hereby authorized and designates the Board Secretary, the Assistant Board Secretary, the Executive Director, the Chief Financial Officer, the Director of Financial Administration, the Chief Investment Officer, the Director of Multifamily Finance, the Director of Texas Homeownership, a Deputy Executive Director, the Director of HOME and Homelessness Program and the Director of Single Family Operations and Services and each of them as signatories for single family and multifamily bond and indenture-related transactions as well as transactions under the Department’s “to be announced” or TBA program including, but not limited to letters of instruction, officer's certificates, bond transactional documents and all other documents and certificates executed in connection with such transactions. In addition, the Governing Board authorizes and designates the Manager of Single Family Finance and Senior Bond Financial Analysts within the Bond Finance division as signatories for day-to-day operations activities related to advances taken through the Federal Home Loan Bank of Dallas (“FHLB”) for the purchase of loan participations from the Idaho Housing and Finance Association (“IHFA”), the Department’s Master Servicer, including directing the wiring of such advances from FHLB to IHFA.

SECTION 3 – Designation of Signatory Authority for Real Estate Transactions. The Governing Board hereby authorizes and designates the following persons holding the positions described and each of them to execute and deliver, as specified, earnest money contracts, deeds or conveyances of title, leases of real property, settlement statements on purchase or sale of real property, deposits and disbursements on agency bank accounts, real estate transactional documents and all other documents executed in connection with real estate or real estate-related transactions:

- (a) Executive Director, Deputy Executive Director, Chief Financial Officer, Board Secretary, and Assistant Board Secretary: All real estate or real estate related transactions;
- (b) Director of Financial Administration: All real estate or real estate-related transactions administered by the Financial Administration Division;
- (c) Director of Multifamily Finance Division: All real estate or real estate-related transactions administered by the Multifamily Finance Division;
- (d) Director of Asset Management: All real estate or real estate-related transactions administered by the Asset Management Division;
- (e) Chief Investment Officer: All real estate or real estate-related transactions administered by the Bond Finance Division;
- (f) Director of Texas Homeownership: All real estate or real estate-related transactions administered by the Texas Home Ownership Division;

- (g) Director of the HOME and Homelessness Programs: All real estate or real estate-related transactions administered under the HOME and Homelessness Programs;
- (h) Director of Single Family Operations and Services Division: All real estate or real estate-related transactions administered under the Single Family Operations and Services Division; and
- (i) Signatory authority on deposits and disbursements on agency bank accounts is limited to those persons designated on the applicable signature cards, as specified by the Executive Director; provided however, that no person may be so designated other than the Executive Director, Chief Financial Officer, a Deputy Executive Director, or a Director.
- (j) Every reference to a signatory office or title herein includes any person serving in an acting or interim capacity.

SECTION 4 – Designation of Signatory Authority for Fund Transfers. The Governing Board hereby authorizes and designates the following persons and each of them to execute and deliver any necessary fund transfer documents, including letters of instruction, in the manner prescribed below.

Fund transfers require dual signatures, consisting of one signatory from each of the following two groups:

- (a) Chief Financial Officer or Director of Financial Administration and
- (b) Executive Director or a Deputy Executive Director.

SECTION 5 – Execution of Documents. The Governing Board hereby authorized the Executive Director, or in his absence the Chief Financial Officer or a Deputy Executive Director, to execute, on behalf of the Department, any and all documents, instruments reasonably deemed necessary to effectuate this resolution.

SECTION 6 – Effective Date. This Resolution shall be in full force and effect from and upon its adoption until and unless it is revoked or superseded.

BACKGROUND

This Resolution updates and designates signature authority to reflect the current organizational structure of the Department and the current working titles for the positions designated.

Incumbency Certificate

I, James "Beau" Eccles, the duly appointed and serving Secretary of the Texas Department of Housing and Community Affairs (the "Department"), do hereby certify that Timothy K. Irvine is the duly appointed Executive Director of the Department, appointed by its governing board on September 17, 2011, and set forth below opposite his name is his true and correct signature:

Timothy K. Irvine _____

Executed and seal of the Department affixed this ____ day of _____, 2017 at Austin, Texas.

James "Beau" Eccles

(S E A L)

Certificate

I, Timothy K. Irvine, the duly appointed Executive Director of the Texas Department of Housing and Community Affairs (the "Department"), do hereby certify that set forth below is a true and correct listing setting forth specific positions within the Department, the name of the person currently designated by me to hold each such position, and, opposite their name, their true and correct signature. Each person listed currently holds the position indicated:

Board Secretary	_____
	James "Beau" Eccles
Assistant Board Secretary	_____
	Michael Lyttle
Chief Financial Officer	_____
	David Cervantes
Director of Financial Administration	_____
	Ernesto Palacios, III
Chief Investment Officer	_____
	Monica Galuski
Director of Multifamily Finance	_____
	Margaret L. Holloway
Director of Texas Homeownership	_____
	Cathy Gutierrez
Deputy Executive Director	_____
	Brooke Boston
Deputy Executive Director	_____
	Tom Gouris
Director of Asset Management	_____
	Raquel Morales
Acting Director of HOME Program	_____
	Abigail Versyp
Director of Single Family Operations & Services	_____
	Homero V. Cabello, Jr.

Executed this ____ day of _____, 2017 at Austin, Texas.

Timothy K. Irvine, Executive Director
Texas Department of Housing and Community Affairs

1g

BOARD ACTION REQUEST
ASSET MANAGEMENT DIVISION
NOVEMBER 9, 2017

Presentation, discussion, and possible action to approve a Material Amendment to the Housing Tax Credit (“HTC”) Land Use Restriction Agreement (“LURA”) for Terrell Senior Terraces (HTC #98009)

RECOMMENDED ACTION

WHEREAS, Terrell Senior Terraces (the “Development”) received a 9% HTC award in 1998 to construct 72 multifamily units in Terrell, Kaufman County;

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

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

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

WHEREAS, amendment to the ROFR period in the LURA is a material change requiring Board approval under 10 TAC §10.405(b)(2) and the Owner has complied with the procedural amendment requirements in 10 TAC §10.405(b) to place this request before the Board, including holding a public hearing at which no negative public comment was received;

NOW, therefore, it is hereby

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

BACKGROUND

Terrell Senior Terraces received an award of 9% HTC in 1998 for the new construction of 72 multifamily units for the elderly population in Terrell, Kaufman County. In a letter dated September 13, 2017, the Development Owner, Windsor Senior Partners, LP, through its General Partner, Life Rebuilders of Texas, Inc. (Barrett D. Halla, President), requested approval to amend the LURA related to the ROFR provision.

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

The General Partner requests to amend the LURA to replace the two-year ROFR period with a 180-day ROFR period. The property is currently in the eighteenth year of the affordability period.

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

The Development Owner has complied with the amendment and notification requirements under the Department's rule at Tex. Gov't Code §2306.6712 and 10 TAC §10.405(b). The Development Owner held a public hearing on the matter on October 2, 2017, at the Development's community building. No negative public comment was received regarding the requested amendment.

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

WINDSOR SENIOR PARTNERS, LP
16810 East Avenue of the Fountains #202
Fountain Hills, AZ 85268

September 13, 2017

Rosalio Banuelos
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701-2401

Re: TDHCA File No. 1861, Terrell Senior Terraces (the "Property")

Dear Rosalio:

The undersigned, being the General Partner (herein so called) of Windsor Senior Partners, LP, a Texas limited partnership (the "Partnership") and the current owner of the Property, hereby submits this letter as a request for a material LURA amendment in accordance with Section 10.405(b) of the Rules for the reasons set forth below.

Background Information and Request

In 2015, Texas Government Code Section 2306.6725 was amended to allow for a 180-day Right of First Refusal ("ROFR") period. Currently the LURA for this Property required a two-year ROFR period. Section 10.405(b)(2)(F) of the Rules allows for a LURA amendment in order to conform a ROFR period to the period described in Section 2306.6725. Therefore the General Partner, acting on behalf of the Partnership, requests a LURA amendment to eliminate the two-year ROFR period and replace it with the 180-day ROFR period.

LURA Amendment

In accordance with Section 10.405(b) of the Rules, the General Partner, acting on behalf of the Partnership, is delivering a fee in the amount of \$2500. In addition, the General Partner, acting on behalf of the Partnership, commits to hold a public hearing, as required by the Rules, and to notify all residents, investors, lenders, and appropriate elected officials. Drafts of the public hearing notices are attached for your consideration. Upon approval from TDHCA, the General Partner, acting on behalf of the Partnership, will proceed to set a date and time for the Public Hearing and will provide TDHCA with evidence that the notice has been delivered and the hearing has been conducted. With that, the General Partner, acting on behalf of the Partnership, requests staff recommendation, in support of this request, to be considered at the November 9, 2017 TDHCA Board meeting.

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

Sincerely,

Life Rebuilders of Texas, Inc.
By: The Life Rebuilders Group, its sole member

By  9/13/17
Barrett D. Halla, President



Asset Management Division

Amendment Request Form

Completed forms and supporting materials can be emailed to asset.management@tdhca.state.tx.us

TYPE OF AMENDMENT REQUESTED

Date Submitted: 9/11/2017

Amendment Requested: *LURA Amendment,*

Has the change been implemented? *No*

Award Stage: *Post 15-Year Compliance Period*

NOTE: Material Application or LURA Amendment requests must be received **45 days before the Board Meeting.**

Contact your Asset Manager if you are unsure what type of Amendment to request: <https://www.tdhca.state.tx.us/asset-management/contacts.htm>

DEVELOPMENT INFORMATION

Dev. Name: Terrell Senior Terraces

File No. / CMTS No.: 1861 /

CONTACT INFORMATION

Request Submitted By: Barry Halla

Phone #/Email: (972) 839-5959 /

SECTION 1: COVER LETTER

A cover letter **MUST** be submitted with your request. Review your cover letter to ensure it includes:

- The change(s) requested The reason the change is necessary The good cause for the change
 An explanation of whether the amendment was reasonably foreseeable or preventable at the time of Application

SECTION 2: REQUIRED DOCUMENTATION

Entering an Amendment conveys to the Department that representations in the Application have changed. You **MUST** provide information about any and all changes made from the time of Application (or as last approved by the Department) in your request, including any items that will be impacted by the requested change. Failure to represent or properly document all changes may result in delays, denials, or a request for re-submission. The following is attached:

- Revised Development Financing Exhibits – if sources, terms, conditions, or amounts of financing will be impacted or changed by your amendment request, revised Application exhibits and term sheets (or executed Loan documents and LPA, if the loan has closed) must be submitted
- Signed Statement of No Financial Impact – if no sources, terms, conditions, or amount of financing will be impacted or changed by your amendment request, the Owner must sign and submit a statement to this effect
- Revised Application Exhibits/Documents Reflecting or Supporting All Requested Changes – revised site plans, surveys, Building and Unit Configuration exhibit, etc.
- Material Amendment fee of \$2,500 for first amendments, \$3,000 for second amendments, \$3,500 for third or more. (Applicable to Non-Material Amendments only if changes have been implemented prior to Amendment approval) – *N/A for Developments only funded by a Direct Loan program (HOME, NSP, HTF)*

SECTION 3A: MATERIAL APPLICATION AMENDMENT ITEMS

Check all items that have been modified from the original application (see *Subchapter E, §10.405(a)(3)*):

- Site plan
- Scope of tenant services
- Exclusion of reqs in Subchapters B & C
- Number of units*
- Reduction of 3%+ in unit sq ft
- Other
- Bedroom mix
- Reduction of 3%+ common area
- Architectural design
- Residential density (5%+ change)

If “Number of units” is selected above and the total LI units or LI units at any rent or income level will be reduced, also:

- Written confirmation from the lender *and* syndicator that the development is infeasible without the adjustment in units
- Evidence supporting the need for the adjustment in units

*NOTE: *The approved amendment may carry a penalty in accordance with §10.405(a)(6)(b).*

SECTION 3B: MATERIAL LURA AMENDMENT ITEMS

Check all items that require a material LURA amendment (see Subchapter E, *§10.405(b)(2)*):

- Reductions in the number of LI units
- Change in Target Population
- Changes to income or rent restrictions
- Removal of Non-profit
- Other
- Change in ROFR period or other ROFR provisions

The following additional items are attached for consideration or will be forthcoming:

- Draft Notice of Public Hearing*
- Evidence of public hearing*

*NOTE: *Draft Notices of Public Hearing must be provided with the Amendment materials 45 days prior to the Board meeting. *The Public Hearing must be held at least 15 business days prior to the Board meeting and evidence in the form of attendance sheets and a summary of comments made must be submitted to TDHCA within 3 days of the hearing.*

SECTION 4A: NON-MATERIAL APPLICATION AMENDMENT SUMMARY

Identify all non-material changes that have been or will be made (Contact your Asset Manager if you are unsure of whether your request is non-material):

Short Summary Regarding Application Changes

- Amendment is requesting a change in Developer(s) or Guarantor(s) and Previous Participation forms are attached.

SECTION 4B: NON-MATERIAL LURA AMENDMENT SUMMARY

Identify non-material amendments requested to the LURA:

Short Summary Regarding LURA Changes

SECTION 4C: NOTIFICATION ITEM SUMMARY

Identify any notification items from the time of application:

Short Summary Regarding LURA Changes

WINDSOR SENIOR PARTNERS, LP
16810 East Avenue of the Fountains #202
Fountain Hills, AZ 85268

DRAFT

September____, 2017

Dear Resident:

Terrell Senior Terraces (the "Community") is owned by Windsor Senior Partners, LP (the "Owner"). In order to help finance the construction and development of the Community, the Owner received federal funding through the Texas Department of Housing and Community Affairs (the "Department") (Phone: 512-475-3800; Website: www.tdhca.state.tx.us).

A contractual restriction imposed by the Department mandates that if the Owner decides to sell the Community at a certain time, the Owner will offer the Community for sale to a non-profit organization or a tenant organization for a period of up to two years. To be consistent with a change in Texas law, the Owner is requesting Department approval to change the two-year period to a 180-day period.

In making its decision whether to approve Owner's request, the Department considers the opinions and views of the members of the Community. Accordingly, there will be a public meeting to discuss this matter. This meeting will take place at the Community's clubhouse on _____ at _____ a.m./p.m.

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

We appreciate that Terrell Senior Terraces is your home and we invite you to attend and give your input on this proposal.

Thank you for choosing Terrell Senior Terraces as your home.

Sincerely,

Life Rebuilders of Texas, Inc.

By: The Life Rebuilders Group, its
sole member

By _____
Barrett D. Halla, President

WINDSOR SENIOR PARTNERS, LP
16810 East Avenue of the Fountains #202
Fountain Hills, AZ 85268

DRAFT

September __, 2017

Ms. Katie Vaughan
Boston Capital
One Boston Place, Suite 2100
Boston, MA 02108

Dear Ms. Vaughan:

Windsor Senior Partners, LP (the "**Owner**") is the owner of Terrell Senior Terraces (the "**Community**") which is located at 260 W. British Flying School Blvd., Terrell, TX 75160-0053. In order to help finance the construction and development of the Community, the Owner received federal funding through the Texas Department of Housing and Community Affairs (the "**Department**").

A contractual restriction imposed by the Department mandates that if the Owner decides to sell the Community at a certain time, the Owner will offer the Community for sale to a non-profit organization or a tenant organization for a period of up to two years. To be consistent with a change in Texas law, the Owner is requesting Department approval to change the two-year period to a 180-day period.

In making its decision whether to approve Owner's request, the Department considers the opinions and views of the members of the Community, its elected representatives and the Owner's other financing partners. Accordingly, there will be a public meeting to discuss this matter. This meeting will take place at the Community's management office/clubhouse on _____ at ____ a.m./p.m.

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

Sincerely,

Life Rebuilders of Texas, Inc.
By: The Life Rebuilders Group, its sole
member

By _____
Barrett D. Halla, President

WINDSOR SENIOR PARTNERS, LP
16810 East Avenue of the Fountains #202
Fountain Hills, AZ 85268

September __, 2017

DRAFT

Mr. Bill Johnson
Special Asset Manager
JLL
28050 US Hwy 19 North, Suite 500
Clearwater, FL 33761

Dear Mr. Johnson:

Windsor Senior Partners, LP (the "**Owner**") is the owner of Terrell Senior Terraces (the "**Community**") which is located at 260 W. British Flying School Blvd., Terrell, TX 75160-0053. In order to help finance the construction and development of the Community, the Owner received federal funding through the Texas Department of Housing and Community Affairs (the "**Department**").

A contractual restriction imposed by the Department mandates that if the Owner decides to sell the Community at a certain time, the Owner will offer the Community for sale to a non-profit organization or a tenant organization for a period of up to two years. To be consistent with a change in Texas law, the Owner is requesting Department approval to change the two-year period to a 180-day period.

In making its decision whether to approve Owner's request, the Department considers the opinions and views of the members of the Community, its elected representatives and the Owner's other financing partners. Accordingly, there will be a public meeting to discuss this matter. This meeting will take place at the Community's management office/clubhouse on _____ at ____ a.m./p.m.

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

Sincerely,

Life Rebuilders of Texas, Inc.
By: The Life Rebuilders Group, its sole
member

By _____
Barrett D. Halla, President

WINDSOR SENIOR PARTNERS, LP
16810 East Avenue of the Fountains #202
Fountain Hills, AZ 85268

September 25, 2017

Dear Resident:

Terrell Senior Terraces (the “Community”) is owned by Windsor Senior Partners, LP (the “Owner”). In order to help finance the construction and development of the Community, the Owner received federal funding through the Texas Department of Housing and Community Affairs (the “Department”) (Phone: 512-475-3800; Website: www.tdhca.state.tx.us).

A contractual restriction imposed by the Department mandates that if the Owner decides to sell the Community at a certain time, the Owner will offer the Community for sale to a non-profit organization or a tenant organization for a period of up to two years. To be consistent with a change in Texas law, the Owner is requesting Department approval to change the two-year period to a 180-day period.

In making its decision whether to approve Owner’s request, the Department considers the opinions and views of the members of the Community. Accordingly, there will be a public meeting to discuss this matter. This meeting will take place at the Community Building, 260 W. British Flying School Blvd. on Monday, October 2, 2017 at 5:30 p.m.

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

We appreciate that Terrell Senior Terraces is your home and we invite you to attend and give your input on this proposal.

Thank you for choosing Terrell Senior Terraces as your home.

Sincerely,

Life Rebuilders of Texas, Inc.
By: The Life Rebuilders Group, its
sole member

By: 
Barrett D. Halla, President

WINDSOR SENIOR PARTNERS, LP
16810 East Avenue of the Fountains #202
Fountain Hills, AZ 85268

September 21, 2017

Katie Vaughan
Boston Capital
Attn: Ms. Robyn Jarvis
Suite 2100
One Boston Place
Boston, MA 02110

Dear Katie:

Windsor Senior Partners, LP (the "**Owner**") is the owner of Terrell Senior Terraces (the "**Community**") which is located at 260 W. British Flying School Blvd., Terrell, TX 75160-0053. In order to help finance the construction and development of the Community, the Owner received federal funding through the Texas Department of Housing and Community Affairs (the "**Department**").

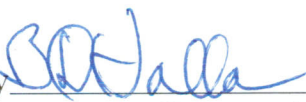
A contractual restriction imposed by the Department mandates that if the Owner decides to sell the Community at a certain time, the Owner will offer the Community for sale to a non-profit organization or a tenant organization for a period of up to two years. To be consistent with a change in Texas law, the Owner is requesting Department approval to change the two-year period to a 180-day period.

In making its decision whether to approve Owner's request, the Department considers the opinions and views of the members of the Community, its elected representatives and the Owner's other financing partners. Accordingly, there will be a public meeting to discuss this matter. This meeting will take place at the Community Building, 260 W. British Flying School Blvd. on Monday, October 2, 2017 at 5:30 p.m.

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

Sincerely,

Life Rebuilders of Texas, Inc.
By: The Life Rebuilders Group, its sole
Member

By 
Barrett D. Halla, President

WINDSOR SENIOR PARTNERS, LP
16810 East Avenue of the Fountains #202
Fountain Hills, AZ 85268

September 21, 2017

Mr. Bill Johnson
Special Asset Manager
JLL
28050 US Hwy 19 North, Suite 500
Clearwater, FL 33761

Dear Bill:

Windsor Senior Partners, LP (the "**Owner**") is the owner of Terrell Senior Terraces (the "**Community**") which is located at 260 W. British Flying School Blvd., Terrell, TX 75160-0053. In order to help finance the construction and development of the Community, the Owner received federal funding through the Texas Department of Housing and Community Affairs (the "**Department**").

A contractual restriction imposed by the Department mandates that if the Owner decides to sell the Community at a certain time, the Owner will offer the Community for sale to a non-profit organization or a tenant organization for a period of up to two years. To be consistent with a change in Texas law, the Owner is requesting Department approval to change the two-year period to a 180-day period.

In making its decision whether to approve Owner's request, the Department considers the opinions and views of the members of the Community, its elected representatives and the Owner's other financing partners. Accordingly, there will be a public meeting to discuss this matter. This meeting will take place at the Community Building, 260 W. British Flying School Blvd., Terrell, TX 75160 at 5:30 p.m.

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

Sincerely,

Life Rebuilders of Texas, Inc.
By: The Life Rebuilders Group, its sole
member

By: 
Barrett D. Halla, President

Terrell Senior Terraces

*260 W British Flying School Blvd. Terrell, TX 75160
Ph. 972-524-0432 Fax 972-524-0089*



MEETING MINUTES

October 2, 2017

Life Rebuilders, Inc.

In attendance:

See attached sign in list. We received 49 signatures at the meeting but counted at least 60 in the room.

Board:

Barrett D. Halla, Chairman of the Board

New Business:

Meeting with residents of Terrell Senior Terraces regarding changing the ROFR (right of first refusal) from a two-year period to a 180-day period.

Questions were asked about what the contractual restriction meant.

Some residents were concerned about how this would affect them and where they reside. They were answered ~~with~~ it would not affect them as the notice stated in the fourth paragraph.

A resident asked why they were sent the notice. Barry responded that it was a mandate by TDHCA to notify residents of the possible change.

A resident asked if there would be any updates to the property.

Compliments were given to the current office and maintenance staff by several residents. Residents stated they were “blessed” with the staff.

Several compliments given on the layout of the one story apartment homes and plan on being here for years to come.

Hopeful statements that current management will continue after the sale.

We were encouraged by residents to build more units just like the existing apartment homes.

Residents were appreciative of the new HVAC units currently being installed in phase 2 of Terrell Senior Terraces.

Barry gave the residents contact information for TDHCA if they felt the need to contact them with any further comments.

There were no more questions or comments as the meeting came to a close.

Motion to adjourn was made at 6:10 p.m. and was passed unanimously.

Life Rebuilders Inc.

LURA Amendment Change meeting

Date: 10/2/17

Name:

Apartment number Phase I

Apartment number Phase II

Maxine Olson

PETTY TAYLOR

Ann Smith

Shirley Stubbs

C RHAMSTINE

Walter C. Ki

Lewada Coe

Dale & Pat Frady

Nema Griffin & James Griffin

Mary Graham

Ann M. Spring

Gerald Spolty

Bcky McDonald

Dale Powell

Jennifer Hale

Jane Lamb

Linda M. Sudder

Virginia DeLata

Ann M. G. G.

Mary Robinson

Judy SerVOSS

Gerry Helleman

Jim Golden

Life Rebuilders Inc.

LURA Amendment Change meeting

Date: 10/2/17

Name:

Apartment number Phase I

Apartment number Phase II

John Jones		
F. Wheeler		
Ronnie Deffen Thompson		
Junior Davis		
Donald D. Hall Sr		
C. E. Brinnell		
Anna Robinson & Shuley Adams		
Kay Squires		
Brenda Bohn		
Sue Hafford		
Judy & Jerry Olson		
Thelma Stroman		
Arno Jennings		
Angie J. Williams		
Paul Calvey		
Ernie Calvey		
Frankie Miller		
Stella Yanni		
Debbie Kelle		
Mary Krow		
Ronca Huskaby		
Willie Gorn		

BOARD ACTION REQUEST
ASSET MANAGEMENT DIVISION
NOVEMBER 9, 2017

Presentation, discussion, and possible action to approve a Material Amendment to the Housing Tax Credit (“HTC”) Land Use Restriction Agreement (“LURA”) for Terrell Senior Terraces, Phase II (HTC #02034)

RECOMMENDED ACTION

WHEREAS, Terrell Senior Terraces, Phase II (the “Development”) received a 9% HTC award in 2002 to construct 180 multifamily units in Terrell, Kaufman County;

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

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

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

WHEREAS, amendment to the ROFR period in the LURA is a material change requiring Board approval under 10 TAC §10.405(b)(2) and the Owner has complied with the procedural amendment requirements in 10 TAC §10.405(b) to place this request before the Board, including holding a public hearing at which no negative public comment was received;

NOW, therefore, it is hereby

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

BACKGROUND

Terrell Senior Terraces, Phase II received an award of 9% HTC in 2002 for the new construction of 180 multifamily units for the elderly population in Terrell, Kaufman County. In a letter dated September 13, 2017, the Development Owner, LRI X, LTD. (Barrett D. Halla), requested approval to amend the LURA related to the ROFR provision.

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

The General Partner requests to amend the LURA to replace the two-year ROFR period with a 180-day ROFR period. The property is currently in the fourteenth year of the Compliance Period.

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

The Development Owner has complied with the amendment and notification requirements under the Department's rule at Tex. Gov't Code §2306.6712 and 10 TAC §10.405(b). The Development Owner held a public hearing on the matter on October 2, 2017, at the Development's community building. No negative public comment was received regarding the requested amendment.

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

LRI X, LTD.
800 W. Airport Freeway #1100
Irving, Texas 75062

September 13, 2017

Rosalio Banuelos
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701-2401

Re: TDHCA File No. 3217, Terrell Senior Terraces (the "Property")

Dear Rosalio:

The undersigned, being the General Partner (herein so called) of LRI X, Ltd., a Texas limited partnership (the "Partnership") and the current owner of the Property, hereby submits this letter as a request for a material LURA amendment in accordance with Section 10.405(b) of the Rules for the reasons set forth below.

Background Information and Request

In 2015, Texas Government Code Section 2306.6725 was amended to allow for a 180-day Right of First Refusal ("ROFR") period. Currently the LURA for this Property required a two-year ROFR period. Section 10.405(b)(2)(F) of the Rules allows for a LURA amendment in order to conform a ROFR period to the period described in Section 2306.6725. Therefore the General Partner, acting on behalf of the Partnership, requests a LURA amendment to eliminate the two-year ROFR period and replace it with the 180-day ROFR period.

LURA Amendment

In accordance with Section 10.405(b) of the Rules, the General Partner, acting on behalf of the Partnership, is delivering a fee in the amount of \$2500. In addition, the General Partner, acting on behalf of the Partnership, commits to hold a public hearing, as required by the Rules, and to notify all residents, investors, lenders, and appropriate elected officials. Drafts of the public hearing notices are attached for your consideration. Upon approval from TDHCA, the General Partner, acting on behalf of the Partnership, will proceed to set a date and time for the Public Hearing and will provide TDHCA with evidence that the notice has been delivered and the hearing has been conducted. With that, the General Partner, acting on behalf of the Partnership, requests staff recommendation, in support of this request, to be considered at the November 9, 2017 TDHCA Board meeting.

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

Sincerely,

LRI X, LTD
By: The Life Rebuilders Group, its sole member

By:  9/13/17
Barrett D. Halla, President



Asset Management Division

Amendment Request Form

Completed forms and supporting materials can be emailed to asset.management@tdhca.state.tx.us

TYPE OF AMENDMENT REQUESTED

Date Submitted: 9/11/2017

Amendment Requested: *LURA Amendment,*

Has the change been implemented? *No*

Award Stage: *Compliance Period (After 8609s)*

NOTE: Material Application or LURA Amendment requests must be received 45 days before the Board Meeting.

Contact your Asset Manager if you are unsure what type of Amendment to request: <https://www.tdhca.state.tx.us/asset-management/contacts.htm>

DEVELOPMENT INFORMATION

Dev. Name: Terrell Senior Terraces II

File No. / CMTS No.: 3217 /

CONTACT INFORMATION

Request Submitted By: Barry Halla

Phone #/Email: (972) 839-5959 /

SECTION 1: COVER LETTER

A cover letter **MUST** be submitted with your request. Review your cover letter to ensure it includes:

- The change(s) requested
- The reason the change is necessary
- The good cause for the change
- An explanation of whether the amendment was reasonably foreseeable or preventable at the time of Application

SECTION 2: REQUIRED DOCUMENTATION

Entering an Amendment conveys to the Department that representations in the Application have changed. You **MUST** provide information about any and all changes made from the time of Application (or as last approved by the Department) in your request, including any items that will be impacted by the requested change. Failure to represent or properly document all changes may result in delays, denials, or a request for re-submission. The following is attached:

- Revised Development Financing Exhibits – if sources, terms, conditions, or amounts of financing will be impacted or changed by your amendment request, revised Application exhibits and term sheets (or executed Loan documents and LPA, if the loan has closed) must be submitted
- Signed Statement of No Financial Impact – if no sources, terms, conditions, or amount of financing will be impacted or changed by your amendment request, the Owner must sign and submit a statement to this effect
- Revised Application Exhibits/Documents Reflecting or Supporting All Requested Changes – revised site plans, surveys, Building and Unit Configuration exhibit, etc.
- Material Amendment fee of \$2,500 for first amendments, \$3,000 for second amendments, \$3,500 for third or more. (Applicable to Non-Material Amendments only if changes have been implemented prior to Amendment approval) – *N/A for Developments only funded by a Direct Loan program (HOME, NSP, HTF)*

SECTION 3A: MATERIAL APPLICATION AMENDMENT ITEMS

Check all items that have been modified from the original application (see *Subchapter E, §10.405(a)(3)*):

- Site plan Scope of tenant services Exclusion of reqs in Subchapters B & C
- Number of units* Reduction of 3%+ in unit sq ft Other
- Bedroom mix Reduction of 3%+ common area
- Architectural design Residential density (5%+ change)

If “Number of units” is selected above and the total LI units or LI units at any rent or income level will be reduced, also:

- Written confirmation from the lender *and* syndicator that the development is infeasible without the adjustment in units
- Evidence supporting the need for the adjustment in units

NOTE: **The approved amendment may carry a penalty in accordance with §10.405(a)(6)(b).*

SECTION 3B: MATERIAL LURA AMENDMENT ITEMS

Check all items that require a material LURA amendment (see Subchapter E, *§10.405(b)(2)*):

- Reductions in the number of LI units Change in Target Population
- Changes to income or rent restrictions Removal of Non-profit Other
- Change in ROFR period or other ROFR provisions

The following additional items are attached for consideration or will be forthcoming:

- Draft Notice of Public Hearing* Evidence of public hearing*

NOTE: **Draft Notices of Public Hearing must be provided with the Amendment materials 45 days prior to the Board meeting. *The Public Hearing must be held at least 15 business days prior to the Board meeting and evidence in the form of attendance sheets and a summary of comments made must be submitted to TDHCA within 3 days of the hearing.*

SECTION 4A: NON-MATERIAL APPLICATION AMENDMENT SUMMARY

Identify all non-material changes that have been or will be made (Contact your Asset Manager if you are unsure of whether your request is non-material):

Short Summary Regarding Application Changes

- Amendment is requesting a change in Developer(s) or Guarantor(s) and Previous Participation forms are attached.

SECTION 4B: NON-MATERIAL LURA AMENDMENT SUMMARY

Identify non-material amendments requested to the LURA:

Short Summary Regarding LURA Changes

SECTION 4C: NOTIFICATION ITEM SUMMARY

Identify any notification items from the time of application:

Short Summary Regarding LURA Changes

DRAFT

**LRI X, LTD.
800 W. Airport Freeway #1100
Irving, Texas 75062**

September __, 2017

Dear Resident:

Terrell Senior Terraces (the "Community") is owned by LRI X, Ltd. (the "Owner"). In order to help finance the construction and development of the Community, the Owner received federal funding through the Texas Department of Housing and Community Affairs (the "Department") (Phone: 512-475-3800; Website: www.tdhca.state.tx.us).

A contractual restriction imposed by the Department mandates that if the Owner decides to sell the Community at a certain time, the Owner will offer the Community for sale to a non-profit organization or a tenant organization for a period of up to two years. To be consistent with a change in Texas law, the Owner is requesting Department approval to change the two-year period to a 180-day period.

In making its decision whether to approve Owner's request, the Department considers the opinions and views of the members of the Community. Accordingly, there will be a public meeting to discuss this matter. This meeting will take place at the Community's clubhouse on _____ at _____ a.m./p.m.

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

We appreciate that Terrell Senior Terraces is your home and we invite you to attend and give your input on this proposal.

Thank you for choosing Terrell Senior Terraces as your home.

Sincerely,

LRI X, LTD
By: The Life Rebuilders Group, its
sole member

By _____
Barrett D. Halla, President

LRI X, LTD.
800 W. Airport Freeway #1100
Irving, Texas 75062

DRAFT

September _____, 2017

Mr. David Fernandes
First Vice President, Asset Management
Boston Financial Investment Management, LP
101 Arch Street
Boston, MA 02110

Dear Mr. Fernandes:

LRI X, LTD (the “**Owner**”) is the owner of Terrell Senior Terraces (the “**Community**”) which is located at 260 W. British Flying School Blvd., Terrell, TX 75160-0053. In order to help finance the construction and development of the Community, the Owner received federal funding through the Texas Department of Housing and Community Affairs (the “**Department**”).

A contractual restriction imposed by the Department mandates that if the Owner decides to sell the Community at a certain time, the Owner will offer the Community for sale to a non-profit organization or a tenant organization for a period of up to two years. To be consistent with a change in Texas law, the Owner is requesting Department approval to change the two-year period to a 180-day period.

In making its decision whether to approve Owner’s request, the Department considers the opinions and views of the members of the Community, its elected representatives and the Owner’s other financing partners. Accordingly, there will be a public meeting to discuss this matter. This meeting will take place at the Community’s management office/clubhouse on _____ at ____ a.m./p.m.

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

Sincerely,

LRI X, LTD
By: The Life Rebuilders Group, its sole
member

By _____
Barrett D. Halla, President

LRI X, LTD.
800 W. Airport Freeway #1100
Irving, Texas 75062

DRAFT

September _____, 2017

Mr. Bill Johnson
Special Asset Manager
JLL
28050 US Hwy 19 North, Suite 500
Clearwater, FL 33761

Dear Mr. Johnson:

LRI X, LTD (the "**Owner**") is the owner of Terrell Senior Terraces (the "**Community**") which is located at 260 W. British Flying School Blvd., Terrell, TX 75160-0053. In order to help finance the construction and development of the Community, the Owner received federal funding through the Texas Department of Housing and Community Affairs (the "**Department**").

A contractual restriction imposed by the Department mandates that if the Owner decides to sell the Community at a certain time, the Owner will offer the Community for sale to a non-profit organization or a tenant organization for a period of up to two years. To be consistent with a change in Texas law, the Owner is requesting Department approval to change the two-year period to a 180-day period.

In making its decision whether to approve Owner's request, the Department considers the opinions and views of the members of the Community, its elected representatives and the Owner's other financing partners. Accordingly, there will be a public meeting to discuss this matter. This meeting will take place at the Community's management office/clubhouse on _____ at ____ a.m./p.m.

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

Sincerely,

LRI X, LTD
By: The Life Rebuilders Group, its sole
member

By _____
Barrett D. Halla, President

LRI X, LTD.
800 W. Airport Freeway #1100
Irving, Texas 75062

September 25, 2017

Dear Resident:

Terrell Senior Terraces (the “**Community**”) is owned by LRI X, Ltd. (the “**Owner**”). In order to help finance the construction and development of the Community, the Owner received federal funding through the Texas Department of Housing and Community Affairs (the “**Department**”) (Phone: 512-475-3800; Website: www.tdhca.state.tx.us).

A contractual restriction imposed by the Department mandates that if the Owner decides to sell the Community at a certain time, the Owner will offer the Community for sale to a non-profit organization or a tenant organization for a period of up to two years. To be consistent with a change in Texas law, the Owner is requesting Department approval to change the two-year period to a 180-day period.

In making its decision whether to approve Owner’s request, the Department considers the opinions and views of the members of the Community. Accordingly, there will be a public meeting to discuss this matter. This meeting will take place at the Community Building, 260 W. British Flying School Blvd. on Monday, October 2, 2017 at 5:30 p.m.

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

We appreciate that Terrell Senior Terraces is your home and we invite you to attend and give your input on this proposal.

Thank you for choosing Terrell Senior Terraces as your home.

Sincerely,

LRI X, LTD
By: The Life Rebuilders Group, its
sole member

By: 
Barrett D. Halla, President

LRI X, LTD.
800 W. Airport Freeway #1100
Irving, Texas 75062

September 21, 2017

David J. Fernandes
Vice President,
Stabilized Asset Management
MMA Financial, Inc.
101 Arch Street
Boston, MA 02110-1106

Dear David:

LRI X, LTD (the “**Owner**”) is the owner of Terrell Senior Terraces (the “**Community**”) which is located at 350 Windsor Ave., Terrell, TX 75160-0053. In order to help finance the construction and development of the Community, the Owner received federal funding through the Texas Department of Housing and Community Affairs (the “**Department**”).

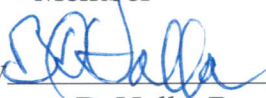
A contractual restriction imposed by the Department mandates that if the Owner decides to sell the Community at a certain time, the Owner will offer the Community for sale to a non-profit organization or a tenant organization for a period of up to two years. To be consistent with a change in Texas law, the Owner is requesting Department approval to change the two-year period to a 180-day period.

In making its decision whether to approve Owner’s request, the Department considers the opinions and views of the members of the Community, its elected representatives and the Owner’s other financing partners. Accordingly, there will be a public meeting to discuss this matter. This meeting will take place at the Community Building, 260 W. British Flying School Blvd. on Monday, October 2, 2017 at 5:30 p.m.

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

Sincerely,

LRI X, LTD
By: The Life Rebuilders Group, its sole
Member

By: 
Barrett D. Halla, President

LRI X, LTD.
800 W. Airport Freeway #1100
Irving, Texas 75062

September 21, 2017

Mr. Bill Johnson
Special Asset Manager
JLL
28050 US Hwy 19 North, Suite 500
Clearwater, FL 33761

Dear Bill:

LRI X, LTD (the "**Owner**") is the owner of Terrell Senior Terraces (the "**Community**") which is located at 260 W. British Flying School Blvd., Terrell, TX 75160-0053. In order to help finance the construction and development of the Community, the Owner received federal funding through the Texas Department of Housing and Community Affairs (the "**Department**").

A contractual restriction imposed by the Department mandates that if the Owner decides to sell the Community at a certain time, the Owner will offer the Community for sale to a non-profit organization or a tenant organization for a period of up to two years. To be consistent with a change in Texas law, the Owner is requesting Department approval to change the two-year period to a 180-day period.

In making its decision whether to approve Owner's request, the Department considers the opinions and views of the members of the Community, its elected representatives and the Owner's other financing partners. Accordingly, there will be a public meeting to discuss this matter. This meeting will take place at the Community Building, 260 W. British Flying School Blvd., Terrell, TX 75160 on Monday, October 2, 2017 at 5:30 p.m.

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

Sincerely,

LRI X, LTD
By: The Life Rebuilders Group, its sole
member

By _____
Barrett D. Halla, President

Terrell Senior Terraces

*260 W British Flying School Blvd. Terrell, TX 75160
Ph. 972-524-0432 Fax 972-524-0089*



MEETING MINUTES

October 2, 2017

Life Rebuilders, Inc.

In attendance:

See attached sign in list. We received 49 signatures at the meeting but counted at least 60 in the room.

Board:

Barrett D. Halla, Chairman of the Board

New Business:

Meeting with residents of Terrell Senior Terraces regarding changing the ROFR (right of first refusal) from a two-year period to a 180-day period.

Questions were asked about what the contractual restriction meant.

Some residents were concerned about how this would affect them and where they reside. They were answered ~~with~~ it would not affect them as the notice stated in the fourth paragraph.

A resident asked why they were sent the notice. Barry responded that it was a mandate by TDHCA to notify residents of the possible change.

A resident asked if there would be any updates to the property.

Compliments were given to the current office and maintenance staff by several residents. Residents stated they were “blessed” with the staff.

Several compliments given on the layout of the one story apartment homes and plan on being here for years to come.

Hopeful statements that current management will continue after the sale.

We were encouraged by residents to build more units just like the existing apartment homes.

Residents were appreciative of the new HVAC units currently being installed in phase 2 of Terrell Senior Terraces.

Barry gave the residents contact information for TDHCA if they felt the need to contact them with any further comments.

There were no more questions or comments as the meeting came to a close.

Motion to adjourn was made at 6:10 p.m. and was passed unanimously.

Life Rebuilders Inc.

LURA Amendment Change meeting

Date: 10/2/17

Name:

Apartment number Phase I

Apartment number Phase II

Maxine Olson

PETTY TAYLOR

Ann Smith

Shirley Stubbs

C RHAMSTINE

Walter C. Ki

Lewada Cane

Dale & Pat Frady

Nema Griffin & James Griffin

Mary Graham

Ann M. Spring

Gerald Spolty

Bcky McDonald

Dale Powell

Jennifer Hale

Jane Lamb

Linda M. Sudder

Virginia D. D. D.

Ann M. D. D.

Mary Robinson

Judy Ser. Voss

Gerry Helleman

Jim Golden

Life Rebuilders Inc.

LURA Amendment Change meeting

Date: 10/2/17

Name:

Apartment number Phase I

Apartment number Phase II

John Jones		
J. Wheeler		
Ronnie Deffen Thompson		
Junior Davis		
Donald D. Hall Sr		
C. E. Brinnell		
Anna Robinson & Shuley Adams		
Kay Squires		
Brenda Bohn		
Sue Hafford		
Judy & Jerry Olson		
Thelma Stroman		
Arno Jennings		
Angie J. Williams		
Paul Calvey		
Ernie Calvey		
Frankie Miller		
Stella Yanni		
Debbie Kelle		
Mary Krow		
Ronca Huskaby		
Willie Gorn		

1h

BOARD ACTION REQUEST
ASSET MANAGEMENT DIVISION
NOVEMBER 9, 2017

Presentation, discussion, and possible action regarding a change in the ownership structure of the Development Owner prior to issuance of IRS Form(s) 8609 and amendments to the Developers and Guarantors for Bruton Apartments (HTC #14402)

RECOMMENDED ACTION

WHEREAS, Bruton Apartments (the “Development”) received an award of 4% Housing Tax Credits (“HTCs”) in 2014 for the new construction of 264 multifamily units in Dallas, Dallas County;

WHEREAS, the Development Owner has requested approval for changes to the ownership structure of the Development Owner, Developer, and Guarantors;

WHEREAS, there was a change in the ownership structure of NRP Bruton Apartments SLP LLC, the Class B Special Limited Partner of the Development Owner, that involves the exit of one of its original principals and the addition of new affiliated entities but no new principals;

WHEREAS, Alan F. Scott (“Scott”), one of the principals, has retired and sold his interest to the remaining principals, J. David Heller (“Heller”) and T. Richard Bailey, Jr. (“Bailey”), which impacts the Development Owner, Developers, and Guarantors in the transaction;

WHEREAS, Scott, in addition to Heller and Bailey, was used to meet the Department’s Experience Requirement in the Application; and

WHEREAS, the transfer of ownership is being requested prior to the issuance of IRS Form(s) 8609 and 10 TAC §10.406(e) requires that parties reflected in the Application that have control must remain in the ownership structure and retain such control, unless approved otherwise by the Board, and changes in Developers or Guarantors are considered amendments under 10 TAC §10.405(a)(3)(C) requiring approval;

NOW, therefore, it is hereby

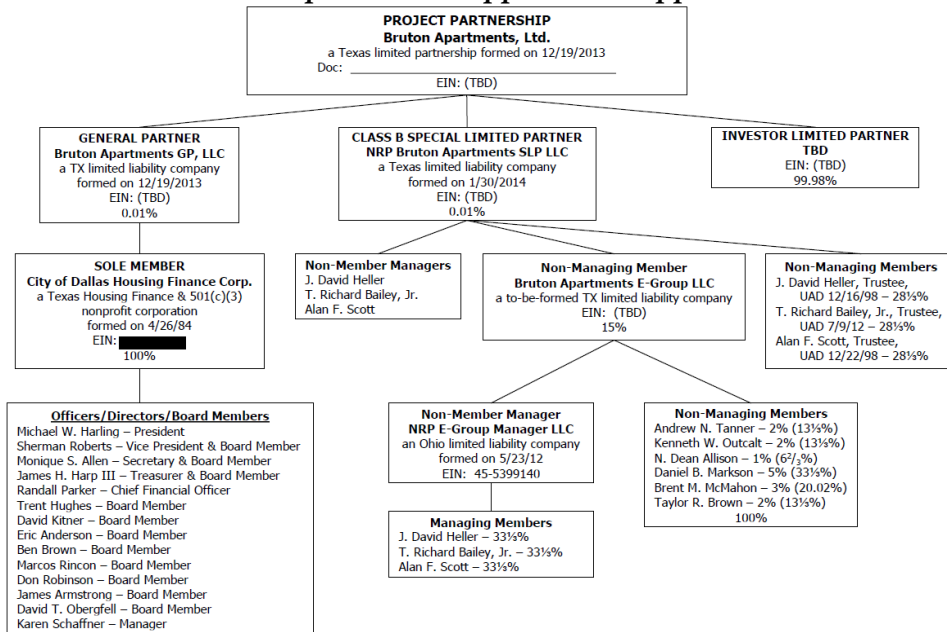
RESOLVED, that the ownership transfer and amendments to the Developers and Guarantors for Bruton Apartments are approved as presented to this meeting, and the Executive Director and his designees are each authorized, empowered, and directed to take all necessary action to effectuate the foregoing.

BACKGROUND

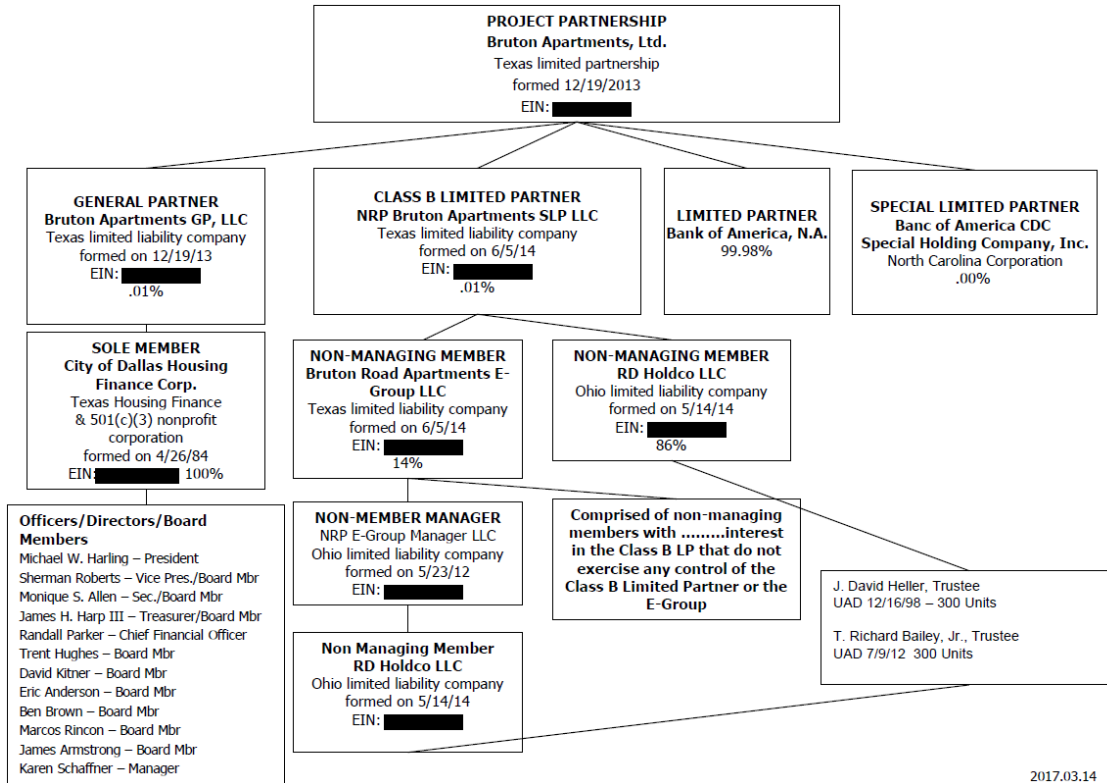
Bruton Apartments (also known as Sterlingshire Apartment Homes) was approved for a 4% HTC award in 2014 to construct 264 units in Dallas, Dallas County. Construction of the Development has been completed, and the cost certification documentation is currently under review by the Department. In a letter dated September 15, 2017, a representative of NRP, an affiliate of the Class B Special Limited Partner of the Development Owner, Bruton Apartments, Ltd., requested approval for changes to the ownership structure of the Development Owner, Developers, and Guarantors prior to issuance of IRS Form(s) 8609. The changes involve the exit of a principal and the addition of new affiliated entities but no new principals.

The changes to the Development Owner are for the ownership structure of the Class B Special Limited Partner, NRP Bruton Apartments SLP LLC (the “SLP”). At Application, the SLP was anticipated to be owned by Bruton Apartments E-Group LLC and J. David Heller (“Heller”), T. Richard Bailey, Jr. (“Bailey”), and Alan F. Scott (“Scott”). Heller, Bailey, and Scott were proposed as the managers for this entity and ultimately also controlled Bruton Apartments E-Group LLC. The ownership transfer request letter from the Owner explains that Scott retired from NRP in 2014 and sold his interest in the various NRP entities and projects to Heller and Bailey. In addition, RD Holdco LLC and Bruton Road Apartments E-Group LLC were added as the owners of the SLP. Heller and Bailey own and control RD Holdco LLC and also control the SLP. According to the Owner, RD Holdco LLC is an entity used to own all of Heller’s and Bailey’s affordable projects that closed prior to November 30, 2016. The revised organization chart for the Development Owner identifies NRP E-Group Manager LLC as the non-member manager of Bruton Road Apartments E-Group LLC but does not identify the specific owners of Bruton Road Apartments E-Group LLC. The ownership transfer request letter states that Bruton Road Apartments E-Group is owned by employees of NRP but is controlled by Heller; this entity has a small economic interest in the project but has no management or control rights. RD Holdco LLC is the sole member of NRP E-Group Manager LLC. Although Scott was used to meet the Experience Requirement in the Application, Heller and Bailey were also used and remain owners in the Development. As these changes are occurring prior to issuance of IRS Form(s) 8609, Board approval is required under 10 TAC §10.406(e).

Ownership Structure Approved at Application



Revised Ownership Structure



2017.03.14

The ownership transfer request letter also identifies changes to the Developers and Guarantors and requests approval for those changes. The letter states that, in addition to Scott exiting the transaction, Bailey was bought out of NRP’s operating companies, including NRP Holdings LLC, NRP Investments LLC, and NRP Contractors LLC. While Bailey retained a non-economic interest in certain entities, he does not exercise any control over these entities. Additionally, several NRP-affiliated entities were added to the ownership structure of NRP Lone Star Development LLC (co-Developer) and NRP Holdings LLC (co-Guarantor), but no new principals were added. NRP Investments LLC (successor by conversion to NRP Investments Corp.), an entity in the ownership structure of one of the co-Developers, was added as co-Guarantor, and additional NRP-affiliated entities were added to its ownership structure. Changes to the Developers and Guarantors are considered non-material amendments that may be administratively approved by the Executive Director under 10 TAC §10.405(a)(3).

Staff recommends approval of the ownership transfer and amendments to the Developers and Guarantors for Bruton Apartments as presented.

September 15, 2017

Mr. Rosalio Bauelos
Asset Manager
TDHCA
221 East 11th Street
Austin, Texas 78701-2410

Re: Bruton Apartments (TDHCA# 14402) – Ownership Transfer Request

Mr. Banuelos:

The purpose of this letter is to request the TDHCA's approval of the following changes in the ownership structure of Bruton Apartments, Ltd., as it relates to the sub-structure of the Class B Limited Partner, NRP Decatur-Angle SLP LC (the "SLP") and NRP affiliate entities:

Class B Special Limited Partner

Additional entities were added to the ownership structure between the Class B Special Limited Partner and the principals of NRP. J. David Heller ("Heller") and T. Richard Bailey ("Bailey") manage/control these entities. RD Holdco LLC is an entity used to own all of Heller's and Bailey's affordable projects that closed prior to November 30, 2016. Decatur-Angle E-Group LLC is wholly owned by employees of NRP, but is controlled by Heller; the E-Group has a small economic interest in the project, but no management or control rights.

Alan F. Scott

Mr. Scott retired from NRP in 2014 and sold his interest in the various NRP entities and projects to J. David Heller and T. Richard Bailey.

T. Richard Bailey

Mr. Bailey was bought out of NRP's operating companies, including NRP Holdings LLC, NRP Investments LLC and NRP Contractors LLC; however, for tax purposes he retained a .5% non-economic interest in NRP Master L.P. (Master), the owner of NRP Direct Subsidiary LLC (Direct Sub) and the owner of NRP Enterprises LLC (Enterprises). Master, is otherwise owned by Heller through a trust and another wholly owned subsidiary. None of the economics of Enterprises or Master, flow to Bailey, nor does he exercise any control of these entities. Bailey continues to own an interest and have management rights in the affordable projects that closed prior to November 30, 2016.

Direct Sub, which is ultimately 99.5% owned by Heller, owns 100% of the common interest in Enterprises. AGT NRP Investor LLC (AGT), a private equity firm, recently bought into a preferred position in Enterprises. AGT has the right to convert its preferred interest into a



5309 Transportation Blvd.
Cleveland, Ohio 44125
Phone (216) 475-8900
Fax (216) 475-6101
www.nrpgroup.com

common interest, but at this time, AGT is only entitled to a fixed distribution from Enterprises and is not entitled to any common distributions of Enterprises. AGT does not exercise any control over the partnership.

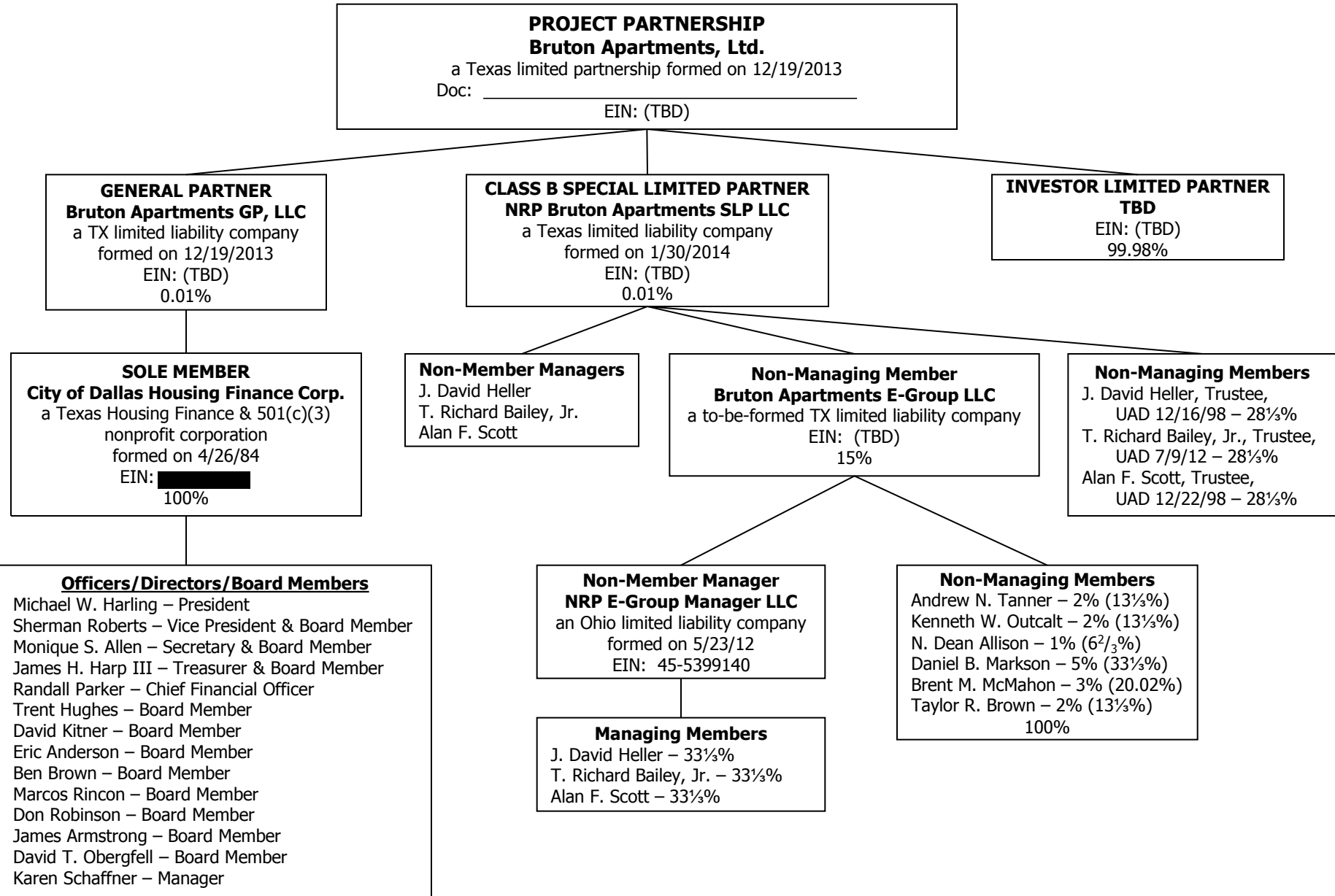
We respectfully request your consideration in this matter and have enclosed the complete Ownership Transfer Request, along with a check for \$1,000.00 to cover the fee.

Sincerely,

By: Jessica Ludwig
Jessica Ludwig
NRP Assistant Project Manager - Development

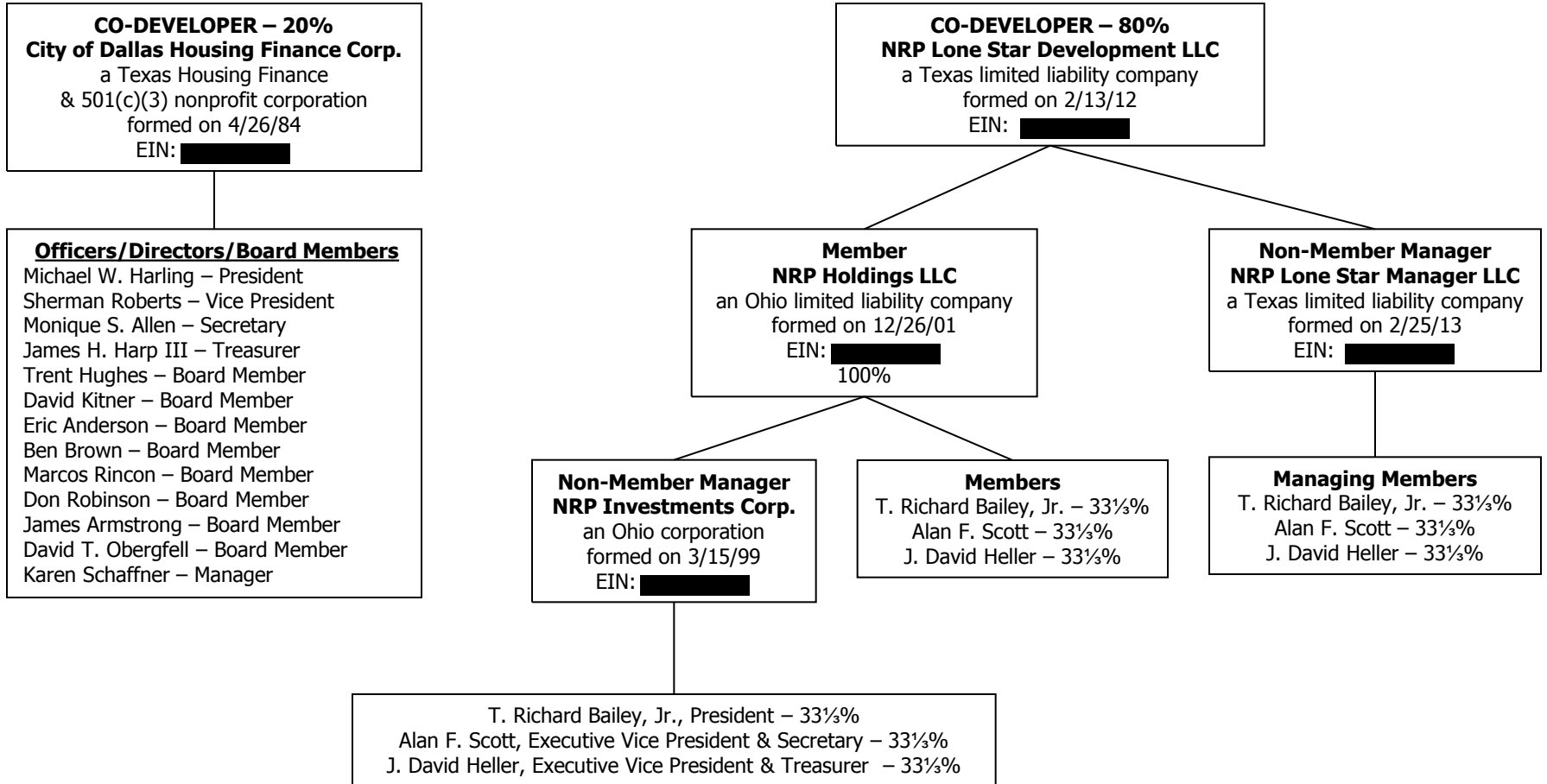
Bruton Apartments

Before



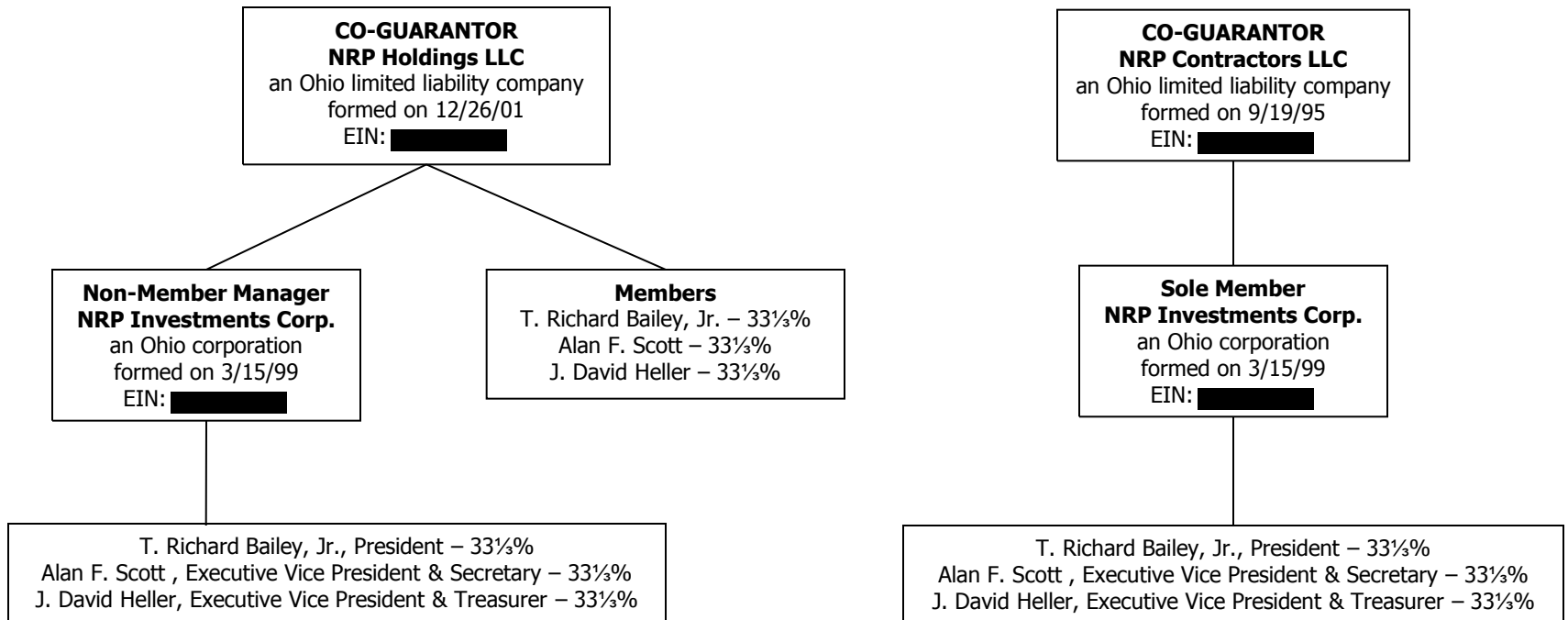
Bruton Apartments

DEVELOPERS



Bruton Apartments

GUARANTORS



BRUTON APARTMENTS

After

PROJECT PARTNERSHIP
Bruton Apartments, Ltd.
 Texas limited partnership
 formed 12/19/2013
 EIN: 37-1746517

GENERAL PARTNER
Bruton Apartments GP, LLC
 Texas limited liability company
 formed on 12/19/13
 EIN: [REDACTED]
 .01%

CLASS B LIMITED PARTNER
NRP Bruton Apartments SLP LLC
 Texas limited liability company
 formed on 6/5/14
 EIN: [REDACTED]
 .01%

LIMITED PARTNER
Bank of America, N.A.
 99.98%

SPECIAL LIMITED PARTNER
Banc of America CDC
Special Holding Company, Inc.
 North Carolina Corporation
 .00%

SOLE MEMBER
City of Dallas Housing Finance Corp.
 Texas Housing Finance & 501(c)(3) nonprofit corporation
 formed on 4/26/84
 EIN: [REDACTED] 100%

NON-MANAGING MEMBER
Bruton Road Apartments E-Group LLC
 Texas limited liability company
 formed on 6/5/14
 EIN: [REDACTED]
 14%

NON-MANAGING MEMBER
RD Holdco LLC
 Ohio limited liability company
 formed on 5/14/14
 EIN: [REDACTED]
 86%

NON-MEMBER MANAGER
NRP E-Group Manager LLC
 Ohio limited liability company
 formed on 5/23/12
 EIN: [REDACTED]

Comprised of non-managing members withinterest in the Class B LP that do not exercise any control of the Class B Limited Partner or the E-Group

J. David Heller, Trustee
 UAD 12/16/98 – 300 Units

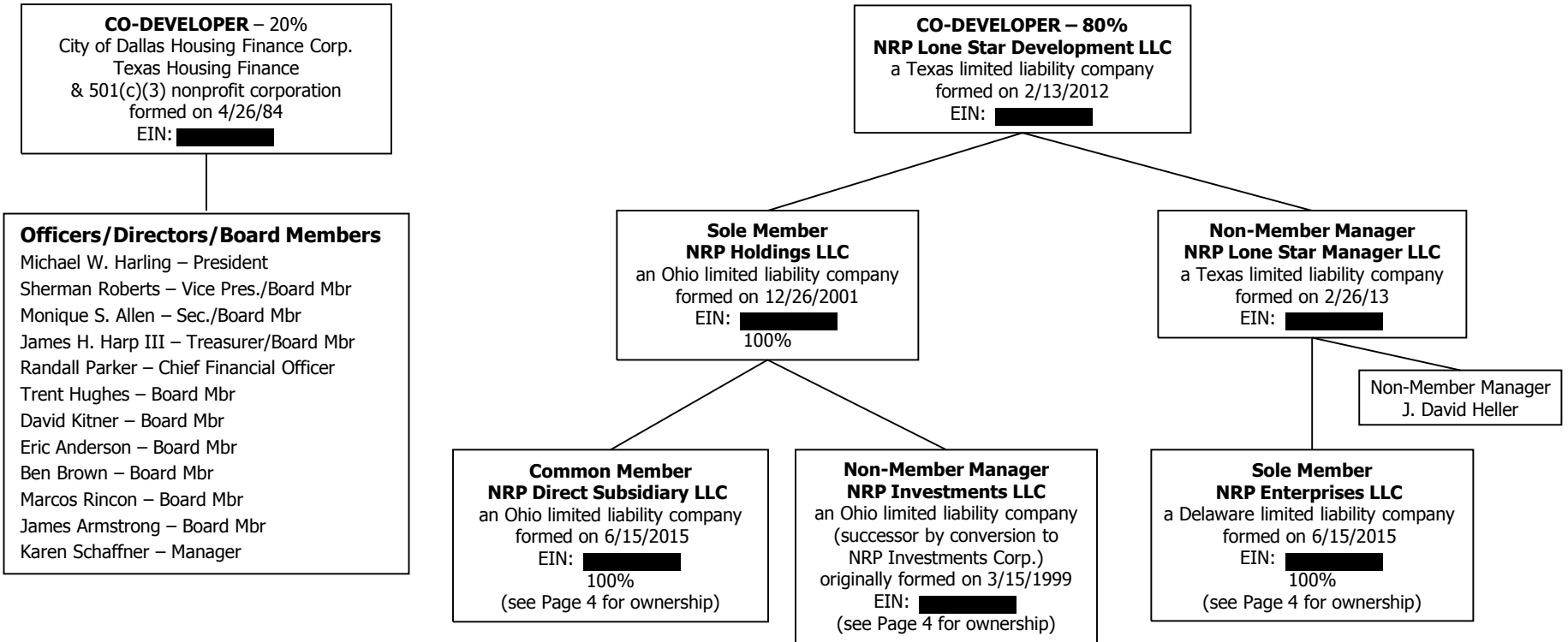
 T. Richard Bailey, Jr., Trustee
 UAD 7/9/12 300 Units

Non Managing Member
RD Holdco LLC
 Ohio limited liability company
 formed on 5/14/14
 EIN: [REDACTED]

Officers/Directors/Board Members
 Michael W. Harling – President
 Sherman Roberts – Vice Pres./Board Mbr
 Monique S. Allen – Sec./Board Mbr
 James H. Harp III – Treasurer/Board Mbr
 Randall Parker – Chief Financial Officer
 Trent Hughes – Board Mbr
 David Kitner – Board Mbr
 Eric Anderson – Board Mbr
 Ben Brown – Board Mbr
 Marcos Rincon – Board Mbr
 James Armstrong – Board Mbr
 Karen Schaffner – Manager

BRUTON APARTMENTS

DEVELOPERS



BRUTON APARTMENTS

GUARANTORS

CO-GUARANTOR
NRP Holdings LLC
an Ohio limited liability company
formed on 12/26/2001
EIN: [REDACTED]

CO-GUARANTOR
NRP Investments LLC
an Ohio limited liability company
(successor by conversion to
NRP Investments Corp.)
originally formed on 3/15/1999
EIN: [REDACTED]
100%
(see Page 4 for ownership)

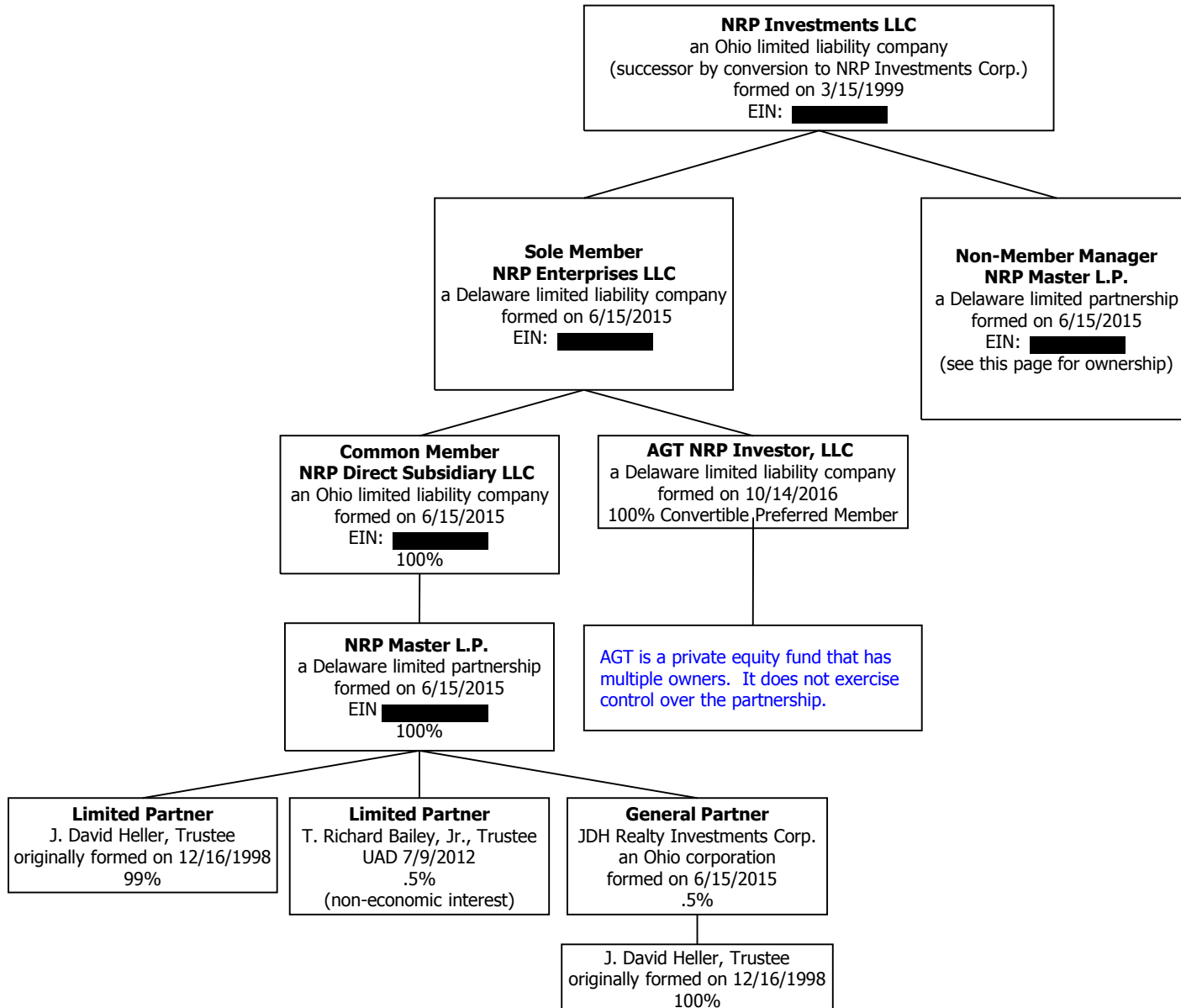
CO-GUARANTOR
NRP Contractors LLC
an Ohio limited liability company
formed on 9/1/1995
EIN: [REDACTED]

Common Member
NRP Direct Subsidiary LLC
an Ohio limited liability company
formed on 6/15/2015
EIN: [REDACTED]
100%
(see Page 4 for ownership)

Non-Member Manager
NRP Investments LLC
an Ohio limited liability company
(successor by conversion to
NRP Investments Corp.)
originally formed on 3/15/1999
EIN: [REDACTED]
(see Page 4 for ownership)

Sole Member
NRP Investments LLC
an Ohio limited liability company
(successor by conversion to
NRP Investments Corp.)
formed on 3/15/1999
EIN: [REDACTED]
100%
(see Page 4 for ownership)

BRUTON APARTMENTS



1i

BOARD ACTION REQUEST
HOME AND HOMELESS PROGRAMS DIVISION
NOVEMBER 9, 2017

Presentation, discussion, and possible action on awards for the 2017 HOME Investment Partnerships Program (“HOME”) Single Family Programs Homebuyer Assistance (“HBA”) and Tenant-Based Rental Assistance (“TBRA”) Open Cycle Notice of Funding Availability (“NOFA”)

RECOMMENDED ACTION

WHEREAS, through Board action on January 26, 2017, the Texas Department of Housing and Community Affairs (“TDHCA” or the “Department”) made available approximately \$3,000,000 from de-obligated 2015 HOME Single Family funds in an Open Application Cycle NOFA;

WHEREAS, 13 applicants requesting 18 contract awards totaling \$2,880,000 have been awarded funds and \$120,000 remains available to be awarded;

WHEREAS, one additional applicant requesting one contract award totaling \$120,000 has received complete reviews for compliance with program and previous participation requirements;

WHEREAS, the Executive Award and Review Advisory Committee (“EARAC”) has recommended the approval this award; and

WHEREAS, following Board approval of the application presented herein, funding remaining under the NOFA will have been fully awarded;

NOW, therefore, it is hereby

RESOLVED, that award of HOME funding from the Single Family Programs HBA and TBRA Open Cycle NOFA totaling \$120,000 are hereby approved in the form presented at this meeting.

BACKGROUND

On December 2, 2016, HUD published an interim final rule making changes with respect to HOME Program commitment and expenditure requirements. Beginning with FY 2015 HOME allocations, HUD is no longer using the cumulative method for measuring compliance with the requirement that Participating Jurisdictions (“PJs”) commit HOME funds within 24 months of obligation. Instead HUD is determining compliance with the deadlines on a grant-specific basis instead of the “cumulative average” approach HUD previously employed. The rule was effective on January 3, 2017.

To ensure that to the extent feasible all HOME funding available from prior year grant funds could be re-committed timely, and in an effort to avoid the potential for a significant amount of funds to be returned to HUD treasury accounts, staff began pursuing several different strategies as outlined in a prior Board Action Request presented on January 26, 2017. That action resulted in the authorization of an Open Application Cycle NOFA, specifically for HBA and TBRA activities that was later amended on May 25, 2017, to extend the deadline and make the remaining funds available for all HBA and TBRA Applicants. Under the NOFA, the selection of Applicants occurs on a first-come, first-served basis, based on Application receipt date and time. Funds in an amount not to exceed \$100,000 in project funds per application are authorized to be awarded for HBA activities, and funds in an amount not to exceed \$200,000 in project funds per Application are authorized to be awarded for TBRA activities. Applicants can apply for up to three awards total, provided that separate Applications are submitted for each request, and the service areas are mutually exclusive and do not overlap.

The Open Application Cycle NOFA closed on September 1, 2017, with all \$3,000,000 of funding available through the NOFA having been requested and \$2,880,000 of that having been awarded. This final award of \$120,000 exhausts the remaining balance of the NOFA.

EARAC met on August 28, 2017, and recommended approval of this award.

Staff recommends the following administrator receive a total of one award as follows:

Award Recommendation Log

App #	HOME Applicant	Activity	Award	Region	Area Served
2017-1023	Community Council of South Central Texas	TBRA	\$120,000	9, 11	Atascosa, Bandera, Comal, Dimmit, Edwards, Frio, Gillespie, Guadalupe, Karnes, Kendall, Kerr, Kinney, La Salle, Live Oak, McMullen, Medina, Real, Uvalde, Val Verde, Wilson, Zavala
TOTAL			\$120,000		

1j

BOARD ACTION REQUEST
HOME AND HOMELESS PROGRAMS DIVISION
NOVEMBER 9, 2017

Presentation and discussion and possible action on a Policy Relating to the Initial Implementation of the Ending Homelessness Fund

RECOMMENDED
ACTION

WHEREAS, the 85th Legislature passed H.B. 4102 which amended Subchapter H, Chapter 502, Transportation Code effective September 1, 2017, and added a voluntary contribution to the Ending Homelessness fund (the “Fund”) in Texas that may be made when renewing registration of a motor vehicle;

WHEREAS, the Ending Homelessness fund is a trust fund, outside of the state treasury, held by the comptroller and administered by the Texas Department of Housing and Community Development (the “Department”) as trustee;

WHEREAS, the legislature directed the Department to use the Fund to provide grants to counties and municipalities to combat homelessness;

WHEREAS, the Department is also directed to adopt rules governing application for grants from the Fund;

WHEREAS, the Department has been working with the Department of Motor Vehicles to set up the fund and allow donations to be made to the Fund beginning in December 2017;

WHEREAS, the amount of funding that may become available through donations to the Fund is uncertain making the independent programming of any such funds difficult at this time;

WHEREAS, the Department anticipates utilizing the Fund in conjunction with its existing Emergency Solutions Grants programs and its Homeless Housing and Services Program; and

WHEREAS, the Department will solicit input from stakeholders regarding the long term use of the Fund utilizing a roundtable discussions, an online forum and ultimately the formal rule making process;

NOW, therefore, it is hereby

RESOLVED, that the Governing Board hereby adopts a policy that directs the staff to initially reserve all funds held by the comptroller in the Ending Homelessness fund to potentially be utilized as matching funds for the Emergency Solutions Grant Program until such a time as an independent but related program is

developed through the rulemaking process but no sooner than donations to the Fund exceed \$100,000 per state fiscal year;

BACKGROUND

The 85th Texas Legislature passed H.B. 4102, which was enacted to be effective on September 1, 2017. The act amended Subchapter H, Chapter 502, Transportation Code to add Section 502.415, Voluntary Contribution to Ending Homelessness Fund. This section allows registrants of a motor vehicle in Texas to elect to contribute any amount of funds to the newly established Ending Homelessness fund. Funds will be sent by the assessor-collector to the comptroller, and held in trust to be administered by the Department as trustee. The funds must be utilized to provide grants to counties and municipalities to combat homelessness. The act further requires the Department to adopt rules governing applications for grants from the Fund, and the issuance of those grants.

The contributions to the Fund are entirely voluntary, and there is not a historical basis to determine the expected annual contribution level from the public for this fund; therefore the Department is unable to forecast the annual level of funding. Other existing funds that individuals can choose to donate to while they are completing their motor vehicle registration have seen annual donations from \$10,000 per year to over \$1,000,000 in cumulative donations. At this time, it is not expected that the funding level will be adequate to support an autonomous program, and a smaller amount of funding may be best utilized to leverage other sources of funding that are known quantities.

The Emergency Solutions Grants (“ESG”) Program is funded by the U.S. Department of Housing and Urban Development (“HUD”). Funds from the ESG Program are utilized to combat homelessness in a variety of ways, including emergency shelter, homelessness prevention, street outreach, and rapid re-housing. The demand for ESG funds historically outpaces the annual allocation from HUD, and funds are awarded to both private nonprofit entities and units of general local government, such as cities and counties. In addition, each year there are ESG Subrecipients who expend their funding before the contract end date and request additional funding.

The Department is proposing that funds deposited into the Ending Homelessness fund may be made available to the ESG Subrecipients. After six months or so of contributions are tallied staff will have a better idea of the expected annual contribution level, and if it is under \$100,000 per state fiscal year, it is likely to be recommended to be utilized as match for the ESG program and become available to ESG Subrecipients that are units of general local government as directed by future Board action, and after an input process is accomplished.

The ESG Program requires that funds awarded must be matched dollar-for-dollar. Staff has received feedback from ESG applicants that the match is a deterrent for organizations to apply to use the funding. The Ending Homelessness funds made available to the high performing ESG Subrecipients could be used as ESG funding, which then can be counted as match for the State’s grant as a whole. These matching funds would allow the Department more flexibility in offering match waivers for part or all of future ESG applicants proposed activities. The 2019 ESG application cycle is anticipated to occur during the spring of 2019.

The Department will actively seek feedback from stakeholders related to this plan, and any future utilizing of the Fund. The Department will also establish a website to provide information about the Fund located at www.txhomelessfund.org beginning December 10, 2017. Additionally, the Department will conduct roundtable discussions and open an online forum for comments and feedback regarding this plan.

1k

BOARD ACTION REQUEST
HOME AND HOMELESS PROGRAMS DIVISION
NOVEMBER 9, 2017

Presentation, discussion, and possible action on Orders adopting amendments to 10 TAC Chapter 23, Single Family HOME Program Rules Subchapter B, Availability of Funds, Application Requirements, Review And Award Procedures, General Administrative Requirements, and Resale and Recapture of Funds, §23.25 concerning General Threshold and Selection Criteria; and Subchapter F, Tenant-Based Rental Assistance Program, §23.61 concerning Tenant-Based Rental Assistance (“TBRA”) General Requirements, and directing their publication in the *Texas Register*

RECOMMENDED ACTION

WHEREAS, proposed amendments to 10 TAC Chapter 23 were approved in draft form at the Board meeting of September 7, 2017, and published for public comment in the *Texas Register*,

WHEREAS, no public comment was received concerning the amendments;

NOW, therefore, it is hereby

RESOLVED, that the Governing Board hereby adopts amendments to 10 TAC Chapter 23, Single Family HOME Program Rules Subchapter B, Availability of Funds, Application Requirements, Review And Award Procedures, General Administrative Requirements, and Resale and Recapture of Funds, §23.25 concerning General Threshold and Selection Criteria; and Subchapter F, Tenant-Based Rental Assistance Program, §23.61 concerning Tenant-Based Rental Assistance (“TBRA”) General Requirements, and directing their publication in the *Texas Register*, together with preamble, in the form presented in this meeting; and

FURTHER RESOLVED, that the Executive Director and his designees be and each of them hereby are authorized, empowered, and directed, for and on behalf of the Department, to cause the adoption in the form presented to this meeting and as published in the *Texas Register*, and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing.

BACKGROUND

The purpose of amending the State HOME Investment Partnerships Program (“HOME”) Rule under Subchapter B is to require applicants for HOME Program funds to establish intent to apply for funding subject to the terms and conditions set forth at time of application receipt. Currently, the threshold requirements state that a resolution from the governing board of the applicant must be dated no later than six months from the date of application submission; proposed amendments to the rule would require the applicant to more specifically identify the fund source and, if applicable, Notice of Funding Availability under which funds are requested by the applicant.

The purpose of amending the HOME Rule under Subchapter F is to require that units selected by tenants for occupancy under the TBRA program are two-fold. First, an amendment is proposed to ensure that units selected for rental by an assisted household are not owned by members of the assisted household's immediate family, with an exception for units that have unique accessibility features for persons with disabilities that are not readily available in the service area. This amendment will more closely align the HOME Rule with the requirements of the Section 8 Housing Choice Voucher Program, allowing tenants a more seamless transition between temporary HOME assistance and more permanent assistance offered under the Section 8 Housing Choice Voucher Program. Second, an additional amendment was proposed to ensure that administrators of the HOME Program comply with requirements to conduct a rent-reasonableness analysis for each unit to be occupied by a HOME assisted household.

The proposed changes to the HOME Rule were approved in draft form at the TDHCA Board meeting of September 7, 2017, and were published for public comment in the September 22, 2017, issue of the *Texas Register* to allow for public comment. Public comments were accepted in writing and by e-mail through October 31, 2017, and no comments were received.

Attachment 1: Preamble and amendment of SUBCHAPTER B, §23.25, GENERAL THRESHOLD AND SELECTION CRITERIA

The Texas Department of Housing and Community Affairs (the “Department”) adopts the amendment to 10 TAC Chapter 23, Subchapter B, §23.25 General Threshold and Selection Criteria

REASONED JUSTIFICATION: The purpose of amending the State HOME Investment Partnerships Program (“HOME”) Rule under Subchapter B is to require applicants for HOME Program funds to establish intent to apply for funding subject to the terms and conditions set forth at time of application receipt. Currently, the threshold requirements state that a resolution from the governing board of the applicant must be dated no later than 6 months from the date of application submission; proposed amendments to the rule would require the applicant to more specifically identify the fund source and, if applicable, Notice of Funding Availability under which funds are requested by the applicant.

The Department accepted public comment between September 22, 2017, and October 31, 2017. No comments were received concerning the amendment.

The Board approved the final order adopting the amendment on November 9, 2017.

STATUTORY AUTHORITY. The amendment is adopted pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

The adopted amendment affects no other code, article, or statute.

SUBCHAPTER B. AVAILABILITY OF FUNDS, APPLICATION REQUIREMENTS, REVIEW AND AWARD PROCEDURES, GENERAL ADMINISTRATIVE REQUIREMENTS, AND RESALE AND RECAPTURE OF FUNDS

§23.25. General Threshold and Selection Criteria.

(a) General Threshold. All Applicants and Applications to administer a HOME Program award from the Department must submit or comply with the following:

(1) an Applicant certification of compliance with state rules promulgated by the Department, and federal laws, rules and guidance governing the HOME Program as provided in the Application;

(2) a Resolution ~~signed and dated within the six (6) months preceding the Application submission date~~ from the Applicant's direct governing body which includes:

(A) authorization of the submission of the Application specifying the NOFA under which funds are requested for Contract award Applications;

(B) commitment and amount of cash reserves, if applicable, for use during the Contract or RSP Agreement term;

(C) source of funds for Match obligation and Match dollar amount, if applicable;

(D) name and title of the person authorized to represent the organization and who also has signature authority to execute a Contract and grant agreement or loan documents, as applicable, unless otherwise stated- ;

(E) date that the resolution was passed by the governing body, which must be within six (6) months preceding Application submission for Reservation System Participation Agreement Applications, and no earlier than the date of the Department's Governing Board approval of the NOFA for Contract award Applications.

(3) any Applicant requesting \$25,000 or more must be registered in the System for Award Management (SAM) and have a current Data Universal Numbering System (DUNS) number;

(4) an Application fee of thirty dollars per Application;

(5) an Application must be substantially complete when received by the Department. An Application will be terminated if an entire tab of the Application is missing; has excessive omissions of documentation from the threshold or selection criteria or uniform Application documentation; or is so unclear, disjointed, or incomplete that a thorough review cannot reasonably be performed by the Department, as determined by the Department. Such Application will be terminated without being processed as an administrative deficiency. To the extent that a review was able to be performed, specific reasons for the Department's termination will be included in the notification sent to the Applicant but, because of the suspended review, may not include an all inclusive list of deficiencies in the Application.

(b) Selection Criteria. Applications for competitive awards consistent with a NOFA will be scored and ranked based on the following criteria. Selection criteria for which points are awarded will become a contractual requirement if the Applicant is awarded a Contract.

(1) Applicants will be required to submit a self-score within the Application. In no event will the points awarded to the Applicant exceed the point value of the self-score in any one selection criterion. Applicants must achieve a minimum staff determined score of fifteen (15) points to be awarded a Contract.

(2) Applicants may be awarded points under the following selection criteria:

(A) Homes Built to greater than or equal to IRC 2012 Standard. This selection criterion is applicable to Homeowner Rehabilitation Assistance ("HRA") Applications only. Applications may be awarded five (5) points if all reconstructed or newly constructed homes under the Contract will be built to a code that meets or exceeds IRC 2012 standards.

(B) Purchased Home Will Meet TMCS. This selection criterion is applicable to Homebuyer Assistance ("HBA") Applications only. Applications may be awarded five (5) points if all homes for which HBA is provided under the Contract pass an inspection prior to purchase that meets or exceeds TMCS.

(C) Previous HOME Award. All Applications may receive a maximum of five (5) points for past experience in the HOME Program as follows:

(i) Applications may be awarded five (5) points if the Applicant administered a HOME Contract

awarded within five (5) years of the date that Applications are first accepted under the NOFA. The previous HOME Contract for which points are requested must be of the same assistance type as that proposed in the Application and the Applicant must have met the 100 percent commitment benchmark of the Contract without requiring an amendment.

(ii) Applications may be awarded one (1) point for each reservation of the same assistance type which resulted in Commitment of Funds within twelve (12) months of the date that Applications are first accepted under the NOFA, but may not, in any event, receive more than four (4) points under this criterion.

(iii) Applications may be awarded two (2) points if the Applicant administered a HOME Contract awarded within five (5) years of the date that Applications are first accepted under the NOFA. The previous HOME Contract for which points are requested must be of the same assistance type as that proposed in the Application and all contractually required units must have been completed by the end of the Contract term in accordance with the original Contract, or as amended.

(D) Administrator Provides Expanded Services. This selection criterion is applicable to Tenant-Based Rental Assistance (TBRA) Applications only. Applicants may receive a maximum of five (5) points for the provision of services available to existing clients within twelve (12) months of the date that Applications are first accepted under the NOFA. Applicant must specify the types of services offered in the Application, and must provide documentation verifying the provision of each service within the specified timeframe. A maximum of one (1) point for each separate service may be awarded. Any service for which points are requested must be identified as provided under one of the following categories: Child Care, Nutrition, Job Training, Health, and Human Services. The services must be uniquely different as determined by the Department. The Department must be able to make a determination that the service stated in the Application was provided by the Applicant and qualifies for the corresponding point(s) when determining the points awarded under this criterion.

(E) Previous Monitoring History. All Applications may receive a maximum of five (5) points for the Applicant's previous monitoring history. The Department will consider the monitoring history for three (3) years preceding the date that Applications are first accepted under the NOFA when determining the points awarded under this criterion. Findings that were subsequently rescinded will not be considered findings for the purpose of this point criterion.

(i) Applications will be limited to a maximum of two (2) points if the Applicant has a monitoring close-out letter that included findings related to violations of procurement requirements.

(ii) Applications will be limited to a maximum of three (3) points if the Applicant has a monitoring close-out letter that included findings on miscalculation of Household income.

(iii) Applications may be awarded a maximum of four (4) points if the Applicant has a monitoring close-out letter that included findings but the findings were not related to miscalculation of Household income or violations of procurement requirements.

(iv) Applications may be awarded a maximum of five (5) points if the Applicant has not received any monitoring findings, including Applicants with no previous monitoring history.

(F) Applicant Staff with Income Eligibility Training or Financial Management Training. All

Applications may receive a maximum of five (5) points if a member of the Applicant's staff that will be involved in administration of the program if awarded, has attended TDHCA's 1st Thursday Income Eligibility training or has completed Financial Management 101: Introduction or Financial Management 201: A Closer Look, available through the HUD Exchange website, no earlier than one (1) year from the date that Applications are first accepted under the NOFA, or certifies that the staff member will attend TDHCA's 1st Thursday Income Eligibility training or HUD's on-line Financial Management 101 or 102 training prior to submission of a Activity for TDHCA approval. Activities may not be approved under a Contract until the staff member has attended 1st Thursday Income Eligibility training or HUD's on-line Financial Management trainings if points are awarded under this criterion.

(G) Section 8 Housing Choice Voucher Availability. This selection criterion is applicable to TBRA Applications only. Applications may be awarded a maximum of five (5) points if the waiting list(s) for the Section 8 Housing Choice Voucher ("HCV") program maintained by the Public Housing Authority ("PHA") with jurisdiction over the Service Area outlined in the Application exceeds a twelve (12) month wait time as of the date that Applications are first accepted under the NOFA, or if the PHA does not offer rental assistance under the HCV program. The Department must be able to make a determination that PHA's wait time exceeds twelve (12) months through documentation provided in the Application by the Applicant for requested points when determining the points awarded under this criterion.

(H) Lack of Single Family Activities within the Service Area within the Previous Two (2) Years. This selection criterion is applicable to HRA and HBA Applications only.

(i) Applications may be awarded a maximum of five (5) points if TDHCA HOME funds have not been awarded thorough a competitive award or been provided to an Activity of the same type as the assistance proposed in the Application, and within the Service Area designated in the Application within two (2) years of the date that Applications are first accepted under the NOFA.

(ii) Applications may be awarded a maximum of four (4) points if TDHCA HOME funds have been committed to Activities of the same type of assistance as that proposed in the Application, and within the Service Area designated in the Application, if the Applicant was not awarded funds to administer a Contract of the same type of assistance and was not the service provider for Activities submitted under an RSP agreement, within two (2) years of the date that Applications are first accepted under the NOFA.

(I) Program Restricted to First-Time Homebuyers. This selection criterion is applicable to HBA Applications only. Applications may be awarded a maximum of five (5) points if 100 percent of Households served are first-time homebuyers defined on the Department's Certification of First-Time Homebuyer Status Form.

(J) Program Restricted to Households at or below 60 percent AMFI. This selection criterion is applicable to HRA and TBRA Applications only. Applications may be awarded a maximum of five (5) points if 100 percent of Households served will have incomes at or below 60 percent AMFI for the county in which the Activity will be located.

(K) Priority for Certain Communities. All Applications may receive a maximum of two (2) points if at least one Colonia is included in the Service Area identified in the Application. Applicants awarded points under this criterion will be contractually required to maintain a Service Area that

includes at least one Colonia as identified on the Office of the Secretary of State's website.

Attachment 2: Preamble and amendment of SUBCHAPTER F, SUBCHAPTER F, §23.61 TENANT-BASED RENTAL ASSISTANCE (TBRA) GENERAL REQUIREMENTS

The Texas Department of Housing and Community Affairs (the “Department”) adopts an amendment to 10 TAC Chapter 23, Subchapter F, §23.61 *Tenant-Based Rental Assistance (TBRA) General Requirements*.

REASONED JUSTIFICATION: The purpose of amending the HOME Rule under Subchapter F is to require that units selected by tenants for occupancy under the Tenant-Based Rental Assistance (“TBRA”) program are two-fold. First, an amendment is proposed to ensure that units selected for rental by an assisted household are not owned by members of the assisted household’s immediate family, with an exception for units that have unique accessibility features for persons with disabilities that are not readily available in the service area. This amendment will more closely align the HOME Rule with the requirements of the Section 8 Housing Choice Voucher Program, allowing tenants a more seamless transition between temporary HOME assistance and more permanent assistance offered under the Section 8 Housing Choice Voucher Program. Second, an additional amendment is proposed to ensure that administrators of the HOME Program comply with requirements to conduct a rent-reasonableness analysis for each unit to be occupied by a HOME assisted household.

The Department accepted public comment between September 22, 2017, and October 31, 2017. No comments were received concerning the amendment.

The Board approved the final order adopting the amendment on November 9, 2017.

STATUTORY AUTHORITY. The amendment is adopted pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

The adopted amendment affects no other code, article, or statute.

§23.61.Tenant-Based Rental Assistance (TBRA) General Requirements.

- (a) The Household must participate in a self-sufficiency program.
- (b) The amount of assistance will be determined using the Housing Choice Voucher method.
- (c) Households certifying to zero income must also complete a questionnaire which includes a series of questions regarding how basic hygiene, dietary, transportation, and other living needs are met.
- (d) The minimum Household contribution toward gross monthly rent must be ten percent of the Household's gross monthly income.
- (e) Activity funds are limited to:
 - (1) rental subsidy: Each rental subsidy term is limited to no more than twenty-four (24) months. Total lifetime assistance to a Household may not exceed thirty-six (36) months cumulatively, except that a maximum of twenty-four (24) additional months of assistance, for a total of sixty (60) months

cumulatively may be approved if:

(A) the Household has applied for a Section 8 Housing Choice Voucher, HUD Section 811 Supportive Housing for Persons with Disabilities, HUD Section 811 Project Rental Assistance Demonstration, or HUD Section 202 Supportive Housing for the Elderly Program, and is placed on a waiting list during their TBRA participation tenure; and

(B) the Household has not been removed from the waiting list for the Section 8 Housing Choice Voucher, HUD Section 811 Supportive Housing for Persons with Disabilities, HUD Section 811 Project Rental Assistance Demonstration, or HUD Section 202 Supportive Housing for the Elderly Program due to failure to respond to required notices or other ineligibility factors; and

(C) the Household has not been denied participation in the Section 8 Housing Choice Voucher, HUD Section 811 Supportive Housing for Persons with Disabilities, HUD Section 811 Project Rental Assistance Demonstration, or HUD Section 202 Supportive Housing for the Elderly Program while they were being assisted with HOME TBRA; and

(D) the Household did not refuse to participate in the Section 8 Housing Choice Voucher, HUD Section 811 Supportive Housing for Persons with Disabilities, HUD Section 811 Project Rental Assistance Demonstration, or HUD Section 202 Supportive Housing for the Elderly Program when a voucher was made available.

(2) security deposit: no more than the amount equal to two (2) month's rent for the unit.

(3) utility deposit in conjunction with a TBRA rental subsidy.

(f) The payment standard is determined at the date of assistance. The payment standard utilized by the Administrator must be:

(1) for metropolitan counties and towns, the current U.S. Department of Housing and Urban Development (HUD) Small Area Fair Market Rent for the Housing Choice Voucher Program;

(2) for nonmetropolitan counties and towns, the current HUD Fair Market Rent for the Housing Choice Voucher Program;

(3) for a HOME assisted unit, the current applicable HOME rent; or

(4) The Administrator may submit a written request to the Department for approval of a different payment standard. The request must be evidenced by a market study or documentation that the PHA serving the market area has adopted a different payment standard. An Administrator may request a Reasonable Accommodation as defined in §1.204 of this title for a specific household if the household, because of a disability, requires the features of a specific unit, and units with such features are not available in the Service Area at the payment standard.

(g) The lease agreement start date must correspond to the date of the TBRA rental coupon contract, and the rent reasonable analysis must be conducted prior to the date of the TBRA rental coupon contract.

(h) Activity soft costs are limited to \$1,200 per Household assisted for determining Household

income eligibility, including recertification, and conducting Housing Quality Standards (HQS) inspections. All costs must be reasonable and customary for the Administrator's Service Area.

(i) Funds for administrative costs are limited to 4 percent of Direct Activity Costs, excluding Match funds. Funds for administrative costs may be increased an additional 1 percent of Direct Activity Costs if Match is provided in an amount equal to 5 percent or more of Direct Activity Costs.

(j) Rental units must be inspected prior to occupancy, annually upon Household recertification, and must comply with HQS established by HUD.

(k) Administrators must have a written agreement with Owner that the Owner will notify the Administrator within one (1) month if a tenant moves out of an assisted unit prior to the lease end date.

(l) Administrator must not approve a unit if the owner is by consanguinity, affinity, or adoption the parent, child, grandparent, grandchild, sister, or brother of any member of the assisted Household, unless the Administrator determines that approving the unit would provide Reasonable Accommodation for a Household member who is a Person with Disabilities. This restriction against Administrator approval of a unit only applies at the time the Household initially receives assistance under a Contract or Agreement, but does not apply to Administrator approval of a recertification with continued tenant-based assistance in the same unit.

(l) Administrators must maintain Written Policies and Procedures established for the HOME Program in accordance with §10.610 of this title, except that where the terms Owner, Property, or Development are used Administrator or Program will be substituted, as applicable. Additionally, the procedures in subsection (n) of this section (relating to the Violence Against Women Act (if in conflict with the provisions in §10.610 of this title)) will govern.

(m) Administrators serving a Household under a Reservation Agreement may not issue a Certificate of Eligibility to the Household prior to reserving funds for the project.

(n) Administrators are required to comply with regulations and procedures outlined in the Violence Against Women Act (VAWA), and provide tenant protections as established in the Act.

(1) An Administrator of Tenant-Based Rental Assistance must provide all Applicants (at the time of admittance or denial) and Households (before termination from the Tenant-Based Rental Assistance program or from the dwelling assisted by the Tenant-Based Rental Assistance Coupon Contract) the Department's "Notice of Occupancy Rights under the Violence Against Women Act", (based on HUD form 5380) and also provide to Households "Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking" (HUD form 5382) prior to execution of a Rental Coupon Contract and before termination of assistance from the Tenant-Based Rental Assistance program or from the dwelling assisted by the Tenant-Based Rental Assistance coupon contract.

(2) Administrator must notify the Department within three (3) calendar days when tenant submits a Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking and/or alternate documentation to Administrator and must submit a plan to Department for continuation or termination of assistance to affected Household members.

(3) Notwithstanding any restrictions on admission, occupancy, or terminations of occupancy or assistance, or any Federal, State or local law to the contrary, Administrator may "bifurcate" a rental coupon contract, or otherwise remove a Household member from a rental coupon contract, without regard to whether a Household member is a signatory, in order to evict, remove, terminate occupancy rights, or terminate assistance to any individual who is a recipient of TBRA and who engages in criminal acts of physical violence against family members or others. This action may be taken without terminating assistance to, or otherwise penalizing the person subject to the violence.

11

BOARD ACTION REQUEST

COMPLIANCE DIVISION

NOVEMBER 9, 2017

Presentation, discussion, and possible action on an order proposing actions to 10 TAC Chapter 10, Uniform Multifamily Rules including the: 1) proposed amendment in Subchapter H, Income and Rent Limits, of §10.1002, Definitions, 2) proposed amendment in Subchapter H, Income and Rent Limits, of §10.1005, HOME and NSP, and 3) an order proposing a new §10.1006 to Subchapter H concerning National Housing Trust Fund (NHTF), and directing its publication for public comment in the *Texas Register*

RECOMMENDED ACTION

WHEREAS, 10 TAC Chapter 10 Subchapter H codifies the income and rent limits applicable to the multifamily programs administered by the Department and

WHEREAS, since the adoption of this rule the Department has two new programs, the Tax Credit Assistance Program Repayment Funds (“TCAP RF”) and National Housing Trust Fund (“NHTF”);

NOW, therefore, it is hereby

RESOLVED, that the Executive Director and his designees, be and each of them hereby are authorized, empowered, and directed, for and on behalf of the Department to cause the proposed amendments to 10 TAC, Chapter 10, Subchapter H, §10.1002 and §10.1005, and a new 10 TAC, Chapter 10, Subchapter H, §10.1006 in the form presented to this meeting, to be published in the *Texas Register* and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing.

BACKGROUND

The Department needs to update the rule regarding income and rent limits to incorporate TCAP RF and NHTF. The proposed amendments and new rule will address which income and rent limits apply to Developments with these funds.

TCAP RF is a Multifamily Direct Loan program and is primarily awarded as a source of HOME match funds; therefore, 10 TAC §10.1005, which codifies the applicable income and rent limits for HOME and NSP, was amended to include TCAP RF with these other programs.

The proposed new rule, 10 TAC§10.1006, addresses the income and rent limits for NHTF, which are published annually by HUD. HUD has determined that the applicable income and rent limits will be the greater of the 30% area median income or the federal poverty line.

10 TAC §10.1002, which is the definition section of the rule, was amended to clarify the distinction between TCAP RF and the Tax Credit Assistance Program (“TCAP”), which is also administered by the Department.

Attachment 1: Preamble and proposed amendment to 10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter H, Income and Rent Limits, §10.1002, Definitions and §10.1005, HOME and NSP; and new Subchapter H, Income and Rent Limits, §10.1006, concerning National Housing Trust Fund (NHTF)

The Texas Department of Housing and Community Affairs (the “Department”) proposes amendments to 10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter H, Income and Rent Limits, §10.1002, Definitions, and §10.1005, HOME and NSP; and proposes new Subchapter H, Income and Rent Limits, §10.1006, concerning National Housing Trust Fund (“NHTF”).

These amendments and new section define the Tax Credit Assistance Program (“TCAP”) and the Tax Credit Assistance Program Repayment Funds (“TCAP RF”) and codify the income and rent limits for these programs.

10 TAC §10.1002, Definitions: amendment defines the TCAP and TCAP RF administered by the Department.

10 TAC §10.1005, HOME and NSP: amendment codifies the income and rent limits applicable to TCAP RF.

10 TAC §10.1006, National Housing Trust Fund (NHTF): new section codifies the income and rent limits applicable to NHTF.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the amendments and new rule will be in effect, enforcing or administering the proposed amendments and new rule do not have any foreseeable implications related to costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the proposed amendments and new section will be in effect, there will be no change in the public benefit anticipated as a result of the proposed amendment and new rule. There will not be any economic cost to any individuals required to comply with the proposed amendments and new rule.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES. The Department has determined that there will be no economic effect on small or micro-businesses or rural communities.

GOVERNMENT GROWTH IMPACT STATEMENT. Mr. Irvine also has determined that, for the first five years a rule would be in effect:

1. The proposed rule does not create or eliminate a government program;
2. The proposed rule will not require a change in the number of employees of the Department;
3. The proposed rule will not require additional future legislative appropriations;
4. The proposed rule will not require an increase in fees paid to the Department;
5. The proposed rule will not create a new regulation;
6. The proposed rule will not expand, limit, or repeal an existing regulation;

7. The proposed rule will not increase or decrease the number of individuals subject to the rule's applicability; and
8. The proposed rule will neither positively nor negatively affect this state's economy.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held from November 24, 2017, through December 26, 2017. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Patricia Murphy, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 475-3359. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. Austin local time December 26, 2017.

STATUTORY AUTHORITY. The amendments and new rule are proposed pursuant to §2306.053 of the Texas Government Code, which authorizes the Department to adopt rules.

The proposed amendments and new rule affect no other code, article, or statute.

§10.1002 Definitions

(a) Unless otherwise defined here terms have the meaning in §10.3 of this chapter (relating to Definitions), or federal or state law.

(b) Multifamily Tax Subsidy Program Imputed Income Limit--Using the income limits provided by HUD pursuant to §142(d), the imputed income limit is the income limitation which would apply to individuals occupying the unit if the number of individuals occupying the unit were as described in paragraphs (1) and (2) of this subsection:

- (1) In the case of a unit which does not have a separate bedroom, 1 individual; or
- (2) In the case of a unit which has 1 or more separate bedrooms, 1.5 individuals for each separate bedroom.

(c) Tax Credit Assistance Program ("TCAP") – Funds awarded as part of the American Recovery and Reinvestment Act to assist Low Income Housing Tax Credit projects funded during 2007, 2008, and 2009.

(d) Tax Credit Assistance Program Repayment Funds ("TCAP RF") – Multifamily Direct Loan funds made available through -income generated from loan repayments from the Tax Credit Assistance Program.

§10.1005 HOME, TCAP RF and NSP

(a) HOME and TCAP RF Developments must use the HOME Program Income and Rent Limits that are calculated annually by HUD's Office of Policy Development and Research (PDR). The limits are made available for each Metropolitan Statistical Areas (MSA), Primary Metropolitan Statistical Areas (PMSA) and Area, District or County by State.

(1) Upon publication, the Department will determine which counties are in each MSA, PMSA, Area or District.

(2) Generally, PDR publishes income limits in tables identifying the following Area Median Gross Income (AMGI) by household size:

(A) Extremely Low-Income Limits which are generally 30 percent of median income, which will be shown as the 30 percent limit in the Department's income limits ;

(B) Very Low-Income Limits which are generally 50 percent of median income, ~~but not less than the State non-metropolitan median~~ which will be shown as the 50 percent limit in the Department's income limits;

(C) 60 percent Limits;

(D) Low-Income Limits which are generally 80 percent of the median income, but capped at the national median income with some exceptions which will be shown as the 80 percent limits in the Department's income limits.

(3) If not published, the Department will use the following methodology to calculate, without rounding, additional income limits from the HOME Program income limits released by PDR:

(A) To calculate the 30 percent AMGI, the 50 percent AMGI limit will be multiplied by .60 or 60 percent.

(B) To calculate the 40 percent AMGI, the 50 percent AMGI limit will be multiplied by .80 or 80 percent.

(C) To calculate the 60 percent AMGI, the 50 percent AMGI limit will be multiplied by 1.2 or 120 percent.

(b) PDR publishes High and Low HOME rent limits by bedroom size.

(c) PDR does not publish a 30 percent or 40 percent rent limits that certain HOME and TCAP RF Developments are required to use. These limits will be calculated using the same formulas described in §10.1004 of this subchapter (relating to Housing Tax Credit Properties, TCAP, Exchange and HTF).

(d) In the event that PDR publishes rent limits after the HOME program income limits, the Department permits HOME and TCAP RF Developments to delay the implementation of the 30 percent and 40 percent rent limits until the High and Low HOME rent limits must be used.

(e) NSP income limits are published annually by HUD for each county with tables identifying the 50 percent AMGI and 120 percent AMGI for household size. If not published, the Department will use the following methodology to calculate, without rounding, additional income limits from the HOME Program income limits released by HUD:

(1) To calculate the 30 percent AMGI, the 50 percent AMGI limit will be multiplied by .60 or 60 percent.

(2) To calculate the 40 percent AMGI, the 50 percent AMGI limit will be multiplied by .80 or 80 percent.

(3) To calculate the 60 percent AMGI, the 50 percent AMGI limit will be multiplied by 1.2 or 120 percent.

(4) To calculate the 80 percent AMGI, the 50 percent AMGI limit will be multiplied by 1.6 or 160 percent.

(f) If the LURA for an NSP Development restricts rents, the amount of rent the Development Owner is permitted to charge will be the High or Low HOME rent published by PDR or calculated in the same manner described in §10.1004 of this subchapter using the HOME income limits.

§10.1006 National Housing Trust Fund (NHTF)

(a) The 30% National Housing Trust Fund Income and Rent Limits are calculated annually by HUD's Office of Policy Development and Research ("PDR"). The limits are made available for each Metropolitan Statistical Areas (MSA), Primary Metropolitan Statistical Areas ("PMSA") and Area, District or County by State. Generally, PDR publishes income limits in tables identifying the Area Median Gross Income ("AMGI") by household size. The 30% NHTF income limit is the greater of the 30 percent limit and the federal poverty line. The 15% NHTF income limit will be half of the 30% NHTF income limit.

(b) PDR publishes 30% NHTF Rent Limits by bedroom size. The 30% NHTF rent limit is calculated based on the greater of the 30 percent AMGI or the federal poverty line. The 15% NHTF rent limit will be half of the 30% NHTF rent limit.

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BOARD ACTION REQUEST

811 PROGRAM

NOVEMBER 9, 2017

Presentation, discussion, and possible action on an Order adopting new 10 TAC Chapter 8, Section 811 Project Rental Assistance Program Rule, and directing that it be published in the Texas Register

RECOMMENDED ACTION

WHEREAS, the U.S. Department of Housing and Urban Development ("HUD") awarded the Department with two awards of Section 811 Project Rental Assistance Program ("811 PRA Program") funds, in 2013 and 2014 respectively, for a total award of \$24 million to provide rental assistance for approximately 681 units;

WHEREAS, 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, to date the 811 PRA Program has been governed through the rules and regulations stipulated in the Cooperative Agreements executed between the Department and HUD; through the Interagency Agreement executed between the Department and our State of Texas Health and Human Service agency partners; through the inclusion of some germane requirements having been included in the Qualified Allocation Plan ("QAP") or the Uniform Multifamily Rules each year; and through the Board approved policies for the program;

WHEREAS, staff believes it beneficial and transparent to establish a new rule that codifies those requirements previously handled through Board approved policies, and shift several of the requirements previously addressed in Chapter 10 or Chapter 11 into a rule specifically governing the 811 PRA Program;

WHEREAS, proposed 10 TAC Chapter 8, Section 811 Project Rental Assistance Program Rule, was published in the Texas Register on September 22, 2017, for public comment and the public comment period ended on October 23, 2017; and

WHEREAS, public comment was received, the Department has carefully considered the comments, and the Department has made some changes in response to the comments;

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 adoption of the new 10 TAC Chapter 8, Section 811 Project Rental Assistance Program Rule, in the form presented to this meeting, to be published in the Texas Register and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing, including the preparation of the subchapter specific preambles.

BACKGROUND

On September 7, 2017, the Board approved the proposed new, 10 TAC Chapter 8, Section 811 Project Rental Assistance Program Rule. The rule was published in the Texas Register on September 22, 2017, for public comment and the public comment period ended on October 23, 2017. Public comment was received from five commenters, and the Department has made changes in response to the comments as further described in the preamble attached.

Since 2011 the Department has been working collaboratively with the state's Health and Human Services agency partners to expand supportive housing in Texas. In 2013 the Department was awarded Section 811 Project Rental Assistance Program ("811 PRA Program") funds in the amount of \$12 million; upon submission of a subsequent year application, the Department was awarded additional funds in 2014 in the amount of \$12 million, for a total award of \$24 million to provide rental assistance for approximately 681 units. The populations eligible for the program are people with disabilities living in institutions, people with serious mental illness, and youth with disabilities exiting foster care.

The general design of the program nationally is that the state is required to identify multifamily properties to participate in the 811 PRA Program, who then receive rental assistance when they house eligible 811 tenants who are referred, through the Department, from service agencies. In Texas, as in most other states, the approach taken to garner multifamily participation has been through including participation in the 811 PRA Program as either a threshold or scoring item in the Housing Tax Credit Qualified Allocation Plan. In 2017, 811 PRA Program participation was included in the Multifamily Rules as a threshold requirement for all multifamily properties (with the exception of Bond applications).

Based on a variety of considerations and requirements that have varied from year to year, an application for multifamily funds generally is considered to meet threshold if either the 811 PRA Program commitment is made on another property already in existence in the owner's portfolio, or if not applicable, then the 811 PRA commitment is made on the property for which credits/funds are being applied. The Department has prioritized through the QAP and MF Rules the contribution of another property already in existence, as that significantly reduces the wait time required to begin to have access to the units, and therefore to begin to house eligible tenants. When designing the program, there was significant input from the disability and advocacy community that not just any property could be used from an existing portfolio, but only properties meeting certain criteria, which were considered to be a good measure of what attributes a property should have considering the needs of the 811 PRA eligible populations. These criteria to be used for approval of an existing property for 811 PRA Purposes, whether voluntarily requesting participation, or through participation in one of the Department's MF programs, have been presented and approved by the Board each year since 2014.

To date the 811 PRA Program has been governed through the rules and regulations stipulated in the Cooperative Agreements executed between the Department and HUD; through the Interagency Agreement executed between the Department and our State of Texas Health and Human Service agency partners; through the inclusion as noted above of some germane requirements having been included in the Qualified Allocation Plan each year; and through the above referenced Board approved policies for Existing Developments. To date, a specific rule had not been established for the program. However, staff has proposed rules that will reflect those criteria by which Existing Developments are evaluated.

Staff is recommending the adoption of the rule with the changes described in response to the public comments.

Attachment 1: Preamble and order adopting new 10 TAC Chapter 8, 811 Project Rental Assistance Program Rule

The Texas Department of Housing and Community Affairs (the "Department") adopts new 10 TAC Chapter 8, 811 Project Rental Assistance Program Rule, without changes to §8.1, Purpose; §8.2, Definitions; §8.4, Qualification Requirements for Existing Developments; §8.5, List of Qualified Existing Developments; and §8.6, Disposition of Conflicts with Other Department Rules, without changes to the text published in the September 22, 2017, Texas Register (42 TexReg 4865). Section 8.3, Participation as a Proposed Development and §8.7, Program Regulations and Requirements are adopted with changes to the proposed text and is published below.

REASONED JUSTIFICATION. The new 10 TAC Chapter 8, 811 Project Rental Assistance Program Rule, codifies procedures and evaluative criteria used in the Program, previously provided for in contracts and agreements, but not provided for in rule.

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS. The public comment period was from September 22, 2017, through October 23, 2017. Comments were accepted in writing and via email, with comments received from: (1) Kate Moore of Kate Moore Consulting, (2) Judy Telge of Coastal Bend Center for Independent Living, (3) Jean Langendorf of Disability Rights Texas, (4) Alyssa Carpenter, and (5) Walter Moreau of Foundation Communities.

§8.3(a)(2) Participation as a Proposed Development, Criteria.

COMMENT SUMMARY: Commenter 3 questioned whether or not the eligible Metropolitan Statistical Areas should be listed in the proposed rule because having them in rule makes them less flexible and more time consuming to change. The commenter feels the list should be flexible and responsive to changing needs such as natural disasters.

STAFF RESPONSE: The original seven Metropolitan Statistical Areas ("MSAs") were selected as part of a deliberative process involving many stakeholders. One additional MSA was added ahead of the 2016 Multifamily Cycle in response to public input from disability advocates, including the Disability Advisory Workgroup. The Department is working first to ensure that these MSAs are successful and the Target Population is well served in these areas. The Department would not make the decision to add more MSAs hastily and would want the public input associated with the rulemaking process to ensure the decision is well-considered. Staff recommends no changes to the rule.

§8.3(b)(3) Participation as a Proposed Development, Unit Eligibility.

COMMENT SUMMARY: Commenter 5 suggested that additional clarification be provided in regards to Units having a limitation for persons with disabilities. Specifically that having a preference for persons with disabilities or a restriction for special needs (which includes but is not limited to persons with disabilities), is not a limitation.

STAFF RESPONSE: Staff agrees that this is an important clarification and suggests the following rule change to the proposed rule.

(3) Units with an existing or proposed limitation for persons with disabilities are not eligible. A Development having a preference for Persons with Disabilities, or a use restriction for Special Needs Populations, which could include but is not limited to Persons with Disabilities, is not a Unit limitation for purposes of this item.

§8.3(c) Participation as a Proposed Development, Integration Requirement.

COMMENT SUMMARY: Commenter 5 pointed out that §1.15(c)(1) of the Department's Integrated Housing Rule seems to possibly conflict with §8.3(c) of this Rule, as the Integrated Housing Rule seems to indicate that the limit applies in combination with other special needs populations, while the 811 Rule indicates that it is specific to Persons with Disabilities.

STAFF RESPONSE: 10 TAC §1.15(c)(1) states that an entire Development cannot be 100% limited to persons with disabilities, or 100% limited to persons with disabilities in combination with other special needs populations. 10 TAC §1.15(c)(1)(A) and (B) go on to further provide maximum unit limitations that a Development may adopt for persons with disabilities. 10 TAC §8.3(c) incorporates this rule by reference. These sections of the rule and 10 TAC §8.3(b)(3), can be read without conflict, and thus staff recommend no changes to the rule.

§8.4. Qualification Requirements for Existing Developments, Proximity to Transportation.

COMMENT SUMMARY: Commenters 1 and 2 questioned why the proximity to public transportation is not a requirement for an existing development. Commenter 2 specifically noted this concern because individuals at 30% of area median income, and individuals relocating from institutions, more than likely do not own a car. Commenter 2 suggested adding "within proximity of transit" without a specific distance to at least encourage proximity instead of totally removing the requirement.

STAFF RESPONSE: Previously, the Section 811 Program Guidelines for Existing Developments, required that Existing Developments agree to provide at no cost to the tenant accessible transportation when the Property Management Office is open, such as cab vouchers or a specialized van on-site, to a bus or other public transit stop; or that the Development be within a quarter mile of a bus or other public transit stop. Because of this language, there were several properties in the 2017 cycle that were excluded from the program that may have been properties a tenant would have chosen. Staff understands the importance of transportation, but does not agree that the rule should presume the households do not have cars or that another deciding factor may not have even more weight (e.g., proximity to family). From actual current 811 households served, staff has had units without transportation access declined by households, but then those same units without transportation subsequently leased by an 811 household. If no applicants choose to live at a property that does not have bus stop proximity, then there is no harm to the program. However, by including those properties, tenant choice is expanded. In keeping with the program goal of maximizing tenant choice, staff does not recommend putting this requirement back into the rule. As it relates to the suggestion to add "within proximity of transit" without a specific distance to at least encourage proximity, staff does not agree. Adding vague or undefined distances will only create confusion and make determination of whether a property satisfies that requirement untenable. Staff recommends no changes to the proposed rule.

§8.4. Qualification Requirements for Existing Developments & §8.5. List of Qualified Existing Developments, Lender or Investor Letters

COMMENT SUMMARY: Commenter 4 recommended that the rule require approval of the lender and syndicator on an existing development as a qualification requirement for the 811 Program. They suggested that a similar edit be made to §8.5 as well.

STAFF RESPONSE: The Commenter is alluding to language in the 2017 Chapter 10 rules. In the 2017, when participation in the 811 Program was a threshold requirement for 9% Developments and Developments receiving Direct Loan funds, and therefore inability to participate affected meeting threshold, language was included that exempted an applicant if they could submit documentation of their lender or syndicator being unwilling to approve 811 participation. However, staff sees this issue as a function of threshold versus points. Participation in the 811 Program is now proposed as a point/selection criteria and therefore such a letter would not preclude applying for credits or direct loan funds, but merely means the applicant cannot receive the points. In both the 2015 and 2016 HTC cycles, when 811 was a point item, such language was not included. 811 staff has worked with lenders and investors whenever needed to educate them about the Section 811 PRA Program and get them comfortable with how it will work with a Development. To date, over three years of tax credit and direct loan participation in the program, there have not been any lenders or investors that the Department has worked with that ultimately refused to participate in the Section 811 PRA Program. Staff recommends no changes to the proposed rule.

§8.7(c) Program Regulations and Requirements, Unit Types.

COMMENT SUMMARY: Commenter 5 suggests that once unit types are defined and entered into Exhibit 1 of the Rental Assistance Contract, the unit types should remain the same throughout the duration of the 20 year RAC unless mutually agreed upon to be revised.

STAFF RESPONSE: The Department retains the right to select the unit types and change the unit types throughout the duration of the RAC in order to maximize tenant choice. The unit makeup staff is striving for at a given property is based on the actual demand for the development. For example, if a Development has 10 households interested in the Development and each of the 10 households are single-individuals, then the Department will ensure that Exhibit One of the Rental Assistance Contract is completed in such a way that these households can be served. The households on the waiting list for a property will change over time, which could necessitate a change to the unit types. The unit types will never be changed more than once per year, and will never exceed the maximum potential units designated in the Owner Participation Agreement. Staff recommends no changes to the proposed rule.

§8.7(h)(4) Rental Assistance Contracts, Unit Types.

COMMENT SUMMARY: Similar to the comment above, Commenter 5 suggests that the rule be revised to be clearer that the number of units in the RAC cannot be greater than the number indicated in the Participation Agreement.

STAFF RESPONSE: The Department agrees that the sentence noted may imply that the number could increase. Staff concurs with the change.

(4) TDHCA will designate the bedroom composition of the Assisted Units, as required by the RAC. However, based on an actual Eligible Tenant, this may fluctuate. It is possible that an Eligible Multifamily Property will have a RAC for fewer ~~a different number of~~ units than the number committed in the Participation Agreement.

§8.7(h)(8) Rental Assistance Contracts, Rent Increases.

COMMENT SUMMARY: Commenter 5 requests that 8.7(h)(8) be amended to provide more flexibility with when a development's rent limits and utility allowances can change because Multifamily Program rent limits change inconsistently.

STAFF RESPONSE: The Department has and is continuing to work with HUD to increase the flexibility of the program; however, this provision reflects federal program requirements. Staff recommends no change to the proposed rule.

§8.7(j)(2) Leasing Activities, Form of Lease.

COMMENT SUMMARY: Commenter 5 suggests that all Department-approved addendums should be made readily available for owners and the Department should delineate a clear process and timeline for Department review and approval of any other addendums already in use on other units in the property.

STAFF RESPONSE: The Department will strive towards reviewing addenda in a timely fashion. Staff commits to make addenda more readily available, but this does not require a rule change and staff recommends no change to the proposed rule.

§8.7(k)(3)(A) Rent.

COMMENT SUMMARY: Commenter 5 requests clarification that the enforced rent restriction be the maximum Department enforced rent restriction on the property (up to the 60% Area Median Income).

STAFF RESPONSE: Staff agrees with the comment regarding the maximum rents reflecting the maximum Department enforced rent at the Development. The rule has been changed to reflect that when the Development has a TDHCA enforced rent restriction that is equal to or lower than FMR that the initial rent limit is the maximum Department enforced rent restriction,

(A) If the ~~Assisted Unit~~Development has a TDHCA enforced rent restriction that is equal to or lower than Fair Market Rent ("FMR"), the initial rent is the maximum TDHCA enforced rent restriction at the property~~Development~~.

§8.7(k)(3)(D) Rent Restrictions

COMMENT SUMMARY: Commenter 5 also requested that the rule be revised to allow rent increases annually without a deadline tied to the anniversary of the Rental Assistance Contract.

STAFF RESPONSE: Regarding the rent increases, the deadline being tied to the anniversary of the Rental Assistance Contract is required by HUD. No change to the proposed rule is recommended for this comment.

§8.7(l)(3) Program Regulations and Requirements.

COMMENT SUMMARY: Commenter 3 voiced concern that the Department being notified of a temporary vacancy of a participating Eligible Household, when that household is still current on rent, is intrusive, on its face discriminatory, and a potential Fair Housing violation.

STAFF RESPONSE: Staff understands the perception that may have been created by this provision and agrees in changing the proposed rule. The intention of the requirement was definitely not to discriminate or be intrusive, but to protect the household from eviction in the event that the eligible tenant was hospitalized or reinstitutionalized. However, given that there are other adequate tenant protections to prevent a tenant from being subject to wrongful eviction, and in light of the concerns expressed by the commenter, Disability Rights Texas, the Department will remove this provision.

~~(3) Temporary Vacancy. If the Owner is made aware, the Owner will notify TDHCA if the Eligible Tenant has vacated the Eligible Multifamily Property for more than two (2) weeks, but is continuing to pay rent. An example of this could be for temporary hospitalization.~~

§8.7(l)(6) Vacancy Payments.

COMMENT SUMMARY: Commenter 5 suggests that the Department replace the word “may” with “will” to provide Owners with assurances that vacancy payments will be made available during the applicable time period for participating units.

STAFF RESPONSE: The Department is committed to providing Owners with vacancy payments that meet the eligibility criteria, but cannot codify all scenarios where payments would not be made. Staff recommends no changes to the proposed rule.

§8.7(l)(8) Eviction

COMMENT SUMMARY: Commenter 5 suggests that the Department remove the tie between the Conflict Management process and eviction. Commenter suggests that if the Conflict Management process remains, the Department provide greater information on its website.

STAFF RESPONSE: Staff has modified this section to clarify exactly what the expectation is for Owner/Managers who are serving a Notice to Vacate or a Notice of Nonrenewal to the Tenant. The process has been separated from the Conflict Management process, however Owner/Managers will need to provide notice to the Department at least three calendar days before providing such notices. This can be done by emailing the 811 TDHCA Point of Contact.

(8) Eviction and Nonrenewal. Owners are required to notify the Department by sending a copy of the applicable notice via email to the 811 TDHCA Point of Contact, as identified in the Owner Participation Agreement, at least three calendar days before providing a Notice to Vacate or a Notice of Nonrenewal to the Tenant. Before evicting an Eligible Tenant, the Owner must have accessed, at least once in the two (2) months prior to eviction, the Section 811 Project Rental Assistance Program's Conflict Management process.

§8.7(n) Owner Training.

COMMENT SUMMARY: Commenter 5 urges the Department to offer in-person property management training on the Section 811 PRA Program.

STAFF RESPONSE: The Department has provided extensive and frequent in-person property management training to participating Owners, compliance staff and property managers and is committed to continuing this practice. However, ultimately, is the responsibility of a Development to ensure that their staff is implementing program regulations compliantly. Staff recommends no changes to the proposed rule.

8.7(y)(3) Conflict Management.

COMMENT SUMMARY: Commenter 5 suggests that TDHCA remove the Conflict Management process tied to eviction.

STAFF RESPONSE: The Department, in §8.7(l)(8) has removed the connection between Conflict Management and eviction. This section in (y) does not include that requirement. Staff recommends no changes to the proposed rule.

STATUTORY AUTHORITY. The new rule is adopted pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

The adopted new rule affects no other code, article or statute.

<rule>

§8.1. Purpose.

§8.2. Definitions.

§8.3. Participation as a Proposed Development.

§8.4. Qualification Requirements for Existing Developments.

§8.5. List of Qualified Existing Developments.

§8.6. Disposition of Conflicts with Other Department Rules.

§8.7. Program Regulations and Requirements.

§8.1. Purpose.

The purpose of the Section 811 Project Rental Assistance Program ("Section 811 PRA Program") is to provide federally funded project-based rental assistance to participating multifamily properties on behalf of extremely low-income persons with disabilities linked with long term services provided through a formalized partnership and other state of Texas agencies that provide health and human services.

§8.2. Definitions.

Terms defined in this chapter apply to the 811 PRA Program administered by the Department. Any capitalized terms not specifically mentioned in this section or any section referenced in this document shall have the meaning ascribed to them in or for the purposes of the Program Requirements.

(1) Assisted Units--rental units made available to or occupied by an Eligible Tenant in Eligible Multifamily Properties receiving assistance under 42 U.S.C. § 8013(b)(3)(A).

(2) Contract Rent--the total amount of rent specified in the Rental Assistance Contract (RAC) as payable to the Owner for the Assisted Unit.

(3) Cooperative Agreement--means the Section 811 Project Rental Assistance Program Cooperative Agreement including all exhibits and attachments thereto, by and between the Department as "Grantee" and HUD, entered into as a condition to and in consideration of TDHCA's participation in the Section 811 Project Rental Assistance Program.

(4) Eligible Applicant--means an Extremely Low-Income Person with Disabilities, between the ages of 18 and 62, and Extremely Low Income Families, which includes at least one Person with a Disability, who is between the ages of 18 and 62 at the time of admission. The Person with a Disability must be eligible for community-based, long-term care services as provided through Medicaid waivers, Medicaid state plan options, comparable state funded services or other appropriate services related to the type of disability(ies) targeted under the Inter-Agency Partnership Agreement.

(5) Eligible Families or Eligible Family--shall have the same meaning as Eligible Tenant.

(6) Eligible Multifamily Property or Eligible Multifamily Properties--means any new or existing property owned by a private or public nonprofit, or for-profit entity with at least five (5) housing units and as specifically identified in a Participation Agreement.

(7) Eligible Tenant--means an Eligible Applicant who is being referred to available Assisted Units in accordance with the Inter-Agency Partnership Agreement and for whom community-based, long-term care services are available at time of referral. Such services are voluntary; referral shall not be based on willingness to accept such services. Eligible Tenant also means an Extremely Low-Income Person with a Disability, between the ages of 18 and 62 at the time of referral, and Extremely Low-Income Families, which includes at least one Person with a Disability, who is between the ages of 18 and 62 at the time of referral. Also referred to as an Eligible Family.

(8) Existing Development--means for purposes of 811 PRA Program participation, a property within the Department's portfolio that is not actively applying for multifamily funds at the time, and is being considered to serve as the Eligible Multifamily Property as part of an Applicant's or an Affiliate's current application. For full applications made on or after January 1, 2018, Existing Developments do not include properties for which the only Ownership interest is through the participation of a Historically Underutilized Business, which owns less than 50% of an Existing Development.

(9) Extremely Low-Income--means a household whose annual income does not exceed thirty percent (30%) of the median income for the area, as determined by HUD, with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than thirty percent (30%) of the median income for the area if HUD finds that such variations are necessary because of unusually high or low family incomes. HUD's income exclusions, as defined under 24 CFR §5.609 (as amended), apply in determining income eligibility and Eligible Tenant's rent.

(10) HUD--means the U. S. Department of Housing and Urban Development.

(11) Inter-Agency Partnership Agreement--means the Inter-Agency Partnership Agreement between TDHCA and State Health and Human Services Medicaid Agency(ies) that provides a formal structure for collaboration to participate in TDHCA's Section 811 Project Rental Assistance Program to develop permanent supportive housing for Extremely Low-Income Persons with Disabilities.

(12) Multifamily Rules--Chapters 10, 11, and/or 13 of this Title, as applicable.

(13) Owner--means the entity that owns the Eligible Multifamily Property. Additionally, Owner means the entity named as such in the Property Agreement, its successors, and assigns.

(14) Owner & Property Management Manual--means a set of guidelines designed to be an implementation tool for the Program, which allows the Owner and the Owner's designated property manager to better administer the Program, which also includes adherence to the "Owner Occupancy Requirements" set forth in Section IV of HUD Notice H 2013-24.

(15) Participation Agreement--that agreement to be executed by the Owner and the Department reflecting the agreement of participation in the Section 811 Project Rental Assistance Program with regards to a given number of assisted housing units on a certain multifamily rental housing properties.

(16) Persons with Disability or Persons with Disabilities--shall have the same meaning as defined under 42 U.S.C. §8013(k)(2) and 24 CFR §891.305.

(17) Program--TDHCA's Section 811 Project Rental Assistance Program under Section 811 of the Cranston-Gonzales National Affordable Housing Act [42 U.S.C. §8013(b)(3)(A)], as amended by the Frank Melville Supportive Housing Investment Act of 2010 (Public Law 111-374) designed to provide permanent supportive housing for Extremely Low-Income persons with disabilities receiving long term supports and services in the community.

(18) Program Requirements--means but is not limited to: ~~(1)~~ the Participation Agreement (sometimes called the Property Agreement); ~~(2)~~ Tex. Gov't. Code Ann. Chapter 2306; ~~(3)~~ the applicable state program rules under Title 10, Parts 1, 2, and 8 of the Texas Administrative Code; ~~(4)~~ the Owner & Property Management Manual; ~~(5)~~ Part I of the Rental Assistance Contract attached as Exhibit 8 to the Cooperative Agreement; ~~(6)~~ Part II of the Rental Assistance Contract attached as Exhibit 9 to the Cooperative Agreement; ~~(7)~~ the Use Agreement; ~~(8)~~ Program Guidelines attached as Exhibit 5 to the Cooperative Agreement; ~~(9)~~ HUD Notice 2013-24 issued on August 23, 2013; ~~(10)~~ Section 811 of the Cranston-Gonzales National Affordable Housing Act ~~[(42 U.S.C. §8013(b)(3)(A))]~~, as amended by the Frank Melville Supportive Housing Act of 2010 ~~[(Public Law 111-374)]~~; ~~(11)~~ Consolidated and Further Continuing Appropriations Act of 2012 ~~[(Public Law 112-55)]~~; ~~(12)~~ Notice of Funding Availability (NOFA) for Fiscal Year 2012 Section 811 Project Rental Assistance Program published on May 15, 2012; ~~(13)~~ Notice of Funding Availability (NOFA) for Fiscal Years 2013 Section 811 Project Rental Assistance Program published on March 4, 2014, and Technical Corrections to NOFA; and ~~(14)~~ all laws applicable to the Program.

(19) Proposed Development--the Development proposes to be awarded funds or an allocation as part of a Multifamily application.

(20) Rental Assistance Contract (RAC)--means the HUD contract (form HUD-92235-PRA and form HUD-92237-PRA) by and between TDHCA and the Owner of the Eligible Multifamily Property which sets forth additional terms, conditions and duties of the Parties with respect to the Eligible Multifamily Property and the Assisted Units.

(21) Rental Assistance Payments--means the payment made by TDHCA to Owner as provided in the Rental Assistance Contract. Where the Assisted Units are leased to an Eligible Tenant, the payment is the difference between the Contract Rent and the Tenant Rent. An additional payment is made to the Eligible Tenant when the Utility Allowance is greater than the Total Tenant Payment. A vacancy payment may be made to the Owner when an Assisted Units is vacant, in accordance with the RAC and other Program Requirements.

(22) Target Population--means the specific group or groups of Eligible Applicants and Eligible Tenants described in TDHCA's Inter-Agency Partnership Agreement who are intended to be solely served or to be prioritized under TDHCA's Program.

(23) Tenant Rent--means the rent as defined in 24 CFR Part 5.

(24) Total Tenant Payment--means the payment as defined in 24 CFR Part 5.

(25) Use Agreement--means an agreement by and between TDHCA and Owner in the form prescribed by HUD under Exhibit 10 of the Cooperative Agreement (form HUD-92238-PRA) encumbering the Eligible Multifamily Property with restrictions and guidelines under the Program for operating Assisted Units during a thirty (30) year period, to be recorded in the official public property records in the county where the Eligible Multifamily Property is located.

§8.3. Participation as a Proposed Development.

(a) To the extent that Applications under Multifamily Rules allow for and/or require use of a Proposed Development to participate in the 811 PRA Program, the Proposed Development must satisfy the following criteria:

(1) Unless the Development is also proposing to use any federal funding or has received federal funding after 1978, the Development must not be originally constructed before 1978;

(2) The Development Site must be located in one of the following areas: Austin-Round Rock MSA, Brownsville-Harlingen MSA, Corpus Christi MSA; Dallas-Fort Worth-Arlington MSA; El Paso MSA;

Houston-The Woodlands-Sugar Land MSA; McAllen-Edinburg-Mission MSA; or San Antonio-New Braunfels MSA; and

(3) No new construction of structures shall be located in the mapped 500-year floodplain or in the 100-year floodplain according to FEMA's Flood Insurance Rate Maps (FIRM). Rehabilitation Developments that have previously received HUD funding or obtained HUD insurance do not have to follow sections (A) – (C) of this subparagraph. Except for sites located in coastal high hazard areas (V Zones) or regulatory floodways, Existing structures are eligible in these areas, but must meet the following requirements:

(A) The existing structures must be flood-proofed or must have the lowest habitable floor and utilities elevated above both the 500-year floodplain and the 100-year floodplain.

(B) The project must have an early warning system and evacuation plan that includes evacuation routing to areas outside of the applicable floodplains.

(C) Existing structures in the 100-year floodplain must obtain flood insurance under the National Insurance Program. No activities or projects located within the 100-year floodplain may be assisted in a community that is not participating in or has been suspended from the National Flood Insurance Program.

(b) The following requirements must be satisfied for the Units that participate in the 811 PRA Program. Failure for a Unit to meet these requirements does not make the entire Development ineligible, rather only those Units.

(1) Units in the Development are not eligible for Section 811 assistance if they have an existing or proposed project-based or operating housing subsidy attached to them or if they have received any form of long-term operating subsidy within the last six months prior to receiving Section 811 Rental Assistance Payments.

(2) Units with an existing or proposed 62 or up age restriction are not eligible.

(3) Units with an existing or proposed limitation for persons with disabilities are not eligible. [A Development having a preference for Persons with Disabilities, or a use restriction for Special Needs Populations, which could include but is not limited to Persons with Disabilities, is not a Unit limitation for purposes of this item.](#)

(4) Units with an existing or proposed occupancy restriction for households at 30% or below are not eligible, unless there are no other Units at the Development.

(c) Developments cannot exceed the integration requirements of the Department and HUD. Properties that are exempt from the Department's Integrated Housing Rule at §1.15 of this Title (such as housing for special needs) are not exempt from HUD's Integration Requirement maximum of 25%. The maximum number of units a Development can set aside (restrict), or have an occupancy preference for persons with disabilities, including Section 811 PRA units is:

(1) 25% for Housing Developments with less than 50 Units, and

(2) 18% for Housing Developments with 50 or more Units or for Elderly Limitation Developments.

(d) Section 811 PRA units must be dispersed throughout the Development.

§8.4. Qualification Requirements for Existing Developments.

Eligible Existing Developments must meet all of the requirements in §8.3 of this Chapter. In addition, the Existing Development must meet the following requirements:

(1) The Development received an award (tax credit, direct loan, etc.) under a TDHCA administered program in or after 2002, or has been otherwise approved by the Department in writing;

(2) The Development has at least 5 housing units;

(3) For Developments that were placed in service on or before January 1, 2017, the most current vacancy report as reflected in CMTS evidences that the Development maintained at least 85 percent physical occupancy for a period of at least 3 consecutive months;

(4) For Developments that have received a UPCS inspection, the Development received a UPCS score of at least 80 on its most recent TDHCA, REAC inspection and all compliance issues associated with that inspection have been resolved;

(5) The Development is operating in accordance with the accessibility requirements of Section 504, the Rehabilitation Act of 1973 (29 U.S.C. Section 794), as specified under 24 C.F.R. Part 8, Subpart C, or operating under the 2010 ADA standards with the exceptions listed in "Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities" Federal Register 79 FR 29671; and

(6) The Development is not Transitional Housing as defined in the 2018 Uniform Multifamily Rules.

§8.5. List of Qualified Existing Developments.

A proposed list of Existing Developments within the Department's portfolio that satisfy the requirements of §8.4 will be released on the Department's website no later than November 1, and a final list will be posted by December 15 of each year. If either date falls on a weekend or holiday, the list will be released on the next business day.

§8.6. Disposition of Conflicts with other Department Rules.

To the extent that any conflicts arise between this rule and the rules provided in Chapter 10, Uniform Multifamily Rules, Chapter 11, Qualified Allocation Plan, and Chapter 13, Multifamily Direct Loan Rule, federal requirements will first prevail, after which the requirements of the other Multifamily Rules, will take precedence.

§8.7. Program Regulations and Requirements.

(a) Participation in the 811 PRA Program is encouraged and incentivized through the Department's Multifamily Rules. Once committed in the Multifamily Application, a Development must not accept a fund source that would prevent it from participating in the 811 PRA Program.

(b) An Existing Development that is already participating in the 811 PRA Program is eligible to have an additional commitment of 811 PRA Units as long as the integrated housing requirements as noted in §8.3(c) of this Chapter is not violated.

(c) The types (e.g., accessible, one bedroom, first floor, etc) and the specific number of Assisted Units (e.g., units 101, 201, etc.) will be "floating" (flexible) and dependent on the needs of the Department and the availability of the Assisted Units on the Eligible Multifamily Property.

(d) Occupancy Requirements. Owner is required to follow all applicable Program Requirements including but not limited to the following occupancy requirements found in HUD Handbook 4350.3 REV-1 and Housing Notices:

(1) H 2012-06, Enterprise Income Verification (EIV) System

(2) H 2012-26, Extension of Housing Notice 2011-25, Enterprise Income Verification (EIV) & You Brochure- Requirements for Distribution and Use

(3) H 2012-22, Further Encouragement for O/As to Adopt Optional Smoke-Free Housing Policies

(4) H 2012-11, State Registered Lifetime Sex Offenders in Federally Assisted Housing

(5) H 2012-09, Supplemental Information to Application for Assistance Regarding Identification of Family Member, Friend or Other Persons or Organization Supportive of a Tenant for Occupancy in HUD Assisted Housing

(6) H 2017-5, Violence Against Women Act (VAWA) Reauthorization Act of 2013,-Additional Guidance for Multifamily Owners and Management Agents

(e) Use Agreements. The Owner must execute the Use Agreement, as found in Exhibit 10 of the Cooperative Agreement, before the execution of the RAC and comply with the following:

(1) Use Agreement should be properly recorded according to local laws in the official public records on the Eligible Multifamily Property. The Owner shall provide to TDHCA within 30 days of its receipt of the recorded Use Agreement, a copy of the executed, recorded Use Agreement.

(2) From the date the Property Agreement is entered into, the Owner shall not enter into any future use agreements or other subsidy programs that would diminish the number of Assisted Units that can be placed on the Eligible Multifamily Property.

(3) TDHCA will enforce the provisions of the Use Agreement and RAC consistent with HUD's internal control and fraud monitoring requirements.

(f) Tenant Certifications, Reporting and Compliance

(1) TRACS & EIV Systems. The Owner shall have appropriate software to access the Tenant Rental Assistance Certification System (TRACS) and the Enterprise Income Verification (EIV) System. The Owner shall be responsible for ensuring Program information is entered into these systems. TRACS is the only system by which an Eligible Multifamily Property can request Project Rental Assistance payments.

(2) Outside Vendors. The Owner has the right to refuse assistance from outside vendors hired by TDHCA, but is still required to satisfy the Program Requirements.

(3) Tenant Certification. The Owner shall transmit Eligible Tenant's certification and recertification data, transmit voucher data, and communicate errors electronically in a form consistent with HUD reporting requirements for HUD Secure Systems.

(g) Tenant Selection and Screening

(1) Target Population. TDHCA will screen Eligible Applicants for compliance with TDHCA's Program Target Population criteria and do an initial screening for Program Requirements. The Inter-Agency Partnership Agreement describes the specific Target Population eligible for TDHCA's Program. The Target Population may be revised, with HUD approval.

(2) Tenant Selection Plan. Upon the execution of the Participation Agreement, the Owner will submit the Eligible Multifamily Property's Tenant Selection Criteria, as defined by and in accordance with 10 TAC §10.610 (as amended), to TDHCA for approval. TDHCA will review the Tenant Selection Plan for compliance with existing Tenant Selection Criteria requirements, and consistent with TDHCA's Section 811 PRA Participant Selection Plan.

(3) Tenant Eligibility and Selection. The Owner is responsible for ultimate eligibility and selection of an Eligible Tenant and will comply with the following:

(A) The Owner must accept referrals of an Eligible Tenant from TDHCA and retain copies of all applications received. The Owner is responsible for notifying the prospective Eligible Tenant and TDHCA in writing regarding any denial of a prospective Eligible Tenant's application to an Eligible Multifamily Property and the reason for said denial. In the notice of denial, the Owner is responsible for notifying the Eligible Tenant of the right to dispute a denial, as outlined in HUD Handbook 4350.3. The results of the dispute must be sent to the Eligible Tenant and TDHCA in writing.

(B) The Owner is responsible for determining age of the qualifying member of the Eligible Families. Eligible Family member must be at least 18 years of age and under the age of 62.

(C) The Owner is responsible for criminal background screening as required by HUD Handbook 4350.3.

(D) Verification of Income. The Owner is responsible for determining income of Eligible Families. The Owner shall verify income through the Enterprise Income Verification (EIV) System. The Owner must certify an Eligible Tenant and Eligible Families at least annually and verify their income. If the household is also designated under the Housing Tax Credit or other Department administered program, the Owner must obtain third party, or first hand, verification of income in addition to using the EIV system.

(h) Rental Assistance Contracts

(1) Applicability. If requested by TDHCA, the Owner shall enter into a RAC. Not all properties with an Owner Participation Agreement will have a RAC, but when notified by TDHCA, the Eligible Multifamily Property must enter into a RAC(s) and begin serving Eligible Applicants.

(2) Notice. TDHCA will provide written notice to the Owner if and when it intends to enter into a RAC with the Owner.

(3) Assisted Units. TDHCA will determine the number of Units (up to the maximum listed in the Property Agreement) to place in the RAC(s) which may be fewer than the number of Units identified in the Property Agreement.

(4) TDHCA will designate the bedroom composition of the Assisted Units, as required by the RAC. However, based on an actual Eligible Tenant, this may fluctuate. It is possible that an Eligible Multifamily Property will have a RAC for ~~fewer a different number of~~ units than the number committed in the Participation Agreement.

(5) If no additional applicants are referred to the property, the RAC may be amended to reduce the number of Assisted Units. Owners who have an executed RAC must continue to notify TDHCA of any vacancies for units not under a RAC if additional units were committed under the Agreement. For instance, if the Owner has committed 10 units under the Agreement and only has a RAC for five Assisted Units, the Owner must continue to notify TDHCA of all vacancies until there is a RAC for 10 Assisted Units.

(6) Amendments. The Owner agrees to amend the RAC(s) upon request of TDHCA. Some examples are amendments that may either increase or decrease the total number of Assisted Units or increase or decrease the associated bedroom sizes; multiple amendments to the RAC may occur over time. The total number of Assisted Units in the RAC will not exceed the number of Assisted Units committed in the Participation Agreement, unless by request of the Owner.

(7) Contract Term. TDHCA will specify the effective date of the RAC. During the first year of the RAC and with approval from HUD, the Owner may request to align the anniversary date of the RAC with existing federal or state housing programs layered on the Eligible Multifamily Property.

(8) Rent Increase. Owners must submit a written request to TDHCA 30 days prior to the anniversary date of the RAC to request an annual increase.

(9) Utility Allowance. The RAC will identify the TDHCA approved Utility Allowance being used for the Assisted Units for the Eligible Multifamily Property. The Owner must notify TDHCA if there are changes to the Utility Allowance calculation methodology being used.

(10) Termination. Although TDHCA has discretion to terminate a RAC due to good cause, an Owner cannot opt-out of a RAC. The RAC survives a foreclosure, assignment, sale in lieu of foreclosure, or sale of the Eligible Multifamily Property, to the extent allowed by law.

(11) Foreclosure of Eligible Multifamily Property. Upon foreclosure, assignment, sale in lieu of foreclosure, or sale of the Eligible Multifamily Property, to the extent allowed by law:

(A) The RAC shall be transferred to new owner by contractual agreement or by the new owner's consent to comply with the RAC, as applicable;

(B) Rental Assistance Payments will continue uninterrupted in accordance with the terms of the RAC; and

(C) Voluntary and involuntary transfers or conveyances of property must adhere to the ownership transfer process in 10 TAC §10.406, as amended, regarding Ownership Transfer requests.

(i) Advertising and Affirmative Marketing

(1) Advertising Materials. Upon the execution of the Property Agreement, the Owner must provide materials for the purpose of advertising the Eligible Multifamily Property, including but not limited to:

(A) depictions of the units including floor plans;

(B) brochures;

(C) tenant selection criteria;

(D) house rules;

(E) number and size of available units;

(F) number of units with accessible features (including, but not limited to units designed to meet Uniform Federal Accessibility Standards, the Fair Housing Act, or the Americans with Disabilities Act);

(G) documentation on access to transportation and commercial facilities; and

(H) and a description of onsite amenities.

(2) Affirmative Marketing. TDHCA and its service partners will be responsible for affirmatively marketing the Program to Eligible Applicants.

(3) At any time, TDHCA may choose to advertise the Eligible Multifamily Property, even if the Eligible Multifamily Property has not yet entered into a RAC.

(j) Leasing Activities

(1) Segregation of Assisted Units. The Owner must take actions or adopt procedures to ensure that the Assisted Units are not segregated to one area of a building (such as on a particular floor or part of a floor in a building) or in certain sections within the Eligible Multifamily Property.

(2) Form of Lease. The Owner will use the HUD Section 811 PRA Model Lease (HUD-92236-PRA), Exhibit 11 of the Cooperative Agreement and any Department approved Addendums, for all Eligible Families once a RAC is signed. The initial lease will be for not less than one year.

(3) Communication. Owners are required to document in writing all communication between the Eligible Tenant and the Owner, or Owner-designated agent regarding applications, notifications, evictions, complaints, non-renewals and move outs.

(4) Lease Renewals and Changes. The Owner must notify TDHCA of renewals of leases with Eligible Families and any changes to the terms of the lease.

(k) Rent

(1) Tenant Rent Payment. The Owner is responsible for remitting any Tenant Rent payment due to the Eligible Tenant if the Utility Allowance exceeds the Total Tenant Payment. The Owner will determine the Tenant Rent payment of the Eligible Tenant, based on HUD Handbook 4350.3, and is responsible for collecting the Tenant Rent payment.

(2) Rent Increase. Owner must provide the Eligible Tenant with at least thirty (30) days notice before increasing rent.

(3) Rent Restrictions. Owner will comply with the following rent restrictions:

(A) If the Assisted Unit Development has a TDHCA enforced rent restriction that is equal to or lower than Fair Market Rent ("FMR"), the initial rent is the maximum TDHCA enforced rent restriction at the property Development.

(B) If there is no existing TDHCA enforced rent restriction on the Unit, or the existing TDHCA enforced rent restriction is higher than FMR, TDHCA will work with the Owner to conduct a market analysis of the Eligible Multifamily Property to support that a rent higher than FMR is attainable.

(C) After the signing of the original RAC with TDHCA, the Owner may request a new anniversary date to be consistent with other rent restrictions on the Eligible Multifamily Property allowed by TDHCA.

(D) After the signing of the original RAC, upon request from the Owner to TDHCA, Rents may be adjusted on the anniversary date of the RAC.

(E) Adjustments may not result in higher rents charged for an Assisted Unit as compared to a non-assisted unit. The calculation or methodology used for the annual increase amount will be identified in the Eligible Multifamily Property's RAC.

(F) Owner can submit a request for a rent increase or to change the contract anniversary date using HUD Form 92458.

(l) Vacancy; Transfers; Eviction; Household Changes

(1) Holding Assisted Units. Once an Owner signs a RAC, the Eligible Multifamily Property must hold an available Assisted Unit for 60 days while a qualified Eligible Applicant applies for and moves into the Assisted Unit.

(2) Notification. Owner will notify TDHCA of determination of ineligibility or the termination of any participating Eligible Families or any member of a participating Eligible Family.

~~(3) Temporary Vacancy. If the Owner is made aware, the Owner will notify TDHCA if the Eligible Tenant has vacated the Eligible Multifamily Property for more than two (2) weeks, but is continuing to pay rent. An example of this could be for temporary hospitalization.~~

(34) Initial Lease-up. Owners of newly constructed, acquired and/or rehabilitated Eligible Multifamily Property must notify TDHCA no later than 180 days before the Eligible Multifamily Property will be available for initial move-in.

(45) Vacancy. Once a RAC is executed, the Owner must notify TDHCA of the vacancy of any Unit, including those that have not previously been occupied by an Eligible Tenant, as soon as possible, not to exceed seven (7) calendar days from when the Owner learns that an Assisted Unit will become available. If the qualifying Eligible Tenant vacates the Assisted Unit, TDHCA will determine if the remaining family members are eligible for continued assistance from the Program.

(56) Vacancy Payment. — An Owner of an Eligible Multifamily Property that is not under a RAC may not receive a vacancy payment. TDHCA may make vacancy payments not to exceed 80% of the Contract Rent, during this time to the Eligible Multifamily Property, potentially for up to 60 days. After 60 days, the Owner may lease that Assisted Unit to a non-Eligible Tenant.

(67) Household Changes; Transfers. Owners must notify TDHCA if the Eligible Tenant requests an Assisted Unit transfer. Owner will notify TDHCA of any household changes in an Assisted Unit within three (3) business days. If the Owner determines that, because of a change in household size, an Assisted Unit is smaller than appropriate for the Eligible Tenant to which it is leased or that the Assisted Unit is larger than appropriate, the Owner shall refer to TDHCA's written policies regarding family size, unit transfers, and waitlist management. If the household is determined by TDHCA to no longer be eligible, TDHCA will notify the Owner. Rental Assistance Payments with respect to the Assisted Unit will not be reduced or terminated until the eligible household has been transferred to an appropriate size Assisted Unit.

~~(78) Eviction and Nonrenewal. Owners are required to notify the Department by sending a copy of the applicable notice via email to the 811 TDHCA Point of Contact, as identified in the Owner Participation Agreement, at least three calendar days before providing a Notice to Vacate or a Notice of Nonrenewal to the Tenant. Before evicting an Eligible Tenant, the Owner must have accessed, at least once in the two (2) months prior to eviction, the Section 811 Project Rental Assistance Program's Conflict Management process.~~

(m) Construction Standards, Accessibility, Inspections and Monitoring

(1) Construction Standards. Upon execution of a RAC, the Eligible Multifamily Property shall be required to conform to Uniform Physical Conditions Standards (UPCS) which is a uniform national standards established by HUD for housing that is decent, safe, sanitary, and in good repair. The site, building exterior, building systems, dwelling units and common areas of the Eligible Multifamily Property, as more specifically described in 24 CFR §5.703 must be inspected in any physical inspection of the property.

(2) Inspection. Prior to occupancy, the Eligible Tenant must be given the opportunity to be present for the move-in unit inspection.

(3) Repair and Maintenance. Owner will perform all repair and maintenance functions, including ordinary and extraordinary maintenance; will replace capital items; and will maintain the premises and equipment, appurtenant thereto, in good repair, safe and sanitary condition consistent with HUD and TDHCA requirements.

(4) Accessibility. Owner must ensure that the Eligible Multifamily Property will meet or exceed the accessibility requirements under (1) 24 CFR Part 8, which implements Section 504 of the Rehabilitation Act of 1973; (2) the Fair Housing Act Design Manual, (3) Titles II and III of the Americans with Disabilities Act (42 U.S.C. §§12131-12189), as implemented by the U. S. Department of Justice regulations at 28 CFR Parts 35 and 36, and (4) the Federal Fair Housing Act as implemented by HUD at 24 CFR Part 100. However,

Assisted Units can consist of a mix of accessible units for those persons with physical disabilities and non-accessible units for those persons without physical disabilities.

(n) Owner Training. The Owner is obligated to train all property management staff on the requirements of the Program. The Owner will ensure that any new property management staff who is involved in serving Eligible Families review training materials found on the Program's webpage including webinars, manuals and checklists.

(o) Reporting Requirements. Owner shall submit to TDHCA such reports on the operation and performance of the Program as required by the Participation Agreement and as may be required by TDHCA. Owner shall provide TDHCA with all reports necessary for TDHCA's compliance with 24 CFR Part 5, or any other federal or state law or regulation.

(p) Environmental Laws and Regulations

(1) Compliance with Laws and Regulations. Owner must comply with, as applicable, any federal, state, or local law, statute, ordinance, or regulation, whether now or hereafter in effect, pertaining to health, industrial hygiene, or the environmental conditions on, under, or about the Land or the Improvements, including without limitation, the following, as now or hereafter amended:

- (A) Hazardous Materials Transportation Act (49 U.S.C.A. §1801 et seq.);
- (B) Insecticide Fungicide and Rodenticide Act (7 U.S.C.A. §136 et seq.);
- (C) National Environmental Policy Act (42 U.S.C. §4321 et seq.) ("NEPA");
- (D) Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C.A. §9601 et seq.) ("CERCLA"), as amended by the Superfund Amendments and Reauthorization Act of 1986 (Pub. L. No. 99-499, 100 Stat. 1613, as amended Pub. L. No. 107-377) ("Superfund" or "SARA");
- (E) Resource, Conservation and Recovery Act (24 U.S.C.A. §6901 et seq.) ("RCRA");
- (F) Toxic Substances Control Act, 15 U.S.C.A. §2601 et seq.;
- (G) Emergency Planning and Community Right to Know Act of 1986 (42 U.S.C.A. §1101 et seq.);
- (H) Clean Air Act (42 U.S.C.A. §7401 et seq.) ("CAA");
- (I) Federal Water Pollution Control Act and amendments (33 U.S.C.A. §1251 et seq.) ("Clean Water Act" or "CWA");
- (J) Any corresponding state laws or ordinances including but not limited to Chapter 26 of the Texas Water Code regarding Water Quality Control;
- (K) Texas Solid Waste Disposal Act (Chapter 361 of the Texas Health & Safety Code, formerly Tex. Rev. Civ. Stat. Ann. Art. 4477-7);
- (L) Comprehensive Municipal Solid Waste Management, Resource Recovery, and Conservation Act (Chapter 363 of the Texas Health & Safety Code);
- (M) County Solid Waste Control Act (Chapter 364 of the Texas Health & Safety Code);
- (N) Texas Clean Air Act (Chapter 382 of the Texas Health & Safety Code);
- (O) Hazardous Communication Act (Chapter 502 of the Texas Health & Safety Code); and
- (P) Regulations, rules, guidelines, or standards promulgated pursuant to such laws, statute and regulations, as such statutes, regulations, rules, guidelines, and standards, as amended from time to time.

(2) Environmental Review. The environmental effects of each activity carried out with funds provided under this Agreement must be assessed in accordance with the provisions of the Program Requirements, National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. §432 et. seq.). Each such activity must have an environmental review completed and support documentation prepared in accordance with 10 TAC §10.305 complying with the NEPA, including screening for vapor encroachment following American Society for Testing and Materials ("ASTM") 2600-10.

(q) Labor Standards

(1) Owner understands and acknowledges that every contract for the construction (rehabilitation, adaptive reuse, or new construction) of housing that includes twelve (12) or more units assisted with Program funds must contain provisions in accordance with Davis-Bacon Regulations.

(2) Owner understands and acknowledges that every contract involving the employment of mechanics and laborers of said construction shall be subject to the provisions, as applicable, of the Contract Work Hours and Safety Standards Act, as amended (40 U.S.C. Sec. 3701 to 3708), Copeland (Anti-Kickback) Act (40 U.S.C. Sec. 3145), the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201, et. seq.) and Davis-Bacon and Related Acts (40 U.S.C. 3141-3148).

(3) Owner further acknowledges that if more housing units are constructed than the anticipated eleven (11) or fewer housing units, it is the Owner's responsibility to ensure that all the housing units will comply with these federal labor standards and requirements under the Davis-Bacon Act as supplemented by the U. S. Department of Labor regulations ("Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction" at 29 CFR Part 5).

(4) Owner also understands that structuring the proposed assistance for the rehabilitation or construction of housing under this Agreement to avoid the applicability of the Davis-Bacon Act is prohibited.

(5) Construction contractors and subcontractors must comply with regulations issued under these federal acts described herein, with other federal laws, regulations pertaining to labor standards, including but not limited to "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction" at 29 CFR Part 5, HUD Federal Labor Provisions (HUD form 4010).

(r) Lead-Based Paint. Housing assisted with Program funds is subject to the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and implementing regulations Title X of the 1992 Housing and Community Development Act at 24 CFR Part 35, (including subparts A, B, J, K, M and R). Owner shall also comply with the Lead: Renovation, Repair, and Painting Program Final Rule, 40 CFR Part 745 and Response to Children with Environmental Intervention Blood Lead Levels. Failure to comply with the lead-based paint requirements may be subject to sanctions and penalties pursuant to 24 CFR §35.170.

(s) Limited English Proficiency. Owner shall comply with the requirements in Executive Order 13166 of August 11, 2000, reprinted at 65 FR 50121, August 16, 2000 Improving Access to Services for Persons with Limited English Proficiency and 67 FR 41455. To ensure compliance the Owner must take reasonable steps to insure that LEP persons have meaningful access to the program and activities. Meaningful access may entail providing language assistance services, including oral and written translation, where necessary.

(t) Procurement of Recovered Materials. Owner, its subrecipients, and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

(u) Drug-Free Workplace. Owner will follow the Drug-Free Workplace Act of 1988 (41 U.S.C 701, et seq) and HUD's implementing regulations at 2 CFR Part 2429. Owner affirms by executing the Certification Regarding Drug-Free Workplace Requirements attached hereto as Addendum B, that it is implementing the Drug-Free Workplace Act of 1988.

(v) Nondiscrimination, Fair Housing, Equal Access and Equal Opportunity

(1) Equal Opportunity. — The Owner agrees to carry out an Equal Employment Opportunity Program in keeping with the principles as provided in President's Executive Order 11246 of September 24, 1965, as amended, and its implementing regulations at 41 CFR Part 60.

(2) Fair Housing Poster. The Owner is required to place a fair housing poster (HUD-928.1 and HUD-9281.A) provided by TDHCA in the leasing office, online, or anywhere else rental activities occur pursuant to 24 CFR §200.620(e). A copy of the poster in Spanish and in English can be found at <http://www.tdhca.state.tx.us/section-811-pra/participating-agents.htm>.

(3) Nondiscrimination Laws. Owner shall ensure that no person shall, on the grounds of race, color, religion, sex, disability, familial status, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any Program or activity funded in whole or in part with funds provided under this Agreement. Owner shall follow Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. §2000d et seq.), the Age Discrimination Act of 1975 (42 U.S.C. §6101 et seq.) and its implementing regulations at 24 CFR Part 146, Titles II and III of the Americans with Disabilities Act (42 U.S.C. §§12131-12189; 47 U.S.C. §§155, 201, 218 and 255) as implemented by U. S. Department of Justice at 28 CFR Parts 35 and 36, Section 527 of the National Housing Act (12 U.S.C. §1701z-22), the Equal Credit Opportunity Act (15 U.S.C. §1691 et seq.), the Equal Opportunity in Housing (Executive Order 11063 as amended by Executive Order 12259) and its implementing regulations at 24 CFR Part 107 and The Fair Housing Act (42 U.S.C. §3601 et seq.), as implemented by HUD at 24 CFR Part 100-115.

(4) Affirmatively Furthering Fair Housing. By Owner's execution of the Agreement and pursuant to Section 808(e)(5) of the Fair Housing Act, Owner agrees to use funds in a manner that follows the State of Texas' "Analysis of Impediments" or "Assessment of Fair Housing", as applicable and as amended, and will maintain records in this regard.

(5) Protections for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking . Subpart L of 24 CFR part 5 shall apply to the Assisted Units in Eligible Multifamily Properties.

(w) Security of Confidential Information.

(1) Systems Confidentiality Protocols. Owner must undertake customary and industry standard efforts to ensure that the systems developed and utilized under this Agreement protect the confidentiality of every Eligible Applicants' and Eligible Tenants' personal and financial information, both electronic and paper, including credit reports, whether the information is received from the Eligible Applicants', Tenants' or from another source. Owner must undertake customary and industry standard efforts so that neither they nor their systems vendors disclose any Eligible Applicants' or Tenants' personal or financial information to any third party, except for authorized personnel in accordance with this Agreement.

(2) Protected Health Information. If Owner collects or receives documentation for disability, medical records or any other medical information in the course of administering the Program, Owner shall comply with the Protected Health Information state and federal laws and regulations, as applicable, under 10 TAC §1.24, Chapter 181 of the Texas Health and Safety Code, the Health Insurance Portability and Accountability Act of 1996 (HIPAA) (Pub. L. 104-191, 110 Stat. 1936, enacted August 21, 1996) the HIPAA Privacy Rules (45 CFR Part 160 and Subparts A and E of 45 CFR Part 164). When accessing confidential information under this Program, Owner hereby acknowledges and further agrees to comply with the requirements under the Interagency Data Use Agreement between TDHCA and the Texas Health and Human Services Agencies dated October 1, 2015, as amended.

(x) Real Property Acquisition and Relocation. Except as otherwise provided by federal statute, HUD-assisted programs or projects are subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Uniform Act or URA) (42 U.S.C. 4601), and the government wide implementing regulations issued by the U.S. Department of Transportation at 49 CFR Part 24. The Uniform Act's protections and assistance apply to acquisitions of real property and displacements resulting from the acquisition, rehabilitation, or demolition of real property for federal or federally assisted programs or projects. With certain limited exceptions, real property acquisitions for a HUD-assisted program or project must comply with 49 CFR Part 24, Subpart B. To be exempt from the URA's acquisition policies, real property acquisitions conducted without the threat or use of eminent domain, commonly referred to as —voluntary acquisitions, the Owner must satisfy the applicable requirements of 49 CFR §24.101(b)(1) through (5). Evidence of compliance with

these requirements must be maintained by the recipient. The URA's relocation requirements remain applicable to any tenant who is displaced by an acquisition that meets the requirements of 49 CFR §24.101(b)(1) through (5). The relocation requirements of the Uniform Act, and its implementing regulations at 49 CFR Part 24, cover any person who moves permanently from real property or moves personal property from real property as a direct result of acquisition, rehabilitation, or demolition for a program or project receiving HUD assistance. While there are no statutory provisions for temporary relocation under the URA, the URA regulations recognize that there are circumstances where a person will not be permanently displaced but may need to be moved from a project for a short period of time. Appendix A of the URA regulation (49 CFR §24.2(a)(9)(ii)(D)) explains that any tenant who has been temporarily relocated for a period beyond one year must be contacted by the displacing agency and offered URA relocation assistance.

(y) Dispute Resolution; Conflict Management.

(1) Eligible Tenant Disputes. The Owner or Owner's representative is required to participate in a Dispute Resolution process, as required by HUD, to resolve an appeal of an Eligible Tenant dispute with the Owner.

(2) Agreement Disputes. In accordance with Tex. Gov't Code 2306.082 –, it is TDHCA's policy to encourage the use of appropriate alternative dispute resolution procedures ("ADR") under the Governmental Dispute Resolution Act and the Negotiated Rulemaking Act (Chapters 2009 and 2006 respectively, Texas Government Code), to assist in the fair and expeditious resolution of internal and external disputes involving the TDHCA and the use of negotiated rulemaking procedures for the adoption of TDHCA rules. As described in Chapter 154, Civil Practices and Remedies Code, ADR procedures include mediation. Except as prohibited by TDHCA's ex parte communications policy, TDHCA encourages informal communications between TDHCA staff and the Owner, to exchange information and informally resolve disputes. TDHCA also has administrative appeals processes to fairly and expeditiously resolve disputes. If at any time the Owner would like to engage TDHCA in an ADR procedure, the Owner may send a proposal to TDHCA's Dispute Resolution Coordinator. For additional information on TDHCA's ADR policy, see TDHCA's Alternative Dispute Resolution and Negotiated Rulemaking at 10 TAC §1.17.

(3) Conflict Management. The purpose of the Conflict Management process is to address any concerns that Owner or Owner's agent or representative may have with an Eligible Family. At any time, an Eligible Family may choose to give consent to their Section 811 service coordinator to work directly with the property manager of the Eligible Multifamily Property. However, such consent cannot be made a condition of tenancy.

REPORT ITEMS

2a

TDHCA Outreach Activities, October - November 2017

A compilation of outreach and educational activities designed to enhance the awareness of TDHCA programs and services among key stakeholder groups and the general public.

Activity	Event	Date	Location	Division
Webinar	Fair Housing Listing	11/02/2017	N/A	Fair Housing
Training (Webinar for REALTORS®)	Down Payment Assistance and First Time Homebuyer Program	12/11/2017	N/A	Homeownership Division

Internet Postings of Note

A list of new or noteworthy postings to the Department's website.

Amy Young Barrier Removal

- Updated income/assets forms

Asset Management

- Included public comment period open for Draft 2018 Asset Management Rules

Communications:

- Homepage article update: October marks National Energy Awareness Month (includes photo gallery)
- Included federal resources information on Disaster Relief Resources page
- Added Help For Texans button (Spanish version) to several program pages

Community Affairs:

- Provided Help For Texans link on CEAP, WAP, CSBG, and related pages
- Added 2018 LIHEAP State Plan
- Replaced Weatherization FAQs documentation

Compliance:

- Included Single Family Affirmative Marketing Tool compliance information (link added to several program pages)
- Updated language on the Rent-Income Limits page (provided printable copies in English/Spanish)
- Added federal regulations guidance materials and links
- Added counties to list of individuals/households eligible for FEMA assistance

Fair Housing

- Updated Fair Housing training page (Single Family Affirmative Marketing Tool) information for property owners and managers

Homeownership:

- Added training information Navigating the Road to Housing Recovery with NeighborWorks Alliance of Texas

HOME and Homeless:

- Updated/Included links for ESG subrecipients on Guidance page
- Updated guidance and request form for ESG program
- Updated link for Protect Your Family from Lead in Your Home
- Added links to new video library modules regarding ESG program/contract implementation
- Updated guidance on data collection and reporting for HHSP

Housing Trust Fund

- Included link Single Family Affirmative Marketing Tool compliance information

Internal Audit:

- Added link for Peer Review of TDHCA's Internal Audit Department

Multifamily:

- Updated 2017 9% Housing Tax Credit Award and Waiting List to reflect October date
- Added Draft of 2018 HTC Site Demographic Characteristics Report
- Added 2018 MF bond Pre-App submission timeline
- Updated HTC Inventory list
- Added 2018 List of Declared Disaster Areas

Neighborhood Stabilization Program

- Added updated performance reports and action plans

Public Comment: www.tdhca.state.tx.us/public-comment.htm

- Comment period closed for Draft Amendment of the 2017 State of Texas Consolidated Plan: OYAP
- Comment period closed for Amendments to 2017 HOME Single Family Rules
- Comment period closed for Section 811 Project Rental Assistance Program proposed rule
- Comment period open for MF Draft Proposed Amendments to 10 TAC Chapter 13
- Comment period open for MF Proposed Amendments to 10 TAC Chapter 12 the MF Revenue Bond Rules

Purchasing:

- Updated contracts with vendors (contracts for services over \$100,000)
- Provided link with report of all No-Bid contracts (in compliance with state directive)

Frequently Used Acronyms

AMFI	Area Median Family Income	LURA	Land Use Restriction Agreement
AYBR	Amy Young Barrier Removal Program	MF	Multifamily
CEAP	Comprehensive Energy Assistance Program	MFTH	My First Texas Home Program
CFD	Contract for Deed Program	MRB	Mortgage Revenue Bond Program
CFDC	Contract for Deed Conversion Assistance Grants	NHTF	National Housing Trust Fund
CHDO	Community Housing Development Organization	NOFA	Notice of Funding Availability
CMTS	Compliance Monitoring and Tracking System	NSP	Neighborhood Stabilization Program
CSBG	Community Services Block Grant Program	OIG	Office of Inspector General
ESG	Emergency Solutions Grants Program	QAP	Qualified Allocation Plan
FAQ	Frequently Asked Questions	QCP	Quantifiable Community Participation
HBA	Homebuyer Assistance Program	REA	Real Estate Analysis
HHSCC	Housing and Health Services Coordination Council	RFA	Request for Applications
HHSP	Homeless Housing and Services Program	RFO	Request for Offer
HRA	Homeowner Rehabilitation Assistance Program	RFP	Request for Proposals
HRC	Housing Resource Center	RFQ	Request for Qualifications
HTC	Housing Tax Credit	ROFR	Right of First Refusal
HTF	Housing Trust Fund	SLIHP	State of Texas Low Income Housing Plan
HUD	US Department of Housing and Urban Development	TA	Technical Assistance
IFB	Invitation for Bid	TBRA	Tenant Based Rental Assistance Program
		TICH	Texas Interagency Council for the Homeless
		TSHEP	Texas Statewide Homebuyer Education Program
		TXMCC	Texas Mortgage Credit Certificate
		VAWA	Violence Against Women Act
		WAP	Weatherization Assistance Program

2b

BOARD REPORT ITEM
FINANCIAL ADMINISTRATION DIVISION
NOVEMBER 9, 2017

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

BACKGROUND

The Department's investment portfolio consists of two distinct parts. One part is related to bond funds under trust indentures that are not subject to the PFIA, and the remaining portion is related to accounts excluded from the indentures but covered by the PFIA. The Department's total investment portfolio is \$725,761,536, of which \$694,032,793 is not subject to the PFIA. This report addresses the remaining \$31,728,743 (See Page 1 of the Internal Management Report) in investments covered by the PFIA. These investments are deposited in the General Fund, Housing Trust Fund, Compliance, and Housing Initiative accounts, which are all held at the Texas Treasury Safekeeping Trust Company ("TTSTC"), primarily in the form of overnight repurchase agreements. These investments are fully collateralized and secured by the U.S. Government Securities. A repurchase agreement is the purchase of a security with an agreement to repurchase that security at a specific price and date (which in this case was August 31, 2017), with an effective interest rate of 1.0%. These investments safeguard principal while maintaining liquidity.

Below is a description of each fund group and its corresponding accounts.

- The General Fund accounts maintain funds for administrative purposes to fund expenses related to the Department's ongoing operations. These accounts contain balances related to bond residuals, fee income generated from the Mortgage Credit Certificate ("MCC") Program, escrow funds, single family and multifamily bond administration fees, and balances associated with the Below Market Interest Rate ("BMIR") Program.
- The Housing Trust Fund accounts maintain funds related to programs set forth by the Housing Trust Fund funding plan. The Housing Trust Fund provides loans and grants to finance, acquire, rehabilitate, and develop decent and safe affordable housing.
- The Compliance accounts maintain funds from compliance fees and asset management fees collected from multifamily developers. The number of low income units and authority to collect these fees is outlined in the individual Land Use Restriction Agreements ("LURAs") that are issued to each Developer. These fees are generated for the purpose of offsetting expenses incurred by the Department related to the monitoring and administration of these properties.

- The Housing Initiative accounts maintain funds from fees collected from Developers in connection with the Department's Tax Credit Program. The majority of fees collected are application fees and commitment fees. The authority for the collection of these fees is outlined in the Department's Multifamily Rules. These fees are generated for the purpose of offsetting expenses incurred by the Department related to the administration of the Tax Credit Program.

This report is in the format required by the Public Funds Investment Act. It shows in detail the types of investments, their maturities, their carrying (face amount) values, and fair values at the beginning and end of the quarter. The detail for investment activity is on Pages 1 and 2.

During the 4th Quarter, as it relates to the investments covered by the PFIA, the carrying value increased by \$1,907,256 (See Page 1) for a total of \$31,728,743. The increase is described below by fund groups.

General Fund: The General Fund increased by \$285,366. This consists primarily of \$636,547 received in multifamily bond administration fees, and \$79,118 in MCC Fees, offset by disbursements including \$332,754 transferred to fund the operating budget, and \$136,058 in bond related expenses.

Housing Trust Fund: The Housing Trust Fund increased by \$481,598. This consists primarily of \$1,923,129 received in loan repayments offset by disbursements including \$1,367,149 for loans, grants and escrow payments.

Compliance: Compliance funds increased by \$998,295. This consists primarily of \$1,492,405 received in compliance fees, offset by disbursements of \$457,006 transferred to fund the operating budget.

Housing Initiative: Housing Initiative funds increased by \$141,997. This consists primarily of \$501,622 received in fees related to tax credit activities, offset by disbursements of \$394,302 transferred to fund the operating budget.

**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
HOUSING FINANCE DIVISION**


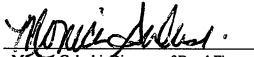
**PUBLIC FUNDS INVESTMENT ACT
INTERNAL MANAGEMENT REPORT (SEC. 2256.023)
QUARTER ENDING AUGUST 31, 2017**

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
HOUSING FINANCE DIVISION
PUBLIC FUNDS INVESTMENT ACT
Internal Management Report (Sec. 2256.023)
Supplemental Management Report
Quarter Ending August 31, 2017

Investment Type	FAIR VALUE	CARRYING	ACCRETION / PURCHASES	CHANGE IN CARRYING VALUE			CARRYING	FAIR VALUE	CHANGE	ACCRUED	RECOGNIZED
	(MARKET) @ 05/31/17	VALUE @ 05/31/17		AMORTIZATION/ SALES	MATURITIES	TRANSFERS	VALUE @ 08/31/17	(MARKET) @ 08/31/17	IN FAIR VALUE (MARKET)	INT REC'BL @ 08/31/17	
NON-INDENTURE RELATED:											
General Fund Mortgage-Backed Securities	97,869.99	97,200.64	0.00	0.00	(24,813.04)	-	72,387.60	72,827.69	(229.26)	452.43	
General Fund Repurchase Agreements	4,727,313.27	4,727,313.27	495,165.67	(184,986.67)	-	-	5,037,492.27	5,037,492.27	0.00	139.93	
Housing Trust Fund Repurchase Agreements	5,985,681.54	5,985,681.54	2,023,054.23	(1,541,455.85)	-	-	6,467,279.92	6,467,279.92	0.00	179.90	
Compliance Repurchase Agreements	9,077,823.27	9,077,823.27	998,295.12	-	-	-	10,076,118.39	10,076,118.39	0.00	279.90	
Housing Initiatives Repurchase Agreements	9,933,467.87	9,933,467.87	170,305.24	(28,308.45)	-	-	10,075,464.66	10,075,464.66	0.00	280.08	
NON-INDENTURE RELATED TOTAL	29,822,155.94	29,821,486.59	3,686,820.26	(1,754,750.97)	(24,813.04)	0.00	31,728,742.84	31,729,182.93	(229.26)	1,332.24	0.00

(b) (8) The Department is in compliance with regards to investing its funds in a manner which will provide by priority the following objectives: (1) safety of principal, (2) sufficient liquidity to meet Department cash flow needs, (3) a market rate of return for the risk assumed, and (4) conformation to all applicable state statutes governing the investment of public funds including Section 2306 of the Department's enabling legislation and specifically, Section 2256 of the Texas Government Code, the Public Funds Investment Act.

Per Section 2256.007(d) of the Texas Government Code, the Public Funds Investment Act:
David Cervantes completed 5.0 hrs. of training on the Texas Public Funds Investment Act on August 11, 2017
Monica Galuski completed 5.0 hrs. of training on the Texas Public Funds Investment Act on February 17, 2017

	Date 10/26/17
David Cervantes, Chief Financial Officer	
	Date 10/20/17
Monica Galuski, Director of Bond Finance	

Texas Department of Housing and Community Affairs
Non-Indenture Related Investment Summary
For Period Ending August 31, 2017

Investment Type	Issue	Current Interest Rate	Current Purchase Date	Current Maturity Date	Beginning Carrying Value 05/31/17	Beginning Market Value 05/31/17	Accretions/ Purchases	Amortizations/ Sales	Maturities	Transfers	Ending Carrying Value 08/31/17	Ending Market Value 08/31/17	Change In Market Value	Recognized Gain
Repo Agmt	General Fund	1.00	08/31/17	09/01/17	147,460.55	147,460.55	14,146.45				161,607.00	161,607.00	-	0.00
Repo Agmt	General Fund	1.00	08/31/17	09/01/17	33,886.21	33,886.21	46.20				33,932.41	33,932.41	-	0.00
Repo Agmt	General Fund	1.00	08/31/17	09/01/17	1,209,859.52	1,209,859.52	275,555.78				1,485,415.30	1,485,415.30	-	0.00
Repo Agmt	General Fund	1.00	08/31/17	09/01/17	978,567.12	978,567.12		(152,482.75)			826,084.37	826,084.37	-	0.00
Repo Agmt	General Fund	1.00	08/31/17	09/01/17	796,427.83	796,427.83	176,887.15				973,314.98	973,314.98	-	0.00
Repo Agmt	General Fund	1.00	08/31/17	09/01/17	505,289.84	505,289.84		(6,153.97)			499,135.87	499,135.87	-	0.00
Repo Agmt	General Fund	1.00	08/31/17	09/01/17	242,156.77	242,156.77	514.99				242,671.76	242,671.76	-	0.00
Repo Agmt	General Fund	1.00	08/31/17	09/01/17	663,579.72	663,579.72	28,015.10				691,594.82	691,594.82	-	0.00
GNMA	General Fund	7.50	08/31/89	07/20/18	16,055.42	16,139.01			(3,579.23)		12,456.19	12,524.82	(34.96)	0.00
GNMA	General Fund	7.50	10/31/89	09/20/18	15,439.84	15,532.79			(4,408.59)		11,031.25	11,084.31	(39.89)	0.00
GNMA	General Fund	7.50	01/01/90	11/20/18	10,729.72	10,808.91			(2,267.80)		8,461.92	8,517.77	(23.34)	0.00
GNMA	General Fund	7.50	01/01/90	12/20/18	11,927.17	12,015.79			(2,312.02)		9,615.15	9,678.90	(24.87)	0.00
GNMA	General Fund	7.50	02/27/90	12/20/18	2,591.29	2,597.38			(498.71)		2,092.58	2,096.91	(1.76)	0.00
GNMA	General Fund	7.50	03/30/90	01/20/19	21,785.08	21,944.55			(7,901.85)		13,883.23	13,975.55	(67.15)	0.00
GNMA	General Fund	7.50	05/29/90	04/20/19	18,692.12	18,831.56			(3,844.84)		14,847.28	14,949.43	(37.29)	0.00
Repo Agmt	General Fund	1.00	08/31/17	09/01/17	150,085.71	150,085.71		(26,349.95)			123,735.76	123,735.76	-	0.00
General Fund Total					4,824,513.91	4,825,183.26	495,165.67	(184,986.67)	(24,813.04)	0.00	5,109,879.87	5,110,319.96	(229.26)	0.00
Repo Agmt	Housing Trust Fund	1.00	08/31/17	09/01/17	131,661.21	131,661.21		(111,235.36)			20,425.85	20,425.85	-	0.00
Repo Agmt	Housing Trust Fund	1.00	08/31/17	09/01/17	648.09	648.09	644.29				1,292.38	1,292.38	-	0.00
Repo Agmt	Housing Trust Fund	1.00	08/31/17	09/01/17	185,090.09	185,090.09	152,755.42				337,845.51	337,845.51	-	0.00
Repo Agmt	General Revenue Appn	1.00	08/31/17	09/01/17	10,477.89	10,477.89	4,800.60				15,278.49	15,278.49	-	0.00
Repo Agmt	General Revenue Appn	1.00	08/31/17	09/01/17	403,056.28	403,056.28	944,238.76				1,347,295.04	1,347,295.04	-	0.00
Repo Agmt	General Revenue Appn	1.00	08/31/17	09/01/17	233,949.85	233,949.85		(88,129.49)			145,820.36	145,820.36	-	0.00
Repo Agmt	General Revenue Appn	1.00	08/31/17	09/01/17	110,065.83	110,065.83	6,578.55				116,644.38	116,644.38	-	0.00
Repo Agmt	General Revenue Appn	1.00	08/31/17	09/01/17	245,787.30	245,787.30	0.00				245,787.30	245,787.30	-	0.00
Repo Agmt	Housing Trust Fund-GR	1.00	08/31/17	09/01/17	1,947,702.49	1,947,702.49		(796,260.79)			1,151,441.70	1,151,441.70	-	0.00
Repo Agmt	Bootstrap -GR	1.00	08/31/17	09/01/17	791,662.21	791,662.21		(545,830.21)			245,832.00	245,832.00	-	0.00
Repo Agmt	Bootstrap -GR	1.00	08/31/17	09/01/17	1,615,080.30	1,615,080.30	914,036.61				2,529,116.91	2,529,116.91	-	0.00
Repo Agmt	Contract for Deed Conversion	1.00	08/31/17	09/01/17	310,500.00	310,500.00	0.00				310,500.00	310,500.00	-	0.00
Housing Trust Fund Total					5,985,681.54	5,985,681.54	2,023,054.23	(1,541,455.85)	0.00	0.00	6,467,279.92	6,467,279.92	0.00	0.00
Repo Agmt	Multi Family	1.00	08/31/17	09/01/17	902,257.59	902,257.59	194,533.27				1,096,790.86	1,096,790.86	-	0.00
Repo Agmt	Multi Family	1.00	08/31/17	09/01/17	894,871.26	894,871.26	139,012.35				1,033,883.61	1,033,883.61	-	0.00
Repo Agmt	Low Income Tax Credit Prog.	1.00	08/31/17	09/01/17	7,280,694.42	7,280,694.42	664,749.50				7,945,443.92	7,945,443.92	-	0.00
Compliance Total					9,077,823.27	9,077,823.27	998,295.12	0.00	0.00	0.00	10,076,118.39	10,076,118.39	0.00	0.00
Repo Agmt	Asset Management	1.00	08/31/17	09/01/17	1,084,150.77	1,084,150.77	94,078.87				1,178,229.64	1,178,229.64	-	0.00
Repo Agmt	Low Income Tax Credit Prog.	1.00	08/31/17	09/01/17	1,406,000.91	1,406,000.91	76,226.37				1,482,227.28	1,482,227.28	-	0.00
Repo Agmt	Low Income Tax Credit Prog.	1.00	08/31/17	09/01/17	7,049,447.88	7,049,447.88		(24,935.43)			7,024,512.45	7,024,512.45	-	0.00
Repo Agmt	Low Income Tax Credit Prog.	1.00	08/31/17	09/01/17	393,868.31	393,868.31		(3,373.02)			390,495.29	390,495.29	-	0.00
Housing Initiative Total					9,933,467.87	9,933,467.87	170,305.24	(28,308.45)	0.00	0.00	10,075,464.66	10,075,464.66	0.00	0.00
Total Investment Summary					29,821,486.59	29,822,155.94	3,686,820.26	(1,754,750.97)	(24,813.04)	0.00	31,728,742.84	31,729,182.93	(229.26)	0.00

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BOARD ACTION ITEM

FINANCIAL ADMINISTRATION DIVISION

NOVEMBER 9, 2017

Report on the Department's SFY 2017 *draft* Balance Sheet/Statement of Net Position for the year ended August 31, 2017

BACKGROUND

Tex. Gov't Code §2101.011 requires all agencies to file annual financial reports ("AFRs") no later than Nov. 20th of each year. Tex. Gov't Code §2306.074 states that the Department's books and accounts must be audited each fiscal year by a certified public accountant and a copy of the audit must be filed with the governor, the comptroller, and the legislature not later than the 30th day after the submission date for the AFR as required by the General Appropriations Act.

A state agency's annual financial report must include a detailed statement of all assets, liabilities, and fund balances, including:

1. Cash on hand and on deposit in banks and accounts in the state treasury;
2. The value of consumable supplies and postage;
3. The value of the agency's inventory of movable equipment and other fixed assets;
4. All other assets;
5. An itemization of the investments, bonds, notes, and other securities owned by any special funds under the agency's jurisdiction, including the amount and value of the securities;
6. All money due the agency from any source;
7. All outstanding commitments of the agency, including amounts due for services or goods received by the agency;
8. A summary by source of all revenue collected or accruing through the agency;
9. A summary by source of all appropriations, expenditures, bona fide encumbrances, and other disbursements by the agency; and
10. Any other financial information requested by the comptroller.

Overview of the Financial Statements

The audited financial statements, which will be presented at a later date, consist of three parts – management's discussion and analysis, the basic financial statements, and supplementary information. The basic financial statements include two types of statements that present different views of the Department. One set of statements are government-wide financial statements that provide information about the Department's overall financial position and results. These statements, which are presented on an accrual basis, consist of the Statement of Net Position and the Statement of Activities. This report includes a draft summary of the Statement of Net Position, which will be sent in final form by the December 20th deadline. The Statement of Net Position shows governmental activities and business-type activities presented on a full accrual basis.

Below is a condensed version of the Statement of Net Position along with a description of the major categories of this statement.

**Texas Department of Housing and Community Affairs
Government Wide
Condensed Statement of Net Position
As of August 31, 2017**

	Governmental Activities	Business-Type Activities	Total
Assets			
Current Assets:			
Cash & Cash Equivalents	\$ 36,416,787	\$ 139,061,800	\$ 175,478,587
Investments		12,525	12,525
Loans and Contracts	16,626,883	93,544,607	110,171,490
Federal Receivable	2,707,522		2,707,522
Legislative Appropriations	5,668,218		5,668,218
Interest Receivable	48,018	8,576,186	8,624,204
Other Current Assets	193,381	574,406	767,787
Non-current Assets:			
Investments		643,131,856	643,131,856
Loans and Contracts	446,747,764	1,007,841,016	1,454,588,780
Capital Assets	145,319	149,781	295,100
Other Non-Current Assets		42,959	42,959
Total Assets	508,553,892	1,892,935,136	2,401,489,028
DEFERRED OUTFLOWS OF RESOURCES	6,449,564	16,858,733	23,308,297
Liabilities			
Current			
Accounts/Payroll Payables	8,757,980	1,674,201	10,432,182
Interest Payable		11,749,118	11,749,118
Unearned Revenue	9,178,387	6,243,344	15,421,731
Bonds Payable		12,455,884	12,455,884
Notes and Loans Payable		224,147	224,147
Other Current Liabilities	698,926	82,251,029	82,949,954
Non-current			
Net Pension Liability	26,302,768	27,843,670	54,146,438
Bonds Payable		1,313,340,070	1,313,340,070
Notes and Loans Payable		83,901,051	83,901,051
Derivative Hedging Instrument		9,902,173	9,902,173
Other Non-current Liabilities	373,641	87,953,576	88,327,217
Total Liabilities	45,311,702	1,637,538,263	1,682,849,965
DEFERRED INFLOWS OF RESOURCES	3,336,666	3,187,484	6,524,150
Net Position			
Invested in Capital Assets	145,319	149,781	295,100
Restricted	490,405,579	214,252,279	704,657,859
Unrestricted	(24,195,810)	54,666,062	30,470,251
Total Net Position	\$ 466,355,088	\$ 269,068,122	\$ 735,423,210

Texas Department of Housing and Community Affairs
Major Categories of the Statement of Net Position

Assets	Governmental	Business-Type
Current Assets:	Activities	Activities
Cash & Cash Equivalents	Cash primarily related to Tax Credit Assistance Program (“TCAP”) and HOME loan repayments available for use in current and future Notice of Funding Availability (“NOFAs”).	Cash and cash equivalents in the form of overnight repurchase agreements (“Repos”) and money market funds primarily associated with Single Family, Multifamily and operating activities.
Investments		Current portion of investments stated at fair value. Primarily in the form Mortgage Backed Securities (“MBSs”) and Guaranteed Investment Contracts (“GICs”) due within one year.
Loans and Contracts	Current portion of loans made from federal funds for the purpose of Single Family loans and Multifamily development loans from HOME, TCAP and Neighborhood Stabilization Program (“NSP”) activities.	Current portion of loans and contracts consisting of mortgage loans made from Single Family and Multifamily bond proceeds. In addition, loans and contracts consist of Single Family loans and Multifamily development loans from the Housing Trust Fund and other Housing Initiative Programs. Loans receivable are carried at the unpaid principal balance outstanding, net of the allowance for estimated losses.
Federal Receivable	Funds expended or services performed for which federal contract and/or grant funds have not yet been collected during the current fiscal year.	
Legislative Appropriations	Balance of an agency’s unexpended legislative appropriations authority on the balance sheet and the total spending authority received on the operating statement associated with Homeless Housing and Services Program (“HHSP”) and Earned Federal Funds.	
Interest Receivable		Interest receivable primarily related to investments and mortgage loans.
Non-current Assets:		
Investments		Non-current portion of investments stated at fair value. Primarily in the form of MBSs and GICs.

Loans and Contracts	Non-current portion of loans made from federal funds for the purpose of Single Family loans and Multifamily development loans from HOME, TCAP and NSP activities.	Non-current portion of loans and contracts consisting of mortgage loans made from Single Family and Multifamily bond proceeds. In addition, loans and contracts consist of Single Family loans and Multifamily development loans from the Housing Trust Fund and other Housing Initiative Programs. Loans receivable are carried at the unpaid principal balance outstanding, net of the allowance for estimated losses.
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Deferred Outflows Of Resources	The effect of changes in actuarial assumptions for pensions are reported as deferred outflows of resources.	The effect of changes in actuarial assumptions for pensions are reported as deferred outflows of resources. In addition, the Department contracted a service provider to measure its derivative effectiveness. Since the derivative instruments were deemed to be effective, the Department will be deferring the changes in fair value for these derivatives and reporting them as deferred outflow of resources.
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Liabilities

Current

Accounts/Payroll Payables	Represents the liability for the value of assets or services received at the balance sheet date for which payment is pending.	Represents the liability for the value of assets or services received at the balance sheet date for which payment is pending.
Interest Payable		Accrued interest due on bonds
Unearned Revenue	Federal revenues that have not been earned but are available at fiscal year-end in the amount that revenues exceed expenditures.	Fees such as compliance fees that are received in advance of work performed and are recognized over a period of time.
Bonds Payable		Current portion of bonds payable reported at par less unamortized discount or plus unamortized premium.
Other Current Liabilities		Primarily consist of funds due to Federal Home Loan Bank related to an advances and security agreement.

Non-current

Net Pension Liability	The Department's proportionate share of the pension liability according to the report issued by the Employees Retirement System of Texas, who is the administrator of the single employer defined benefit plan.	
Bonds Payable		Non-current portion of bonds payable reported at par less unamortized discount or plus unamortized premium.
Notes and Loans Payable		Notes to provide funding to nonprofit and for-profit developers of multifamily properties to construct or rehabilitate rental housing. These notes are limited obligations of the Department and are payable solely from the payments received from the assets and guarantors, which secure the notes.
Derivative Hedging Instrument		Interest rate swaps at fair value taking into account non-performance risk. At year end, the fair value of the Department's four swaps is considered to be negative indicating the Department would be obligated to pay the counterparty the fair value as of the termination date. The Department has the option to terminate prior to the maturity date.
Other Non-current Liabilities		Primarily accounts for funds due to Developers as a result of Multifamily bond proceeds. These proceeds are conduit debt issued on behalf of the Developer for the purpose of Multifamily developments and are held by the trustee.

Deferred Inflows Of Resources	The difference between expected and actual experience and the difference between projected and actual investment return related to pension plan.
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Net Position

Restricted	Resources that have constraints placed on their use through external parties or by law through constitutional provisions associated with HOME, TCAP and NSP.	Amounts restricted through bond covenants.
Unrestricted	Resources not considered restricted per accounting standards but spending authority remains under program related regulations, GAA, Government Code and Board Action.	

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BOARD REPORT ITEM
BOND FINANCE DIVISION
NOVEMBER 9, 2017

REPORT ITEM

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

BACKGROUND

- The Department's Investment Policy excludes funds invested under a bond trust indenture for the benefit of bond holders because each trust indenture controls the authorized investments under that particular trust indenture. Management of assets within an indenture is the responsibility of the Trustee. This internal management report is for informational purposes only and, while not required under the Public Funds Investment Act, it is consistent with the prescribed format and detail as required by the Public Funds Investment Act. It details the types of investments, maturity dates, carrying (face amount) values, and fair market values at the beginning and end of the quarter.
- Overall, the portfolio carrying value increased by approximately \$59.1 million (see page 3), resulting in an end of quarter balance of \$694,032,794. The increase reflects the issuance single family mortgage revenue bonds and the acquisition of mortgage backed securities.

The portfolio consists of those investments described in the attached Bond Trust Indentures Supplemental Management Report.

	<u>Beginning Quarter</u>	<u>Ending Quarter</u>
Mortgage Backed Securities (MBS)	78%	83%
Guaranteed Investment Contracts/Investment Agreements	5%	4%
Repurchase Agreements	7%	7%
Money Markets and Mutual Funds	9%	6%
Treasury Bills	1%	0%

The increase in MBS is due to the issuance of single family mortgage revenue bonds and the acquisition of new MBS. The decrease in Guaranteed Investment Contracts/Investment Agreements is due to the withdrawal of funds for bond debt service on September 1. The decrease in Money Markets/Mutual Funds and Treasury Bills is attributed to the withdrawal of funds for the redemption of bonds.

Portfolio activity for the quarter:

- \$104 million in MBS were purchased this quarter due to the issuance of single family bonds and acquisition of new MBS.
- The maturities in MBS this quarter were \$21.7 million which represent loan repayments or payoffs. The table below shows the trend in MBS activity.

	4th Qtr FY16	1st Qtr FY 17	2nd Qtr FY 17	3rd Qtr FY 17	4th Qtr FY 17	Total
Purchases					\$ 104,005,338	\$ 104,005,338
Sales						\$ -
Maturities	\$ 24,958,486	\$ 26,818,361	\$ 36,222,187	\$ 21,716,863	\$ 21,925,178	\$ 131,641,075
Transfers						\$ -

- The process of valuing investments at fair market value identifies unrealized gains and losses. These gains or losses do not impact the overall portfolio because the Department typically holds these investments (MBS) until maturity.
- The fair market value (the amount at which a financial instrument could be exchanged in a current transaction between willing parties) increased \$2.2 million (see pages 3 and 4), with fair market value being greater than the carrying value. The national average for a 30-year fixed rate mortgage, as reported by the Freddie Mac Primary Mortgage Market Survey as of August 31, 2017, was 3.82%, down from 3.95% at the end of May, 2017. There are various factors that affect the fair market value of these investments, but there is a correlation between the prevailing mortgage interest rates and the change in market value.
- Given the current financial environment, this change in market value is to be expected. However, the change is cyclical and is reflective of the overall change in the bond market as a whole.
- The ability of the Department’s investments to provide the appropriate cash flow to pay debt service and eventually retire the related bond debt is of more importance than the assessed relative value in the bond market as a whole.
- The more relevant measures of indenture parity are reported on page 5 in the Bond Trust Indenture Parity Comparison. This report shows parity (ratio of assets to liabilities) by indenture with assets greater than liabilities in a range from 99.56% to 261.36% which would indicate the Department has sufficient assets to meet its obligations.

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
HOUSING FINANCE DIVISION
PUBLIC FUNDS INVESTMENT ACT
Internal Management Report (Sec. 2256.023)
Supplemental Management Report
Quarter Ending August 31, 2017


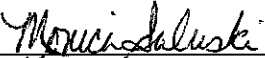
	FAIR VALUE	CARRYING	CHANGE IN CARRYING VALUE				CARRYING	FAIR VALUE	CHANGE	RECOGNIZED
	(MARKET)	VALUE	ACCRETION /	MORTIZATION /			VALUE	(MARKET)	IN FAIR VALUE	
	@ 05/31/17	@ 05/31/17	PURCHASES	SALES	MATURITIES	TRANSFERS	@ 08/31/17	@ 08/31/17	(MARKET)	GAIN
INDENTURE RELATED:										
Single Family	354,792,312.28	331,580,350.28	118,697,078.58	(13,718,143.30)	(12,603,077.38)	-	423,956,208.18	451,029,398.12	3,861,227.94	
RMRB	203,974,582.67	190,249,459.92	88,939.88	(5,017,265.89)	(9,002,371.67)	-	176,318,762.24	188,466,600.18	(1,577,284.81)	
CHMRB	3,177,592.84	2,991,920.40	0.00	(288,350.36)	(97,505.69)	-	2,606,064.35	2,778,691.21	(13,045.58)	
Taxable Mortgage Program	6,220,942.27	6,102,362.22	217,434.37	-	(157,827.48)	-	6,161,969.11	6,269,547.93	(11,001.23)	
Multi Family	103,674,803.96	103,916,112.11	5,145,929.41	(24,007,855.92)	(64,396.13)	-	84,989,789.47	84,745,353.77	(3,127.55)	
TOTAL	671,840,234.02	634,840,204.93	124,149,382.24	(43,031,615.47)	(21,925,178.35)	0.00	694,032,793.35	733,289,591.21	2,256,768.77	0.00

(b) (8) The Department is in compliance with regards to investing its funds in a manner which will provide by priority the following objectives: (1) safety of principal, (2) sufficient liquidity to meet Department cash flow needs, (3) a market rate of return for the risk assumed, and (4) conformation to all applicable state statutes governing the investment of public funds including Section 2306 of the enabling legislation and specifically, Section 2256 of the Texas Government Code, the Public Funds Investment Act.

Per Section 2256.007(d) of the Texas Government Code, the Public Funds Investment Act:

David Cervantes completed 5.0 hrs. of training on the Texas Public Funds Investment Act on August 11, 2017

Monica Galuski completed 5.0 hrs. of training on the Texas Public Funds Investment Act on February 17, 2017

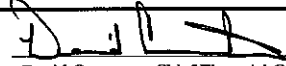
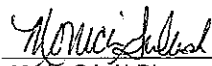
	Date 10/30/17
David Cervantes, Chief Financial Officer	
	Date 10/30/17
Monica Galuski, Director of Bond Finance	

TEXAS DEPARTMENT OF HOUSING & COMMUNITY AFFAIRS
BOND FINANCE DIVISION
BOND TRUST INDENTURES
Supplemental Management Report
Quarter Ending August 31, 2017

INVESTMENT TYPE	FAIR VALUE	CARRYING	ACCRETION / PURCHASES	AMORTIZATION/ SALES	MATURITIES	TRANSFERS	CARRYING	FAIR VALUE	CHANGE	RECOGNIZED
	(MARKET) @ 5/31/17	VALUE @ 5/31/17					VALUE @ 8/31/17	(MARKET) @ 8/31/17	IN FAIR VALUE (MARKET)	
INDENTURE RELATED:										
Mortgage-Backed Securities	534,098,391.39	497,098,362.30	104,005,337.52	-	(21,925,178.35)	-	579,178,521.47	618,435,319.33	2,256,768.77	
Guaranteed Inv Contracts	35,100,163.00	35,100,163.00	30,786.12	(11,357,230.45)	-	-	23,773,718.67	23,773,718.67	-	
Investment Agreements	1,943,579.28	1,943,579.28	0.00	(1,081,062.51)	-	-	862,516.77	862,516.77	-	
Treasury-Backed Mutual Funds	57,033,156.36	57,033,156.36	5,145,929.41	(19,141,451.71)	-	-	43,037,634.06	43,037,634.06	-	
Repurchase Agreements	38,918,943.99	38,918,943.99	14,967,329.19	(6,705,870.80)	-	-	47,180,402.38	47,180,402.38	-	
Treasury Bill	4,746,000.00	4,746,000.00		(4,746,000.00)			-	0.00	0.00	
GRAND TOTAL	671,840,234.02	634,840,204.93	124,149,382.24	(43,031,615.47)	(21,925,178.35)	0.00	694,032,793.35	733,289,591.21	2,256,768.77	0.00

(b) (8) The Department is in compliance with regards to investing its funds in a manner which will provide by priority the following objectives: (1) safety of principal, (2) sufficient liquidity to meet Department cash flow needs, (3) a market rate of return for the risk assumed, and (4) conformation to all applicable state statutes governing the investment of public funds including Section 2306 of the Department's enabling legislation and specifically, Section 2256 of the Texas Government Code, the Public Funds Investment Act.

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	Date 10/30/17
David Cervantes, Chief Financial Officer	
	Date 10/30/17
Monica Galuski, Director of Bond Finance	

Texas Department of Housing and Community Affairs
Bond Finance Division
Executive Summary
As of August 31, 2017

	Single Family Indenture Funds	Residential Mortgage Revenue Bond Indenture Funds	Collateralized Home Mortgage Revenue Bond Indenture Funds	Multi-Family Indenture Funds	Combined Totals
PARITY COMPARISON:					
PARITY ASSETS					
Cash	\$ 204,593	\$ 1,848		\$ 448,460	\$ 654,900
Investments ⁽¹⁾	\$ 49,769,210	\$ 16,567,425	\$ 167,719	\$ 82,645,449	\$ 149,149,804
Mortgage Backed Securities ⁽¹⁾	\$ 373,909,023	\$ 159,887,256	\$ 2,442,248	\$ -	\$ 536,238,528
Loans Receivable ⁽²⁾	\$ 138,536			\$ 875,286,899	\$ 875,425,435
Accrued Interest Receivable	\$ 1,450,200	\$ 597,707	\$ 14,532	\$ 6,697,004	\$ 8,759,442
TOTAL PARITY ASSETS	\$ 425,471,562	\$ 177,054,236	\$ 2,624,499	\$ 965,077,812	\$ 1,570,228,108
PARITY LIABILITIES					
Loans Payable		\$ 10,000,000		\$ 74,766,033	\$ 84,766,033
Bonds and Notes Payable ⁽¹⁾	\$ 374,800,014	\$ 148,390,000	\$ 1,000,000	\$ 800,239,915	\$ 1,324,429,929
Accrued Interest Payable	\$ 4,274,225	\$ 871,132	\$ 4,159	\$ 6,787,074	\$ 11,936,590
Other Non-Current Liabilities ⁽³⁾				\$ 87,556,033	\$ 87,556,033
TOTAL PARITY LIABILITIES	\$ 379,074,239	\$ 159,261,132	\$ 1,004,159	\$ 969,349,056	\$ 1,508,688,586
PARITY DIFFERENCE	\$ 46,397,322	\$ 17,793,104	\$ 1,620,340	\$ (4,271,244)	\$ 61,539,522
PARITY	112.24%	111.17%	261.36%	99.56%	104.08%

(1) Investments, Mortgage Backed Securities and Bonds Payable reported at par value not fair value. This adjustment is consistent with indenture cashflows prepared for rating agencies.

(2) Loans Receivable include whole loans only. Special mortgage loans are excluded.

(3) Other Non-Current Liabilities include "Due to Developers" (for insurance, taxes and other operating expenses) and "Earning Due to Developers" (on investments).

Note: Based on preliminary and unaudited financial statements, subject to change in audited financial statements.

2e

BOARD REPORT
MULTIFAMILY FINANCE DIVISION
NOVEMBER 9, 2017

Report on the 2018 Multifamily Programs Application Manual

Pursuant to Tex. Gov't Code §2306.67022, the Board shall adopt a manual to provide information regarding the administration of and eligibility for participation in the housing tax credit program. Staff creates the Multifamily Programs Application Manual (the "Manual") to provide guidance on the filing of a multifamily application and other multifamily program-related documents. This manual serves as a resource guide that includes references to the rules and examples of acceptable documentation or development plans based on the program rules and requirements.

In prior years, multifamily staff has presented the Manual to the Board as part of the annual rule-making process. This year, multifamily staff will post a draft of the 2018 Multifamily Programs Application Manual to the multifamily programs website for review by interested parties. The draft will be based on the multifamily program rules adopted at the Board meeting of November 9, 2017, and will incorporate any adopted revisions. While there will be no official "public comment period," staff will consider comments received regarding the draft Manual when composing the final Manual for 2018.

Upon approval of the rules by the Governor and the finalization of the application, staff will finalize this manual with instructions, guidance and references to the rules or federal requirements. Staff will seek the Board's adoption of the 2018 Multifamily Programs Application Manual at the Board meeting of December 14, 2017. Seeking the Board's action in approving the adoption of the Manual at a later meeting allows staff the flexibility to provide more detailed instructions and amend the Manual as necessary in order to implement the Department's multifamily program rules effectively once such rules have been adopted and approved by the Governor. Additionally, from time to time staff may update the manual based on additional information that may become available or to correct inconsistencies or to clarify information contained therein.

ACTION ITEMS

3a

**TO BE POSTED
NOT LATER THAN
THE THIRD DAY
BEFORE THE
DATE OF THE
MEETING**

3b

BOARD ACTION REQUEST

HOME AND HOMELESS PROGRAMS DIVISION

NOVEMBER 9, 2017

Presentation, discussion, and possible action on an appeal under 10 Texas Administrative Code §1.7, Staff Appeals, in regards to 2017 Emergency Solutions Grants Application Process, Family Violence Prevention Services, Inc

RECOMMENDED ACTION

WHEREAS, the Emergency Solutions Grants (“ESG”) Program is funded by the U.S. Department of Housing and Urban Development (“HUD”);

WHEREAS, the Department released a Notice of Funding Availability (“NOFA”) in January 2017 to identify successful applicants to be awarded funding for Program Years (“PY”) 2017 and, if 2018 funds are awarded to the State and there are no previous participation or performance concerns, for 2018;

WHEREAS, during the 2017 ESG application process, Family Violence Prevention Services, Inc, (“FVPS”) received notices on two scoring items on September 18, 2017, and did not file an appeal of the staff decision to deduct points on their application within seven days of receiving the score notification as prescribed by 10 TAC §1.7(c);

WHEREAS, FVPS has indicated that their decision not to appeal the scoring notification was based on a verbal conversation with staff regarding the status of their potential award and a belief at the time that there would be no change in staff’s recommendation as a result of the loss of score;

WHEREAS, staff has since determined that the change in score has changed the ultimate award recommendation for the San Antonio region and asked at the Board meeting on October 12, 2017, that the awards for the San Antonio region be suspended until the interested parties could fully articulate their concerns;

WHEREAS, FVPS has now appealed their score and the Board is now being asked to consider the appeal the Executive Director has found good cause for the Board to hear;

WHEREAS, Staff now believes there was a procedural error in its determination that the response to the original deficiency notice about scoring was erroneous; and

WHEREAS, FVPS has provided additional clarification to evidence that the calculations which caused the scoring issue were consistent with the other information contained in the application and should have resulted in a reinstatement of their self score for that item;

NOW, therefore, it is hereby

RESOLVED, that the Board finds that there was a procedural error processing the original deficiency notice about scoring, it has demonstrated that the Applicant was entitled to the points in question, the appeal is granted and the points for the contested item are reinstated.

Background

The ESG Program is funded by HUD. The ESG Program's focus is to assist people to regain stability in permanent housing quickly after experiencing a housing crisis and/or homelessness.

On January 9, 2017, the Department released a NOFA notifying prospective applicants of the availability of ESG funds for PY 2017. Funds were allocated to the State's 11 Continuum of Care ("CoC") regions based on criteria indicated in the NOFA, including the CoC regions' proportionate share of the State's homeless population as reported in the annual point in time count, persons living in poverty, renter cost burden, and 2016 ESG funding. Applicants could apply for funds either through the Department or through the locally-designated competitions, as indicated in the NOFA. Applications for the Department's portion of the competition were due on July 28, 2017.

The Department received 25 applications requesting more than \$8.9 million for the approximately \$5.1 million available to be awarded in the CoC regions submitting applications to the Department. In the CoC region TX-500 which encompasses San Antonio, three applications were received:

1. San Antonio Metropolitan Ministries, Inc (SAMM)
2. FVPS
3. The Salvation Army of San Antonio

During the application process, applicants were required to submit a self score for their own applications. On August 9, 2017, the Department posted an application log listing the self scores, in which FVPS had a score of 630, and SAMM had a score of 560.

On September 1, Department staff issued a deficiency notice to FVPS, asking for clarification on the methods of calculation used to substantiate two proposed performance measures: Part III, Question U5 and Part III, Question U6. On September 8, 2017, FVPS responded to the deficiency notice by proposing a new performance measure for Part III, U5, and clarifying the method of calculation for Part III, U6. On September 18, 2017, FVPS was notified that Part III, U5, consisted of a new performance measure that could not be considered because it was new information which was not originally submitted in the application. Additionally, on September 18, 2017, FVPS was notified that Part III, U6's method of calculation did not accurately calculate to the performance measure originally provided, and no points were awarded because staff was unable to determine whether the method of calculation or the performance measure was to be scored. Staff score reflected a reduction of 50 points for Part III, U5, and a reduction of 50 points for Part III, U6.

After the deficiency notice was sent on September 18, 2017, a phone conversation took place between FVPS and Department Staff in which FVPS has alleged they were given the impression that the result of the score change would not impact staff's ultimate positive funding recommendation for them. On September 20, 2017, FVPS indicated that they understood the rationale for the score as a result of errors in their deficiency response.

On October 2, 2017, TDHCA posted the scoring log in which FVPS had a score of 530 and SAMM had a score of 560. On October 9, 2017, an email from FVPS to the Department indicated that they were requesting an opportunity to appeal Part III, U6, which, if corrected, would result in additional 50 points. The Executive Director has determined that good cause exists for the Board to hear the appeal.

Staff has reviewed the basis for the underlying appeal and it involves the mathematical calculation provided for Part II, U6. Staff agrees with the applicant's assertion that the scoring inconsistency can be explained by rounding utilized in the other parts of the application. The application requests an explanation of the method of calculation used to estimate the number of people exiting from emergency shelter to permanent housing, and then divides the clients exiting to permanent housing by total clients served to obtain the percentage. In this case, the Applicant's explanation had provided a mathematical formula that resulted in approximately three additional persons exiting to permanent housing than indicated the application. However, the mathematical formula outcome was subject to rounding.

The scoring for this region has an impact on this San Antonio region and the outcome of the Balance of State awards. If the appeal is granted, then the FVPS would be the highest score in the region but the remaining funds in the region would be insufficient to fund SAMM; therefore the remaining funding would be combined with the remaining funds in all other regions, and then allocating the collapse of regional funding pursuant to the NOFA. The next step would be to fund the most underserved CoC region. If FVPS were awarded, then San Antonio CoC instead of the Balance of State CoC would be the most underfunded region. This means that SAMM would receive funds during the collapse of funding and less funding would be available in the Balance of the State CoC. If FVPS is not granted the appeal, then they would no longer be the highest scoring in the region and SAMM would be fully funded. The San Antonio region would no longer be the most underserved because SAMM's request for funding is larger than FVPS. Under this scenario, FVPS would not be recommended for funding during the collapse of regional funding, but the next application in the Balance of State CoC would be recommended for funding, since the Balance of State CoC would again be the most underfunded region.

3c

BOARD ACTION REQUEST

HOME AND HOMELESS PROGRAMS DIVISION

NOVEMBER 9, 2017

Presentation, discussion, and possible action on Program Year 2017 Emergency Solutions Grants Program Awards and Program Year 2016 Emergency Solutions Grants Program Recaptured Funding Allocation

RECOMMENDED ACTION

WHEREAS, the Emergency Solutions Grants (“ESG”) Program is funded by the U.S. Department of Housing and Urban Development (“HUD”);

WHEREAS, the Department released a Notice of Funding Availability (“NOFA”) in January 2017 to identify successful applicants to be awarded funding for Program Years (“PY”) 2017 and, if 2018 funds are awarded to the State and there are no performance concerns, for 2018;

WHEREAS, the Department received from HUD \$9,028,982 in PY 2017 and one-time supplemental funding, of which an estimated \$8,667,823 will be awarded to ESG subrecipients and their partners, and \$361,159 will be retained for State administration of the program;

WHEREAS, federal program rules require the Department to commit all funds within 60 days of receipt of an award letter from HUD and such letter dated October 30, 2017, has been received by the Department;

WHEREAS, Family Violence Prevention Services, Inc, (“FVPS”) appealed a reduction of their score which is being heard under a separate Board action item at this meeting;

WHEREAS, granting of the FVPS appeal or any other timely filed appeal changes the scoring priority and adjusts the funding distribution pursuant to the ESG NOFA and reflected on the recommended funding list which was presented at the Board meeting of October 12, 2017, in particular to the San Antonio Continuum of Care (“CoC”) and Balance of State CoC regions;

WHEREAS, on October 17, 2017, the Department notified several applicants of revisions to their final score based upon incorrect self scoring which lead to the Children’s Center in the Balance of State CoC region no longer having a score high enough to garner an award;

WHEREAS, on October 30, 2017, the Executive Award Review and Advisory Committee (“EARAC”) recommended the denial of the Previous Participation Review for the Children’s Center in the Balance of State CoC region;

WHEREAS, Children’s Center has been provided notice and has had the opportunity to appeal their final score and EARAC’s further recommendation that no award be consider based on a previous participation review;

WHEREAS, staff is presenting multiple funding scenarios to the Board, one for each distribution of funding in the case that either of the potential appeals is granted or not granted;

WHEREAS, a previously-approved ESG awardee will have part of an award for Homeless Management Information System (“HMIS”) funds with a partner which must be contracted directly with TDHCA, and the funds for that award will come from the previously approved awardee and such award recommendation to the partner was approved by EARAC on October 30, 2017; and,

WHEREAS, seventeen of the 2016 ESG contracts that have ended, have resulted in a recapture of \$40,428 in funding, which will be available to any award that is not fully funded through the 2017 ESG NOFA along with any remaining balances in 2016 contracts that will end in the next 30 to 60 days.

NOW, therefore, it is hereby

RESOLVED, that the Executive Director, his designees, and each of them be and they hereby are authorized, empowered, and directed, for and on behalf of the Department, to take any and all such actions as they or any of them may deem necessary or advisable to effectuate the awards in PY 2017 ESG contracts according to the scenarios described herein depending on the appeals heard and resolved at this meeting; and,

FURTHER RESOLVED, that the Executive Director, his designees, and each of them be and they hereby are authorized, empowered, and directed, for and on behalf of the Department, to take any and all such actions as they or any of them may deem necessary or advisable within the terms of the 2017 ESG NOFA to effectuate any award that is only partially funded with 2017 ESG funds, including but not limited to reallocating returned or recaptured ESG funds until the full requested award amounts have been awarded in accordance with the NOFA.

Background

On January 9, 2017, the Department released a NOFA notifying prospective applicants of the availability of ESG funds for PY 2017. The ESG Program is funded by HUD and its focus is to assist people to regain stability in permanent housing quickly after experiencing a housing crisis and/or homelessness. Funds were allocated for competition to the State’s 11 CoC regions based on criteria indicated in the NOFA.

During the Board meeting of October 12, 2017, the Board approved the 2017 ESG award recommendations presented with the exception of the San Antonio CoC region (TX-500). In addition, in the Balance of State CoC region (TX-607) the Children's Center was not recommended for an award on October 12, 2017, pending decision of EARAC. However, funds for such award were held in order to provide a remedy if such funds were ultimately recommended to be awarded to Children's Center.

Since the October 2017, Board meeting, staff has found scoring discrepancies with the Children's Center ESG application which precluded an award of funds. Additionally, EARAC voted to not recommend the Previous Participation Review for the Children's Center on October 30, 2017. These actions, if upheld through the Board, would release \$150,000 into the Balance of State CoC that was previously reserved for the Children's Center application.

The 2017/2018 ESG NOFA funding distribution is summarized as follows:

- Step 1: All Applications and parties associated with the Application must be reviewed in accordance with the Department's Previous Participation Review.
- Step 2: Eligible Applications from Step 1 are ranked in descending order by score within the CoC region, and funds are obligated starting with the Applicant with the highest score until funds are fully obligated or until an Application cannot be fully funded.
- Step 3: Remaining funds from all regions with too few qualifying Applications will be pooled together along with any remaining funds from all regions that were not able to completely fund the next qualified Applicant, in an effort to fully fund as many Applications as possible. Remaining funds will be allocated starting with the region with the greatest proportional share of its allocation still unallocated, and proceeding to award in that region with the next highest scoring Application.
- Step 4: Any funds still remaining after Step 3 will be allocated to the region with the greatest proportional share of the state's renters with cost burden.
- Step 5: If there are not enough eligible applicants to be funded, the Department may award recommended Applicants with an award amount in excess of the funds requested.
- In addition, the NOFA outlines that additional funds that become available either through a supplemental appropriation, return of funds, or recapture of prior year funds will be distributed to increase the award of Subrecipients that received a partial award of 2017 ESG funds.

At the Board meeting of October 12, 2017, the funding distribution outlined in the NOFA per Step 3 reflected a full award to Mid-Coast Family Services of \$450,000 and a partial award to the Salvation Army of Temple in the amount of \$62,530, both from the Balance of State CoC. At this Board meeting, if the \$150,000 reserved in the Balance of State CoC is released, the \$150,000 would not be sufficient to fully fund the next applicant in the Balance of State CoC region, and therefore is pooled with other CoC regions that had funding left in their region after fully funding the highest scores, pursuant to step 3 outlined above. The first two scenarios discussed below reflect the two alternatives that will exist if the \$150,000 reserved in the Balance of State CoC region is released.

At the present time FVPS, an ESG Applicant in the San Antonio CoC region, has a pending appeal pursuant to 10 TAC §1.7, Staff Appeals. If the appeal is granted by the Board, the increase in their score would make their application the highest score in the San Antonio CoC region and result in an award to FVPS during Step 2. If FVPS receives the award, then the San Antonio Metropolitan Ministries (“SAMM”), another applicant in the San Antonio CoC region, would not be recommended for an award under step 2 during the competition within the CoC region due to lack of funding for a complete award and this is reflected in scenario 1. The San Antonio CoC would, however, be the region with the greatest proportional share of its allocation still unallocated instead of the Balance of State CoC. Therefore, per Step 3, the pooled funds from other applications would be distributed to SAMM in San Antonio CoC instead of Mid-Coast Family Services in the Balance of State CoC. After SAMM is funded, then Step 4 would apply and Mid-Coast Family Services in the Balance of State would receive a full award. Step 5 would not apply, since there are more applicants that can be funded, so Step 4 would be applied again and Salvation Army of Temple in the Balance of State would receive a partial award; however this award would be reduced from the \$62,530 provided for in the awards made on October 12, 2017 to \$5,030. However, Salvation Army of Temple was already awarded the partial award of \$62,530, and the San Antonio CoC region, which was not awarded at the October 2017 meeting, would receive a partial deduction of \$57,500. The ESG NOFA provides that subsequent to the initial award, any recaptured 2016 funds may be utilized to fully fund any partial awards made with 2017 funds. Therefore, SAMM would be offered a partial award of \$542,500 and be first in line for 2016 ESG deobligated funds, or recaptured or program income funds from other ESG awards (“additional ESG funding”)¹. After SAMM is completely funded, then Salvation Army of Temple could be offered additional ESG funding..

Scenario 2 reflects what would happen if FVPS’ appeal is not granted. FVPS would not receive an award and SAMM would be the highest scoring applicant in the San Antonio CoC region. Balance of State CoC would be the region with the greatest proportional share of its allocation still unallocated instead of the San Antonio CoC; therefore, per Step 3, the pooled funds from other regions would be distributed to Mid-Coast Family Services in the Balance of State CoC. After Mid-Coast Family Services is funded, then Step 4 would apply and Salvation Army of Temple would receive a partial award of \$212,530 rather than the previously awarded \$62,530. Step 5 would not apply since there is no additional funding after Step 4 is complete.

In either of these funding scenarios, Salvation Army of Temple will receive a partial award and, per the ESG NOFA, could have access to additional funding. As of this Board meeting, approximately \$40,428 in 2016 ESG recaptured funding has been identified. Additional deobligated funds which may be identified in the future could also be awarded to the Salvation Army of Temple per the NOFA.

Two additional scenarios have been considered in this award presentation with regard to the potential appeal of final score and EARAC’s denial of previous participation results. These two scenarios repeat the scenarios above but consider what could happen if Children’s Center appeals and is granted its appeal. At the time of this writing the Children’s Center has not yet made a formal

¹ This is contingent upon the Department receiving the funds and having enough time to obligate them during the Department’s contract with HUD.

appeal, but there is the potential for such an appeal to be made prior to the Board meeting. Under Scenario 3 where the FVPS appeal is denied and the Children's Center appeal is granted, the award recommendations under Balance of State CoC for Mid-Coast Family Services and Salvation Army of Temple would be unchanged from the awards made at the October 2017 Board meeting.

If both Children's Center appeals and the FVPS appeals are granted as reflected in scenario 4, Salvation Army of Temple would no longer have been recommended for any funding because an insufficient amount of funds would be available to make such an award. However, a full award for Mid-Coast Family Services and partial award of \$62,530 for Salvation Army of Temple have already been affirmed by the Board at the October 2017 meeting; therefore a reduction in the award to the San Antonio CoC region which was not made at that time would now need to occur. Scenario 4 therefore reflects a full award to FVPS and Children's Center as well as the prior full award to Mid-Coast Family Services and prior partial award of \$62,350 Salvation Army of Temple, but a reduction in the funds under the collapse for the San Antonio CoC region. SAMM therefore would be offered \$392,500 and again be first in line for additional ESG funding.

Finally, one partner will receive contracts directly with TDHCA for the HMIS funds: The Family Crisis Center, Inc. (partner of Loaves and Fishes of Rio Grande Valley). This contract is a result of HUD's interpretation of an administrative requirement that organizations that use HMIS-comparable databases, which are used for domestic violence and may be used for legal service providers, not receive funds through a Subrecipient that uses an HMIS database. The award to the partner is indicated in the spreadsheet attached, and the contract amount for the lead agency is subsequently reduced by the amount of the HMIS contract to the partner. EARAC voted to approve this award on October 30, 2017.

It should be noted that these awards (subject to performance and previous participation) are for a two-year cycle and the 2018 ESG awards will reflect the funding distribution levels decided under the final approved 2017 scenario (exclusive of the one-time supplemental funding given by Congress to the Amarillo COC).

2017/2018 Emergency Solutions Grants Application Scores and Funding Amounts as of 11/9/2017 - Scenario 1: FVPS Appeal Granted, Childrens Center Denied

Continuum of Care Number	Continuum of Care (CoC) Location	Application Submissions	Funding Available for 2017	Funding Requested	Funding Awarded During Competitions	Remaining Balance for Funding Collapse
TX500	San Antonio	Directly to the Texas Department of Housing and Community Affairs (TDHCA)	\$636,052	\$ 850,000	\$ 207,500	\$ 428,552
TX503	Austin	Directly to TDHCA	\$571,808	\$ 569,093	\$ 569,093	\$ 2,715
TX600	Dallas	To the CoC Lead Agency	\$1,219,112	\$ 5,410,000	\$ 1,219,112	\$ -
TX601	Tarrant County	To the CoC Lead Agency	\$608,449	\$ 605,561	\$ 608,449	\$ -
TX603	El Paso	To the CoC Lead Agency	\$286,711	\$ 1,047,021	\$ 286,711	\$ -
TX604	Waco	Directly to TDHCA	\$151,646	\$ 151,646	\$ 151,646	\$ -
TX607	Balance of State	Directly to TDHCA	\$3,134,458	\$ 6,898,844	\$ 2,830,344	\$ 304,114
TX611	Amarillo	Directly to TDHCA	\$308,381	\$ 308,381	\$ 308,381	\$ -
TX624	Wichita Falls	Directly to TDHCA	\$132,437	\$ -	\$ -	\$ 132,437
TX700	Houston	To the CoC Lead Agency	\$1,431,557	\$ 2,806,631	\$ 1,431,557	\$ -
TX701	Bryan College Station	Directly to TDHCA	\$187,212	\$ -	\$ -	\$ 187,212
Total			\$8,667,823	\$ 18,647,177	\$7,612,793	\$ 1,055,030

Funding Distribution Per Step 2 of the 2017/2018 ESG Notice of Funding Availability as of 11/9 - Scenario 1

TX 500 San Antonio Competitive Award Recommendations

\$636,052

Application Number	Lead Agency	Partners	City	Requested	Scores	Funding Awarded	Remaining Funding Available
17500FVPS	Family Violence Prevention Services ("FVPS") dba The Battered Women and Children's Shelter of Bexar County	n/a	San Antonio	\$ 207,500	580	\$ 207,500	\$ 428,552
17500SAMM	San Antonio Metropolitan Ministry, Inc (SAMM)	San Antonio Food Bank, Haven for Hope of Bexar County, St. Vincent de Paul	San Antonio	\$ 600,000	560	Not enough to award in CoC Region Competition	n/a
17500SASA	The Salvation Army of San Antonio	n/a	San Antonio	\$ 250,000	500	Not enough to award in CoC Region Competition	n/a
Total				\$ 850,000	n/a	\$ 207,500	\$ 428,552

TX 503 Austin Competitive Award Recommendations

\$ 571,808

Application Number	Lead Agency	Partners	City	Requested	Scores	Funding Awarded	Remaining Funding Available
17503LW	Youth and Family Alliance dba LifeWorks	The SAFE Alliance (SAFE), Ending Community Homelessness Coalition (ECHO), Front Steps, Inc	Austin	\$ 569,093	450	\$ 569,093	\$ 2,715
Total				\$ 569,093		\$ 569,093	\$ 2,715

TX 600 Dallas Competitive Award Recommendations - Local Competition

\$1,219,112

Application Number	Lead Agency	Partners	City	Requested	Scores	Funding Awarded	Remaining Funding Available
17600-10	Austin Street Center	n/a	Dallas	\$ 250,000	n/a	\$ 200,964	\$ 1,018,148
17600-11	Bridge Steps	The Salvation Army of Dallas	Dallas	\$ 600,000	n/a	\$ 200,300	\$ 817,848
17600-12	City House	Alliance Center of Collin County	Dallas	\$ 600,000	n/a	\$ 200,298	\$ 617,550
17600-13	City Square	n/a	Dallas	\$ 200,000	n/a	\$ 200,978	\$ 416,572
17600-14	Family Gateway	n/a	Dallas	\$ 250,000	n/a	\$ 200,964	\$ 215,608
17600-15	Family Place	Legal Aid of NW Texas, Promise House	Dallas	\$ 600,000	n/a	\$ 215,608	\$ -
n/a	Volunteers of America	n/a	Dallas	\$ 225,000	n/a	\$ -	\$ -
n/a	The Source of Hope	n/a	Dallas	\$ 250,000	n/a	\$ -	\$ -
n/a	Shared Housing	Housing Crisis Center, Jewish Family Services, Rainbow Days	Dallas	\$ 285,000	n/a	\$ -	\$ -
n/a	Sharing Life Community Out	n/a	Dallas	\$ 225,000	n/a	\$ -	\$ -
n/a	New Life Individual and Fam	n/a	Dallas	\$ 250,000	n/a	\$ -	\$ -
n/a	Creation of Tomorrow	n/a	Dallas	\$ 250,000	n/a	\$ -	\$ -
n/a	Bosh Jackson's Place	n/a	Dallas	\$ 250,000	n/a	\$ -	\$ -
n/a	Amazing Grace Food Pantry	n/a	Dallas	\$ 200,000	n/a	\$ -	\$ -
n/a	Texas Muslim Women's Four	n/a	Dallas	\$ 225,000	n/a	\$ -	\$ -
n/a	Bridges Safehouse	Transformation Vision Cedar Hill, Hope Mansion, Pathway to Purpose	Dallas	\$ 600,000	n/a	\$ -	\$ -
n/a	Azar Foundation	America Housing Solutions, Agape Provisions Food Bank	Dallas	\$ 150,000	n/a	\$ -	\$ -
Total				\$ 5,410,000		\$ 1,219,112	\$ -

TX 601 Tarrant County CoC Competitive Award Recommendations - Local Competition

\$608,449

Application Number	Lead Agency	Partners	City	Requested	Scores	Funding Awarded	Remaining Funding Available
17601-6	Safe Haven of Tarrant County	Catholic Charities of Fort Worth, Presbyterian Night Shelter	Fort Worth	\$ 353,350	n/a	\$ 354,909	\$ 253,540
17601-7	The Salvation Army - Mabec	Center for Transforming Lives, Hands of Hope	Fort Worth	\$ 252,211	n/a	\$ 253,540	\$ -
Total				\$ 605,561		\$ 608,449	\$ -

TX 603 El Paso CoC Competitive Award Recommendations - Local Competition

\$286,711

Application Number	Lead Agency	Partners	City	Requested	Scores	Funding Awarded	Funding Available
17603-8	The Salvation Army - El Paso	n/a	El Paso	\$ 250,000	875	\$ 114,684	\$ 172,027
17603-9	El Paso Human Services Inc	Center for Children	El Paso	\$ 285,350	870	\$ 172,027	\$ -
n/a	Project Vida	n/a	El Paso	\$ 285,350	801.25	\$ -	\$ -
n/a	El Paso County	n/a	El Paso	\$ 20,000	680	\$ -	\$ -
n/a	Child Crisis Center of El Paso	n/a	El Paso	\$ 206,321	585	\$ -	\$ -
Total				\$ 1,047,021		\$ 286,711	\$ -

TX 604 Waco Competitive Award Recommendations

\$ 151,646

Application Number	Lead Agency	Partners	City	Requested	Scores	Funding Awarded	Remaining Funding Available
17604SAW	The Salvation Army of Waco	n/a	Waco	\$ 151,646	580	\$ 151,646	\$ -
Total				\$ 151,646		\$ 151,646	\$ -

2017/2018 Emergency Solutions Grants Application Scores and Funding Amounts as of 11/9/2017 - Scenario 1: FVPS Appeal Granted, Childrens Center Denied

TX 607 Balance of State Competitive Award Recommendations

\$ 3,134,458

Application Number	Lead Agency	Partners	City	Requested	Scores	Funding Awarded	Remaining Funding Available
17607COT	City of Texarkana	Randy Sams' Outreach Shelter, Ark-Tex Council of Governments	Texarkana	\$ 449,786	920	\$ 449,786	\$ 2,684,672
17607LFRG	Loaves & Fishes of the Rio Grande Valley, Inc.	Family Crisis Center, La Posada Providencia	Harlingen	\$ 464,610	890	\$ 464,610	\$ 2,220,062
17607LFRG - parnter	Family Crisis Center for HMIS-comparable database	Partner of Loaves and fishes of the Rio Grande Valley, Inc	Harlingen	\$ 13,376	890	\$ 13,376	\$ 2,206,686
17607COD	City of Denton	Christian Community Action, Denton County Friends of the Family, Giving Hope, The Salvation Army of Denton	Denton	\$ 600,000	831	\$ 600,000	\$ 1,606,686
17607AO	Advocacy Outreach	Family Crisis Center (Bastrop Co Women's Shelter), Combined Community Action	Bastrop	\$ 450,000	810	\$ 450,000	\$ 1,156,686
17607SAFET	Shelter Agencies for Families in East Texas, Inc.	n/a	Mount Pleasant	\$ 150,000	755	\$ 150,000	\$ 1,006,686
17607FOW	Friendship of Women, Inc.	Bishop Enrique San Pedro Ozanam Center, Brownsville Literacy Center, Catholic Charities Rio Grande Valley	Brownsville	\$ 552,572	765	\$ 552,572	\$ 454,114
17607SACC	The Salvation Army of Corpus Christi	n/a	Corpus Christi	\$ 150,000	750	\$ 150,000	\$ 304,114
17607MCFS	Mid-Coast Family Services	Community Action Committee of Victoria Texas, The Harbor Children's Alliance and Victim Center	Victoria	\$ 450,000	730	Not enough to award in CoC Region Competition	n/a
Total*				\$ 2,830,344		\$ 2,830,344	\$ 304,114

*Total requested for TX-607 competition only includes what was funded, but total requests are reflected in the pooled funds under Step 4 below.

TX 611 Amarillo Competitive Award Recommendations

\$ 308,381

Application Number	Lead Agency	Partners	City	Requested	Scores	Funding Awarded	Remaining Funding Available
17611COA	City of Amarillo	The Salvation Army of Amarillo, Guyon Saunders Resource Center, Family Support Services	Amarillo	\$ 308,381	373	\$ 308,381	\$ -
Total				\$ 308,381		\$ 308,381	\$ -

TX 624 Wichita Falls Competitive Award Recommendations

\$ 132,437

Application Number	Lead Agency	Partners	City	Requested	Scores	Funding Awarded	Remaining Funding Available
n/a				\$ -	n/a	\$ -	\$ 132,437
Total				\$ -		\$ -	\$ 132,437

2017/2018 Emergency Solutions Grants Application Scores and Funding Amounts as of 11/9/2017 - Scenario 1: FVPS Appeal Granted, Childrens Center Denied

TX 700 Houston CoC Competitive Award Recommendations- Local

\$ 1,431,557

Application Number	Lead Agency	Partners	City	Requested	Scores	Funding Awarded	Remaining Funding Available
17700-3	Houston Area Community Services (DBA Avenue 360)	Covenant House Texas (Homeless Gay Kids Houston was a partner but their activity was not funded)	Houston	\$ 356,040	635	\$ 200,771	\$ 1,230,786
17700-2	Bridge Over Troubled Water	Bay Area Turning Point	Houston	\$ 600,000	571	\$ 310,470	\$ 920,316
17700-5	The Salvation Army of Houston	SEARCH Homeless Services, Cathedral Health and Outreach Ministries	Houston	\$ 568,091	534	\$ 323,696	\$ 596,620
17700-1	Alliance of Community Assistance Ministries	Humble Area Assistance Ministries, Katy Christian Ministries, Wesley Community Center	Houston	\$ 600,000	497	\$ 286,150	\$ 310,470
17700-4	Coalition for the Homeless	n/a	Houston	\$ 600,000	430	\$ 310,470	\$ -
n/a	The Women's Home	Memorial Assistance Ministries	Houston	\$ 82,500	430	Did not meet threshold requirements.	
Total				\$ 2,806,631	n/a	\$ 1,431,557	\$ -

TX 701 Bryan/College Station Competitive Award Recommendations

\$ 187,212

Application Number	Lead Agency	Partners	City	Requested	Scores	Funding Awarded	Remaining Funding Available
n/a				\$ -	n/a	\$ -	\$ 187,212
Total				\$ -		\$ -	\$ 187,212

2017/2018 Emergency Solutions Grants Application Scores and Funding Amounts as of 11/9/2017 - Scenario 1: FVPS Appeal Granted, Childrens Center Denied

Funding Distribution Per Step 3 of the 2017/2018 ESG Notice of Funding Availability as of 11/9/2017 - Scenario 1

\$ 1,055,030

Application Number	Lead Agency	Partners	City	Requested	Scores	Funding Awarded**	Remaining Funding Available**
17500SAMM	San Antonio Metropolitan Ministry, Inc (SAMM)	San Antonio Food Bank, Haven for Hope of Bexar County, St. Vincent de Paul	San Antonio	\$ 600,000	560	\$ 542,500	\$ 512,530

**Funding awarded and available reflects the previous awards on October 12, 2017 illustrated under Step 4.

Funding Distribution Per Step 4 of the 2017/2018 ESG Notice of Funding Availability as of 11/9/2017 - Scenario 1

\$ 512,530

Application Number	Lead Agency	Partners	City	Requested	Scores	Funding Awarded	Remaining Funding Available
17607MCFS	Mid-Coast Family Services	Community Action Committee of Victoria Texas, The Harbor Children's Alliance and Victim Center	Victoria	\$ 450,000	730	\$ 450,000	\$ 62,530
17607SATPL	The Salvation Army of Temple	Central Counties Center for Mental Health and Mental Retardation Services, Families in Crisis	Temple	\$ 450,000	715	\$ 62,530	\$ -
17607SAB	The Salvation Army of Brazoria County	n/a	Freeport	\$ 150,000	710	\$ -	\$ -
17607FSST	Family Services of Southeast Texas, Inc	n/a	Beaumont	\$ 150,000	670	\$ -	\$ -
17607SAT	The Salvation Army of Tyler	East Texas Crisis Center, East Texas Cornerstone Assistance Network, The Andrews Center	Tyler	\$ 547,217	643	\$ -	\$ -
17607TCC	The Children's Center, Inc.	n/a	Galveston	\$ 150,000	640	\$ -	\$ -
17607CCHH	Corpus Christ Hope House, Inc.	n/a	Corpus Christi	\$ 150,000	640	\$ -	\$ -
17607COL	City of Lubbock	Lubbock Open Door, Women's Protective Services of Lubbock, Family Promise of Lubbock, The Salvation Army of Lubbock, Alcoholic Recovery Center of Lubbock	Lubbock	\$ 600,000	630	\$ -	\$ -

2017/2018 Emergency Solutions Grants Application Scores and Funding Amounts as of 11/9/2017 - Scenario 1: FVPS Appeal Granted, Childrens Center Denied

17607UWGC	United Way of Grayson County	Four Rivers Outreach, Grayson County Women's Crisis Line, The Salvation Army of Sherman	Sherman	\$ 599,783	625	\$ -	\$ -
17607SAG	The Salvation Army of Galveston County	SER - Jobs for Progress of the Texas Gulf Coast	Galveston	\$ 300,000	560	\$ -	\$ -
17607CO	The Gulf Coast Attainable Housing Foundation	The Chosen Ones Outreach Ministries of Galveston, Inc.	Galveston	\$ 300,000	Application Terminated	Application Terminated	\$ -
17607MDR	Making Dreams Real, Inc.	n/a		\$ 221,500	Application Terminated	Application Terminated	\$ -
Total				\$ 4,068,500		\$ 512,530	\$ -

2016 Recaptured funding distribution per the 2017/2018 ESG Notice of Funding Availability - Scenario 1

Application Number	Lead Agency	Partners	City	Requested	Scores	2017 ESG Funding Awarded	Current 2016 ESG deobligated funding awarded
17500SAMM	San Antonio Metropolitan Ministry, Inc (SAMM)	San Antonio Food Bank, Haven for Hope of Bexar County, St. Vincent de Paul	San Antonio	\$ 600,000	560	\$ 542,500	\$ 40,428
17607SATPL	The Salvation Army of Temple	Central Counties Center for Mental Health and Mental Retardation Services, Families in Crisis	Temple	\$ 450,000	715	\$ 62,530	\$ -

2017/2018 Emergency Solutions Grants Application Scores and Funding Amounts as of 11/9/2017 - Scenario 2: FVPS Appeal Denied, Childrens Center Denied

Continuum of Care Number	Continuum of Care (CoC) Location	Application Submissions	Funding Available for 2017	Funding Requested	Funding Awarded During Competitions	Remaining Balance for Funding Collapse
TX500	San Antonio	Directly to the Texas Department of Housing and Community Affairs (TDHCA)	\$636,052	\$ 457,500	\$ 600,000	\$ 36,052
TX503	Austin	Directly to TDHCA	\$571,808	\$ 569,093	\$ 569,093	\$ 2,715
TX600	Dallas	To the CoC Lead Agency	\$1,219,112	\$ 5,410,000	\$ 1,219,112	\$ -
TX601	Tarrant County	To the CoC Lead Agency	\$608,449	\$ 605,561	\$ 608,449	\$ -
TX603	El Paso	To the CoC Lead Agency	\$286,711	\$ 1,047,021	\$ 286,711	\$ -
TX604	Waco	Directly to TDHCA	\$151,646	\$ 151,646	\$ 151,646	\$ -
TX607	Balance of State	Directly to TDHCA	\$3,134,458	\$ 6,448,844	\$ 2,830,344	\$ 304,114
TX611	Amarillo	Directly to TDHCA	\$308,381	\$ 308,381	\$ 308,381	\$ -
TX624	Wichita Falls	Directly to TDHCA	\$132,437	\$ -	\$ -	\$ 132,437
TX700	Houston	To the CoC Lead Agency	\$1,431,557	\$ 2,806,631	\$ 1,431,557	\$ -
TX701	Bryan College Station	Directly to TDHCA	\$187,212	\$ -	\$ -	\$ 187,212
Total			\$8,667,823	\$ 17,804,677	\$8,005,293	\$ 662,530

Funding Distribution Per Step 2 of the 2017/2018 ESG Notice of Funding Availability as of 11/9 - Scenario 2

TX 500 San Antonio Competitive Award Recommendations

\$636,052

Application Number	Lead Agency	Partners	City	Requested	Scores	Funding Awarded	Remaining Funding Available
17500SAMM	San Antonio Metropolitan Ministry, Inc (SAMM)	San Antonio Food Bank, Haven for Hope of Bexar County, St. Vincent de Paul	San Antonio	\$ 600,000	560	\$ 600,000	\$ 36,052
17500FVPS	Family Violence Prevention Services (FVPS) dba The Battered Women and Children's Shelter of Bexar County	n/a	San Antonio	\$ 207,500	530	Not enough to award in CoC Region Competition	n/a
17500SASA	The Salvation Army of San Antonio	n/a	San Antonio	\$ 250,000	500	Not enough to award in CoC Region Competition	n/a
Total				\$ 457,500	n/a	\$ 600,000	\$ 36,052

TX 503 Austin Competitive Award Recommendations

\$ 571,808

Application Number	Lead Agency	Partners	City	Requested	Scores	Funding Awarded	Remaining Funding Available
17503LW	Youth and Family Alliance dba LifeWorks	The SAFE Alliance (SAFE), Ending Community Homelessness Coalition (ECHO), Front Steps, Inc	Austin	\$ 569,093	450	\$ 569,093	\$ 2,715
Total				\$ 569,093		\$ 569,093	\$ 2,715

TX 600 Dallas Competitive Award Recommendations - Local Competition

\$1,219,112

Application Number	Lead Agency	Partners	City	Requested	Scores	Funding Awarded	Remaining Funding Available
17600-10	Austin Street Center	n/a	Dallas	\$ 250,000	n/a	\$ 200,964	\$ 1,018,148
17600-11	Bridge Steps	The Salvation Army of Dallas	Dallas	\$ 600,000	n/a	\$ 200,300	\$ 817,848
17600-12	City House	Alliance Center of Collin County	Dallas	\$ 600,000	n/a	\$ 200,298	\$ 617,550
17600-13	City Square	n/a	Dallas	\$ 200,000	n/a	\$ 200,978	\$ 416,572
17600-14	Family Gateway	n/a	Dallas	\$ 250,000	n/a	\$ 200,964	\$ 215,608
17600-15	Family Place	Legal Aid of NW Texas, Promise House	Dallas	\$ 600,000	n/a	\$ 215,608	\$ -
n/a	Volunteers of America	n/a	Dallas	\$ 225,000	n/a	\$ -	\$ -
n/a	The Source of Hope	n/a	Dallas	\$ 250,000	n/a	\$ -	\$ -
n/a	Shared Housing	Housing Crisis Center, Jewish Family Services, Rainbow Days	Dallas	\$ 285,000	n/a	\$ -	\$ -
n/a	Sharing Life Community Out	n/a	Dallas	\$ 225,000	n/a	\$ -	\$ -
n/a	New Life Individual and Fam	n/a	Dallas	\$ 250,000	n/a	\$ -	\$ -
n/a	Creation of Tomorrow	n/a	Dallas	\$ 250,000	n/a	\$ -	\$ -
n/a	Bosh Jackson's Place	n/a	Dallas	\$ 250,000	n/a	\$ -	\$ -
n/a	Amazing Grace Food Pantry	n/a	Dallas	\$ 200,000	n/a	\$ -	\$ -
n/a	Texas Muslim Women's Four	n/a	Dallas	\$ 225,000	n/a	\$ -	\$ -
n/a	Bridges Safehouse	Transformation Vision Cedar Hill, Hope Mansion, Pathway to Purpose	Dallas	\$ 600,000	n/a	\$ -	\$ -
n/a	Azar Foundation	America Housing Solutions, Agape Provisions Food Bank	Dallas	\$ 150,000	n/a	\$ -	\$ -
Total				\$ 5,410,000		\$ 1,219,112	\$ -

TX 601 Tarrant County CoC Competitive Award Recommendations - Local Competition

\$608,449

Application Number	Lead Agency	Partners	City	Requested	Scores	Funding Awarded	Remaining Funding Available
17601-6	Safe Haven of Tarrant County	Catholic Charities of Fort Worth, Presbyterian Night Shelter	Fort Worth	\$ 353,350	n/a	\$ 354,909	\$ 253,540
17601-7	The Salvation Army - Mabec	Center for Transforming Lives, Hands of Hope	Fort Worth	\$ 252,211	n/a	\$ 253,540	\$ -
Total				\$ 605,561		\$ 608,449	\$ -

TX 603 El Paso CoC Competitive Award Recommendations - Local Competition

\$286,711

Application Number	Lead Agency	Partners	City	Requested	Scores	Funding Awarded	Funding Available
17603-8	The Salvation Army - El Paso	n/a	El Paso	\$ 250,000	875	\$ 114,684	\$ 172,027
17603-9	El Paso Human Services Inc	Center for Children	El Paso	\$ 285,350	870	\$ 172,027	\$ -
n/a	Project Vida	n/a	El Paso	\$ 285,350	801.25	\$ -	\$ -
n/a	El Paso County	n/a	El Paso	\$ 20,000	680	\$ -	\$ -
n/a	Child Crisis Center of El Paso	n/a	El Paso	\$ 206,321	585	\$ -	\$ -
Total				\$ 1,047,021		\$ 286,711	\$ -

TX 604 Waco Competitive Award Recommendations

\$ 151,646

Application Number	Lead Agency	Partners	City	Requested	Scores	Funding Awarded	Remaining Funding Available
17604SAW	The Salvation Army of Waco	n/a	Waco	\$ 151,646	580	\$ 151,646	\$ -
Total				\$ 151,646		\$ 151,646	\$ -

TX 607 Balance of State Competitive Award Recommendations

\$ 3,134,458

Application Number	Lead Agency	Partners	City	Requested	Scores	Funding Awarded	Remaining Funding Available
17607COT	City of Texarkana	Randy Sams' Outreach Shelter, Ark-Tex Council of Governments	Texarkana	\$ 449,786	920	\$ 449,786	\$ 2,684,672
17607LFRG	Loaves & Fishes of the Rio Grande Valley, Inc.	Family Crisis Center, La Posada Providencia	Harlingen	\$ 464,610	890	\$ 464,610	\$ 2,220,062
17607LFRG - parnter	Family Crisis Center for HMIS-comparable database	Partner of Loaves and fishes of the Rio Grande Valley, Inc	Harlingen	\$ 13,376	890	\$ 13,376	\$ 2,206,686
17607COD	City of Denton	Christian Community Action, Denton County Friends of the Family, Giving Hope, The Salvation Army of Denton	Denton	\$ 600,000	831	\$ 600,000	\$ 1,606,686
17607AO	Advocacy Outreach	Family Crisis Center (Bastrop Co Women's Shelter), Combined Community Action	Bastrop	\$ 450,000	810	\$ 450,000	\$ 1,156,686
17607SAFET	Shelter Agencies for Families in East Texas, Inc.	n/a	Mount Pleasant	\$ 150,000	755	\$ 150,000	\$ 1,006,686
17607FOW	Friendship of Women, Inc.	Bishop Enrique San Pedro Ozanam Center, Brownsville Literacy Center, Catholic Charities Rio Grande Valley	Brownsville	\$ 552,572	765	\$ 552,572	\$ 454,114
17607SACC	The Salvation Army of Corpus Christi	n/a	Corpus Christi	\$ 150,000	750	\$ 150,000	\$ 304,114
17607MCFS	Mid-Coast Family Services	Community Action Committee of Victoria Texas, The Harbor Children's Alliance and Victim Center	Victoria	\$ 450,000	730	Not enough to award in CoC Region Competition	n/a
Total*				\$ 2,830,344		\$ 2,830,344	\$ 304,114

*Total requested for TX-607 competition only includes what was funded, but total requests are reflected in the pooled funds under Step 4 below.

TX 611 Amarillo Competitive Award Recommendations

\$ 308,381

Application Number	Lead Agency	Partners	City	Requested	Scores	Funding Awarded	Remaining Funding Available
17611COA	City of Amarillo	The Salvation Army of Amarillo, Guyon Saunders Resource Center, Family Support Services	Amarillo	\$ 308,381	373	\$ 308,381	\$ -
Total				\$ 308,381		\$ 308,381	\$ -

TX 624 Wichita Falls Competitive Award Recommendations

\$ 132,437

Application Number	Lead Agency	Partners	City	Requested	Scores	Funding Awarded	Remaining Funding Available
n/a				\$ -	n/a	\$ -	\$ 132,437
Total				\$ -		\$ -	\$ 132,437

TX 700 Houston CoC Competitive Award Recommendations - Local Competition

\$ 1,431,557

Application Number	Lead Agency	Partners	City	Requested	Scores	Funding Awarded	Remaining Funding Available
17700-3	Houston Area Community Services (DBA Avenue 360)	Covenant House Texas (Homeless Gay Kids Houston was a partner but their activity was not funded)	Houston	\$ 356,040	635	\$ 200,771	\$ 1,230,786
17700-2	Bridge Over Troubled Water	Bay Area Turning Point	Houston	\$ 600,000	571	\$ 310,470	\$ 920,316
17700-5	The Salvation Army of Houston	SEARCH Homeless Services, Cathedral Health and Outreach Ministries	Houston	\$ 568,091	534	\$ 323,696	\$ 596,620
17700-1	Alliance of Community Assistance Ministries	Humble Area Assistance Ministries, Katy Christian Ministries, Wesley Community Center	Houston	\$ 600,000	497	\$ 286,150	\$ 310,470
17700-4	Coalition for the Homeless	n/a	Houston	\$ 600,000	430	\$ 310,470	\$ -
n/a	The Women's Home	Memorial Assistance Ministries	Houston	\$ 82,500	430	Did not meet threshold requirements.	
Total				\$ 2,806,631	n/a	\$ 1,431,557	\$ -

TX 701 Bryan/College Station Competitive Award Recommendations

\$ 187,212

Application Number	Lead Agency	Partners	City	Requested	Scores	Funding Awarded	Remaining Funding Available
n/a				\$ -	n/a	\$ -	\$ 187,212
Total				\$ -		\$ -	\$ 187,212

2017/2018 Emergency Solutions Grants Application Scores and Funding Amounts as of 11/9/2017 - Scenario 2: FVPS Appeal Denied, Childrens Center Denied

Funding Distribution Per Step 3 of the 2017/2018 ESG Notice of Funding Availability as of 11/9/2017 - Scenario 2

\$ 662,530

Application Number	Lead Agency	Partners	City	Requested	Scores	Funding Awarded	Remaining Funding Available
17607MCFS	Mid-Coast Family Services	Community Action Committee of Victoria Texas, The Harbor Children's Alliance and Victim Center	Victoria	\$ 450,000	730	\$ 450,000	\$ 212,530

Funding Distribution Per Step 4 of the 2017/2018 ESG Notice of Funding Availability as of 11/9/2017 - Scenario 2

Application Number	Lead Agency	Partners	City	Requested	Scores	Funding Awarded	Remaining Funding Available
17607SATPL	The Salvation Army of Temple	Central Counties Center for Mental Health and Mental Retardation Services, Families in Crisis	Temple	\$ 450,000	715	\$ 212,530	\$ -
17607SAB	The Salvation Army of Brazoria County	n/a	Freeport	\$ 150,000	710	\$ -	\$ -
17607FSST	Family Services of Southeast Texas, Inc	n/a	Beaumont	\$ 150,000	670	\$ -	\$ -
17607SAT	The Salvation Army of Tyler	East Texas Crisis Center, East Texas Cornerstone Assistance Network, The Andrews Center	Tyler	\$ 547,217	643	\$ -	\$ -
17607TCC	The Children's Center, Inc.	n/a	Galveston	\$ 150,000	640	\$ -	\$ -
17607CCHH	Corpus Christ Hope House, Inc.	n/a	Corpus Christi	\$ 150,000	640	\$ -	\$ -
17607COL	City of Lubbock	Lubbock Open Door, Women's Protective Services of Lubbock, Family Promise of Lubbock, The Salvation Army of Lubbock, Alcoholic Recovery Center of Lubbock	Lubbock	\$ 600,000	630	\$ -	\$ -
17607UWGC	United Way of Grayson County	Four Rivers Outreach, Grayson County Women's Crisis Line, The Salvation Army of Sherman	Sherman	\$ 599,783	625	\$ -	\$ -

2017/2018 Emergency Solutions Grants Application Scores and Funding Amounts as of 11/9/2017 - Scenario 2: FVPS Appeal Denied, Childrens Center Denied

17607SAG	The Salvation Army of Galveston County	SER - Jobs for Progress of the Texas Gulf Coast	Galveston	\$ 300,000	560	\$ -	\$ -
17607CO	The Gulf Coast Attainable Housing Foundation	The Chosen Ones Outreach Ministries of Galveston, Inc.	Galveston	\$ 300,000	Application Terminated	Application Terminated	\$ -
17607MDR	Making Dreams Real, Inc.	n/a		\$ 221,500	Application Terminated	Application Terminated	\$ -
Total				\$ 3,618,500		\$ 212,530	\$ -

2016 Recaptured funding distribution per the 2017/2018 ESG Notice of Funding Availability - Scenario 2

Application Number	Lead Agency	Partners	City	Requested	Scores	2017 ESG Funding Awarded	Current 2016 ESG deobligated funding awarded
17607SATPL	The Salvation Army of Temple	Central Counties Center for Mental Health and Mental Retardation Services, Families in Crisis	Temple	\$ 450,000	715	\$ 212,530	\$ 40,428

2017/2018 Emergency Solutions Grants Application Scores and Funding Amounts as of 11/9/2017 - Scenario 3: FVPS Appeal Denied, Childrens Center
Granted

Continuum of Care Number	Continuum of Care (CoC) Location	Application Submissions	Funding Available for 2017	Funding Requested	Funding Awarded During Competitions	Remaining Balance for Funding Collapse
TX500	San Antonio	Directly to the Texas Department of Housing and Community Affairs (TDHCA)	\$636,052	\$ 457,500	\$ 600,000	\$ 36,052
TX503	Austin	Directly to TDHCA	\$571,808	\$ 569,093	\$ 569,093	\$ 2,715
TX600	Dallas	To the CoC Lead Agency	\$1,219,112	\$ 5,410,000	\$ 1,219,112	\$ -
TX601	Tarrant County	To the CoC Lead Agency	\$608,449	\$ 605,561	\$ 608,449	\$ -
TX603	El Paso	To the CoC Lead Agency	\$286,711	\$ 1,047,021	\$ 286,711	\$ -
TX604	Waco	Directly to TDHCA	\$151,646	\$ 151,646	\$ 151,646	\$ -
TX607	Balance of State	Directly to TDHCA	\$3,134,458	\$ 6,598,844	\$ 2,830,344	\$ 304,114
TX611	Amarillo	Directly to TDHCA	\$308,381	\$ 308,381	\$ 308,381	\$ -
TX624	Wichita Falls	Directly to TDHCA	\$132,437	\$ -	\$ -	\$ 132,437
TX700	Houston	To the CoC Lead Agency	\$1,431,557	\$ 2,806,631	\$ 1,431,557	\$ -
TX701	Bryan College Station	Directly to TDHCA	\$187,212	\$ -	\$ -	\$ 187,212
Total			\$8,667,823	\$ 17,954,677	\$8,005,293	\$ 662,530

2017/2018 Emergency Solutions Grants Application Scores and Funding Amounts as of 11/9/2017 - Scenario 3: FVPS Appeal Denied, Childrens Center
Granted

Funding Distribution Per Step 2 of the 2017/2018 ESG Notice of Funding Availability as of 11/9 - Scenario 3

TX 500 San Antonio Competitive Award Recommendations

\$636,052

Application Number	Lead Agency	Partners	City	Requested	Scores	Funding Awarded	Remaining Funding Available
17500SAMM	San Antonio Metropolitan Ministry, Inc (SAMM)	San Antonio Food Bank, Haven for Hope of Bexar County, St. Vincent de Paul	San Antonio	\$ 600,000	560	\$ 600,000	\$ 36,052
17500FVPS	Family Violence Prevention Services (FVPS) dba The Battered Women and Children's Shelter of Bexar County	n/a	San Antonio	\$ 207,500	530	Not enough to award in CoC Region Competition	n/a
17500SASA	The Salvation Army of San Antonio	n/a	San Antonio	\$ 250,000	500	Not enough to award in CoC Region Competition	n/a
Total				\$ 457,500	n/a	\$ 600,000	\$ 36,052

TX 503 Austin Competitive Award Recommendations

\$ 571,808

Application Number	Lead Agency	Partners	City	Requested	Scores	Funding Awarded	Remaining Funding Available
17503LW	Youth and Family Alliance dba LifeWorks	The SAFE Alliance (SAFE), Ending Community Homelessness Coalition (ECHO), Front Steps, Inc	Austin	\$ 569,093	450	\$ 569,093	\$ 2,715
Total				\$ 569,093		\$ 569,093	\$ 2,715

2017/2018 Emergency Solutions Grants Application Scores and Funding Amounts as of 11/9/2017 - Scenario 3: FVPS Appeal Denied, Childrens Center
Granted

TX 600 Dallas Competitive Award Recommendations - Local Competition

\$1,219,112

Application Number	Lead Agency	Partners	City	Requested	Scores	Funding Awarded	Remaining Funding Available
17600-10	Austin Street Center	n/a	Dallas	\$ 250,000	n/a	\$ 200,964	\$ 1,018,148
17600-11	Bridge Steps	The Salvation Army of Dallas	Dallas	\$ 600,000	n/a	\$ 200,300	\$ 817,848
17600-12	City House	Alliance Center of Collin County	Dallas	\$ 600,000	n/a	\$ 200,298	\$ 617,550
17600-13	City Square	n/a	Dallas	\$ 200,000	n/a	\$ 200,978	\$ 416,572
17600-14	Family Gateway	n/a	Dallas	\$ 250,000	n/a	\$ 200,964	\$ 215,608
17600-15	Family Place	Legal Aid of NW Texas, Promise House	Dallas	\$ 600,000	n/a	\$ 215,608	\$ -
n/a	Volunteers of America	n/a	Dallas	\$ 225,000	n/a	\$ -	\$ -
n/a	The Source of Hope	n/a	Dallas	\$ 250,000	n/a	\$ -	\$ -
n/a	Shared Housing	Housing Crisis Center, Jewish Family Services, Rainbow Days	Dallas	\$ 285,000	n/a	\$ -	\$ -
n/a	Sharing Life Community Out	n/a	Dallas	\$ 225,000	n/a	\$ -	\$ -
n/a	New Life Individual and Fam	n/a	Dallas	\$ 250,000	n/a	\$ -	\$ -
n/a	Creation of Tomorrow	n/a	Dallas	\$ 250,000	n/a	\$ -	\$ -
n/a	Bosh Jackson's Place	n/a	Dallas	\$ 250,000	n/a	\$ -	\$ -
n/a	Amazing Grace Food Pantry	n/a	Dallas	\$ 200,000	n/a	\$ -	\$ -
n/a	Texas Muslim Women's Four	n/a	Dallas	\$ 225,000	n/a	\$ -	\$ -
n/a	Bridges Safehouse	Transformation Vision Cedar Hill, Hope Mansion, Pathway to Purpose	Dallas	\$ 600,000	n/a	\$ -	\$ -
n/a	Azar Foundation	America Housing Solutions, Agape Provisions Food Bank	Dallas	\$ 150,000	n/a	\$ -	\$ -
Total				\$ 5,410,000		\$ 1,219,112	\$ -

2017/2018 Emergency Solutions Grants Application Scores and Funding Amounts as of 11/9/2017 - Scenario 3: FVPS Appeal Denied, Childrens Center
Granted

TX 601 Tarrant County CoC Competitive Award Recommendations - Local Competition

\$608,449

Application Number	Lead Agency	Partners	City	Requested	Scores	Funding Awarded	Remaining Funding Available
17601-6	Safe Haven of Tarrant County	Catholic Charities of Fort Worth, Presbyterian Night Shelter	Fort Worth	\$ 353,350	n/a	\$ 354,909	\$ 253,540
17601-7	The Salvation Army - Mabec	Center for Transforming Lives, Hands of Hope	Fort Worth	\$ 252,211	n/a	\$ 253,540	\$ -
Total				\$ 605,561		\$ 608,449	\$ -

TX 603 El Paso CoC Competitive Award Recommendations - Local Competition

\$286,711

Application Number	Lead Agency	Partners	City	Requested	Scores	Funding Awarded	Funding Available
17603-8	The Salvation Army - El Paso	n/a	El Paso	\$ 250,000	875	\$ 114,684	\$ 172,027
17603-9	El Paso Human Services Inc	Center for Children	El Paso	\$ 285,350	870	\$ 172,027	\$ -
n/a	Project Vida	n/a	El Paso	\$ 285,350	801.25	\$ -	\$ -
n/a	El Paso County	n/a	El Paso	\$ 20,000	680	\$ -	\$ -
n/a	Child Crisis Center of El Paso	n/a	El Paso	\$ 206,321	585	\$ -	\$ -
Total				\$ 1,047,021		\$ 286,711	\$ -

TX 604 Waco Competitive Award Recommendations

\$ 151,646

Application Number	Lead Agency	Partners	City	Requested	Scores	Funding Awarded	Remaining Funding Available
17604SAW	The Salvation Army of Waco	n/a	Waco	\$ 151,646	580	\$ 151,646	\$ -
Total				\$ 151,646		\$ 151,646	\$ -

2017/2018 Emergency Solutions Grants Application Scores and Funding Amounts as of 11/9/2017 - Scenario 3: FVPS Appeal Denied, Childrens Center
Granted

TX 607 Balance of State Competitive Award Recommendations

\$ 3,134,458

Application Number	Lead Agency	Partners	City	Requested	Scores	Funding Awarded	Remaining Funding Available
17607COT	City of Texarkana	Randy Sams' Outreach Shelter, Ark-Tex Council of Governments	Texarkana	\$ 449,786	920	\$ 449,786	\$ 2,684,672
17607LFRG	Loaves & Fishes of the Rio Grande Valley, Inc.	Family Crisis Center, La Posada Providencia	Harlingen	\$ 464,610	890	\$ 464,610	\$ 2,220,062
17607LFRG - parnter	Family Crisis Center for HMIS-comparable database	Partner of Loaves and fishes of the Rio Grande Valley, Inc	Harlingen	\$ 13,376	890	\$ 13,376	\$ 2,206,686
17607COD	City of Denton	Christian Community Action, Denton County Friends of the Family, Giving Hope, The Salvation Army of Denton	Denton	\$ 600,000	831	\$ 600,000	\$ 1,606,686
17607AO	Advocacy Outreach	Family Crisis Center (Bastrop Co Women's Shelter), Combined Community Action	Bastrop	\$ 450,000	810	\$ 450,000	\$ 1,156,686
17607SAFET	Shelter Agencies for Families in East Texas, Inc.	n/a	Mount Pleasant	\$ 150,000	755	\$ 150,000	\$ 1,006,686
17607FOW	Friendship of Women, Inc.	Bishop Enrique San Pedro Ozanam Center, Brownsville Literacy Center, Catholic Charities Rio Grande Valley	Brownsville	\$ 552,572	765	\$ 552,572	\$ 454,114
17607SACC	The Salvation Army of Corpus Christi	n/a	Corpus Christi	\$ 150,000	750	\$ 150,000	\$ 304,114
17607MCFS	Mid-Coast Family Services	Community Action Committee of Victoria Texas, The Harbor Children's Alliance and Victim Center	Victoria	\$ 450,000	730	Not enough to award in CoC Region Competition	n/a
Total*				\$ 2,830,344		\$ 2,830,344	\$ 304,114

*Total requested for TX-607 competition only includes what was funded, but total requests are reflected in the pooled funds under Step 4 below.

2017/2018 Emergency Solutions Grants Application Scores and Funding Amounts as of 11/9/2017 - Scenario 3: FVPS Appeal Denied, Childrens Center
Granted

TX 611 Amarillo Competitive Award Recommendations

\$ 308,381

Application Number	Lead Agency	Partners	City	Requested	Scores	Funding Awarded	Remaining Funding Available
17611COA	City of Amarillo	The Salvation Army of Amarillo, Guyon Saunders Resource Center, Family Support Services	Amarillo	\$ 308,381	373	\$ 308,381	\$ -
Total				\$ 308,381		\$ 308,381	\$ -

TX 624 Wichita Falls Competitive Award Recommendations

\$ 132,437

Application Number	Lead Agency	Partners	City	Requested	Scores	Funding Awarded	Remaining Funding Available
n/a				\$ -	n/a	\$ -	\$ 132,437
Total				\$ -		\$ -	\$ 132,437

2017/2018 Emergency Solutions Grants Application Scores and Funding Amounts as of 11/9/2017 - Scenario 3: FVPS Appeal Denied, Childrens Center
Granted

TX 700 Houston CoC Competitive Award Recommendations- Local

\$ 1,431,557

Application Number	Lead Agency	Partners	City	Requested	Scores	Funding Awarded	Remaining Funding Available
17700-3	Houston Area Community Services (DBA Avenue 360)	Covenant House Texas (Homeless Gay Kids Houston was a partner but their activity was not funded)	Houston	\$ 356,040	635	\$ 200,771	\$ 1,230,786
17700-2	Bridge Over Troubled Water	Bay Area Turning Point	Houston	\$ 600,000	571	\$ 310,470	\$ 920,316
17700-5	The Salvation Army of Houston	SEARCH Homeless Services, Cathedral Health and Outreach Ministries	Houston	\$ 568,091	534	\$ 323,696	\$ 596,620
17700-1	Alliance of Community Assistance Ministries	Humble Area Assistance Ministries, Katy Christian Ministries, Wesley Community Center	Houston	\$ 600,000	497	\$ 286,150	\$ 310,470
17700-4	Coalition for the Homeless	n/a	Houston	\$ 600,000	430	\$ 310,470	\$ -
n/a	The Women's Home	Memorial Assistance Ministries	Houston	\$ 82,500	430	Did not meet threshold requirements.	
Total				\$ 2,806,631	n/a	\$ 1,431,557	\$ -

TX 701 Bryan/College Station Competitive Award Recommendations

\$ 187,212

Application Number	Lead Agency	Partners	City	Requested	Scores	Funding Awarded	Remaining Funding Available
n/a				\$ -	n/a	\$ -	\$ 187,212
Total				\$ -		\$ -	\$ 187,212

2017/2018 Emergency Solutions Grants Application Scores and Funding Amounts as of 11/9/2017 - Scenario 3: FVPS Appeal Denied, Childrens Center
Granted

Funding Distribution Per Step 3 of the 2017/2018 ESG Notice of Funding Availability as of 11/9/2017 - Scenario 3 **\$ 662,530**

Application Number	Lead Agency	Partners	City	Requested	Scores	Funding Awarded	Remaining Funding Available
17607MCFS	Mid-Coast Family Services	Community Action Committee of Victoria Texas, The Harbor Children's Alliance and Victim Center	Victoria	\$ 450,000	730	\$ 450,000	\$ 212,530

Funding Distribution Per Step 4 of the 2017/2018 ESG Notice of Funding Availability as of 11/9/2017 - Scenario 3

Application Number	Lead Agency	Partners	City	Requested	Scores	Funding Awarded	Remaining Funding Available
17607TCC	The Children's Center, Inc.	n/a	Galveston	\$ 150,000	730	\$ 150,000	\$ 62,530
17607SATPL	The Salvation Army of Temple	Central Counties Center for Mental Health and Mental Retardation Services, Families in Crisis	Temple	\$ 450,000	715	\$ 62,530	\$ -
17607SAB	The Salvation Army of Brazoria County	n/a	Freeport	\$ 150,000	710	\$ -	\$ -
17607FSST	Family Services of Southeast Texas, Inc	n/a	Beaumont	\$ 150,000	670	\$ -	\$ -
17607SAT	The Salvation Army of Tyler	East Texas Crisis Center, East Texas Cornerstone Assistance Network, The Andrews Center	Tyler	\$ 547,217	643	\$ -	\$ -
17607TCC	The Children's Center, Inc.	n/a	Galveston	\$ 150,000	640	\$ -	\$ -
17607CCHH	Corpus Christ Hope House, Inc.	n/a	Corpus Christi	\$ 150,000	640	\$ -	\$ -
17607COL	City of Lubbock	Lubbock Open Door, Women's Protective Services of Lubbock, Family Promise of Lubbock, The Salvation Army of Lubbock, Alcoholic Recovery Center of Lubbock	Lubbock	\$ 600,000	630	\$ -	\$ -

2017/2018 Emergency Solutions Grants Application Scores and Funding Amounts as of 11/9/2017 - Scenario 3: FVPS Appeal Denied, Childrens Center
Granted

17607UWGC	United Way of Grayson County	Four Rivers Outreach, Grayson County Women's Crisis Line, The Salvation Army of Sherman	Sherman	\$ 599,783	625	\$ -	\$ -
17607SAG	The Salvation Army of Galveston County	SER - Jobs for Progress of the Texas Gulf Coast	Galveston	\$ 300,000	560	\$ -	\$ -
17607CO	The Gulf Coast Attainable Housing Foundation	The Chosen Ones Outreach Ministries of Galveston, Inc.	Galveston	\$ 300,000	Application Terminated	Application Terminated	\$ -
17607MDR	Making Dreams Real, Inc.	n/a		\$ 221,500	Application Terminated	Application Terminated	\$ -
Total				\$ 3,768,500		\$ 212,530	\$ -

2016 Recaptured funding distribution per the 2017/2018 ESG Notice of Funding Availability - Scenario 3

Application Number	Lead Agency	Partners	City	Requested	Scores	2017 ESG Funding Awarded	Current 2016 ESG deobligated funding awarded
17607SATPL	The Salvation Army of Temple	Central Counties Center for Mental Health and Mental Retardation Services, Families in Crisis	Temple	\$ 450,000	715	\$ 62,530	\$ 40,428

2017/2018 Emergency Solutions Grants Application Scores and Funding Amounts as of 11/9/2017 - Scenario 4: FVPS Appeal Granted, Childrens Center Granted

Continuum of Care Number	Continuum of Care (CoC) Location	Application Submissions	Funding Available for 2017	Funding Requested	Funding Awarded During Competitions	Remaining Balance for Funding Collapse
TX500	San Antonio	Directly to the Texas Department of Housing and Community Affairs (TDHCA)	\$636,052	\$ 850,000	\$ 207,500	\$ 428,552
TX503	Austin	Directly to TDHCA	\$571,808	\$ 569,093	\$ 569,093	\$ 2,715
TX600	Dallas	To the CoC Lead Agency	\$1,219,112	\$ 5,410,000	\$ 1,219,112	\$ -
TX601	Tarrant County	To the CoC Lead Agency	\$608,449	\$ 605,561	\$ 608,449	\$ -
TX603	El Paso	To the CoC Lead Agency	\$286,711	\$ 1,047,021	\$ 286,711	\$ -
TX604	Waco	Directly to TDHCA	\$151,646	\$ 151,646	\$ 151,646	\$ -
TX607	Balance of State	Directly to TDHCA	\$3,134,458	\$ 7,048,844	\$ 2,830,344	\$ 304,114
TX611	Amarillo	Directly to TDHCA	\$308,381	\$ 308,381	\$ 308,381	\$ -
TX624	Wichita Falls	Directly to TDHCA	\$132,437	\$ -	\$ -	\$ 132,437
TX700	Houston	To the CoC Lead Agency	\$1,431,557	\$ 2,806,631	\$ 1,431,557	\$ -
TX701	Bryan College Station	Directly to TDHCA	\$187,212	\$ -	\$ -	\$ 187,212
Total			\$8,667,823	\$ 18,797,177	\$7,612,793	\$ 1,055,030

Funding Distribution Per Step 2 of the 2017/2018 ESG Notice of Funding Availability as of 11/9 - Scenario 4

TX 500 San Antonio Competitive Award Recommendations

\$636,052

Application Number	Lead Agency	Partners	City	Requested	Scores	Funding Awarded	Remaining Funding Available
17500FVPS	Family Violence Prevention Services (FVPS) dba The Battered Women and Children's Shelter of Bexar County	n/a	San Antonio	\$ 207,500	580	\$ 207,500	\$ 428,552
17500SAMM	San Antonio Metropolitan Ministry, Inc (SAMM)	San Antonio Food Bank, Haven for Hope of Bexar County, St. Vincent de Paul	San Antonio	\$ 600,000	560	Not enough to award in CoC Region Competition	n/a
17500SASA	The Salvation Army of San Antonio	n/a	San Antonio	\$ 250,000	500	Not enough to award in CoC Region Competition	n/a
Total				\$ 850,000	n/a	\$ 207,500	\$ 428,552

TX 503 Austin Competitive Award Recommendations

\$ 571,808

Application Number	Lead Agency	Partners	City	Requested	Scores	Funding Awarded	Remaining Funding Available
17503LW	Youth and Family Alliance dba LifeWorks	The SAFE Alliance (SAFE), Ending Community Homelessness Coalition (ECHO), Front Steps, Inc	Austin	\$ 569,093	450	\$ 569,093	\$ 2,715
Total				\$ 569,093		\$ 569,093	\$ 2,715

TX 600 Dallas Competitive Award Recommendations - Local Competition

\$1,219,112

Application Number	Lead Agency	Partners	City	Requested	Scores	Funding Awarded	Remaining Funding Available
17600-10	Austin Street Center	n/a	Dallas	\$ 250,000	n/a	\$ 200,964	\$ 1,018,148
17600-11	Bridge Steps	The Salvation Army of Dallas	Dallas	\$ 600,000	n/a	\$ 200,300	\$ 817,848
17600-12	City House	Alliance Center of Collin County	Dallas	\$ 600,000	n/a	\$ 200,298	\$ 617,550
17600-13	City Square	n/a	Dallas	\$ 200,000	n/a	\$ 200,978	\$ 416,572
17600-14	Family Gateway	n/a	Dallas	\$ 250,000	n/a	\$ 200,964	\$ 215,608
17600-15	Family Place	Legal Aid of NW Texas, Promise House	Dallas	\$ 600,000	n/a	\$ 215,608	\$ -
n/a	Volunteers of America	n/a	Dallas	\$ 225,000	n/a	\$ -	\$ -
n/a	The Source of Hope	n/a	Dallas	\$ 250,000	n/a	\$ -	\$ -
n/a	Shared Housing	Housing Crisis Center, Jewish Family Services, Rainbow Days	Dallas	\$ 285,000	n/a	\$ -	\$ -
n/a	Sharing Life Community Out	n/a	Dallas	\$ 225,000	n/a	\$ -	\$ -
n/a	New Life Individual and Fam	n/a	Dallas	\$ 250,000	n/a	\$ -	\$ -
n/a	Creation of Tomorrow	n/a	Dallas	\$ 250,000	n/a	\$ -	\$ -
n/a	Bosh Jackson's Place	n/a	Dallas	\$ 250,000	n/a	\$ -	\$ -
n/a	Amazing Grace Food Pantry	n/a	Dallas	\$ 200,000	n/a	\$ -	\$ -
n/a	Texas Muslim Women's Four	n/a	Dallas	\$ 225,000	n/a	\$ -	\$ -
n/a	Bridges Safehouse	Transformation Vision Cedar Hill, Hope Mansion, Pathway to Purpose	Dallas	\$ 600,000	n/a	\$ -	\$ -
n/a	Azar Foundation	America Housing Solutions, Agape Provisions Food Bank	Dallas	\$ 150,000	n/a	\$ -	\$ -
Total				\$ 5,410,000		\$ 1,219,112	\$ -

TX 601 Tarrant County CoC Competitive Award Recommendations - Local Competition

\$608,449

Application Number	Lead Agency	Partners	City	Requested	Scores	Funding Awarded	Remaining Funding Available
17601-6	Safe Haven of Tarrant County	Catholic Charities of Fort Worth, Presbyterian Night Shelter	Fort Worth	\$ 353,350	n/a	\$ 354,909	\$ 253,540
17601-7	The Salvation Army - Mabec	Center for Transforming Lives, Hands of Hope	Fort Worth	\$ 252,211	n/a	\$ 253,540	\$ -
Total				\$ 605,561		\$ 608,449	\$ -

TX 603 El Paso CoC Competitive Award Recommendations - Local Competition

\$286,711

Application Number	Lead Agency	Partners	City	Requested	Scores	Funding Awarded	Funding Available
17603-8	The Salvation Army - El Paso	n/a	El Paso	\$ 250,000	875	\$ 114,684	\$ 172,027
17603-9	El Paso Human Services Inc	Center for Children	El Paso	\$ 285,350	870	\$ 172,027	\$ -
n/a	Project Vida	n/a	El Paso	\$ 285,350	801.25	\$ -	\$ -
n/a	El Paso County	n/a	El Paso	\$ 20,000	680	\$ -	\$ -
n/a	Child Crisis Center of El Paso	n/a	El Paso	\$ 206,321	585	\$ -	\$ -
Total				\$ 1,047,021		\$ 286,711	\$ -

TX 604 Waco Competitive Award Recommendations

\$ 151,646

Application Number	Lead Agency	Partners	City	Requested	Scores	Funding Awarded	Remaining Funding Available
17604SAW	The Salvation Army of Waco	n/a	Waco	\$ 151,646	580	\$ 151,646	\$ -
Total				\$ 151,646		\$ 151,646	\$ -

TX 607 Balance of State Competitive Award Recommendations

\$ 3,134,458

Application Number	Lead Agency	Partners	City	Requested	Scores	Funding Awarded	Remaining Funding Available
17607COT	City of Texarkana	Randy Sams' Outreach Shelter, Ark-Tex Council of Governments	Texarkana	\$ 449,786	920	\$ 449,786	\$ 2,684,672
17607LFRG	Loaves & Fishes of the Rio Grande Valley, Inc.	Family Crisis Center, La Posada Providencia	Harlingen	\$ 464,610	890	\$ 464,610	\$ 2,220,062
17607LFRG - parnter	Family Crisis Center for HMIS-comparable database	Partner of Loaves and fishes of the Rio Grande Valley, Inc	Harlingen	\$ 13,376	890	\$ 13,376	\$ 2,206,686
17607COD	City of Denton	Christian Community Action, Denton County Friends of the Family, Giving Hope, The Salvation Army of Denton	Denton	\$ 600,000	831	\$ 600,000	\$ 1,606,686
17607AO	Advocacy Outreach	Family Crisis Center (Bastrop Co Women's Shelter), Combined Community Action	Bastrop	\$ 450,000	810	\$ 450,000	\$ 1,156,686
17607SAFET	Shelter Agencies for Families in East Texas, Inc.	n/a	Mount Pleasant	\$ 150,000	755	\$ 150,000	\$ 1,006,686
17607FOW	Friendship of Women, Inc.	Bishop Enrique San Pedro Ozanam Center, Brownsville Literacy Center, Catholic Charities Rio Grande Valley	Brownsville	\$ 552,572	765	\$ 552,572	\$ 454,114
17607SACC	The Salvation Army of Corpus Christi	n/a	Corpus Christi	\$ 150,000	750	\$ 150,000	\$ 304,114
17607MCFS	Mid-Coast Family Services	Community Action Committee of Victoria Texas, The Harbor Children's Alliance and Victim Center	Victoria	\$ 450,000	730	Not enough to award in CoC Region Competition	n/a
Total*				\$ 2,830,344		\$ 2,830,344	\$ 304,114

*Total requested for TX-607 competition only includes what was funded, but total requests are reflected in the pooled funds under Step 4 below.

TX 611 Amarillo Competitive Award Recommendations

\$ 308,381

Application Number	Lead Agency	Partners	City	Requested	Scores	Funding Awarded	Remaining Funding Available
17611COA	City of Amarillo	The Salvation Army of Amarillo, Guyon Saunders Resource Center, Family Support Services	Amarillo	\$ 308,381	373	\$ 308,381	\$ -
Total				\$ 308,381		\$ 308,381	\$ -

TX 624 Wichita Falls Competitive Award Recommendations

\$ 132,437

Application Number	Lead Agency	Partners	City	Requested	Scores	Funding Awarded	Remaining Funding Available
n/a				\$ -	n/a	\$ -	\$ 132,437
Total				\$ -		\$ -	\$ 132,437

TX 700 Houston CoC Competitive Award Recommendations - Local Competition

\$ 1,431,557

Application Number	Lead Agency	Partners	City	Requested	Scores	Funding Awarded	Remaining Funding Available
17700-3	Houston Area Community Services (DBA Avenue 360)	Covenant House Texas (Homeless Gay Kids Houston was a partner but their activity was not funded)	Houston	\$ 356,040	635	\$ 200,771	\$ 1,230,786
17700-2	Bridge Over Troubled Water	Bay Area Turning Point	Houston	\$ 600,000	571	\$ 310,470	\$ 920,316
17700-5	The Salvation Army of Houston	SEARCH Homeless Services, Cathedral Health and Outreach Ministries	Houston	\$ 568,091	534	\$ 323,696	\$ 596,620
17700-1	Alliance of Community Assistance Ministries	Humble Area Assistance Ministries, Katy Christian Ministries, Wesley Community Center	Houston	\$ 600,000	497	\$ 286,150	\$ 310,470
17700-4	Coalition for the Homeless	n/a	Houston	\$ 600,000	430	\$ 310,470	\$ -
n/a	The Women's Home	Memorial Assistance Ministries	Houston	\$ 82,500	430	Did not meet threshold requirements.	
Total				\$ 2,806,631	n/a	\$ 1,431,557	\$ -

TX 701 Bryan/College Station Competitive Award Recommendations

\$ 187,212

Application Number	Lead Agency	Partners	City	Requested	Scores	Funding Awarded	Remaining Funding Available
n/a				\$ -	n/a	\$ -	\$ 187,212
Total				\$ -		\$ -	\$ 187,212

2017/2018 Emergency Solutions Grants Application Scores and Funding Amounts as of 11/9/2017 - Scenario 4: FVPS Appeal Granted, Childrens Center Granted

Funding Distribution Per Step 3 of the 2017/2018 ESG Notice of Funding Availability as of 11/9/2017 - Scenario 4

\$ 1,055,030

Application Number	Lead Agency	Partners	City	Requested	Scores	Funding Awarded**	Remaining Funding Available**
17500SAMM	San Antonio Metropolitan Ministry, Inc (SAMM)	San Antonio Food Bank, Haven for Hope of Bexar County, St. Vincent de Paul	San Antonio	\$ 600,000	560	\$ 392,500	\$ 662,530

**Funding awarded and available reflects the previous awards on October 12, 2017 illustrated under Step 4.

Funding Distribution Per Step 4 of the 2017/2018 ESG Notice of Funding Availability as of 11/9/2017 - Scenario 4

Application Number	Lead Agency	Partners	City	Requested	Scores	Funding Awarded	Remaining Funding Available
17607MCFS	Mid-Coast Family Services	Community Action Committee of Victoria Texas, The Harbor Children's Alliance and Victim Center	Victoria	\$ 450,000	730	\$ 450,000	\$ 212,530
17607TCC	The Children's Center, Inc.	n/a	Galveston	\$ 150,000	730	\$ 150,000	\$ 62,530
17607SATPL	The Salvation Army of Temple	Central Counties Center for Mental Health and Mental Retardation Services, Families in Crisis	Temple	\$ 450,000	715	\$ 62,530	\$ -
17607SAB	The Salvation Army of Brazoria County	n/a	Freeport	\$ 150,000	710	\$ -	\$ -
17607FSST	Family Services of Southeast Texas, Inc	n/a	Beaumont	\$ 150,000	670	\$ -	\$ -
17607SAT	The Salvation Army of Tyler	East Texas Crisis Center, East Texas Cornerstone Assistance Network, The Andrews Center	Tyler	\$ 547,217	643	\$ -	\$ -
17607TCC	The Children's Center, Inc.	n/a	Galveston	\$ 150,000	640	\$ -	\$ -
17607CCHH	Corpus Christ Hope House, Inc.	n/a	Corpus Christi	\$ 150,000	640	\$ -	\$ -

2017/2018 Emergency Solutions Grants Application Scores and Funding Amounts as of 11/9/2017 - Scenario 4: FVPS Appeal Granted, Childrens Center Granted

17607COL	City of Lubbock	Lubbock Open Door, Women's Protective Services of Lubbock, Family Promise of Lubbock, The Salvation Army of Lubbock, Alcoholic Recovery Center of Lubbock	Lubbock	\$ 600,000	630	\$ -	\$ -
17607UWGC	United Way of Grayson County	Four Rivers Outreach, Grayson County Women's Crisis Line, The Salvation Army of Sherman	Sherman	\$ 599,783	625	\$ -	\$ -
17607SAG	The Salvation Army of Galveston County	SER - Jobs for Progress of the Texas Gulf Coast	Galveston	\$ 300,000	560	\$ -	\$ -
17607CO	The Gulf Coast Attainable Housing Foundation	The Chosen Ones Outreach Ministries of Galveston, Inc.	Galveston	\$ 300,000	Application Terminated	Application Terminated	\$ -
17607MDR	Making Dreams Real, Inc.	n/a		\$ 221,500	Application Terminated	Application Terminated	\$ -
Total				\$ 4,218,500		\$ 662,530	\$ -

2016 Recaptured funding distribution per the 2017/2018 ESG Notice of Funding Availability - Scenario 4

Application Number	Lead Agency	Partners	City	Requested	Scores	2017 ESG Funding Awarded	Current 2016 ESG deobligated funding
17500SAMM	San Antonio Metropolitan Ministry, Inc (SAMM)	San Antonio Food Bank, Haven for Hope of Bexar County, St. Vincent de Paul	San Antonio	\$ 600,000	560	\$ 392,500	\$ 40,428
17607SATPL	The Salvation Army of Temple	Central Counties Center for Mental Health and Mental Retardation Services, Families in Crisis	Temple	\$ 450,000	715	\$ 62,530	

4a

BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION
NOVEMBER 9, 2017

Presentation, discussion, and possible action regarding a waiver of the extension prohibition in 10 TAC §10.402(a) and treatment of an extension under 10 TAC §10.405(c) of the Uniform Multifamily Rules

RECOMMENDED ACTION

WHEREAS, Pedcor Investments (the “Applicant”) submitted Application 17363 Residences of Long Branch for Competitive Low Income Housing Tax Credits (“9% HTC”) for the new construction of 76 multifamily units in Rowlett;

WHEREAS, on September 25, 2017, the Department issued to the Applicant a commitment notice with an expiration date of October 25, 2017;

WHEREAS, pursuant to 10 TAC §10.402(a) related to commitments for 9% HTC and tax exempt bond developments, evidence of final approval of any zoning that is required or was proposed or needed to be changed pursuant to the Development plan must have been received by the Department prior to expiration of the commitment notice;

WHEREAS, the Applicant advised the Department that the Applicant would be unable to provide final approval of zoning prior to expiration of the commitment and has requested a waiver of 10 TAC §10.402(a) in order to extend the date of the commitment notice via 10 TAC §10.207(a);

WHEREAS, because extension of the commitment expiration date is prohibited in 10 TAC §10.402(a), such extension is not addressed in 10 TAC §10.405(c) related to extensions in the housing tax credit program; and

WHEREAS, staff has determined that should a waiver of 10 TAC §10.402(a) be granted, the waiver should be subject to the requirements of 10 TAC §10.405(c), including the requirements to submit an extension fee as described in 10 TAC §10.901 and completion of a point deduction evaluation in accordance with Tex. Gov't Code, §2306.6710(b)(2), and §11.9(f);

NOW, therefore, it is hereby

RESOLVED, if the Board finds that the commitment deadline in 10 TAC §10.402(a) can be waived, then the Board finds that the Applicant has/has not satisfied the waiver standard under 10 TAC §10.207(a)(2);

FURTHER RESOLVED, if the Board determines the waiver standard has been satisfied, then the Board finds that the commitment deadline is extended to November 10, 2017;

FURTHER RESOLVED, that the requested waiver for 17363 Residences of Long Branch is presented to the Board for its consideration at this meeting, and the Executive Director and his designees are each authorized, directed, and empowered to take all necessary action to effectuate the Board's determination.

BACKGROUND

Residences of Long Branch was approved for an award of 9% HTC in 2017 for the new construction of 76 multifamily units for the general population in Rowlett, Dallas County. On September 25, 2017, the Department issued to the Applicant a commitment notice with an expiration date of October 25, 2017. In a letter dated October 18, 2017, the Applicant informed the Department that the Rowlett City Council had not approved their request for a zoning change and requested an extension to the commitment notice expiration date from October 25, 2017, to November 24, 2017, "in order to give Rowlett city council the opportunity to approve the zoning request."

The waiver of 10 TAC §10.402(a) related to commitments for 9% HTC developments would remove the prohibition against extending the expiration date for a commitment notice:

(a) Commitment. For Competitive HTC Developments, the Department shall issue a Commitment to the Development Owner which shall confirm that the Board has approved the Application and state the Department's commitment to make a Housing Credit Allocation to the Development Owner in a specified amount, subject to the feasibility determination described in Subchapter D of this chapter (relating to Underwriting and Loan Policy) and the determination that the Development satisfies the requirements of this chapter and other applicable Department rules. The Commitment shall expire on the date specified therein, which shall be thirty (30) calendar days from the effective date, unless the Development Owner indicates acceptance by executing the Commitment, pays the required fee specified in §10.901 of this Chapter (relating to Fee Schedule), and satisfies any conditions set forth therein by the Department. **The Commitment expiration date may not be extended.** (emphasis added)

The waiver of 10 TAC §10.402(a) would allow staff to apply the requirements of 10 TAC §10.405(c) related to amendments and extensions for HTC awardees to this award:

(c) HTC Extensions. Extensions must be requested if the original deadline associated with Carryover, the 10 Percent Test (including submission and expenditure deadlines), construction status reports, or cost certification requirements will not be met. Extension requests submitted at least thirty (30) calendar days in advance of the applicable deadline will not be required to submit an extension fee as described in §10.901 of this chapter. **Any extension request submitted fewer than thirty (30) days in advance of the applicable deadline or after the applicable deadline will not be processed unless accompanied by the applicable fee.** Extension requests will be approved by the Executive Director or Designee, unless, at staff's discretion it warrants Board approval due to extenuating circumstances stated in the request. The extension request must specify a requested extension date and the reason why such an extension is required. **If the Development Owner is requesting an extension to the Carryover submission or 10 percent Test**

deadline(s), a point deduction evaluation will be completed in accordance with Tex. Gov't Code, §2306.6710(b)(2), and §11.9(f) of this title (relating to Competitive HTC Selection Criteria). Therefore, the Development Owner must clearly describe in their request for an extension how the need for the extension was beyond the reasonable control of the Applicant/Development Owner and could not have been reasonably anticipated. Carryover extension requests will not be granted an extended deadline later than December 1st of the year the Commitment was issued. (emphasis added)

First, the Board must determine whether the phrase in 10 TAC §10.402(a) “[t]he Commitment expiration date may not be extended,” disqualifies the use of the waiver rule, 10 TAC §10.207, by the exception of waiver rule where “otherwise specified” in rule:

(a) General Waiver Process. This waiver section, **unless otherwise specified**, is applicable to Subchapter A of this chapter (relating to General Information and Definitions), Subchapter B of this chapter (relating to Site and Development Requirements and Restrictions), Subchapter C of this chapter (relating to Application Submission Requirements, Ineligibility Criteria, Board Decisions, and Waiver of Rules for Applications), Subchapter D of this chapter (relating to Underwriting and Loan Policy), Subchapter E of this chapter (relating to Post Award and Asset Management Requirements), Subchapter F of this chapter (relating to Compliance Monitoring) Subchapter G of this chapter (relating to Fee Schedule, Appeals, and Other Provisions), Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan), Chapter 12 of this title (relating to Multifamily Housing Revenue Bond Rules), and Chapter 13 (relating to Multifamily Direct Loan Program Rules). (emphasis added)

If the Board finds that the waiver rule may be used, then pursuant to 10 TAC §10.207(a), the waiver request must establish how the waiver is necessary to address circumstances beyond the Applicant's control and how, if the waiver is not granted, the Department will not fulfill some specific requirement of law. To establish how the waiver is necessary to address circumstances beyond the Applicant's control, the Applicant describes in its request its attempts to secure approval of its requested zoning change from the Rowlett City Council. After being denied by the council on June 6, 2017, the request was not approved at a meeting on September 5, 2017. The item was not placed on the October 4 or October 17 council meeting agendas, as the Applicant had requested. Per documentation provided by the Applicant, the council has placed the item on the agenda for a meeting on November 7, 2017.

To establish how, if the waiver is not granted, the Department will not fulfill some specific requirement of law, the Applicant attests that “by not granting the waiver the Department is not fully satisfying what is called its highest priority in Texas Government Code §2306.002, namely to “provide assistance to individuals and families of low and very low income who are not assisted by private enterprise or other governmental programs so that they may obtain affordable housing or other services and programs offered by the Department.” According to the Applicant, “the families of Rowlett currently have no access to the developments produced by HTC program or to affordable housing options, and we believe that granting this waiver could provide them such an option.”

Regarding the Applicant's statements on the basis of the request, staff believes that the Applicant has established that a waiver would be necessary to address circumstances beyond the Applicant's control. Further, allowing the City of Rowlett time to make a determination on the zoning request may be seen as appropriate in this instance if the city can address the issue immediately. In making this determination, staff cites Tex. Gov't Code §2306.001, the literal beginning of the Department's statutory charge which states:

The purposes of the department are to:

- (1) assist local governments in:
 - (A) providing essential public services for their residents; and
 - (B) overcoming financial, social, and environmental problems;
- (2) provide for the housing needs of individuals and families of low, very low, and extremely low income and families of moderate income;
- (3) contribute to the preservation, development, and redevelopment of neighborhoods and communities, including cooperation in the preservation of government-assisted housing occupied by individuals and families of very low and extremely low income; ...

Staff recommends that should the Rowlett City Council approve the requested zoning change at its November 7, 2017, meeting, the Applicant's request for a waiver should be considered by the Board. If the council does not approve the requested zoning change at its November 7 meeting, staff recommends that the Board uphold the requirements of 10 TAC §10.402(a) and not grant an extension of the expiration date for the commitment notice.



October 18, 2017

Tim Irvine
Executive Director
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701

Re: Extension of Expiration of Housing Tax Credit Commitment for Residences of Long Branch (TDHCA # 17363)

Dear Mr. Irvine:

Please accept this letter as a request to extend the expiration date of the Housing Tax Credit Commitment for Residences of Long Branch. First, I would like to acknowledge that 10 TAC §10.402(a) states that "The Commitment expiration date may not be extended." Therefore, we are first seeking a waiver of that rule pursuant to 10 TAC §10.207 related to Waiver of Rule for Applications. This rule allows for waiver requests to be submitted for Competitive Housing Tax Credit ("HTC") Applications subsequent to an award. The HTC award for Residences of Long Branch was approved by the Governing Board on July 27, 2017. Secondly, we are requesting that the expiration date of the Commitment be extended 30 days to November 24, 2017. The details regarding the circumstances that led to this request will follow, but in order to satisfy the requirement of the waiver request, we point not just to Chapter 2306 of the Texas Government Code but to Fair Housing law. We believe that the Texas Department of Housing and Community Affairs (the "Department") has the opportunity to affirmatively further fair housing by granting this waiver and the subsequent extension of the expiration date, and so we believe the Department is compelled to take such action.

As background, on January 3, 2017, I attended a city council workshop in Rowlett as a representative of Pedcor Investments, A Limited Liability Company ("Pedcor") in order to present a proposal for Residences of Long Branch and seek support so that the HTC application would be eligible for enough points to make it competitive for an award. The council was presented with six separate proposals that evening, and at the end of the work session they indicated support for three of them, one of which was Residences of Long Branch. On February 7, 2017, the city council passed a resolution supporting the application, along with resolutions for two others. The site for Residences of Long Branch was not appropriately zoned for multifamily development, and so Pedcor submitted to the city a zoning application for the 8-acre site on February 27, 2017. On March 1, Pedcor submitted the HTC application to the Department.

The City of Rowlett Planning and Zoning Commission ("P&Z") then conducted a public hearing on May 9, 2017. At the end of some discussion the commission recommended that council approve the zoning change with a couple of conditions related to fencing and ingress/egress. Pedcor then went before city council on June 6, presenting the application with the recommended revisions from the commission. The zoning request was denied, and council stated the reason for denial as its approval jeopardizing the ability for a competing HTC application, The Pointe at Rowlett, to be awarded credits.

Pedcor then worked with city staff to submit a new zoning application, one that was significantly different from the previous one so that it could be considered again by P&Z and city council. That application, which included an 18-acre site with both the multifamily piece and a commercial piece, and which included some additional road infrastructure and restrictions on the commercial portion, was submitted to the city on June 20, 2017. On August 22, 2017, P&Z enthusiastically recommended the application be approved by council, with the commissioners voicing strong support for the application.

Meanwhile, the competing application, The Pointe at Rowlett, was recommended for denial by P&Z, recommended to be sent back to P&Z by council, and again recommended for denial by P&Z a second time. You may recall an email I sent on July 23 detailing some of the comments made by that applicant during this process.

At a city council meeting on September 5, public hearings for both Residences of Long Branch and The Pointe at Rowlett were held. The Pedcor application was first, and after a presentation and some discussion, one council member made a motion to approve the zoning change. However, the motion died for a lack of second. Afterward, the other application was unanimously denied after a long hearing.

Because the motion regarding Residences of Long Branch died for lack of second, technically no formal action was taken on the application. It was not denied. Therefore, the city attorney determined it perfectly legal under Rowlett's Council Rules of Procedure (and Roberts Rules of Order), and even appropriate under the Development Code, to consider the item again at the next council meeting. However, the item was not placed on the next two meeting agendas, which were October 4 and October 17, despite several requests from Pedcor and from Inclusive Communities Housing Development Corporation.

We pleaded with council one last time in person at the October 17 meeting, but as of now the item still is not on an agenda for a meeting that will take place before the current Commitment expiration date of October 25, 2017. However, city staff has indicated that they plan to place the item on an agenda for a meeting on November 7, 2017. Therefore, we are asking for an extension of the expiration of the Commitment deadline, in order to give Rowlett city council the opportunity to approve the zoning request.

We believe that the granting of this waiver will satisfy Chapter 2306 of the Texas Government Code by "[providing] for the housing needs of individuals and families of low, very low, and extremely low income and families of moderate income." While we appreciate that another application will likely be awarded credits if Residences of Long Branch is unable to satisfy the conditions of the HTC Commitment, we note that the next application in line for an award is in Denton. While we do not dispute the worthiness of that application for an award on its own merits, the City of Denton already has several affordable housing developments. Rowlett has only one, and it is restricted for the elderly. We would argue that by not granting the waiver the Department is not fully satisfying what is called its highest priority in Texas Government Code §2306.002, namely to "provide assistance to individuals and families of low and very low income who are not assisted by private enterprise or other governmental programs so that they may obtain affordable housing or other services and programs offered by the Department." The families of Rowlett currently have no access to the developments produced by HTC program or to affordable housing options, and we believe that granting this waiver could provide them such an option. Most importantly, we believe that granting this waiver and the subsequent extension of the expiration date is required in order to affirmatively further fair housing law.

Should you not be able to grant this waiver and/or extension, we request that an item be placed on the next agenda for the meeting of the Governing Board that would allow them to consider approving them.

Sincerely,



Jean Marie Latsha
Vice President - Development



**Community Development
Department**

COURTESY NOTICE OF CONSIDERATION OF A ZONING REQUEST

TO: Property Owner

RE: Application for a Rezoning from C-1 Limited Commercial/Retail to PD Planned Development with C-1 base zoning

LOCATION: The subject property is located at 4217 Rowlett Road, being an 18.22 +/- acre tract of land out of the Thomas Collins Survey, Abstract Number 332, City of Rowlett, Dallas County, Texas. A location map depicting a 500-ft notification area is attached for reference.

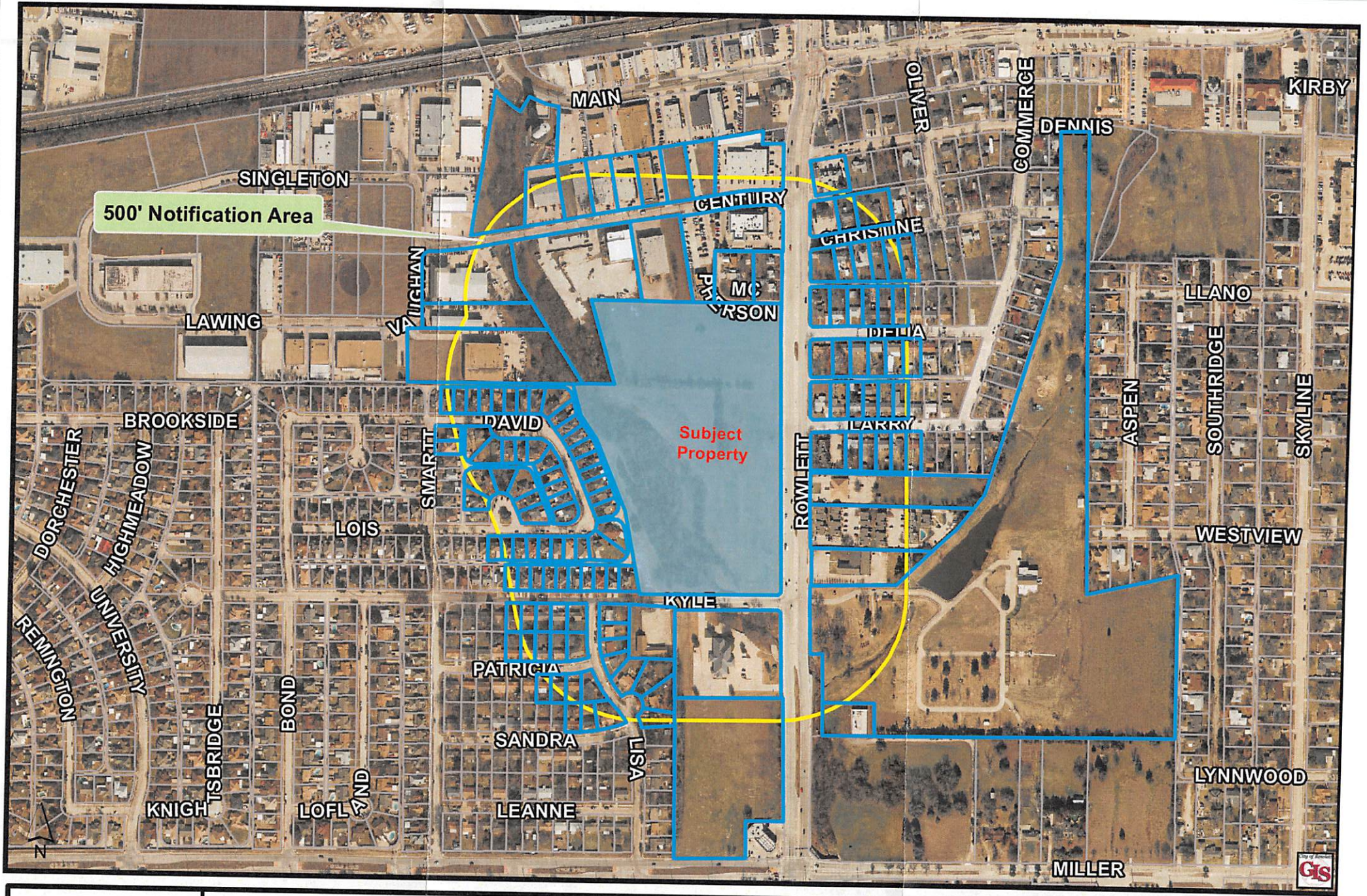
EXPLANATION OF REQUEST: The applicant requests a rezoning to Planned Development to allow Multi-Family Dwelling Units on up to 8.5 acres with C-1 uses elsewhere, and to modify building materials, dimensional requirements, building design requirements, and landscape buffers.

The Rowlett City Council will consider this request at 7:30 pm on November 7, 2017. The meeting will be held at the Municipal Center, 4000 Main Street, Rowlett, Texas.

Pursuant to Section 77-805.B.5. of the Rowlett Development Code, the City Council must take final action, or refer an item back to Planning and Zoning Commission, within 90 days of a public hearing. A public hearing on this matter was held on September 5, 2017, however, no final action was taken. As with any item on the agenda, the City Council will hear public comment on the request at the meeting.

If you have any questions concerning this request,
please contact the Planning Division
Phone 972-412-6239
FAX 972-412-6228
tfelts@rowlett.com

City of Rowlett
Community Development Department
3901 Main Street
Rowlett, TX 75088



4217 ROWLETT RD

REZONING
500 FT NOTICE
LOCATION MAP

4b

BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION
NOVEMBER 9, 2017

Presentation, discussion and possible action on a Determination regarding Eligibility under 10 TAC §10.101(a)(4) related to Undesirable Neighborhood Characteristics for Villa Americana (#17411) in Houston

RECOMMENDED ACTION

WHEREAS, a 4% Housing Tax Credit application for Villa Americana, sponsored by ITEX Partners, LLC, was submitted to the Department on June 23, 2017;

WHEREAS, in lieu of a Certification of Reservation, a Carryforward Designation Certificate was issued by the Texas Bond Review Board on January 12, 2017, and will expire on December 31, 2019;

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

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

WHEREAS, the applicant has disclosed the presence of such undesirable neighborhood characteristics, specifically that the proposed site is located in a census tract where the Part I violent crime rate exceeds 18 per 1,000 persons annually according to NeighborhoodScout;

WHEREAS, the applicant did not initially disclose that the development site is also within 1,000 feet of a census tract where the Part I violent crime rate exceeds 18 per 1,000 persons annually, but subsequently submitted the appropriate disclosure;

WHEREAS, the development site also contains undesirable site features under 10 TAC §10.101(a)(2), specifically, an underground natural gas pipeline and buildings that are within 100 feet of high voltage transmission lines, the latter of which the applicant did not initially disclose;

WHEREAS, the Board has the authority under 10 TAC §10.101(a)(2) to grant an exemption relating to the high voltage transmission lines because the development receives ongoing or existing federal assistance from HUD; however, pursuant to the rule such exemption must be requested prior to or with the application;

WHEREAS, should the Board grant the exemption it must also grant a waiver of the requirement that it be requested prior to or with the application since it was requested after application submission upon questions by staff as to why such undesirable site feature was not disclosed;

WHEREAS, the applicant did not provide a request for a waiver and; therefore, a justification for how it meets the requirements of §10.207 is not contained herein and must instead be presented by the applicant and/or determined by the Board;

WHEREAS, staff has conducted a further review of the Development site and surrounding neighborhood and mitigation provided of actual instances of Part 1 violent crimes does not reflect a positive trend and continued improvement required under §10.101(a)(3)(B) and evidence that crime rates are decreasing pursuant to §10.101(D)(ii); and

WHEREAS, staff recommends the proposed site be found ineligible under 10 TAC §10.101(a)(3)(E)(ii);

NOW, therefore, it is hereby

RESOLVED, that the information provided by the applicant has not established the positive and downward trend required under the rule to sufficiently mitigate the instances of Part 1 violent crime relating to Villa Americana, and, therefore, the site is hereby found ineligible.

BACKGROUND

Villa Americana is an existing development located at 5901 Selinsky Road in Houston, Harris County. It is located in census tract (3317.00) which has a median household income of \$35,250, is in the fourth quartile, and has a poverty rate of 27.7%. The development lies within the Minnetex Super Neighborhood in south central Houston. Information provided by the applicant indicates the neighborhood contains some industrial facilities, scattered homes, and large-lot subdivisions that are surrounded by acres of unimproved land. The Minnetex Super Neighborhood does not include any market rate developments and there are 18 affordable developments located in the designated PMA.

Villa Americana was originally constructed in 1972 and the applicant proposes the acquisition and rehabilitation of 258 units. All of the units are proposed to be rent and income restricted at 60% of Area Median Family Income and the project-based Section 8 contract under which the Development currently operates is intended to be preserved for all of the units.

The presence of an undesirable neighborhood characteristic under §10.101(a)(3) and two undesirable site features under §10.101(a)(2) require additional site analysis. The undesirable characteristic attributable to Villa Americana is related to the rate of Part I violent crimes within the subject census tract as well as an adjacent census tract. The undesirable site features attributable to the site include an underground natural gas pipeline on the site and high voltage transmission lines adjacent to the site.

Crime: The threshold for the rate of Part I violent crimes include anything greater than 18 per 1,000 persons annually. According to NeighborhoodScout, the subject census tract has a Part I violent crime rate of 22.89 per 1,000 persons annually. Moreover, the development site is located within 1,000 feet of a census tract (3316.02) where the Part I violent crime rate exceeds the threshold, at 23.57 per 1,000 persons annually. The property is located within the Houston Police Department's ("HPD") beat 14D50 and the actual instances of Part 1 violent crimes, based on HPD data provided by the applicant and attached hereto as Exhibit A, reflected an increase from 2015 to 2016. Staff acknowledges that the crime rate per 1,000

persons annually for both years is under the threshold of 18; however, staff does not believe the rule allows the undesirable characteristic to be sufficiently mitigated based on the crime rate for actual data if such data has resulted in an upward trend. Specifically, the rule requires the instances of crime to demonstrate a positive trend and continued improvement and evidence that crime rates are decreasing. An excerpt of the rule reads as follows:

§10.101(a)(3)(B) “In order to be considered as an eligible Site despite the presence of such undesirable neighborhood characteristic, an Applicant must demonstrate actions being taken that would lead a reader to conclude that there is a high probability and reasonable expectation the undesirable characteristic will be sufficiently mitigated or significantly improved within a reasonable time, typically prior to placement in service, and that the undesirable characteristic demonstrates a positive trend and continued improvement. Conclusions for such reasonable expectation may need to be affirmed by an industry professional, as appropriate, and may be dependent upon the severity of the undesirable neighborhood characteristic disclosed.”

§10.101(D)(ii) “Evidence that crime rates are decreasing, based on violent crime data from the city’s police department...that would yield a crime rate below the threshold indicated in this section.”

The applicant also provided more recent data from HPD, from January 2017 through July 2017, as reflected on Exhibit A. Staff notes that the applicant annualized this data for 2017; however, such methodology is not contemplated in the rule and staff is not in a position to ascertain whether such methodology would result in the desired outcome. Other assessments of crime in this neighborhood supplied by the applicant (Exhibit A) include instances of crime within a half mile of Villa Americana, as well as instances at the property itself and a multifamily development (non-HTC) directly across the street. As reflected in Exhibit A the instances of crime reflect an increase over the prior year.

The adjacent census tract has a crime rate that exceeds the threshold allowed in the rule and was not initially disclosed by the applicant. After conversations with staff regarding the disclosure, the applicant submitted HPD data relative to the police beat containing the adjacent tract. As reflected in Exhibit B the instances of violent crime reflect an increase over the prior year. Staff notes that the adjacent tract is not separated by any barriers and that it can reasonably be considered part of the neighborhood containing Villa Americana.

The applicant noted that the sponsors of Villa Americana are working to improve the development and the surrounding neighborhood. Revitalization has been occurring in the area surrounding the subject property, including the demolition of Crestmont West Apartments and Crestmont Village Apartments in April 2017. Both of the apartment complexes were severely damaged by Hurricane Ike in 2008 and were located within a mile of the proposed development. These former apartments were considered a significant source of blight and crime in the area. Crestmont West Apartments will be replaced by The Pointe at Crestmont, a 4% Housing Tax Credit development awarded in December 2016. Staff notes that the Pointe at Crestmont was recommended by staff to be ineligible based on significant levels of crime in the area; however, after public testimony by an organized group of neighbors in favor of the development was found to be an eligible site by the prior Board. It is important to note that the only revitalization in the neighborhood seems to be stemming primarily from Department funding for affordable housing. There has not been evidence submitted to substantiate that private sector investment is occurring in this neighborhood.

The applicant has represented that safety measures will be implemented at Villa Americana in an effort to deter crime. Specifically, they noted that cameras will be installed throughout the property and will record activity 24 hours a day, seven days a week. The recordings may be reviewed and footage provided to the police should an incident occur. Moreover, off-duty officers of the Houston Police Department will be

employed by property management to drive through the property at peak times when crimes have occurred in the past. Property Management will issue parking stickers for those authorized to park onsite in an effort to easily identify trespassers, a curfew for all of the common areas will be implemented, and property management will work with the Crestmont Park Civic Association's neighborhood crime watch. The applicant has found that these policies have been successful when implemented at other developments they own.

Pipeline: A metes and bounds survey of Villa Americana shows a natural gas pipeline and easement belonging to Gulf Refining Company running along the southeast corner of the subject property. While the underground pipeline does not run under any of the residential buildings or other structures, a playground is in proximity. As required under 10 TAC §10.101(a)(2) a development site that contains a pipeline carrying a highly volatile liquid must be developed in a manner that conforms to the Pipelines and Informed Planning Alliance ("PIPA") and the applicant has provided documentation to indicate that some of the PIPA best practices would be implemented by the development owner.

High Voltage Transmission Lines: Although not initially disclosed by the applicant, staff observed high voltage transmission lines adjacent to the property. After follow-up conversations with the applicant, documentation was provided requesting an exemption be granted by the Board, pursuant to §10.101(a)(2), which states that developments with ongoing and existing federal assistance from HUD may be granted an exemption by the Board. Staff notes that also pursuant to this rule, such request for an exemption must be requested at the time of or prior to the filing of an Application. Should the Board desire to grant such exemption, it would also need to grant a waiver of the aforementioned requirement since it was only requested after staff brought it to the attention of the applicant. A waiver request or an explanation to how the waiver meets the requirements of §10.207 was not provided by the applicant.

Pursuant to 10 TAC §10.101(a)(3)(E) a site may be found eligible by the Board, despite the existence of undesirable neighborhood characteristics if it finds that use of Department funds for the development is consistent with achieving the following goals:

- (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) Factual determination that the undesirable characteristic(s) that has been disclosed are not of such a nature or severity that should render the Development Site ineligible based on the assessment and mitigation provided under subparagraphs (C) and (D) of this paragraph.;
or
- (iii) The Applicant has requested a waiver of the presence of undesirable neighborhood characteristics 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.

Villa Americana is currently occupied and will continue to receive ongoing federal assistance in the form of a project-based Section 8 contract covering 100% of the units. However, staff believes there is still reason for concern regarding the upward trend in the crime rate based on current data of reported violent crimes in

the neighborhood. Moreover, this development would be the second affordable development funded by the Department in the past 10 months in an area that is struggling with undesirable neighborhood attributes, and can be likened to a “first-money in” approach that would be inconsistent with prior policy directives expressed by the Board. While the local police beat data revealed an analysis that is below the 18 per 1,000 persons threshold, the instances of crime are trending upward and remains a concern. Staff believes that, absent a reasonable expectation relative to crime reduction, such undesirable characteristic fails to meet the second criterion above relative to the nature and severity of the crime and; therefore, leads to a supported conclusion that the reported characteristics should render the development site ineligible under 10 TAC §10.101(a)(4) of the Uniform Multifamily Rules.

Public Comment: The Department received letters of support from The Crestmont Park Civic Association and Houston City Councilman Dwight Boykins. Staff received an appeal of the determination of eligibility from applicant’s counsel which is included in this Board presentation.

EXHIBIT A

Police Beat 14D50 - Violent Crime Summary - 2015 to July 2017

Violent Crime in Police Beat 14D50 is Less than 18/1,000 Persons for 2015, 2016, and Jan-July 2017. Annualized 2017 shows reduction from 2016

Violent Crimes in Police Beat 14D50 (all instances)	2017 (Jan-July)	2016	2015	Total
Aggravated Assault	33	69	38	140
Robbery	13	30	25	68
Murder	1	4	4	9
Rape	1	4	0	5
Total Violent Crime	48	107	67	222
Annualized 2017 Crime	82			

Population in Thousands	6.541	6.04	6.458
Violent Crime / 1,000 Persons	7.34	17.72	10.37
Annualized 2017 Crime Rate	12.58		

Violent Crimes in Beat 14D50 w/in 1/2 Mi of Villa Americana (excludes crime at Villa Americana)	2017 (Jan-July)	2016	2015	Total
Aggravated Assault	4	22	8	34
Robbery	1	7	6	14
Murder	1	2	2	5
Rape	0	1	0	1
Total Violent Crime	6	32	16	54
Annualized 2017	11			

Violent Crimes at Villa Americana 2017 (Jan-July)	2016	2015	Total	
Aggravated Assault	10	17	7	34
Robbery	1	6	0	7
Murder	0	0	1	1
Rape	0	1	0	1
Total Violent Crime	11	24	8	43
Annualized 2017	19			

Violent Crimes at Crystal Springs (complex across street to south)	2017 (Jan-July)	2016	2015	Total
Aggravated Assault	2	18	6	26
Robbery	0	3	2	5
Murder	0	2	2	4
Rape	0	0	0	0
Total Violent Crime	2	23	10	35
Annualized 2017	4			

Population in Police Beat 14D50 - Source: 2013, 2014, 2015 5-Year American Community Survey Table B01003

Census Block Groups in Police Beat 14D50	2015 ACS Population	2014 ACS Population	2013 ACS Population
482013317001	1959	1721	1873
482013316021	720	680	919
482013308001	4156	3898	3947
Total Population	6835	6299	6739
Population in Thousands	6.835	6.299	6.739

Adjusted Population - Block 482013317001 Adjusted Downward by 15% to Account for Differences in Block and Police Beat Boundary

	2015 ACS Population	2014 ACS Population	2013 ACS Population
482013317001	1665	1462	1592
482013316021	720	680	919
482013308001	4156	3898	3947
Total Population	6541	6040	6458
Population in Thousands	6.541	6.04	6.458

EXHIBIT B

Police Beat 14D40 - Violent Crime Summary - 2015 to July 2017

Violent Crime in Police Beat 14D40 is less than 18/1,000 persons for 2015, 2016, and Jan-July 2017. Crime/1,000 persons has decreased each year since 2015.

Violent Crimes in Police Beat 14D40 (all instances)	2017 (Jan-July)	2016	2015	Total
Aggravated Assault	119	186	156	461
Robbery	31	86	109	226
Murder	4	10	7	21
Rape	9	12	8	29
Total Violent Crime	163	294	280	737
Annualized 2017 Crime	279			

Population in Thousands	18.594	18.52	17.33
Violent Crime / 1,000 Persons	8.77	15.88	16.16
Annualized 2017 Crime Rate	15.03		

Violent Crimes in Beat 14D40 w/in 1/2 Mi of Villa Americana	2017 (Jan-July)	2016	2015	Total
Aggravated Assault	6	6	24	36
Robbery	0	4	18	22
Murder	0	0	3	3
Rape	0	0	0	0
Total Violent Crime	6	10	45	61
Annualized 2017 Violent Crime	10			

Population in Police Beat 14D40 - Source: 2013, 2014, 2015 5-Year American Community Survey Table B01003			
Census Tracts and Block Groups in Police Beat 14D40	2015 ACS Population	2014 ACS Population	2013 ACS Population
48201331500	8301	7927	7666
48201331601	6707	6615	6232
482013317003	1058	1141	1189
482013317002	1021	1060	1060
482013316022	1213	1518	904
482013317001 (partial population, 15%)	294	258	281
Total Population	18594	18519	17332
Polulation in Thousands	18.594	18.519	17.332

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November 1, 2017

By Email to tim.irvine@tdhca.state.tx.us

Mr. J.B. Goodwin, Chair
TDHCA Board Members
c/o Tim Irvine, Executive Director
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701

Re: #17411; Villa Americana Apartments; Houston, Harris County, Texas (the “Project”);
Appeal of Staff Recommendation of Disapproval Due to Crime.

Dear Chair Goodwin and Board Members:

This letter serves as an appeal of TDHCA Staff’s recommendation that the development site of the Project be found ineligible for an award of 4% Housing Tax Credits on the basis of the rate of violent crime in the census tract. Staff alleges that the crime in the neighborhood where the Project is located rises to the level of ineligibility under 10.101(a)(3)(B)(ii) of the 2017 Uniform Multifamily Rules (the “Rules”). However, based on a review of actual law enforcement data, violent crime in the area containing the Project site is instead *below* TDHCA’s threshold for a finding as an Undesirable Neighborhood Characteristic. Further, just a year ago the Board approved (rejecting Staff’s determination of ineligibility based on the same reason) a similarly situated 4% Housing Tax Credit award for The Pointe at Crestmont (“Crestmont”), a new construction project that is only a half-mile away from the Villa Americana site. Since that award was made last year, crime rates have continued to decline in the area. Not only is the factual data critical to the analysis of whether residents will be able to live in a safe environment at the Project site, but understanding the Crestmont appeal and what has taken place within the last year is pivotal as well.

Background

Villa Americana Apartments is an existing 258-unit HUD Section 8 development that is a proposed acquisition/rehabilitation project to be undertaken by an affiliate of The ITEX Group

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(“ITEX”), an experienced affordable housing developer in the Houston area committed to providing safe quality affordable housing in the communities it serves. The Project is across the street from a Boys & Girls Club as well as the \$72 million newly renovated and expanded Sterling High School. Just south of the Project is another apartment complex that was acquired by a new owner and under new management as of last year with rehabilitation under way. Southeast of the Project site is a vacant tract that used to be the site of the former Crestmont Village apartments, which were condemned by the City of Houston in 2015 for repeated violations. That dilapidated complex, which often served as a refuge for criminal activity, was finally demolished earlier this year. New senior housing is planned for that tract. Adjacent to that site is The Pointe at Crestmont, formerly an abandoned 308-unit complex that was demolished and is currently being rebuilt as a 192-unit new construction apartment community that received a 4% Housing Tax Credit allocation last December, after appealing to the Board (as referenced above). A map showing the layout and proximity of these locations to one another is attached as **Exhibit A**. Understanding the proximity is helpful since the Crestmont appeal last year dealt specifically with the crime in the area and was subsequently approved by the Board. The recent investment in the area continues to foster a sense of accountability and reduction in criminal activity.

Crestmont Appeal.

As referenced above, just a year ago the Board voted to deem Crestmont eligible for an allocation, in opposition to Staff’s recommendation, despite the neighborhoodscout.com website reflecting statistics that were above the threshold required by the Rules. Crestmont is on the same street as Villa Americana and just a half-mile away. During that presentation to the Board, we heard from a local police captain, a city council member, a local church leader and members of the community, all enthusiastically supportive of the proposed development. They stood before the Board and described a community ripe with increased private and public investment in education, infrastructure and housing, an active civic association, increased presence of community-oriented law enforcement, and a downward trend in crime. They delivered riveting testimony seeking the Board’s approval for additional investment, and the Board subsequently approved that project. Since then, the area has continued to improve.

As part of the Crestmont appeal, City of Houston Councilmember Dwight Boykins submitted a letter highlighting the substantial investment at Sterling High School, nearby new construction of single family homes, infrastructure improvements, rehabilitation of existing nearby apartment complexes, and funding for increased law enforcement presence. He specifically noted pocket areas of increased crime were often located in the vacant and abandoned or unkempt apartment complexes that are now either demolished or have since been sold to new ownership and rehabilitated with increased security measures.

Since the Crestmont appeal was granted, more than 500 vacant or abandoned units, which were magnets for criminal activity, have been demolished. During the appeal presentation, Houston Police Department Captain Kenneth Campbell was clear in stating that when developers deliver a decent product with appropriate fencing and observant security, criminal activity is “extremely low” and better quality housing actually helps law enforcement by allowing them to better allocate their resources.

At the time of the Crestmont appeal, Staff acknowledged there was an initiative in place to address crime in the area, but felt it had not been in effect long enough to indicate it would

successfully reduce the crime rate to a level that does not warrant concern, and Staff expressed it needed to have a reasonable expectation that crime would be reduced. As reflected herein, when focusing on the most recent actual data now available, not only is it shown that the initiatives appear to be working as seen by the reduced crime rate, but the threshold warranting further investigation under the Rules is not reached and/or is appropriately mitigated.

Violent Crime Statistics

The Rules require reliance on the neighborhoodscout.com website statistics (which Staff has admittedly recognized as being “imperfect”) as the relevant tool for determining whether the local violent crime statistics cross the threshold for undesirable neighborhood characteristics review that must be further investigated. Knowing the neighborhoodscout.com website is not reliable, Staff expressly stated to the Board during the Crestmont appeal that they use the tool “just [as] a trigger,” but then look to actual data provided by the local police department to further assess. In looking at such actual data from the Houston Police Department which was previously submitted to Staff, we have been able to show that the violent crime in the area is below the 18/1,000 persons threshold set forth in the Rules, not only for 2015 and 2016, but also to date in 2017 with a trend downward for the current year (10.37/1,000 persons in 2015; 17.72/1,000 persons in 2016; and 7.34/1,000 persons for January through July 2017, which equates to an annualized rate of 12.58 / 1,000 persons).

We provided this information and more to Staff on October 18 (see attached **Exhibit B**). It is our understanding that Staff is unable to exercise discretion in this area of review and must adhere strictly to the Rules, which is why they are limited to the neighborhoodscout.com website as the trigger for further review as well as being limited only to the review of statistics for calendar years 2015 and 2016. However, Staff’s finding ignores several key issues, which we respectfully request that the Board exercise its discretion to take into consideration.

First, according to actual crime statistics from the Houston Police Department, the level of violent crime in the police beat containing the development, and the nearest neighboring police beat is below 18/1,000 persons for 2015, 2016, and 2017 from January to July (months for which statistics are available). Not only should actual law enforcement data be relied upon by TDHCA over an imperfect data source like Neighborhoodscout.com, but Staff expressly stated during the Crestmont appeal that they look to that kind of data for additional information. The most reliable data available indicates a level of violent crime below TDHCA’s threshold for Undesirable Neighborhood Characteristics. However, only the Board has the ability to make findings of eligibility outside the strict letter of the Rules and may take into account Crestmont appeal precedent in using its wide latitude of discretion, something the Staff does not have the power to do.

Second, while Staff is limited to looking only at calendar years 2015 and 2016, the applicant evaluated the trend of violent crime over the most recent 24-month period for which crime statistics are available, August 2015 to July 2017, and is requesting the Board take this into consideration, especially given the recent changes taking place in the area. Statistics were evaluated for the police beat containing the development (14D50) and the nearest neighboring police beat which also contains the Crestmont project (14D40). In all categories of evaluation, the total violent crime rate was below the 18/1,000 person threshold. See **Exhibit C** for details, but the highlights are as follows:

Violent Crime in Villa Americana's Police Beat 14D50:

- Total violent crime **decreased 14%** from August 2015-July 2016 to August 2016-July 2017.
- Violent crime within ½ mile of Villa Americana **decreased 63%** from August 2015-July 2016 to August 2016-July 2017.
- Violent crime at Crystal Springs, the neighboring apartment complex to the south which has undergone recent rehabilitation, **decreased 68%** from August 2015-July 2016 to August 2016-July 2017.
- Violent crime at Villa Americana remained unchanged from 2015-July 2016 to August 2016-July 2017.

Violent Crime in Neighboring Police Beat 14D40 (containing The Pointe at Crestmont):

- Total violent crime **decreased 13%** from August 2015-July 2016 to August 2016-July 2017.
- Violent crime within ½ mile of Villa Americana **decreased 59%** from August 2015-July 2016 to August 2016-July 2017.

While the Rules do not allow for Staff to consider anything except calendar year 2015 and 2016, the most current information regarding crime trends supports a finding of eligibility for Villa Americana, and the Board certainly has the discretion to take that information into account when making its determination.

It is also important to point out that Neighborhoodscout.com has repeatedly been demonstrated to show rates of violent crime that are substantially higher than the rates derived from actual police beat records of reported instances. This Board has shown its understanding of this issue on a number of occasions in the past where Staff initially found ineligibility due to the violent crime rate shown in Neighborhoodscout.com, but subsequent review of the police beat information caused the Board to approve the applications. Here is a partial listing of such projects in the Houston area:

- #16429 – The Pointe at Crestmont;
- #16406 – New Hope at Reed;
- #15409 – Pleasant Hill; and
- #14108 – Cleme Manor.

Project's Anti-Crime Design.

Villa Americana Housing Partners, LP, the Project Owner, takes tenant security seriously, and has caused this Project to be designed to foster a safe environment. ITEX, as developer and affiliated management agent, has a track record of reducing crime post-acquisition and rehabilitation. Existing management at Villa Americana has allowed the apartment complex itself to become a source of crime in the neighborhood. A change in ownership and management to a firm with a history of improving safety at its properties will improve the current situation at Villa Americana. In addition to improving safety onsite, improvements at Villa Americana will improve crime in the overall neighborhood, including the nearby Crestmont project. The measures that will be taken at the Project to reduce the opportunity for criminal activity include:

- **Property conduct guidelines:** Guidelines for conduct will be set upon takeover of operations. Property Managers review written guidelines with residents, residents are

given a copy of guidelines, and residents acknowledge receipt of guidelines. Setting expectations early is key to improving safety at a development.

- **Security personnel**: Off-duty police officers perform patrols of the property to monitor criminal behavior and violations of property conduct guidelines. These patrols also create the visible presence of security and act as a deterrent to criminal activity.
- **Security cameras and monitoring**: In addition to security patrols, security cameras that record activity 24 hours per day and 7 days per week are used. In the event that a crime does occur onsite, security camera footage is used to assist in solving and prosecuting crime.
- **Curfew**: ITEX has a 10:00 PM curfew at all of its developments. The curfew keeps residents and guests from loitering at the property.
- **Parking stickers**: The Project will utilize parking stickers for residents, allowing for easy identification of resident and visitor vehicles. Cars without parking stickers must be parked in a designated visitor parking space and the length of time that a car can be parked in a visitor parking space is limited. Vehicles in violation of parking policies are towed. Along with the other crime prevention policies listed here, parking stickers work to prevent unauthorized visitors.
- **Property manager**: One of the most essential parts of crime reduction at a property is having property management staff that pay attention to who is spending time at the property. In many cases crime stems from non-residents. Therefore, ITEX Property Management staff looks out for unauthorized visitors, and works to enforce lease provisions related to visitors.

Summary.

The new construction and rehabilitation taking place in the immediate area makes the rehabilitation of Villa Americana even more critical. How a community looks and feels matters, and that has a tangible impact on reducing criminal activity. As Captain Campbell stated, “the broken windows theory goes a long way.” If this Project isn’t funded, it will fall behind the curve in a surrounding area of investment and could instead become a magnet for the undesirable neighborhood characteristics we are presently appealing. This kind of area-wide revitalization is what helps spur community pride and additional growth, and further reduce crime, and Villa Americana must be included as a part of that growth if we expect that area to flourish.

As a proposed rehabilitation of an existing HUD Section 8 development, the development plan for Villa Americana will preserve and improve much needed affordable housing in Houston. The surrounding area is receiving significant investment, and the rehabilitation of Villa Americana will continue to support the growing vitality of the community. An award of the Housing Tax Credit funds will be used to bring the Project up to standards that will foster community pride and support the continued downward trend in criminal activity.

We ask that the Board take into consideration the actual data collected by the Houston Police Department concerning violent crime in the neighborhood of the Project in lieu of the Neighborhoodscout.com violent crime rate, which has been shown repeatedly to be materially higher than the actual occurrence of Part 1 crime in various neighborhoods. The 2017 Rules state that a showing of more than 18 Part 1 violent crimes per 1,000 persons annually constitutes an undesirable neighborhood characteristic. The information presented here goes not to mitigation of a rate of violent crime that is higher than 18 per 1,000, but instead contests the accuracy of the data presented by Neighborhoodscout.com. The Owner has shown that the true

incidence of violent crime in the neighborhood is substantially less than 18 reported events per 1,000 persons, and has also provided evidence that more recent revitalization efforts in the area are having a positive impact. Approval of the requested Determination Notice for the Project will serve to mitigate crime in the neighborhood by rehabilitating an apartment complex that otherwise would be an environment that encourages criminal activity. Additionally, the use of Project amenities designed to enhance security, as well as 24-hour video monitoring will all serve to discourage the presence of non-residents with criminal intent.

In the event the Board nonetheless determines there does exist undesirable neighborhood characteristics, then we ask the Board to still deem the Project site eligible for the award based on the Project being consistent with achieving the following goals: (i) Preservation of existing occupied affordable housing units to ensure they are safe and suitable; and (ii) Factual determination that the crime rates that have been disclosed are not of such a nature or severity that should render the Project site ineligible based on the assessment and mitigation provided herein.

We ask that you approve Villa Americana's application for 4% Housing Tax Credits as being eligible for a Determination Notice.

Sincerely,



Barry J. Palmer

cc: Marni Holloway
Teresa Morales
Beau Eccles
Chris Akbari



Park Texas Apartments:
rehab underway in 2016

The Pointe at Crestmont:
Approved for 4% LIHTCs in December 2016 after Board heard appeal and rejected staff recommendation of ineligibility based on crime stats. Was a 308-unit abandoned complex now being rebuilt as 192 units

Crystal Springs Apartments:
Acquired by new Owner; under new management; rehab is under way

Crestmont Village:
Dilapidated complex ordered closed by City in 2015; torn down in April 2017 and new housing for seniors is under way

Sterling High School:
\$72 million in HISD bonds in closeout phase of construction

Boys & Girls Club

Imagery ©2017 Google, Map data ©2017 Google 1000 ft

EXHIBIT B

Villa Americana Housing Partners, LP
3735 Honeywood Court
Port Arthur, Texas 77642

October 18, 2017

Multifamily Finance Division
Texas Department of Housing and Community Affairs
Attn: Marni Holloway and Teresa Morales
221 East 11th Street
Austin, Texas 78701

Re: TDHCA #17411 Villa Americana – Undesirable Neighborhood Characteristics, Crime Rate

Dear Ms. Holloway and Ms. Morales:

Thank you for the opportunity to provide additional clarifying information related to the crime rate in proximity to Villa Americana.

Summary

The applicant has performed extensive reviews of crime data for the neighborhood surrounding Villa Americana, including summary information provided by Neighborhoodscout.com, and detailed crime information published by the Houston Police Department (HPD) for the Police Beat containing Villa Americana (14D50) and the neighboring Police Beat (14D40), which contains The Pointe at Crestmont (approved by the TDCHA Board for a 4% tax credit award in November 2016).

While summary information presented on Neighborhoodscout.com indicates a violent crime rate in excess of 18 / 1,000 persons for the census tract containing Villa Americana, actual crime data from the Houston Police Department shows violent crime below 18 / 1,000 persons for both Police Beat 14D50 and 14D40 for 2015, 2016, and year to date 2017. Further, violent crime rates for both Police Beats for year to date 2017 are lower than 2016, indicating a decreasing trend in violent crimes.

Based on consistent violent crime rates below TDHCA's 18 / 1,000 persons threshold for the Police Beat containing the development, and the neighboring Police Beat since 2015, there is more than sufficient data to find the Villa Americana site eligible. An imperfect summary website such as Neighborhoodscout.com should not be relied upon by staff over actual data compiled by the law enforcement agency with jurisdiction in the area, the Houston Police Department. HPD statistics clearly show that violent crime in the area is not at a level that exceeds TDHCA's threshold, and as such the area should not be considered to have an Undesirable Neighborhood Characteristic on the basis of crime.

Houston Police Department Crime Data

Police Beat 14D50

Villa Americana is within Police Beat 14D50. Villa Americana Housing Partners, LP evaluated violent crimes per 1,000 persons consistent with TDHCA's evaluation criteria for Undesirable Neighborhood Characteristics (see attached Exhibit A). Using population figures for Police Beat 14D50, violent crimes per 1,000 persons was below 18 in 2015, 2016, and for 2017 when January through July information was annualized (10.37 / 1,000 persons in 2015; 17.72 / 1,000 persons in 2016; and 7.34 / 1,000 persons for January through July 2017, which equates to an annualized rate of 12.58 / 1,000 persons).

In addition, we evaluated total number of violent crimes at Villa Americana and at the neighboring apartment complex Crystal Springs. Since 2015 these apartment complexes have accounted for between 27% and 44% of the violent crime in Police Beat 14D50. In recent months Crystal Springs has been acquired by a new owner who has let vacancies increase through attrition in anticipation of a future rehabilitation. Consistent with the increased vacancy at the apartment complex, violent crime at Crystal Springs has decreased from 23 in 2016 to 2 from January through July 2017. New management at Crystal Springs has effectively decreased violent crime since taking over the development in 2017. A similar turnaround is projected for Villa Americana once ITEX Management is able to take over operations and implement a crime prevention plan, which includes coordination with Houston Police Department. Additionally, annualizing 2017 violent crime data for Villa Americana indicates a projected decrease in violent crime from 2016 to 2017 (24 in 2016 to projected 19 in 2017).

Violent crimes in Police Beat 14D50 within 0.5 miles of Villa Americana (excluding crimes at Villa Americana itself) also indicate a projected decrease in violent crimes from 2016 to 2017. In 2016 there were 32 violent crimes within 0.5 miles of Villa Americana. In 2017 through July there have been 6, which equates to a projected 11 violent crimes expected for 2017.

Police Beat 14D40

Police Beat 14D40 is the beat adjacent to 14D50, and contains The Pointe at Crestmont, which was approved by the TDHCA Board for a 4% tax credit award in November 2016. We performed the same analysis for Police Beat 14D40 as for 14D50, and violent crimes per 1,000 persons decreased from 2015 to 2016, and are projected to decrease from 2016 to 2017 based on annualized data for January through July 2017. Houston Police Department data shows violent crimes per 1,000 persons of 16.16 in 2015, 15.88 in 2016, and 15.03 in 2017, all of which are below TDHCA's 18 / 1,000 person threshold. See attached Exhibit B.

Additionally, total violent crimes in Police Beat 14D40 within 0.5 miles of Villa Americana decreased significantly from 2015 to 2016, and are projected to hold steady at the decreased number of crimes in 2017. In 2015 there were 45 violent crimes in Police Beat 14D40 within 0.5 miles of Villa Americana, and only 10 in 2016, with 10 also projected in 2017 based on January through July 2017 information.

Violent crime per 1,000 persons in the area surrounding Villa Americana has been below 18 per 1,000 persons each year since 2015 using actual Houston Police Department data. Furthermore, the combination of efforts by the City of Houston and private developers to demolish blighted apartment complexes, reconstruct apartment complexes, and clean up tenant populations in anticipation of rehabilitation has had the effect of decreasing crime in the neighboring Police Beat 14D40 since 2015, and decreasing crime in Villa Americana's Police Beat 14D50 from 2016 to 2017. Villa Americana Housing Partners, LP's acquisition and rehabilitation of Villa Americana is expected to contribute to the trend of decreasing violent crime once the partnership and management company's crime prevention plan is implemented.

History of Decreasing Crime Post-Acquisition

Villa Americana will be managed by ITEX Property Management, LLC, an affiliated property management company. ITEX Property Management, LLC has acquired other existing developments and achieved lower levels of crime following their takeover of operations. These crime reductions were the result of intensive efforts implementing various crime prevention measures. These measures began with background checks and removal of existing residents with felony convictions or sex offenses. Ongoing crime prevention strategies began immediately as well, and include:

- Property conduct guidelines – Guidelines for conduct were set upon takeover of operations. Property managers review written guidelines with residents, residents are given a copy of guidelines, and

residents acknowledge receipt of guidelines. Setting expectations early is key to improving safety at a development.

- Security personnel – Off-duty police officers perform patrols of the property to monitor criminal behavior and violations of property conduct guidelines. These patrols also create the visible presence of security and act as a deterrent to criminal activity.
- Security cameras and monitoring – In addition to security patrols, security cameras that record activity 24 hours per day and 7 days per week are used. In the event that a crime does occur onsite, security camera footage is used to assist in solving and prosecuting crime.
- Curfew – ITEX has a 10:00 PM curfew at all of its developments. The curfew keeps residents and guests from loitering at the property.
- Parking stickers – ITEX utilizes parking stickers for residents, allowing for easy identification of resident and visitor vehicles. Cars without parking stickers must be parked in a designated visitor parking space and the length of time that a car can be parked in a visitor parking space is limited. Vehicles in violation of parking policies are towed. Along with the other crime prevention policies listed here, parking stickers work to prevent unauthorized visitors.
- Property manager – One of the most essential parts of crime reduction at a property is having property management staff that pay attention to who is spending time at the property. In many cases crime stems from non-residents. Therefore, ITEX Property Management staff looks out for unauthorized visitors, and works to enforce lease provisions related to visitors.

Valley at Cobb Park (awarded tax credits in 2010) is an example of a property that ITEX acquired and rehabilitated, and at which crime decreased following ITEX's acquisition and implementation of the strategies enumerated above. In 2010, prior to ITEX's acquisition of the property, there were 93 crimes at the property according to police department records. Crimes in 2011 through 2015 were 60, 34, 24, 42, and 44 respectively. Following year 1 of ITEX's ownership (2011), crime at the property reflected a decrease of between 53%-74% compared to 2010.

The crime prevention strategies listed above will be implemented at Villa Americana. Additionally, ITEX Property Management, LLC is working with the Southeast Patrol Division of the Houston Police Department to form a partnership between property management and law enforcement.

Based on local law enforcement agency data showing that the Police Beat containing Villa Americana and the neighboring Police Beat have been below TDHCA's Undesirable Neighborhood Characteristic threshold since 2015, and given ITEX's track record of reducing crime at its complexes post-rehabilitation, we respectfully request a finding of eligibility related to Undesirable Neighborhood Characteristics for Villa Americana.

Please contact me at (832) 941-5343 or chris.akbari@itexgrp.com with any questions.

Sincerely,



Christopher A. Akbari
Authorized Representative

Police Beat 14D50 - Violent Crime Summary - 2015 to July 2017

Violent Crime in Police Beat 14D50 is Less than 18/1,000 Persons for 2015, 2016, and Jan-July 2017. Annualized 2017 shows reduction from 2016

Violent Crimes in Police Beat 14D50 (all instances)	2017 (Jan-July)	2016	2015	Total
Aggravated Assault	33	69	38	140
Robbery	13	30	25	68
Murder	1	4	4	9
Rape	1	4	0	5
Total Violent Crime	48	107	67	222
Annualized 2017 Crime	82			

Population in Thousands	6.541	6.04	6.458
Violent Crime / 1,000 Persons	7.34	17.72	10.37
Annualized 2017 Crime Rate	12.58		

Violent Crimes in Beat 14D50 w/in 1/2 Mi of Villa Americana (excludes crime at Villa Americana)	2017 (Jan-July)	2016	2015	Total
Aggravated Assault	4	22	8	34
Robbery	1	7	6	14
Murder	1	2	2	5
Rape	0	1	0	1
Total Violent Crime	6	32	16	54
Annualized 2017	11			

Violent Crimes at Villa Americana 2017 (Jan-July)	2016	2015	Total	
Aggravated Assault	10	17	7	34
Robbery	1	6	0	7
Murder	0	0	1	1
Rape	0	1	0	1
Total Violent Crime	11	24	8	43
Annualized 2017	19			

Violent Crimes at Crystal Springs (complex across street to south)	2017 (Jan-July)	2016	2015	Total
Aggravated Assault	2	18	6	26
Robbery	0	3	2	5
Murder	0	2	2	4
Rape	0	0	0	0
Total Violent Crime	2	23	10	35
Annualized 2017	4			

Population in Police Beat 14D50 - Source: 2013, 2014, 2015 5-Year American Community Survey Table B01003

Census Block Groups in Police Beat 14D50	2015 ACS Population	2014 ACS Population	2013 ACS Population
482013317001	1959	1721	1873
482013316021	720	680	919
482013308001	4156	3898	3947
Total Population	6835	6299	6739
Population in Thousands	6.835	6.299	6.739

Adjusted Population - Block 482013317001 Adjusted Downward by 15% to Account for Differences in Block and Police Beat Boundary

	2015 ACS Population	2014 ACS Population	2013 ACS Population
482013317001	1665	1462	1592
482013316021	720	680	919
482013308001	4156	3898	3947
Total Population	6541	6040	6458
Population in Thousands	6.541	6.04	6.458

Police Beat 14D40 - Violent Crime Summary - 2015 to July 2017

Violent Crime in Police Beat 14D40 is less than 18/1,000 persons for 2015, 2016, and Jan-July 2017. Crime/1,000 persons has decreased each year since 2015.

Violent Crimes in Police Beat 14D40 (all instances)	2017 (Jan-July)	2016	2015	Total
Aggravated Assault	119	186	156	461
Robbery	31	86	109	226
Murder	4	10	7	21
Rape	9	12	8	29
Total Violent Crime	163	294	280	737
Annualized 2017 Crime	279			

Population in Thousands	18.594	18.52	17.33
Violent Crime / 1,000 Persons	8.77	15.88	16.16
Annualized 2017 Crime Rate	15.03		

Violent Crimes in Beat 14D40 w/in 1/2 Mi of Villa Americana	2017 (Jan-July)	2016	2015	Total
Aggravated Assault	6	6	24	36
Robbery	0	4	18	22
Murder	0	0	3	3
Rape	0	0	0	0
Total Violent Crime	6	10	45	61
Annualized 2017 Violent Crime	10			

Population in Police Beat 14D40 - Source: 2013, 2014, 2015 5-Year American Community Survey Table B01003			
Census Tracts and Block Groups in Police Beat 14D40	2015 ACS Population	2014 ACS Population	2013 ACS Population
48201331500	8301	7927	7666
48201331601	6707	6615	6232
482013317003	1058	1141	1189
482013317002	1021	1060	1060
482013316022	1213	1518	904
482013317001 (partial population, 15%)	294	258	281
Total Population	18594	18519	17332
Population in Thousands	18.594	18.519	17.332

EXHIBIT C

Police Beat 14D50 - Violent Crime Summary - 24 Month Period from August 2015 to July 2017

Violent Crime in Police Beat 14D50 is Less than 18/1,000 persons for past 2 12-month periods. Violent Crime reduction from 8/2015-7/2016 to 8/2016-7/2017.

Violent Crimes in Police Beat 14D50 (all instances)	Aug		Total
	Aug 2016 to Jul 2017	2015 to Jul 2016	
Aggravated Assault	59	62	121
Robbery	18	33	51
Murder	3	2	5
Rape	4	1	5
Total Violent Crime	84	98	182
% Decrease	14%		
Population in Thousands	6.541	6.04	
Violent Crime / 1,000 Persons	12.84	16.23	

Violent Crimes in Beat 14D50 w/in 1/2 Mi of Villa Americana (excludes crime at Villa Americana)	Aug		Total
	Aug 2016 to Jul 2017	2015 to Jul 2016	
Aggravated Assault	9	19	28
Robbery	2	10	12
Murder	1	2	3
Rape	0	1	1
Total Violent Crime	12	32	44
% Decrease	63%		

Violent Crimes at Villa Americana	Aug		Total
	Aug 2016 to Jul 2017	2015 to Jul 2016	
Aggravated Assault	18	14	32
Robbery	1	6	7
Murder	0	0	0
Rape	1	0	1
Total Violent Crime	20	20	40
% Decrease	0%		

Violent Crimes at Crystal Springs (complex across street to south)	Aug		Total
	Aug 2016 to Jul 2017	2015 to Jul 2016	
Aggravated Assault	7	15	22
Robbery	0	5	5
Murder	0	2	2
Rape	0	0	0
Total Violent Crime	7	22	29
% Decrease	68%		

Population in Police Beat 14D50 - Source: 2013, 2014, 2015 5-Year American Community Survey Table B01003

Census Block Groups in Police Beat 14D50	2015 ACS Population	2014 ACS Population	2013 ACS Population
482013317001	1959	1721	1873
482013316021	720	680	919
482013308001	4156	3898	3947
Total Population	6835	6299	6739
Population in Thousands	6.835	6.299	6.739

Adjusted Population - Block 482013317001 Adjusted Downward by 15% to Account for Differences in Block and Police Beat Boundary

	2015 ACS Population	2014 ACS Population	2013 ACS Population
482013317001	1665	1462	1592
482013316021	720	680	919
482013308001	4156	3898	3947
Total Population	6541	6040	6458
Population in Thousands	6.541	6.04	6.458

Police Beat 14D40 - Violent Crime Summary - 24 Month Period from August 2015 to July 2017

Violent Crime in Police Beat 14D40 is less than 18/1,000 persons for past 2 12-month periods. Violent Crime reduction from 8/2015-7/2016 to 8/2016-7/2017.

Violent Crimes in Police Beat 14D40 (all instances)	Aug 2015		Total
	Aug 2016 to Jul 2017	to Jul 2016	
Aggravated Assault	192	192	384
Robbery	64	96	160
Murder	5	15	20
Rape	14	12	26
Total Violent Crime	275	315	590
% Decrease	13%		
Population in Thousands	18.594	18.52	
Violent Crime / 1,000 Persons	14.79 17.01		

Violent Crimes in Beat 14D40 w/in 1/2 Mi of Villa Americana	Aug 2015		Total
	Aug 2016 to Jul 2017	to Jul 2016	
Aggravated Assault	8	11	19
Robbery	1	9	10
Murder	0	2	2
Rape	0	0	0
Total Violent Crime	9	22	31
% Decrease	59%		

Population in Police Beat 14D40 - Source: 2013, 2014, 2015 5-Year American Community Survey Table B01003			
Census Tracts and Block Groups in Police Beat 14D40	2015 ACS Population	2014 ACS Population	2013 ACS Population
48201331500	8301	7927	7666
48201331601	6707	6615	6232
482013317003	1058	1141	1189
482013317002	1021	1060	1060
482013316022	1213	1518	904
482013317001 (partial population, 15%)	294	258	281
Total Population	18594	18519	17332
Polulation in Thousands	18.594	18.519	17.332



CRESTMONT PARK CIVIC ASSOCIATION

P. O. BOX 331742
HOUSTON, TEXAS 77233-1742
713-239-4505

May 21, 2017

Villa Americana Housing Partners, LP
Attn: Christopher A. Akbari
9 Greenway Plaza, Suite 1250
Houston, TX 77046

Re: Letter of Support - Villa Americana Apartments Rehab Project, Houston, TX.

Dear Mr. Akbari:

The Crestmont Park Civic Association supports the proposed affordable housing rehabilitation project planned for the Villa Americans Apartments located at 5901 Selinsky Road, Houston, Harris County, Texas 77048. This letter is to affirm our support of the application for 2017 4% Housing Tax Credits being requested through the Texas Department of Housing and Community Affairs.

We believe this development would greatly benefit the community by providing quality affordable housing to families in this area. In the last few years we have seen numerous new public and private developments such as new single family housing developments, new businesses, and rebuilt schools transform our community.

If you have any questions or need any additional information, I can be reached by phone at 832-752-2082, or by email at buildonsuccess@gmail.com.

Sincerely,

A handwritten signature in blue ink that reads 'Charles Cave'.

Charles Cave, President
Crestmont Park Civic Association

Exhibit G



DWIGHT BOYKINS
Houston City Council Member, District D

April 3, 2017

Villa Americana Housing Partners, LP
c/o Christopher A. Akbari
3735 Honeywood Court
Port Arthur, TX 77642

Re: Villa Americana Apartments, Houston, TX

Dear Mr. Akbari,

I am writing to you on behalf of Villa Americana Apartments located at 5901 Selinsky Street, Houston, Harris County. As the Council Member for District D, I offer my support of the application for 2017 4% Housing Tax Credits being requested through the Texas Department of Housing and Community Affairs.

Please feel to contact my office if you have any additional questions or concerns at DistrictD@HoustonTX.gov or 832-393-3001.

Sincerely,

A handwritten signature in blue ink, appearing to read "D. Boykins".

Dwight Boykins
Houston City Council
District D

4c

**TO BE POSTED
NOT LATER THAN
THE THIRD DAY
BEFORE THE
DATE OF THE
MEETING**

5a

BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION
NOVEMBER 9, 2017

Presentation, discussion, and possible action on an order adopting the amended 10 TAC Chapter 11 concerning the Housing Tax Credit Program Qualified Allocation Plan, and directing its publication in the *Texas Register*.

RECOMMENDED ACTION

WHEREAS, the Texas Department of Housing and Community Affairs (the “Department”) is authorized to make Housing Tax Credit allocations for the State of Texas;

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

WHEREAS, the proposed amendments to 10 TAC Chapter 11 were published in the September 22, 2017, issue of the *Texas Register* for public comment; and

WHEREAS, pursuant to Tex. Gov’t Code §2306.6724(b) the Board shall adopt and submit to the Governor a proposed Qualified Allocation Plan no later than November 15th;

NOW, therefore, it is hereby

RESOLVED, that the final order adopting the amended 10 TAC Chapter 11, together with the preambles presented to this meeting, is hereby ordered and approved for publication in the *Texas Register*; and

FURTHER RESOLVED, that the Executive Director and his designees be and each of them hereby are authorized, empowered, and directed, for and on behalf of the Department, to cause the Qualified Allocation Plan, together with the preamble in the form presented to this meeting, to be delivered to the Governor, not later than November 15th for his review and approval, and to cause the Qualified Allocation Plan, as approved, approved with changes or rejected by the Governor, and thereafter be published in the *Texas Register* and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing.

BACKGROUND

The Board approved the proposed amendments to 10 TAC Chapter 11 regarding the Housing Tax Credit Program Qualified Allocation Plan (“QAP”) at the Board meeting of September 7, 2017, to be published in the *Texas Register* for public comment. In keeping with the requirements of the Administrative Procedures Act, staff has reviewed all comments received and provided a reasoned response to these comments. Staff has listed the areas below that received the most comment.

- §11.4(a) Tax Credit Request and Award Limits
- §11.7 Tie Breaker Factors
- §11.9(c)(4) Opportunity Index
- §11.9(c)(5) Underserved Area
- §11.9(c)(6) Tenant Populations with Special Housing Needs
- §11.9(d)(7) Concerted Revitalization Plan
- §11.9(e)(2) Cost of Development per Square Foot
- §11.9(e)(4) Leveraging of Private, State, and Federal Resources

Preamble, Reasoned Response, and Amended Rule

The Texas Department of Housing and Community Affairs (the “Department”) adopts the amended 10 TAC Chapter 11 §§11.1 – 11.10 concerning the Housing Tax Credit Program Qualified Allocation Plan. Sections 11.1, 11.2, 11.3, 11.4, 11.5, 11.6, 11.7, 11.8, 11.9, and 11.10 are adopted with changes to text as published in the September 22, 2017 issue of the *Texas Register* (42 TexReg 4909).

REASONED JUSTIFICATION. The Department finds that the adoption of the rule will result in a more consistent approach to governing multifamily activity and to the awarding of multifamily funding or assistance through the Department while minimizing repetition among the programs. The comments and responses include both administrative clarifications and revisions to the Housing Tax Credit Program Qualified Allocation Plan based on the comments received. After each comment title, numbers are shown in parentheses. These numbers refer to the person or entity that made the comment as reflected at the end of the reasoned response. If comment resulted in recommended language changes to the Draft Housing Tax Credit Program Qualified Allocation Plan as presented to the Board in September, such changes are indicated.

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS

Public comments were accepted between September 22, 2017, and October 12, 2017, with comments received from: (1) Mayor of Plano, Harry LaRosiliere, (2) Representative Garnet F. Coleman, (3) Representative Larry Phillips, (4) Brownstone Affordable Housing, Leslie Holleman & Associates, Evolie Housing Partners, and Mears Development and Construction, (5) Alyssa Carpenter, (6) Texas Affiliation of Affordable Housing Providers, (7) DMA Companies, (8) Tim Smith, (9) Dr. David Hicks, (10) David Baca, (11) Jim Sari, (12) Charles Holcomb, (13) Rural Rental Housing Association, (14) Marlon Sullivan, (15) Devin Baker, (16) Dennis Hoover, (17) Lucas & Associates, (18) National Church Residences, (19) Marilyn Hartman, (20) Disability Rights Texas, (21) Leslie Buck, (22) Meredith Blackburn, (23) Susan Raffle, (24) Methodist Healthcare Ministries, (25) Apolonio Flores, (26) Five Woods, LLC, (27) Foundation Communities, (28) NEW HOPE, (29) True Casa Consulting, (30) Lisa Vecchietti, (31) BETCO Consulting, (32) Texas Coalition of Affordable Developers, (33) Frazier Revitalization, (34) Purple Martin Real Estate, (35) Structure Development, (36) Miller - Valentine Group, (37) MGROUP Holdings, (38) Brad Forslund, (39) JES Dev Co, (40) The NuRock Companies, (41) Texas Low Income Housing Information Service, and (42) The Meals on Wheels Association of Texas.

1. §11 – General Comment; (2), (15), (28), (29), (39)

COMMENT SUMMARY: Commenter (2) states his support for the moving of educational quality criteria entirely to 10 TAC Chapter 10, Subchapter B.

Commenter (15) states that he appreciates staff's involvement and the processes they have implemented to work with the development community.

Commenter (28) thanks staff for the extensive work they do throughout the development cycle.

Commenter (29) thanks staff for the thoughtful year-long planning process that occurred with this year's drafting of rules. Commenter (29) also thanks TDHCA for its past and current efforts to create and incent additional programming that provides integrated models to complement the LIHTC program.

Commenter (39) thanks staff for the time they put into drafting the 2018 Qualified Allocation Plan ("QAP") and Uniform Multifamily Rules ("Rules"), and also appreciates the monthly roundtables that were held. The roundtables have been a welcomed addition to the QAP development process, and Commenter (39) hopes staff will continue this in the coming years.

Commenter (42) applauds staff's efforts in working with stakeholders to craft the rules for 2018.

STAFF RESPONSE: Staff appreciates Commenter (2)'s explaining why he supports the placement of educational quality entirely within 10 TAC Chapter 10. His suggestions regarding mitigation plans for schools that do not have a TEA Met Standard rating are addressed by staff in the public comment reasoned response for 10 TAC Chapter 10, Subchapter B.

Staff thanks Commenters (15), (28), (29), (39), (42) for their support.

2. §11.1(e) – Data; (4), (5)

COMMENT SUMMARY: Commenter (4) states that the proposed language regarding data, especially data from NeighborhoodScout, is unclear, too subjective, and opens the door to Requests for Administrative Deficiencies ("RFADs") during the Application process. Commenter (4) foresees the possibility of NeighborhoodScout's crime rate for a census tract increasing beyond the threshold limit set forth by Departmental rules *after* an Applicant has already selected a site, whose crime rates were below the specified rate, but *before* the Pre-Application Final Delivery Date, thereby invalidating that census tract's, and the proposed Development located in it, qualification for certain point items.

Commenter (4) proposes the following changes (blue) on top of staff's originally proposed changes (red):

(e) ~~Census~~-Data. Where this chapter requires the use of ~~census or~~ American Community Survey data, the Department shall use the most current data available as of October 1, 2017~~6~~, 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 ~~generally be~~ disregarded. Where other data sources are specifically required, such as NeighborhoodScout, the data available after October 1 at the time of site selection; but before Pre-Application Final Delivery Date, will be permissible, provided Applicants retain evidence of the applicable data on that date. The NeighborhoodScout report data submitted in the Application must include the report date on which the report was printed.

Commenter (5) asks staff to look more closely at the discrepancies between NeighborhoodScout data and local data sources when measuring violent and property crime rates. Commenter (5) notes that the rule as proposed requires the development community to spend hundreds of dollars monthly on a third-party commercial website that provides inaccurate data. Commenter (5) asks that NeighborhoodScout be entirely removed from the QAP and Rules.

STAFF RESPONSE: In response to Commenter (4), staff does not find the proposed language for §11.1(e) ambiguous. For NeighborhoodScout crime rate data (and any data other than American Community Survey data), any data secured between October 1 and Pre-Application Final Delivery Date is permissible. Replacing this time frame with Commenter (4)'s proposed phrase of "at the time of site selection" is ambiguous as it does not set a limit to when that site was selected, and staff has no way of confirming this date. The nature of the Department's Housing Tax Credit (HTC) rules is to judge sites according to point-in-time data, which require time parameters. The proposed rule states that the Applicant should include the NeighborhoodScout report in the Application as evidence of the data used by the Applicant, and the date on which that data was attained. If the data is updated after the Application is submitted, it would not impact the Application and will be disregarded

Staff recommends no changes based on this comment.

In response to Commenter (5), staff understands the frustration towards discrepancies in various sources of crime data. Unfortunately, crime data is not reported across jurisdictions according to uniform standards, and this lack of consistency makes it difficult to compare and contrast geographic units. Some jurisdictions do not even accurately record or report their crime data. NeighborhoodScout is not a perfect tool, but it does provide a uniform standard down to the census tract level. Applicants are not required to use NeighborhoodScout and are welcome to use local crime data if they wish to avoid incurring any costs associated with accessing the website, but any local crime data used must follow the same methods as NeighborhoodScout—a given time period's violent or property crime instances within the boundaries of a census tract, relative to the population of that census tract.

Staff recommends no changes based on this comment.

3. §11.1(g) – Transparency; (4)

COMMENT SUMMARY: Commenter (4) asks that the majority of this language regarding the Administrative Deficiency process be moved to other sections of the QAP or Rules where it is either already addressed or more appropriately placed. Commenter (4) recommends moving the

sentence pertaining to point changes during the Administrative Deficiency process to 10 TAC §11.9(a) – General Information. The language regarding the prohibition against changing any aspects of the Development during the Administrative Deficiency process is already addressed in 10 TAC §10.201(7).

STAFF RESPONSE: Staff believes that reinforcing these requirements at the front of the QAP serves the purpose of ensuring that the information is clearly and prominently communicated to Applicants.

Staff recommends no changes based on this comment.

4. §11.2 – Program Calendar for Competitive Housing Tax Credits; (4), (5), (32), (34)

COMMENT SUMMARY: Commenter (4) notes that, by May 1, 2017, only 29 of the 89 priority Applications had been reviewed. Therefore, Commenter (4) worries that, given the unknown outcome of Applications not yet reviewed by staff, other Applicants will be incentivized to file RFADs lest staff overlook a potential flaw in an Application. Commenters (32) and (34) make a similar point, and foresee more RFADs being filed because of this earlier deadline. Commenter (32) believes that staff's attempt to clarify definitions and Departmental expectations will help to address the RFAD issues seen late in the 2017 QAP cycle. Commenters (32) and (34) propose that the RFAD deadline revert to June 1, as it was in the 2017 QAP cycle.

Commenter (5) thanks staff for changing the Third Party Request for Administrative Deficiency date after receiving input from stakeholders as the 2018 QAP was initially crafted. That said, Commenter (5) believes that a May 1 deadline warrants a “Volume 4” review process whereby Applications are quickly assessed for scoring accuracy immediately after the Full Application Delivery Date. Such a review process may save staff time since it would correctly identify Applications’ rankings before staff begins a deeper review of Application materials.

Commenter (5) also asks that staff correct the Carryover Documentation Delivery Date, which is currently listed as being in 2017 but should be in 2018.

STAFF RESPONSE: In response to Commenter (4), staff's primary responsibility is to ensure that Final Awards can be made by July. In order to meet this deadline, staff finds it prudent to address RFADs earlier in the application process, rather than later. Furthermore, having RFADs in hand at an earlier date assists staff in better reviewing Applications, as RFADs do at times point out issues that staff had not considered. With the proposed May 1 RFAD deadline, staff will be able to consolidate most Administrative Deficiencies into one request to an Applicant, which is beneficial for staff, the Applicant, and the Board.

Staff recommends no changes based on this comment.

In response to Commenter (5)'s noticing an inaccurate date for the Carryover Documentation Delivery Date, staff thanks Commenter (5) for noticing this error and will change it to “11/01/2018.”

Regarding Commenter (5)'s proposal that staff conduct a limited review of Applications immediately following the Full Application Delivery Date, staff is considering changes to internal processes to improve accuracy and speed up the review process.

Staff recommends no changes based on this comment.

5. §11.4(a) – Tax Credit Request and Award Limits; (4), (5), (8), (32), (33), (34), (35), (36), (40)

COMMENT SUMMARY: Commenters (4), (5), (32), (34), (36), (40) ask that staff revert to the 2017 QAP language and remove the proposed language that would allow staff, after June 29, to terminate non priority Applications once an Applicant faces the \$3 million cap. Commenter (4) states that this suggested revision grants staff too much subjective discretion since any “non-priority” Application could suddenly become a priority Application as the pool of Applications changes. Furthermore, Commenters (4) and (32) note that Applications that receive awards sometimes do not secure a Carryover Allocation Agreement for many reasons, such as not securing zoning. In this instance, an Applicant should have the option to draw upon an Application on the waiting list to maintain his/her overall funding amount, which would still remain below \$3 million. Commenters (5) and (32) note that, because an Applicant has paid an Application fee for each submitted Application, it should not be at risk of termination and should receive the same treatment as any other Application. Commenter (34) points out that the waiting list moves after the July Governing Board meeting. Commenter (5) points to important milestones for the Development at Commitment Notice and Carryover dates, as well as Real Estate Analysis (“REA”) assessments throughout the review process.

Because of the concerns stated above, Commenters (32) and (36) propose that an Applicant with HTC requests exceeding the \$3 million cap be required to notify staff of their preference by the June 29 date, but that the other Applications remain active, if some version of this provision must remain.

Commenters (5), (8), (32), (33), (34), and (35) also ask staff to reconsider the consultant or advisor fee in §11.4(a)(4), which has been set at \$150,000 since 2004. Because staff has removed the alternative measure for a consultant or advisor fee—10% of the Developer Fee or 20% for Qualified Nonprofit Developments—Commenter (5) asks that staff raise the allowable consultant or advisor fee to \$225,000 to account for inflation from 2004 to 2018. Commenters (32) and (35) request \$250,000 to account for inflation, which accommodates 3-4% inflation per year since 2004. Commenters (8), (33), (35) are against the proposed change and ask that staff revert to the 2017 QAP language. Allowing larger payments to consultants has improved the quality of submitted Applications, and because the consultant fee comes from the Developer fee, no extra costs are added to the total project costs. If anything, high consultant fees ensure a quality Application.

Commenter (33) further explains that they are concerned that a consultant receiving fees more than the specified amount would then be subject to the \$3 million cap applied to Applicants, Developers, or Guarantors. While Commenter (33) recognizes that some Applicants may attempt to circumvent these rules, as they were previously written, Commenter (33) believes that the Department can address this issue in a more targeted way during the Application review process. Commenter (34)

makes a similar comment, noting that, if consultants have abused the \$3 million cap, then TDHCA should simply address that problem directly through strict enforcement of the actual limit.

STAFF RESPONSE: Regarding the request from Commenters (4), (5), (32), (34), (36), (40) for revisions to the proposed \$3 million cap requirements, each Application that is submitted carries the risk of not receiving an award, whether due to non-competitiveness or through the inability to meet required milestones after an award. In contrast to Commenter (4)'s suggestion that the proposed language "grants staff too much subjective discretion since any 'non-priority' Application could suddenly become a priority Application as the pool of Applications changes," allowing Applicants to maintain Applications in amounts beyond the \$3 million dollar limit deprives Applicants on the waiting list of the ability to secure an award when an awarded Applicant fails to meet the requirements of the rules.

Staff recommends no changes based on this comment.

Regarding the request from Commenters (5), (8), (32), (33), (34), and (35) to increase the maximum consultant and advisor fee per Application, staff supports the logic of adjusting the previously stipulated amount of \$150,000 according to inflation. In order to determine an appropriate rate of inflation between 2004 and 2017, staff turned to the U.S. Bureau of Labor Statistics' Consumer Price Index inflation calculator, and determined that \$150,000 in January, 2004 dollars equals \$199,907.40 in September, 2017 dollars. Staff will round up to \$200,000 and adjust the amount in §11.4(a)(4).

In response to Commenters (33) and (34), consultants are not subject to the \$3 million cap. So long as they do not exceed the cap on consultant fees and do not appear in the developer or ownership structure, they may work on multiple Applications.

Staff recommends no changes based on this comment.

6. §11.4(c) – Increase in Eligible Basis (30 percent Boost); (4)

COMEMNT SUMMARY: Commenter (4) recommends reverting back to the 2017 QAP language in this subsection and removing the proposed language that reads, "In no instance will the boost exceed more than the amount of credits required to create the HTC rent restricted units, as determined by the Real Estate Analysis division of TDHCA." Commenter (4) argues that this language is vague and subjective, and without specific criteria in 10 TAC 10.301 specifying how the necessary amount of HTCs will be calculated and determined, the added language should be removed. Furthermore, Commenter (4) notes that this subsection already has language prohibiting the over sourcing of HTCs for a Development.

STAFF RESPONSE Staff does not agree that the proposed language is "vague and subjective." The language considers the requirements of Internal Revenue Code §42(d)(5)(B) in applying the boost, and §42(m)(2)(A) in ensuring that the credit amount allocated does not exceed the amount the housing agency determines necessary for the financial feasibility of the development. Applications will be underwritten using the same method to determine the amount of credits

required that they have used for past application cycles. The difference is that when the boost exceeds the amount required, the amount of the boost will be reduced.

Staff recommends no changes based on this comment.

STAFF TECHNICAL CORRECTION:

Staff has updated the credit year regarding a Uniform State Service Region's Elderly Development credit maximum in §11.4(b), Maximum Request Limit (Competitive HTC Only). This subsection now reads as follows:

(b) Maximum Request Limit (Competitive HTC Only). For any given Development, an Applicant may not request more than 150 percent of the credit amount available in the subregion based on estimates released by the Department on December 1, or \$1,500,000, whichever is less, or \$2,000,000 for Applications under the At-Risk Set-Aside. In addition, for Elderly Developments in a Uniform State Service Region containing a county with a population that exceeds one million, the request may not exceed the final amount published on the Department's website after the release of the Internal Revenue Service notice regarding the ~~2016~~-2018 credit ceiling. For all Applications, the Department will consider the amount in the funding request of the pre-application and Application to be the amount of Housing Tax Credits requested and will automatically reduce the Applicant's request to the maximum allowable under this subsection if exceeded. Regardless of the credit 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))

7. §11.5(2)(A) – Eligibility of Certain Developments to Participate in the USDA or Rural Set-Asides; (4)

COMMENT SUMMARY: Commenter (4) notes that this subparagraph cannot stand alone as “A” unless there is also a “B.” Commenter (4) recommends combining this text with the immediately preceding paragraph, (2) USDA Set-Aside.

STAFF RESPONSE: Staff has considered the suggested change and determined that including this information outside the body of the preceding paragraph serves the purpose of ensuring that the information is clearly and prominently communicated to Applicants. Staff has revised the §11.5(2) to address the Commenter's concern:

(2) USDA Set-Aside. (§2306.111(d-2)) At least 5 percent of the State Housing Credit Ceiling for each calendar year shall be allocated to Rural Developments which are financed through USDA. If an Application in this set-aside involves Rehabilitation it will be attributed to and come from the At-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). ~~All Applications that can score under the USDA set-aside will be considered Rural for all scoring items under this chapter. If a Property receiving USDA financing is unable to score under the USDA Set-Aside and it is located in an Urban subregion, it will be scored as Urban.~~

(A) Eligibility of Certain Developments to Participate in the USDA or Rural Set-Asides. (§2306.111(d-4)) A proposed or Existing Residential Development that, before September 1, 2013, has been awarded or has received federal financial assistance provided under Section 514, 515, or 516 of the Housing Act of 1949 (42 U.S.C. Section 1484, 1485, or 1486) may be attributed to and come from the At-Risk Development Set-Aside or the Uniform State Service Region in which the Development is located, regardless of whether the Development is located in a Rural area.

(B) All Applications that can score under the USDA Set-aside will be considered Rural for all scoring items under this chapter. If a Property receiving USDA financing is unable to score under the USDA Set-aside and it is located in an Urban subregion, it will be scored as Urban.

8. §11.5(3) – At-Risk Set-Aside; (4)

COMMENT SUMMARY: Commenter (4) asserts that subparagraph (c) of this paragraph does not contemplate all of the possible paths to being an At-Risk Development, according to the statutory requirements of 2306.6702(a)(5)(B)(ii).

Commenter (4) proposes changing the deadline for §11.5(3)(D)(i) from Carryover Documentation Delivery Date to, instead, 10 Percent Test Documentation Delivery Date. The current deadline doesn't comport with how HUD approves these types of transfers, which require a Mixed Finance Application that HUD only accepts after an allocation is made. The proposed early deadline is also problematic for Developments awarded off the waiting list.

STAFF RESPONSE: Regarding the first comment from Commenter (4), staff agrees and has made the following clarifying change to §11.5(3)(C):

(C) An At-Risk Development qualifying under Tex. Gov't Code §2306.6702(a)(5)(B) must meet one of the following requirements:

(i) Units to be Rehabilitated or Reconstructed must be owned by a public housing authority or a public facility corporation created by a public housing authority under Chapter 303, Local Government Code and ~~have received assistance under §9, United States Housing Act of 1937 (42 U.S.C. section 1437g); or and 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.~~

(ii) Units to be Rehabilitated or Reconstructed must have been ~~To the extent that an Application is eligible under §2306.6702(a)(5)(B)(ii) and the units being reconstructed~~

~~were disposed of or demolished by a public housing authority prior to the beginning of the Application Acceptance Period, the housing units must have been disposed of or demolished in the two-year period preceding the application for housing tax credits; and The Application will be categorized as New Construction.~~

(iii) For Developments including Units to be Reconstructed, the Application will be categorized as New Construction; and

~~(iv)~~ To the extent that an Application is eligible under Tex. Gov't Code §2306.6702(a)(5)(B)(iii), the Development must receive assistance through the Rental Assistance Demonstration ("RAD") program administered by the United States Department of Housing and Urban Development ("HUD"). Applications must include evidence that RAD participation is included in the applicable public housing plan that was most recently approved by HUD, and evidence (in the form of a Commitment to enter into a Housing Assistance Payment ("CHAP")) that HUD has approved the units proposed for Rehabilitation or Reconstruction for participation in the RAD program; and

~~(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.

Regarding Commenter (4)'s second comment, staff believes that this suggestion would represent sufficiently substantive changes from what was proposed that it could not be accomplished without re-publication for public comment. These ideas could be taken into consideration for drafting the 2019 QAP.

Staff recommends no change based on this comment.

9. §11.6(4) – Waiting List; (4)

COMMENT SUMMARY: Commenter (4) asks that this subparagraph's language revert back to the 2017 QAP language. Staff's additional language added at the end of this item, Commenter (4) states, is already accounted for elsewhere in the QAP. Commenter (4) considers the language allowing the Department to select lower scoring Applications over higher scoring Applications in order to comply with required Set-asides to be highly subjective and denies higher-scoring Applicants appropriate process.

STAFF RESPONSE: The statutory requirements of Tex. Gov't Code §2306.6710(d) state that "the department shall continue to underwrite applications until the department has processed enough applications satisfying the department's underwriting criteria to enable the allocation of all available housing tax credits according to regional allocation goals and set-aside categories." Tex. Gov't Code §2306.111 further clarifies the awards methodology regarding Set-asides by stating that "In allocating low income housing tax credit commitments under Subchapter DD, the department shall, before

applying the regional allocation formula prescribed by Section 2306.1115, set aside for at-risk developments, as defined by Section 2306.6702, not less than the minimum amount of housing tax credits required under Section 2306.6714.” Staff finds the proposed language added to this subparagraph to be in compliance with the requirements and duties of statute.

Staff recommends no change based on this comment.

10. §11.7 – Tie Breaker Factors; (4), (5), (6), (7), (8), (17), (18), (28), (30), (31), (32), (35), (37), (38), (39), (41)

COMMENT SUMMARY: Commenter (41) reflects on what constitutes effective tie-breaker factors, and asks staff to consider this logic as they respond to public comment. Effective tie-breaker criteria: 1) promote the best Applications; 2) are based on variable amounts that avoid simple binaries (yes/no, score/ did not score) and therefore actually break ties; and 3) are crafted in a way to discourage Development Site clustering.

Commenters (17), (30), (31), (39) support the current Tie-Breaker Factors and do not think any changes should be made. Commenters (30), (31), (39) share that Developers have already made their real estate decisions based on tie-breaker factors, and therefore the order and content should remain as written in order to provide stability.

Commenter (5) asks that Proximity to Urban Core be removed as a tie-breaker since it is already a significant scoring item. Also, there is no other scoring item that is also a tie-breaker factor. Commenter (38) asks that Proximity to Urban Core be removed for reasons explained under §11.9(c)(7), Proximity to Urban Core (namely, that qualifying cities are given too much weight by this measure). Commenter (41) states that Proximity to Urban Core should not be the first tie-breaker factor, as other criteria are more important than how close residents are to a city hall.

Commenter (7) accepts staff’s proposed first tie-breaker—proximity to urban core—but asks that staff add the qualification that those proposed Developments *closest* to city hall win. Staff should consider this slight modification since proximity to urban core is now available to more cities and will be pursued by more Applicants.

Commenters (5) and (41) ask that staff revert to the 2017 QAP language for §11.7(2), since adding Concerted Revitalization Plan devalues high opportunity areas. Commenter (41) adds that, with the removal of Educational Quality from scoring criteria, equating CRP with Opportunity Index in tie-breaker factors may push Applicants to focus on lower opportunity area covered by CRPs, which could pose fair housing issues.

Commenters (5), (6), (7), (8), (18), (28), (31), (32), (41) express concern with the proposed third tie-breaker factor regarding HTC units per capita for a Place, since it will drive Developments to very small cities or Places that have never had a HTC allocation, irrespective of whether or not that Place has an adequate housing market to support the Development long-term. Commenters (6), (7), (18), (28) (31) and (32) also express concern with the fourth tie-breaker- census tract with the lowest poverty rate. Commenters (6), (7) and (32) argue that, together, these two tie-breaker factors point Applicants to the same Places and census tracts, which creates upward pressure on land prices and

discourages city governments from issuing resolutions of support. Second, these two factors push Developments to outlying and remote areas because they have either low poverty rates or no existing HTC property, the latter of which may mean that there is no market for HTC Developments. Commenters (6), (7), (8), and (28) therefore ask that staff entirely remove both tie-breakers (3) and (4), regarding HTC units per capita and census tract with the lowest poverty rate, respectively, and Commenter (28) also proposes removing the second tie-breaker factor. Commenter (18) asks that staff remove the poverty rate tie-breaker only. Commenter (5) proposes that tie-breaker (3) apply only to Urban subregions, and not Rural subregions. Commenter (41) does recognize the logic behind the third tie breaker, but proposes using a data set based on actual household need, such as HUD's Comprehensive Housing Affordability Strategy (CHAS) data.

Commenter (37) raises attendant concerns with the third tie-breaker factor, regarding HTCs per capita by Place. First, Commenter (37) expresses concern about the time constraints of American Community Survey ("ACS") population data, which for the 2018 QAP cycle will rely on 2011-2015 estimates. Some cities in Texas may already have populations higher than those ACS amounts, which may significantly alter the HTC / capita calculation. Second, Commenter (37) has noticed errors in the property inventory listed in the Department's Site Demographic Characteristics Report; sometimes Developments fall out of the HTC program but they remain listed on the property inventory. Third, reintroducing the geographic concept of Place under tie breaker factors pulls in Census Designated Places ("CDPs"), the boundaries of which are entirely subjective and based on the 2010 census mapping, which is now eight years old. Therefore, Commenter (37) asks that staff remove this tie breaker factor. If not, Commenter (37) asks that staff allow more recent population estimates from cities and that CDPs, first, only apply when entirely outside the boundaries of an incorporated City and, second, that all HTC Units within that CDP be accounted for.

Commenter (4) asks that staff further clarify tie breaker (3), regarding HTCs per capita. It is possible that a site might straddle jurisdictional boundaries, in which case the site could take one of two HTC per capita ratios. Commenter (4) proposes that the highest of the two or more applicable scores apply to the site.

Commenter (7) proposes a modification to the final tie-breaker factor—Applications proposed to be located the greatest linear distance from the nearest HTC assisted Development. Commenter (7) states that the focus should be on the population served—general or elderly—and not whether or not there is simply a HTC supported structure nearby.

Commenter (35) asks that, as is explained in the third tie-breaker, staff specify that the final tie-breaker—greatest linear distance from the nearest Housing Tax Credit assisted Development—will look to Development information located in the final Site Demographic Characteristics Report.

Commenters (31) and (41) believe that the 2017 QAP tie breaker factor of most high opportunity amenities resulted in some of the best sites found for Developments, and offer amenity-rich locations to residents. Commenter (41) asks that staff reconsider removing the 2017 QAP tie-breaker for most menu items "above the line." Commenter (41) believes that staff's efforts to clarify the menu items will resolve most issues faced by the Department in the 2017 competitive cycle.

Commenter (41) proposes that Opportunity Index be the first tie breaker, and words it as follows:

(1) Applications scoring higher on the Opportunity Index under §11.9(c)(4) of this chapter. For applications with the same score that have achieved the maximum Opportunity Index Score, the application with the highest number of points on the Opportunity Index amenities menu that they were unable to claim due to the 7 point cap on that item.

STAFF RESPONSE: Staff thanks Commenter (31) for proposing a logic that could define the crafting of tie-breakers, and asks that Commenter (31) reiterate this logic during the 2019 QAP planning process once staff and stakeholders begin planning the 2019 QAP.

In response to Commenters (30), (31), (39), such a stance would have the effect of defeating the purpose of public comment.

In regards to Commenters (5), (38), and (41), staff believes that the Department's goals of dispersion, resident choice, and proximity to meaningful amenities are well-served by the Proximity to Urban Core item. While Commenter (41) believes that residents more than likely do not care about being near their community's city hall, staff finds that city hall is a reliable indicator of the beneficial characteristics of a city. Staff believes that the goal of resident choice and HTC dispersion are served well through this item, which in the 2017 Competitive HTC cycle, only applied to 13 successful Applications out of 69 awardees (18.8% of the total).

Staff recommends no changes based on this comment.

In response to Commenter (7), in instances where two Applications or more have Urban Core points, they would move to subsequent tie breakers to break the tie.

Staff recommends no changes based on this comment.

In response to Commenters (5) and (41) and their concern about putting CRP on equal footing with Opportunity Index in the second tie-breaker, staff disagrees with their proposal to remove CRP from the tie-breaker. Such a revision would effectively bar CRP Developments from competing against Developments that score via the Opportunity Index. Given that the QAP's rules for CRP Developments help to ensure that a CRP is well planned and funded, a LIHTC Development in such an area can further catalyze revitalization, providing capital investments in communities that city officials believe really need it.

Staff recommends no changes based on this comment.

In response to the concerns of Commenters (5), (6), (7), (8), (28), (31), (32), (37), and (41) regarding the third tie breaker factor—lowest HTC units per capita for a Place, staff believes this measure promotes the Department's policy of dispersing HTC Developments. Applications in areas without previous Developments that lack amenities or sufficient market demand will not be successful in the Application process. In response to Commenter (37), the data provided by the American

Community Survey (“ACS”) is the most reliable information available at this time. While populations may have changed, there is not a reliable, consistent method to record that change for all cities across the state. Until that time when another data source is readily available, the Department will continue to rely on the ACS. Regarding Commenter (41)’s request that staff calculate a Place’s need through use of another data set, this is a change that has not been contemplated and would represent too large of a change at this point.

Staff recommends no changes based on this comment.

In response to Commenters (4) and (37) regarding sites crossing jurisdictional boundaries and concerns regarding Census Designated Places, the Department has adopted a definition of Place that addresses Commenter (37)’s concerns. In the unlikely event that a Development Site is located in two jurisdictions, the Applicant should request a pre-determination from staff in order to understand how staff will evaluate the Application.

Staff recommends no changes based on this comment.

In response to the concerns of Commenters (6), (7), (18), (28) (31) and (32) regarding the fourth tie breaker factor—lowest poverty rate for a census tract, staff believes that Development locations in lower-poverty areas provide important advantages to residents of HTC properties.

Staff recommends no changes based on this comment.

In regards to Commenter (7)’s request to differentiate between population served when measuring the greatest linear distance from the nearest HTC-assisted Development, this concept was not presented in the draft rule and is too significant of a change to be included at this time

Staff recommends no changes based on this comment.

In regards to Commenter (35)’s request that staff specify the source of information for the fifth tie-breaker, as staff has done in tie-breaker 3, staff agrees and has made the necessary change, as demonstrated below.

(5) Applications proposed to be located the greatest linear distance from the nearest Housing Tax Credit assisted Development. 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.

In regards to the request from Commenters (31) and (41) to revert to the 2017 QAP tie breaker factor of selecting the Application with the most Opportunity Index menu items, removal of this tie breaker factor was discussed extensively during QAP planning meetings in preparation for this draft rule. The tie breaker could be added back into future QAPs if future discussions provide reason for doing so.

Staff recommends no changes based on this comment.

11. §11.9(a) – General Information; (4), (32)

COMMENT SUMMARY: Commenter (32) submits what they call a general comment, but it applies largely to §11.9(a) (and, by way of the competitive nature of the program, §11.7 regarding Tie-Breaker Factors). Commenter (32) believes that the definition of Development Site and its use throughout the QAP and Rules needs to be consistent, especially in regard to proximity to amenities (e.g., a public library) or geographic-based indicators (e.g., crime rates). Development Site should always include ingress/egress points and easements when making measurements or census tract determinations. Additionally, Site Control and Development Site should be the same at the time of full Application submission.

Commenter (4) proposes moving some of the proposed language under §11.1(g) to this subsection, which would read as follows (with red being staff's proposed changes and blue being Commenter (4)'s additional revisions):

(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, §42 of the Code, and other criteria established in a manner consistent with Chapter 2306 and §42 of the Code. There is no rounding of numbers in this section for any of the calculations in order to achieve the desired requirement or limitation, unless rounding is explicitly stated as allowed for that particular calculation or criteria. The Application must include one or more maps indicating the location of the Development Site and the related distance to the applicable facility. Distances are to be measured from the nearest boundary of the Development Site to the nearest boundary of the property or easement containing the facility, unless otherwise noted. For the purposes of this section, all measurements will include ingress/egress requirements and any easements regardless of how they will be held. Applicants should provide appropriate support substantiating all claims for representation made in the Application, such as claims for points, qualification for set-asides, or meeting of threshold requirement. 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 to substantiate the election 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. ~~When providing a pre-application, Application or other materials to a state representative, local governmental body, Neighborhood Organization, or anyone else to secure support or approval that may affect the Applicant's competitive posture, an Applicant must disclose that in accordance with the Department's rules aspects of the Development may not yet have been determined or selected or may be subject to change, such as changes in the amenities ultimately selected and provided.~~

STAFF RESPONSE: In response to Commenter (32)’s request that Development Site, as a definition, be consistent throughout all Multifamily programs at TDHCA, staff believes that the definition of “Development Site” is sufficient for governing the requirements of the Department’s various multifamily programs. However, specific rules may add additional requirements to that definition. In this instance, development site is defined differently in order to provide consistent transparency in scoring. The specificity of the particular requirement does not warrant changing the term’s definition for all programs.

Staff recommends no changes based on this comment.

In response to Commenter (32)’s concerns about consistency between Site Control and Development Site at the time of full Application submission, staff believes that revisions to these requirements would represent sufficiently substantive changes from what was proposed that it could not be accomplished without re-publication for public comment. These ideas could be taken into consideration for drafting the 2019 QAP.

Staff recommends no changes based on this comment.

In regards to Commenter (4)’s proposal to shift the added language in §11.1(g) to §11.9(a), staff provided reasoned response above for §11.1(g), stating that staff believes that reinforcing these requirements at the front of the QAP serves the purpose of ensuring that the information is clearly and prominently communicated to Applicants.

Staff recommends no changes based on this comment.

12. §11.9(b)(2) – Sponsor Characteristics; (18), (25)

COMMENT SUMMARY: Commenter (18) appreciates the changes made to this paragraph regarding the provision of long-term on-site tenant services by a nonprofit or HUB. That said, Commenter (18) asks that this paragraph’s point value be increased from two points to three points by allowing Applicants to pursue the requirements of both subparagraphs, (A) and (B).

Commenters (25) and (26) claim that reducing a HUB’s or Nonprofit Organization’s combined ownership interest in the Development (whether through the General Partner structure, cash flow, or Developer Fee) from 80 percent to 50 percent is not justified. Commenter (25) claims that the HUB or Nonprofit Organization must materially participate, and therefore the combined ownership interest should remain, at minimum, 80 percent. Commenter (25) asks staff to consider the IRS definition of material participation. Commenter (26) commends staff on adding clarification for what constitutes “material participation,” and also expresses support for distinguishing between two types of involvement in a Development and weighting those types appropriately. However, Commenter (26), like Commenter (25), worries that decreasing the baseline ownership percentage for a HUB will undermine the progress that HUBs have made in building capacity, increasing their participation, and gaining in-depth experience in Competitive HTC Developments. Commenter (26) also speaks in favor of the five percent threshold for each ownership category, stating that this requirement encourages meaningful participation.

STAFF RESPONSE: Staff thanks Commenter (18) for the support regarding staff's proposed changes. In regards to Commenter (18)'s request to allow an Applicant to score on both items, staff does not find it reasonable to reward the involvement of a HUB or nonprofit *twice*, especially since a Qualified Nonprofit potentially already has access to the Nonprofit Set-aside. Staff believes that, as written, the rule allows the Applicant to select a Nonprofit or HUB *and* select level of sponsorship. The point level for this item has already been increased from one point to two, and staff believes that the flexibility provided by this change is sufficient without further increasing the possible points.

Staff recommends no changes based on this comment.

Staff thanks Commenter (26) for supporting two proposed changes to this paragraph on Sponsor Characteristics. Regarding the concern from Commenters (25) and (26) about lowering the combined ownership interest for HUBs and Nonprofit Organizations from 80 percent to 50 percent, staff would like to emphasize that the Department is simply setting a minimum. Individual HUBs and Nonprofit Organizations are certainly allowed to hold higher ownership percentages when they partner with Applicants. Staff would also like to point out to Commenter (26) that, at minimum, a 5 percent ownership interest is still required for each ownership category—General Partner, Cash Flow, and Developer Fee.

Staff recommends no changes based on this comment.

In regards to Commenter (25)'s reference to IRS Code §42 and its statements on material participation, staff finds no correlation between these requirements and setting the combined ownership interest at a specified minimum. Staff believes that the combined ownership interest must reasonably reflect the value of the HUB's or Nonprofit Organization's involvement with the proposed Development.

Staff recommends no changes based on this comment.

STAFF TECHNICAL CORRECTION:

Staff has determined there is an error in §11.9(b)(2)(B). The descriptor "Qualified" will be struck from this subsection at publication of the final rule, and will read as follows:

(B) The HUB or Nonprofit Organization must be involved with the Development Services or in the provision of on-site tenant services during the Development's Affordability Period. Selecting this item because of the involvement of a Nonprofit Organization does not make an Application eligible for the Nonprofit Set-Aside. A Principal of the HUB or ~~Qualified~~ Nonprofit Organization cannot be a Related Party to any other Principal of the Applicant or Developer (excluding another Principal of said HUB or ~~Qualified~~ Nonprofit Organization). (1 point)

13. §11.9(c)(2) – Rent Levels of Tenants; (5)

COMMENT SUMMARY: Commenter (5) asks that staff add an additional requirement to the point item regarding Supportive Housing, given that some Applicants may pursue Supportive Housing points when their Developments are not truly Supportive Housing. Commenter (5) proposes adding the following qualification: this point item only applies to “Supportive Housing Developments that meet the definition of Supportive Housing and select that Population in the Application.”

STAFF RESPONSE: Staff appreciates Commenter (5)’s edits, but believes that adding this additional language would be redundant, given that the definition of Supportive Housing in 10 TAC §10.3, Definitions, has been revised.

Staff recommends no changes based on this comment.

14. §11.9(c)(3) – Tenant Services; (5)

COMMENT SUMMARY: Commenter (5) asks that staff add an additional requirement to the point item regarding Supportive Housing, given that some Applicants may pursue Supportive Housing points when their Developments are not truly Supportive Housing. Commenter (5) proposes adding the following qualification: this point item only applies to “Supportive Housing Developments that meet the definition of Supportive Housing and select that Population in the Application.”

STAFF RESPONSE: Staff appreciates Commenter (5)’s edits, but believes that adding this additional language would be redundant, given that the definition of Supportive Housing in 10 TAC §10.3, Definitions, has been revised.

Staff recommends no changes based on this comment.

15. §11.9(c)(4) – Opportunity Index; (4), (5), (6) (8), (18), (30), (31), (32), (34), (36), (39), (40), (41), (42)

SUBPARAGRAPH (A) COMMENT SUMMARY: No comments on subparagraph (A).

STAFF RESPONSE: Not applicable.

SUBPARAGRAPH (B) COMMENT SUMMARY: Commenter (42) thanks the Department for including Meals on Wheels and similar programs as a menu item on the Opportunity Index for HTC Developments, and recommends no changes to the proposed language.

Commenter (5) finds the addition of language in §11.9(c)(4)(B) regarding membership fees to be arbitrary. Some gyms in high opportunity areas with extensive amenities may cost more than \$50 per month per person. Staff should defer to the free market in setting price limitations for amenities, and so Commenter (5) therefore asks staff to remove this added language from the 2018 QAP. Commenter (34) makes a similar request, as high-fee amenities might indicate high opportunity areas.

Commenters (30) and (31) argue that the rule should allow a single site and its constituent amenities to qualify for separate scoring items across the board, and not just those scoring items where such “double-counting” is explicitly allowed by the Department. Having multiple amenities in one area may be more valuable than amenities’ being dispersed.

Commenters (4) and (18) argue that, because an Applicant potentially only needs five points from the “menu items” for Opportunity Index, Applicants will avoid pursuing the items that require 2010 ADA compliance. In effect, most Applicants will cease to pursue proximity to parks and public transit. Commenter (4) suggests an approach where proximity to these items is worth one point and two points if the routes happen to be 2010 ADA compliant. Commenters (6), (8), (18), (30), (31), (32), (34), (39), (40) note that this requirement caused too much controversy during the competitive 2017 cycle, and creates unnecessary costs for Applicants. Commenters (6), (34), (40) understand the need for accessibility *within* the Development Site, but argue that accessibility to amenities offsite does not promote the housing policy goal of enhancing accessibility within housing Developments. Commenter (30) argues that it is outside the purview on an Applicant to manage offsite accessibility, as this duty belongs to a City. Commenter (40) notes that, oftentimes, the playground built on a Development Site as a resident amenity is itself ADA-compliant, so the Department’s concern is somewhat already addressed by the Development itself.

Commenter (4) also asks that staff clarify the point structure of subclause III (urban), regarding a grocery store and a pharmacy, which appears to be worth potentially two points if both are present in the same facility. Commenter (40) thinks it would be clearer if staff just split this one item into two separate menu items, but specified in the pharmacy menu item that it can be located inside a grocery store.

Commenters (4), (32), (34), and (36) ask that subclause IV (urban) allow proximity to a primary care doctor or physician offices, the care from whom is far cheaper than an emergency room visit.

Commenter (41) proposes decreasing the distance for subclause IV (urban), regarding proximity to a health-related facility. As three miles, nearly the entirety of many larger cities is covered. Commenter (41) recommends two miles. Making a menu item more competitive decreases the chances of ties.

Regarding subclause VI (urban), which awards points to Development Sites located in census tracts where the property crime rate is at or below 26 per 1,000 persons, Commenter (4) asks that staff limit this item only to NeighborhoodScout data in order to facilitate an “apples to apples” comparison among Applications (but allow the use of alternative data sources for the purposes of 10 TAC Chapter 10 requirements regarding crime rates).

Commenters (30) and (31) ask staff to reference the Texas Library Association (TLA) Public Library Standards when setting stipulations for hours of operation. These standards state that a library should have either evening *or* weekend hours. Commenter (34) worries that the current language may inadvertently exclude legitimate libraries based on a few technicalities. Commenter (34) asks that this menu item allow for e-readers and operating hours that may not strictly adhere to an 8 a.m.-5 p.m. schedule. Commenter (40) asks that staff remove the requirement that there be indoor meeting space, as this condition is not integral to operating a library.

Commenters (4), (30), and (31) claim that the use of the Texas Higher Education Coordination Board to determine which universities and colleges are eligible is too narrow, and recommends that staff allow accreditation of an institution by any organization recognized by the US Department of Education, as long as the institution issues bachelor's or associate's degrees. Commenter (4) and (32) also ask that staff consider proximity to vocational or trade schools.

Commenter (41) proposes decreasing the distance for subclause VIII (urban), regarding proximity to an accredited university or community college. At five miles, nearly the entirety of many larger cities is covered. Commenter (41) recommends three miles. Making a menu item more competitive decreases the chances of ties.

Commenter (4) believes that subclause XIII (urban), regarding Meals on Wheels, belongs under subclause XII, regarding community, civic, or service organizations that provide services.

Commenter (18) asks that, for subclause XIII (urban), the meals be allowed to be delivered to residents in the Development's community room, as opposed to resident's homes, or individual units. Having a meal in the community room encourages socialization for senior residents, which aids residents in healthy living. Commenter (18) also believes that this opportunity index item should require a MOU with the service provider to be submitted at the time of Application.

Commenters (4), (30), (31) ask that §11.4(c)(4)(B)(ii)(VI), regarding proximity to a park for Rural Applications, revert back to 2017 QAP language, given the impracticality of asking that Rural Developments be on accessible routes to nearby parks and the unlikelihood of a Rural park having a playground, especially since most Rural Developments already provide a playground onsite.

Commenter (4) recommends the following language for §11.4(c)(4)(B) (with red being staff's proposed changes and blue being Commenter (4)'s additional revisions):

(B) An ~~a~~Application that meets the foregoing criteria may qualify for additional points ~~(for a maximum of seven (7) points)~~ for any one or more of the following factors. Each ~~facility or 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. Any costs or membership fees associated with making use of a recreational amenity cannot exceed \$50 per person per month (assume cost is for a single admittance per month and membership fee is for annual membership paid on a monthly basis):

(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 clauses (I) through (XIII) of this subparagraph.

(I) The Development Ssite is located: (up to 2 points)

(-a-) less than 1/2 mile from a public park with a playground; or (1 point)

(-b-) less than 1/2 mile on an accessible route that is less than 1/2 mile in total length from the entrance to a public park with an accessible playground equipment in a public park. The route and the playground both of which must be compliant with meet 2010 ADA standards by the Full Application Delivery Date. In order to qualify for point, the Application must include a map showing the complete accessible route and a report form a qualified third-party attesting to accessibility compliance of both the complete route (identified in the aforementioned map) and the playground itself. (24 point)

(II) The Development Site is located within a certain proximity of public transportation that provides regular service to employment and basic services. For purposes of this scoring item, regular is defined as scheduled service beyond 8 a.m. to 5 p.m., plus service on Saturdays and Sundays. (up to 2 points)

(-a-) Development Site is less than 1/2 mile from a public transportation stop of station. (1 point)

(-b-) Development Site is less than 1/2 mile on an accessible route that is less than 1/2 mile in total length from the entrance of a public transportation stop or station, with a route schedule that provides regular service to employment and basic services. Both the route and the public transportation stop must be compliant with meet 2010 ADA standards by the Full Application Delivery Date. In order to qualify for points, the Application must include a map showing the complete accessible route and a report from a qualified third-party attesting to accessibility compliance of both the complete route (identified in the aforementioned map) and the transportation stop itself. For purposes of this scoring item, regular is defined as scheduled service beyond 8 a.m. to 5 p.m., plus weekend service (both Saturday and Sunday). (24 points)

(III) The Development Site is located within 1 mile of a full-service grocery store and/or pharmacy. For purposes of this subclause, these amenities may be situated within the same facility. (up to 2 points)

(-a-) A full service grocery store which 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 for grocery stores and 1 point for pharmacies)

(-b-) A retail pharmacy. (1 point)

(IV) The Development Site is located within 3 miles of a health-related facility, such a full service hospital, community health center, minor emergency center, emergency room or urgent care facility, or a primary care physician offices and physician specialty offices are not considered in this category. (1 point)

(V) The Development Site is within 2 miles of a center that is licensed by the Department of Family and Protective Services (“DFPS”) specifically to provide a school-age program or to provide a child care program for infants, toddlers, and/or pre-kindergarten. The Application must include evidence from DFPS that the center meets the above requirements. (1 point)

(VI) 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)

(VII) The development ~~s~~Site is located within 1 mile of a public library that has indoor meeting space, physical books that can be checked out and that are of a general and wide-ranging subject matter, computers and internet access, and that is open during normal regularly scheduled operating hours at least 6 days a week. The library must not be age or subject-restricted and must be at least partially funded with government funding (1 point)

(VIII) The Development Site is located within 5 miles of an accredited University or Community College campus, as confirmed by the Texas Higher Education Coordination Board (“THECB”) US Department of Education (<https://www.ed.gov/accreditation>). 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. ~~The Universities and or Community Colleges~~ must have a physical location 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 as tabulated by the 2010~~1~~-2014~~5~~ American Community Survey 5-year Estimate. (1 point)

~~(X) Development site is within 2 miles of a museum that is a government-sponsored or non-profit, permanent institution open to the public and is not an ancillary part of an organization whose primary purpose is other than the acquisition, conservation, study, exhibition, and educational interpretation of objects having scientific, historical, or artistic value.~~ (1 point)

(XI) Development ~~s~~Site is located within 1 mile of an indoor recreation facility available to the public. Examples include a gym, health club, a bowling alley, a theater, or a municipal or county community center. (1 point)

(XII) Development ~~s~~Site is located within 1 mile of an outdoor, dedicated, and permanent recreation facility available to the public. Examples include

swimming pools or splash pads, tennis courts, golf courses, softball fields, or basketball courts. (1 point)

(XIII) Development ~~s~~Site is located within 1 mile of community, civic or service organizations that provide regular and recurring substantive services 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)~~

(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 clauses (I) through (XII) of this subparagraph.

(I) The Development ~~s~~Site is located within 4 miles of a full-service grocery store or pharmacy. For purposes of this subclause, these amenities may be situated withing the same facility. (up to 2 points)

~~(-a-) A full service grocery store which 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 for grocery stores and 1 point for pharmacies)~~

(-b-) A retail pharmacy (1 point)

(II) The Development ~~s~~Site is located within 4 miles of health-related facility, such a full service hospital, community health center, or minor emergency center, or -primary care Physician offices and physician specialty offices are not considered in this category. (1 point)

(III) The Development Site is located within 4 miles of a center that is licensed by the Department of Family and Protective Services (“DFPS”) specifically to provide a school-age program or to provide a child care program for infants, toddlers, and/or pre-kindergarten. The Application must include evidence from DFPS that the center meets the above requirements. (1 point)

(IV) 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)

(V) The ~~d~~Development ~~s~~Site is located within 4 miles of a public library that has indoor meeting space, physical books that can be checked out and that are of a general and wide-ranging subject matter, computers and internet access, and that is open during normal regularly schedule operating hours at

least 5 days a week. The library must not be age or subject-restricted and must be at least partially funded with government funding -(1 point)

(VI) ~~The development site is located within 4 miles of a public park (1 point)
The Development Site is located within 4 miles of a public park, on an accessible route that is less than 1 mile from a public park with an accessible playground. The route and the playground both must meet 2010 ADA standards. (1 point)~~

(VII) ~~The Development Site is located within 15 miles of an accredited University or Community college campus, 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. 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)

(VIII) ~~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 2010-2014 American Community Survey 5-year Estimate~~ (1 point)

~~(IX) Development site is within 4 miles of a museum that is a government-sponsored or non-profit, permanent institution open to the public and is not an ancillary part of an organization whose primary purpose is other than the acquisition, conservation, study, exhibition, and educational interpretation of objects having scientific, historical, or artistic value. (1 point)~~

~~(IX) Development Site is within 3 miles of an indoor recreation facility available to the public. Examples include a gym, health club, a bowling alley, a theater, or a municipal or county community center. (1 point)~~

~~(XI) Development Site is within 3 miles of an outdoor, dedicated, and permanent recreation facility available to the public. Examples include swimming pools or splash pads, tennis courts, golf courses, softball fields, or basketball courts. (1 point)~~

~~(XII) Development Site is within 3 miles of community, civic or service organizations that provide regular and recurring substantive services 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)~~

Commenter (34) proposes revising some of the opportunity index menu items but not all, as summarized above. The exact language of Commenter (34)'s suggested revisions are included below:

~~(B)(i)(I) The Development Site is located less than 1/2 mile on an accessible route that is less than 1/2 mile from the entrance to a public park with an accessible playground. The route and the playground both of which must meet 2010 ADA standards. (1 point)~~

~~(B)(i)(II) The Development Site is located less than 1/2 mile on an accessible route that is less than 1/2 mile from the entrance of a public transportation stop or station with a route schedule that provides regular service to employment and basic services. The route and the public transportation stop must meet 2010 ADA standards. For purposes of this scoring item, regular is defined as scheduled service beyond 8 a.m. to 5 p.m., plus weekend service (both Saturday and Sunday). (1 point)~~

~~(B)(i)(IV) The Development Site is located within 3 miles of a health-related facility, such as a primary care physician office, 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)~~

~~(B)(i)(VII) The Development Site is located within 1 mile of a public library that has indoor meeting space, physical books that can be checked out and that are of a general and wide-ranging subject matter, computers and internet access, and that is open during normal operating hours at least 65 days a week. The library must not be age or subject-restricted and must be at least partially funded with government funding. (1 point)~~

STAFF RESPONSE: Staff thanks Commenter (42) for their support of including Meals on Wheels or similar services in the Opportunity Index.

Regarding Commenters (5) and (34)'s concerns about setting fee limitations on amenities, staff agrees and has removed this requirement. Staff's intent was to encourage Developments' proximity to useful amenities that do not require large membership fees. Staff will propose inclusion of this item for discussion in drafting the 2019 QAP. Staff has removed this proposed language from §11.9(c)(4)(B) regarding amenity costs or membership fees, and this part of §11.9(c)(4)(B) now reads as follows:

(B) An Application that meets the foregoing criteria may qualify for additional points for any one or more of the following factors. Each amenity may be used only once for scoring purposes, unless allowed within the scoring item, regardless of the number of categories it fits. All members of the Applicant or Affiliates cannot have had an ownership position in the amenity or served on the board or staff of a nonprofit that owned or managed that amenity within the year preceding the Pre-Application Final Delivery Date. All amenities must be operational or have started Site Work at the Pre-Application Final Delivery Date. Any age restrictions associated with an amenity must positively correspond to the target population of the proposed Development. ~~Any costs or membership fees associated with making use of a recreational amenity cannot exceed \$50 per person per month (assume cost is for a single admittance per month and membership fee is for annual membership paid on a monthly basis):~~

In regards to Commenters (30) and (31) and their request that one site be allowed to have many amenities, staff believes that such a change would defeat the intent of the Opportunity Index. In addition to seeking to encourage development in proximity to useful amenities for residents, the Opportunity Index's list of menu items also assumes that a larger number of amenities in proximity to each other would be indicative of a high opportunity *area*. If a single business establishment could claim five or more of the amenities, that business alone does not by itself represent a high opportunity area.

Staff recommends no changes based on this comment.

In regards to Commenters (4), (6), (8), (18), (30), (31), (32), (34), (39), and (40), staff agrees that requiring that Applicants do the necessary due diligence to certify that routes to parks and public transit be 2010 ADA compliant may be too costly for Applicants and may discourage the placement of LIHTC Developments near beneficial amenities. Development Sites themselves, of course, will continue to comply with all applicable local, state, federal laws, and Departmental rules regarding visitability and accessibility. Staff has removed language regarding 2010 ADA compliance and accessibility for routes to these amenities, for both urban and rural amenities (the revision to the latter incorporates another suggested change explained by staff below). However, staff has elected to preserve language that speaks to the need for a safe path from the Development Site to the park or public transit.

§11.9(c)(4)(B)(i)

(I) The Development Site is located on ~~an accessible route~~, with sidewalks for pedestrians, that is less than 1/2 mile from the entrance to a public park with ~~an accessible playground~~. ~~The route and the playground both must meet 2010 ADA standards.~~ 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 ~~an accessible route~~, with sidewalks for pedestrians, that is less than 1/2 mile 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. ~~The route and the public transportation stop must meet 2010 ADA standards.~~ For purposes of this scoring item, regular is defined as scheduled service beyond 8 a.m. to 5 p.m., plus weekend service (both Saturday and Sunday). (1 point)

§11.9(c)(4)(B)(ii)

(VI) The Development Site is located ~~on an accessible route that is less than 1~~ within 4 miles from of a public park with ~~an accessible playground~~. ~~The route and the playground both must meet 2010 ADA standards.~~ (1 point)

In response to Commenters (4) and (40)'s request that staff clarify the intent of the opportunity index menu item for a grocery store and pharmacy, staff has made a clarifying change to the pharmacy scoring item by separating it from the grocery store item. That change is detailed below, and it will apply to both urban and rural opportunity Index. Note that the subsequent menu items' roman numerals will change in light of this revision:

§11.9(c)(4)(B)(i)

(III) The Development Site is located within 1 mile of a full-service grocery store ~~or pharmacy~~. 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 ~~for grocery stores and 1 point for pharmacies~~)

(IV) The Development Site is located within 1 mile of a pharmacy. For the purposes of this menu item only, the pharmacy may be claimed if it is within the same building as a grocery store. (1 point)

§11.9(c)(4)(B)(ii)

(I) The Development Site is located within 4 miles of a full-service grocery store ~~or pharmacy~~. 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 ~~for grocery stores and 1 point for pharmacies~~)

(II) The Development Site is located within 4 miles of a pharmacy. For the purposes of this menu item only, the pharmacy may be claimed if it is within the same building as a grocery store. (1 point)

Regarding Commenters (4), (32), (34), and (36)’s request that the intent of “health-related facility” be expanded to include primary care doctors or general physicians, staff believes that these revisions represent sufficiently substantive changes from what was proposed that it could not be accomplished without re-publication for public comment. These ideas could be taken into consideration for drafting the 2019 QAP. Staff encourages Commenters (4), (32), (34), and (36) to suggest this revision during planning for the 2019 QAP.

Staff recommends no changes based on this comment.

In response to Commenter (41)’s proposal to decrease the distance for proximity to a health-related facility from three miles to two miles for urban subregions, staff believes that these revisions represent sufficiently substantive changes from what was proposed that it could not be accomplished without re-publication for public comment. These ideas could be taken into

consideration for drafting the 2019 QAP. Staff encourages Commenter to suggest this revision during planning for the 2019 QAP.

Staff recommends no changes based on this comment.

Regarding Commenter (4)'s request that staff exclude all data sources except NeighborhoodScout's for the purposes of calculating property crime rate as an Opportunity Index menu item, staff believes that Applicants should have a reasonable alternative to NeighborhoodScout through the use of local data, as long as the use of that local data is the same methodology as NeighborhoodScout's.

Staff recommends no changes based on this comment.

With Commenters (30), (31), and (34)'s request that staff alter the required days and hours of operation for public libraries, staff agrees with Commenters (30) and (31) that the Department should reference library standards promulgated by the Texas Library Association ("TLA"). For Urban Opportunity Index, the rule will require that a library be open 50 hours or more each week, which TLA recommends for communities of 25,000 – 49,999 people; for Rural Opportunity Index, the rule will require that a library be open 40 hours or more each week, which TLA recommends for communities of 5,000 – 9,999 people. Therefore, the rule will neither mention a specific number of days nor a specific range of operating times, but will mention the total number of operating hours.

§11.9(c)(4)(B)(i)

(VII) The development Site is located within 1 mile of a public library that has indoor meeting space, physical books that can be checked out and that are of a general and wide-ranging subject matter, computers and internet access, and that is open ~~during normal operating hours at least 6 days a~~ 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)

§11.9(c)(4)(B)(ii)

(V) The Development Site is located within 4 miles of a public library that has indoor meeting space, physical books that can be checked out and that are of a general and wide-ranging subject matter, computers and internet access, and that is open ~~during normal operating hours at least 5 days a~~ 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)

Regarding the request from Commenter (40) about striking indoor meeting space and the request from Commenter (34) about allowing a library with only e-readers, because the TLA standards do suggest that libraries have indoor meeting spaces for library programming and community groups and that all libraries have physical books that circulate through the community's library system, staff respectfully disagrees with the comments.

Staff recommends no changes based on this comment.

In regards to Commenters (4), (30), and (31)'s request that staff change from the Texas Higher Education Coordination Board ("THECB") to any accreditation institution authorized by the Department of Education when locating universities or colleges in Texas, staff believes that the comprehensive list published by this State of Texas agency does not exclude properly accredited schools. Staff does agree with these Commenters' proposal that the conferring of associates' degrees be permissible, and has changed the rule accordingly:

§11.9(c)(4)(B)(i)

(VIII) The Development Site is located within 5 miles of an accredited university or community college, as confirmed by the Texas Higher Education Coordination Board ("THECB"). To be considered a university for these purposes, the provider of higher education must have the authority to confer bachelor's degrees. Two-year colleges are considered community colleges, and to be considered for these purposes must confer at least associate's degrees. The university or community college must have a physical campus, where classes are regularly held for students pursuing their degrees, within the required distance; online-only institutions do not qualify under this item. (1 point)

§11.9(c)(4)(B)(ii)

(VII) 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)

Regarding the request from Commenters (4) and (32) to include vocational and trade schools for the post-secondary education menu item, staff believes that the institutions included on the TCEHB list provide important benefits for the community beyond most technical and trade schools. Staff believes that these revisions would represent sufficiently substantive changes from what was proposed that it could not be accomplished without re-publication for public comment. These ideas could be taken into consideration for drafting the 2019 QAP.

Staff recommends no changes based on this comment.

In response to Commenter (41)'s proposal to decrease the distance for proximity to a university or community college campus from five miles to three miles for urban subregions, staff believes that this revision would represent sufficiently substantive changes from what was proposed that it could not be accomplished without re-publication for public comment. These ideas could be taken into consideration for drafting the 2019 QAP.

Staff recommends no changes based on this comment.

In regards to Commenter (4)'s belief that the Meals on Wheels or similar service menu item is redundant given the menu item for community, civic, or service organizations that provide regular and recurring substantive services, staff finds a difference between the two menu items. For Urban Opportunity Index, subclause XII speaks to organizations with physical meeting places which residents can go to. In contrast, subclause XIII—Meals on Wheels or similar nonprofit service—speaks to a service that comes to residents.

Staff recommends no changes based on this comment.

Regarding Commenter (18)'s request that, for subclause XIII (Urban), the meals be allowed to be delivered to residents in the Development's community room, as opposed to resident's homes or individual units, if allowed by the Development, residents could choose to take their meals to the community room. The Development may not require that residents receive their meals in a specific place or at a specific time.

Staff recommends no changes based on this comment.

With Commenter (18)'s suggestion that this opportunity index item should require a Memorandum of Understanding ("MOU") with the service provider and that MOU should be submitted at the time of Application, in general these services are provided directly to the residents, rather than through an arrangement with the Development. Therefore, a MOU is not necessary.

Staff recommends no changes based on this comment.

In response to Commenters (4), (30), and (31)'s request that staff return to the 2017 QAP language for the Rural menu item regarding proximity to a public park, staff, as stated above, has removed language regarding 2010 ADA standards and accessibility and returned to the four mile distance. However, staff has left language regarding inclusion of a playground because of its benefit to residents and the community.

(VI) The Development Site is located ~~on an accessible route that is less than 1~~within 4 miles from of a public park with an accessible playground. The route and the~~with a playground both must meet 2010 ADA standards.~~ (1 point)

STAFF TECHNICAL CORRECTION: Staff has realized that for both §11.9(c)(4)(B)(i)(I) and §11.9(c)(4)(B)(i)(II), stating that a public park or public transportation stop is "less than 1/2 mile" from the Development Site is not sufficient for the intent of this scoring item. Staff has changed the applicable language to "1/2 mile or less" in order to include distances that are exactly 0.50 miles between the amenity and Development Site.

(I) The Development Site is located on ~~an accessible route,~~with sidewalks for pedestrians, that is ~~less than~~1/2 mile or less from the entrance to a public park with ~~an accessible playground. The route and the playground both must meet 2010 ADA standards.~~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 an ~~accessible~~ route, with sidewalks for pedestrians, that is ~~less than~~ 1/2 mile or less 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. ~~The route and the public transportation stop must meet 2010 ADA standards.~~ For purposes of this scoring item, regular is defined as scheduled service beyond 8 a.m. to 5 p.m., plus weekend service (both Saturday and Sunday). (1 point)

16. §11.9(c)(5) – Underserved Area; (4), (5), (12), (18), (29), (32), (34), (38), (40)

COMMENT SUMMARY: Commenters (4), (32), (34) ask that staff clarify when the year count begins for subparagraphs (C), (D), and (E). Commenters (4) and (34) ask if staff means “x” years after the date of award or after the Placement in Service date. Commenter (32) adds that staff should clarify from what date Applicants are to count backwards “x” number of years. Commenter (5) thanks staff for making the subparagraphs of this paragraph more consistent among each other, but also states that the current language regarding Development age is ambiguous. Currently, it is not clear if staff means the age of the Development structure, the Placement in Service Date, or the date of award. Commenter (5) proposes that staff revise this scoring item to read, “The Development Site is located entirely within a census tract that has not received an HTC allocation within the last 30 [or 15] years.” Commenter (29)’s concerns mirror other Commenters’, and calls attention to the different meanings of “Development” (a defined term that means both a Development awarded HTCs and a proposed Development not awarded HTCs) and also asks staff to clarify if the look back periods reference the date of Board approval or the year that credits were actually awarded. Commenter (34) proposes that the age of existing Developments be evaluated, first, according to their own board award date and, second, according to the 2018 Full Application Delivery Date. Also, Commenter (34) believes that an additional award of tax credits not associated with rehabilitation should be disregarded.

Commenter (5) also requests that staff clarify how they will review a census tract that has part of an existing Development, but that Development’s census tract is listed differently since it is a scattered site. Currently, the Site Demographic Characteristics Report does not account for this scenario.

Commenters (12) and (18) ask that staff change the intent of subparagraphs (C), (D), and (E). Currently, they do not award points to proposed Developments near *any* Existing Residential Development. These Commenters ask that staff change the focus to Target Population. The phrase “targeting the same population” should be added after the phrase “does not having a Development.”

Commenter (38) asks that staff remove subparagraph (E), which only applies to a city with a population greater than 150,000. This scoring item, along with proximity to urban core, disproportionately favors cities with large populations, Commenter (38) states. Removing this item puts larger cities on equal footing with all other cities, regardless of population. Another option, Commenter (38) proposes, is to do away with the minimum population requirement, and allow subparagraph (E) to be open to all cities, regardless of population.

Commenter (40) asks that staff place the year “2018” in front of “Site Demographic Characteristics Report” in subparagraphs (C), (D), and (E).

STAFF RESPONSE: In response to Commenters (4), (5), (29), (32), and (34), the year count for subparagraphs (C), (D), and (E) will be based on the year of award. A Development that is less than 30 years old would be one that was awarded in 1988 or later, and a Development that is less than 15 years old would be one that was awarded in 2003 or later. To make this intent more clear, staff has slightly amended these subparagraphs to read as follows:

(C) The Development Site is located entirely within a census tract that does not have a Development that was awarded ~~that is~~ less than 30 years ~~old~~ ago according to the Department’s property inventory tab of the Site Demographic Characteristics Report. (3 points);

(D) For areas not scoring points for (C) above, the Development Site is located entirely within a census tract that does not have a Development that was awarded ~~that is~~ less than 15 years ~~old~~ ago according to the Department’s property inventory tab of the Site Demographic Characteristics Report. (2 points);

(E) The Development Site is located entirely within a census tract whose boundaries are wholly within an incorporated area and the census tract itself and all of its contiguous census tracts do not have a Development that was awarded ~~that is~~ less than 15 years ~~old~~ ago according to the Department’s property inventory tab of the Site Demographic Characteristics Report. This item will apply in Places with a population of 150,000 or more, and will not apply in the At-Risk Set-Aside (5 points).

Regarding Commenter (34)’s request that Developments that received an additional award not associated with rehabilitation be “disregarded,” staff referred to Tex. Gov’t Code §2306.6725(b)(2), the statutory requirement upon which this scoring item is based, which states:

(b) The department shall provide appropriate incentives as determined through the qualified allocation plan to reward applicants who agree to:
... (2) locate the development in a census tract in which there are no other existing developments supported by housing tax credits.

Staff believes that since the statutory language includes the phrase “no other existing developments,” the rehabilitation Development in the Application would not be considered in this scoring item. Any other Development would fall under the “other” category described in statute.

Staff recommends no changes based on this comment.

In response to Commenter (29), in scoring this item, staff will consider those Developments listed on the Property Inventory tab of the Site Demographic Characteristics Report, so proposed Developments that have not been awarded would not be considered for this scoring item.

Staff recommends no changes based on this comment.

In response to Commenter (5)'s request that staff clarify how they will resolve inaccuracies in the Site Demographic Characteristics Report—such as when only one census tract is listed for a scattered site Development when in reality that scattered site Development occupies two or more census tracts, the Applicant's best course of action would be to request a pre-determination in order to clarify how staff will evaluate an Application.

Staff recommends no changes based on this comment.

In regards to Commenters (12) and (18)'s proposal that the points of subparagraphs (C), (D), and (E) can be secured by proposed Developments serving a *different* target population than an existing HTC Development already located in that census tract, staff believes that these revisions represent sufficiently substantive changes from what was proposed that it could not be accomplished without re-publication for public comment. These ideas could be taken into consideration for drafting the 2019 QAP. Staff encourages Commenter to suggest this revision during planning for the 2019 QAP.

Staff recommends no changes based on this comment.

In regards to Commenter (38)'s comments on subparagraph (E), staff believes that these revisions represent sufficiently substantive changes from what was proposed that it could not be accomplished without re-publication for public comment. These ideas could be taken into consideration for drafting the 2019 QAP. Staff encourages Commenter to suggest this revision during planning for the 2019 QAP.

Staff recommends no changes based on this comment.

In regards to Commenter (40), staff refrains from including dates in the rules that are deemed to be the same as the applicable program year.

Staff recommends no changes based on this comment.

17. §11.9(c)(6) – Tenant Populations with Special Housing Needs; (4), (5), (20), (21), (22), (23), (24), (31), (32)

COMMENT SUMMARY: Commenters (4), (5), (32) ask that staff include investor prohibition as a valid reason to receive points under subparagraph (B). Commenter (5) notes that this was an option in the 2017 QAP, but currently it is not permissible in the 2018 QAP or the new 10 TAC Chapter 8.

Commenter (31) proposed adding the following clarification at the end of subparagraph (A): “A HUB or nonprofit entity’s portfolio of Existing Developments is exempt from the requirements of this subparagraph (A) unless the HUB or nonprofit entity is the proposed Managing General Partner of the Applicant requesting points under this paragraph (6).” Commenter (31) states that this language is needed so as to exclude non-affiliated Developers from participating in the 811 program just because a HUB or nonprofit they had partnered with in the past is now partnering with another

Developer. This should not happen if a HUB partner neither has a controlling interest in the ownership structure nor is the Managing General Partner.

Commenter (20) states that the Section 811 Project Rental Assistance Program (“Section 811 PRA Program”) needs to be returned to 10 TAC Chapter 10, Subchapter C, and should not be located in the QAP as a scoring item.

Commenters (21) and (23) ask that the Section 811 PRA Program be maintained. Commenter (22) claims that the proposed rule changes to the Section 811 PRA Program will eliminate the effort to increase the number of housing units and will have disastrous effects on the mentally ill. Commenter (22) points out that community-based resources—like affordable housing through the Section 811 PRA Program, are the cheapest and most effective avenue in offering mental health care to the mentally ill. A cut to this program will force people to seek help in institutions that ultimately cost taxpayers more, such as emergency rooms, homeless shelters, and prisons. It is community-based mental health services like the Section 811 PRA Program that allow individuals to regain their independence and to pursue productive lives. Staff should reconsider the implications of underfunding this program, Commenter (21) states.

Commenter (24) writes to express opposition to moving the Section 811 PRA Program to the QAP from the Rules, which means that Applicants now have the *option* to participate in the Program instead of being *required* to participate, as Applicants were in 2017. Commenter (24) states that this change would most certainly result in a reduction in the number of future development projects participating in the Section 811 PRA Program, thereby decreasing the number of available units to our most vulnerable citizens. Commenter (24) calls attention to the more than 259 low income individuals with disabilities and mental illness who are currently on the backlog for the Program. Commenter (24) makes the assertion that, currently, only 172 units are available for the program across the state, and yet the state of Texas was allocated funding for 650 units through the Section 811 PRA Program. Only 16 individuals have been housed to date, and 259 are on the waitlist. Ultimately, Commenter (24) shares that the proposed change to the rules regarding this Program are not in line with legislative changes and funding passed by the 85th Legislative session, nor with the Texas Statewide Behavioral Strategic Plan. Commenter (24) asks that staff and the Governing Board revert to the 2017 QAP policies regarding the Section 811 PRA Program.

Commenter (20) also asks whether or not the option delineated in subparagraph (C) requires an additional five percent of units devoted to residents with special needs, on top of the five percent already required by 10 TAC §10.101(b)(8)(A)? Or does meeting the requirements of the latter automatically qualify an Applicant for the two points under §11.9(c)(6)(C), so that ultimately only five percent of units need be set aside, potentially, for residents with disabilities?

Commenter (4) recommends the following language for §11.4(c)(4)(B) (with red being staff’s proposed changes and blue being Commenter (4)’s additional revisions):

~~(7)(c)~~ Tenant Populations with Special Housing Needs. (§42(m)(1)(C)(v)) An Application may qualify to receive ~~up to~~ two (2) points by serving Tenants with Special Housing Needs. For purposes of this paragraph, Existing Development has the meaning as defined in 10 TAC Chapter 8 and proposed Development is the

~~subject of the Application. Points will be awarded as described in subparagraphs (A) – (C) of this paragraph. If pursuing these points, Applicants must try to score first with subparagraph (A) and then subparagraph (B), both of which pertain to the requirements of the Section 811 Project Rental Assistance Program (“Section 811 PRA Program”) (10 TAC Chapter 8). Only if an Applicant or Affiliate cannot meet the requirements of subparagraphs (A) or (B) may an Application qualify for subparagraph (C).~~

~~(A) An Applicant or Affiliate that Owns or Controls an Existing Development that is eligible to participate in the Department’s Section 811 Project Rental Assistance Program (“Section 811 PRA Program”) will must do so in order to receive two (2) points under this paragraph for the subject Application. The same units cannot be used to qualify for points in more than one HTC Application. Once elected in the Application, Applicants may not withdraw their commitment to have the Existing Development participate in the Section 811 PRA Program unless the Department determines that the Existing Development cannot meet all of the Section 811 PRA Program criteria. In order to qualify for points, the Existing Development must commit to the Section 811 PRA Program at minimum 10 Section 811 PRA Program Units, unless the Integrated Housing Rule, 10 TAC §1.15, or the 811 Program Rental Assistance Rule (“811 Rule”), 10 TAC Chapter 8, limits the Existing Development to fewer than 10 Section 811 PRA Program Units. The same Section 811 PRA Program Units cannot be used to qualify for points in more than one HTC Application. The Applicant or Affiliate will comply with the requirements of 10 TAC Chapter 8.~~

~~(B) An Applicant or Affiliate that does not meet the Existing Development requirements of 10 TAC Chapter 8, or who’s investors prohibit the Existing Development from participating in the Section 811 PRA Program, but still meets the requirements of 10 TAC Chapter 8.3 is eligible to receive two (2) points by committing Units in the proposed Development to participate in the Department’s Section 811 PRA Program. In order to be eligible for points, Applicants must commit at least 10 Section 811 PRA Program Units in the proposed Development for participation in the Section 811 PRA Program unless the Integrated Housing Rule, 10 TAC §1.15, or the 811 Program Rental Assistance Rule (“811 Rule”), 10 TAC Chapter 8, limits the Development to fewer than 10 Section 811 PRA Program Units. The same Section 811 PRA Program Units cannot be used to qualify for points in more than one HTC Application. The Applicant will comply with the requirements of 10 TAC Chapter 8.~~

~~(C) Applicants proposing Developments that are unable do to not meet the requirements of subparagraphs (A) or (B) of this paragraph may qualify for two (2) points by meeting the requirements of this subparagraph, (C). In order to qualify for points, Applicants must agree to set-aside at least 5 percent of the total Units for Persons with Special Needs. The units identified for this scoring item may not be the same units identified for Section 811 Project Rental Assistance Demonstration program. For purposes~~

of this subparagraph, Persons with Special Needs is defined as households where one individual has alcohol and/or drug addictions, Colonia resident, Persons with Disabilities, Violence Against Women Act Protections (domestic violence, dating violence, sexual assault, and stalking), persons with HIV/AIDS, homeless populations, veterans, wounded warriors (as defined by the Caring for Wounded Warriors Act of 2008), and farmworkers. Throughout the Compliance Period, unless otherwise permitted by the Department, the Development Owner agrees to affirmatively market Units to Persons with Special Needs. In addition, the Department will require an initial minimum twelve-month period during which Units must either be occupied by Persons with Special Needs or held vacant, unless the units receive HOME funds from any source. After the initial twelve-month period, the Development Owner will no longer be required to hold Units vacant for Persons with Special Needs, but will be required to continue to ~~affirmatively~~ specifically market Units to Persons with Special Needs.

Commenters (5) and (32) ask that staff include the following language in §11.9(c)(6)(A):

“An Applicant may be exempt from having to provide 811 units in an Existing Development if approval from either their lender or investor cannot be obtained and documentation to that effect is submitted in the Application, but they would be required to provide such Units through subparagraph (B) of this paragraph.” Commenter (32) adds the dependent clause “if they have eligible Units” at the end of this proposed sentence.

STAFF RESPONSE: In response to Commenters (4), (5), and (32)’s request that staff allow investor prohibition as a valid reason to receive points under subparagraph (B) and bypass the requirements of subparagraph (A) and in response to Commenter (31)’s proposed language that would absolve a nonprofit entity or HUB with no controlling interest in a General Partner from having to draw upon existing units in that General Partner’s Development, staff agrees and has made the following amendments to 10 TAC §11.9(c)(6):

(6) Tenant Populations with Special Housing Needs. (§42(m)(1)(C)(v)) An Application may qualify to receive two (2) points by serving Tenants with Special Housing Needs. Points will be awarded as described in subparagraphs (A) - (C) of this paragraph. If pursuing these points, Applicants must try to score first with subparagraph (A) and then subparagraph (B), unless the Applicant can establish its lack of legal authority to commit Section 811 PRA Program units in a Development, both of which Subparagraphs (A) and (B) pertain to the requirements of the Section 811 Project Rental Assistance Program (“Section 811 PRA Program”) (10 TAC Chapter 8). Only if an Applicant or Affiliate cannot meet the requirements of subparagraphs (A) or (B) may an Application qualify for subparagraph (C).

In response to the concerns of Commenters (20), (21), (22), (23), and (24), it is important to note that the Department is not closing the Section 811 PRA Program. Including the 811 as a threshold item resulted in unforeseen federal regulatory consequences for Applicants and therefore has been

removed from threshold requirements. Instead, staff has proposed moving the participation in the Section 811 PRA Program from Chapter 10 (“threshold”) to the QAP (“scoring”). Given the competitive nature of the 9% HTC program, staff believes that there is ample incentive for Applicants to participate in the program as Applicants that do not request the points may face a disadvantage in scoring. Staff expects the number of participating Applicants to continue at the same level as in previous years.

Staff recommends no changes based on this comment.

In response to Commenter (20), 10 TAC §10.101(b)(8) refers to the accessibility requirements to be met by all Developments. The option delineated in subparagraph (C) requires that five percent of the Units in the Development be set aside for persons with disabilities. Depending on the type of disability involved, a specifically designed Unit or feature may not be necessary. In some cases, these may be the same units, and in others they will not.

Staff recommends no changes based on this comment.

In response to Commenter (4), staff believes that these revisions represent sufficiently substantive changes from what was proposed that it could not be accomplished without re-publication for public comment. These ideas could be taken into consideration for drafting the 2019 QAP. Staff encourages Commenter to suggest this revision during planning for the 2019 QAP. Staff does accept some of the clarifying revisions and has revised the rule accordingly:

(A) An Applicant or Affiliate that Owns or Controls an Existing Development that is eligible to participate in the Department’s Section 811 Project Rental Assistance Program (“Section 811 PRA Program”) ~~will~~ must do so in order to receive two (2) points. In order to qualify for points, the Existing Development must commit to the Section 811 PRA Program at minimum 10 Section 811 PRA Program Units, unless the Integrated Housing Rule, 10 TAC §1.15, or the 811 Program Rental Assistance Rule (“811 Rule”), 10 TAC Chapter 8, limits the Existing Development to fewer than 10 Section 811 PRA Program Units. The same Section 811 PRA Program Units cannot be used to qualify for points in more than one HTC Application. The Applicant or Affiliate will comply with the requirements of 10 TAC Chapter 8.

(B) An Applicant or Affiliate that does not meet the Existing Development requirements of 10 TAC Chapter 8 but still meets the requirements of 10 TAC Chapter 8.3 is eligible to receive two (2) points by committing Units in the proposed Development to participate in the Department’s Section 811 PRA Program. In order to be eligible for points, Applicants must commit at least 10 Section 811 PRA Program Units in the proposed Development for participation in the Section 811 PRA Program unless the Integrated Housing Rule, 10 TAC §1.15, or the 811 Program Rental Assistance Rule (“811 Rule”), 10 TAC Chapter 8, limits the Development to fewer than 10 Section 811 PRA Program Units. The same Section 811 PRA Program Units cannot be used to qualify for points in more than one HTC Application. The Applicant will comply with the requirements of 10 TAC Chapter 8.

(C) Applications ~~proposing Developments that do not~~ **that are unable to** meet the requirements of subparagraphs (A) or (B) of this paragraph may qualify for two (2) points by meeting the requirements of this subparagraph, (C). In order to qualify for points, Applicants must agree to set-aside at least 5 percent of the total Units for Persons with Special Needs. The units identified for this scoring item may not be the same units identified for Section 811 Project Rental Assistance Demonstration program. For purposes of this subparagraph, Persons with Special Needs is defined as households where one individual has alcohol and/or drug addictions, Colonia resident, Persons with Disabilities, Violence Against Women Act Protections (domestic violence, dating violence, sexual assault, and stalking), persons with HIV/AIDS, homeless populations, veterans, wounded warriors (as defined by the Caring for Wounded Warriors Act of 2008), and farmworkers. Throughout the Compliance Period, unless otherwise permitted by the Department, the Development Owner agrees to affirmatively market Units to Persons with Special Needs. In addition, the Department will require an initial minimum twelve-month period during which Units must either be occupied by Persons with Special Needs or held vacant, unless the units receive HOME funds from any source. After the initial twelve-month period, the Development Owner will no longer be required to hold Units vacant for Persons with Special Needs, but will be required to continue to specifically market Units to Persons with Special Needs.

18. §11.9(c)(7) – Proximity to the Urban Core; (1), (38)

COMMENT SUMMARY: Commenter (1) expresses support for staff's lowering the population requirement from 300,000 or more to 200,000 or more for a city in order to qualify for proximity to urban core points. Commenter (1) notes that this item is an effective tool for urban infill and redevelopment.

Commenter (38) writes that, with the removal of educational excellence from the scoring criteria, urban core points are no longer necessary to give Urban Developments preferential scoring opportunities. Commenter (38) notes that this rewards only 13 out of Texas' 1,754 cities (.007 of all cities and only 44% of the state's population). In region 3 Urban's Competitive HTC Application round in 2017, three of the eight awardees had secured proximity to urban core points (37.5% of the awardees). With the population threshold decrease and the removal of educational quality, Commenter (38) worries that cities able to score on this item will receive the vast majority, if not all, of the awards. Commenter (38) asks that, if staff is unwilling to remove this item, staff *not* decrease the population threshold and revert to the 2017 QAP's language.

STAFF RESPONSE: Staff thanks Commenter (1) for his support for this scoring item.

In regards to Commenter (38)'s concerns with this scoring item, staff believes that the Department's goals of dispersion, resident choice, and proximity to meaningful amenities are well-served by the Proximity to Urban Core item. Staff believes that the urban core, when coupled with the other scoring criteria of the QAP, is a potential means to locate affordable housing near the beneficial characteristics of a city. In the 2017 Competitive HTC cycle, Proximity to Urban Core only applied to 13 successful Applications out of 69 awardees (18.8% of the total).

Staff recommends no changes based on this comment.

STAFF TECHNICAL CORRECTION: Staff has realized that for 10 TAC §11.9(c)(7), stating that the population of a Place should be “more than 500,000” is unclear for the intent of this scoring item. Staff has changed the applicable language to “500,000 or more” in order to include that rare instance where a Place’s population is exactly 500,000.

19. §11.9(d)(5) – Community Support from State Representative; (4), (7), (18), (41)

COMMENT SUMMARY: Commenter (4) states that the last sentence of this paragraph—“A letter from a state representative expressing the level of community support may be expressly based on the representative’s understanding or assessments of indications of support by others, such as local government officials, constituents, and/or other applicable representatives of the community”—warrants clarification. Would a letter of this sort constitute a letter of support or a letter of neutrality, Commenter (4) asks? Commenter (41) states that this proposed language is confusing and opens a Representative’s letter to interpretation, likely resulting in these letters being debated before the Governing Board. Commenter (41) therefore asks that this paragraph revert to the 2017 QAP language.

Commenters (7) and (18) ask that, when a proposed Development lies within a Representative’s District when that office is vacant, that Applicant be eligible for eight points if that Application has received local government support under Section 11.9(d)(1).

Commenter (7) proposes the following sentence for this paragraph:

“If the office is vacant, the Application will be considered to have received a positive support ~~neutral~~ letter, provided that the application has received local government support under Section 11.9(d)(1).”

STAFF RESPONSE: In regards to Commenters (4) and (41), staff believes that the currently proposed language regarding community support from a State Representative reflects the requirements of statute in Tex. Gov’t Code §§2306.6710(b)(J) and 2306.6710(f).

Staff recommends no changes based on this comment.

In regards to Commenters (7) and (18), Tex. Gov’t Code §§2306.6710(b)(J) and 2306.6710(f) do not provide an option for staff to award points for this scoring item absent a letter from a State Representative.

Staff recommends no changes based on this comment.

20. §11.9(d)(4) – Quantifiable Community Participation; (5)

COMMENT SUMMARY: Commenter (5) thanks staff for clarifying the actual date for the valid existence of a neighborhood organization and its boundaries. However, Commenter (5) maintains

concern about a neighborhood organization's ability to expand its boundaries to include the proposed Development site with the sole purpose of opposing the Development's Application. Commenter (5) also asks that staff add language under §11.9(d)(4)(D) that, if a challenge to neighborhood opposition is vindicated by a fact finder, then the Applicant be automatically eligible to instead secure four additional points through the requirements of §11.9(d)(6), Input from Community Organizations.

STAFF RESPONSE: In regards to Commenter (5)'s concerns about neighborhood organizations' changing their boundaries to include—entirely or partially—the Site of a proposed Development, staff believes that such concern is outside the purview of the Department. Regarding Commenter (5)'s request for additional points “if a challenge to neighborhood opposition is vindicated by a fact finder,” staff believes that this revision represents sufficiently substantive changes from what was proposed that it could not be accomplished without re-publication for public comment. These ideas could be taken into consideration for drafting the 2019 QAP. Staff encourages Commenter (5) to suggest this revision during planning for the 2019 QAP.

Staff recommends no changes based on this comment.

21. §11.9(d)(6) – Input from Community Organizations; (18), (32), (40)

COMMENT SUMMARY: Commenter (18) states that the language added to subparagraph (A) regarding proof of tax-exempt status and evidence that the community organization remains in good standing is too subjective and unclear, and it continues to make support from the community more difficult to secure. Commenter (32) asks staff to clarify what will be accepted as evidence of “good standing.” Commenter (40) asks that staff remove this requirement of proving good standing as it may be too difficult to get from community organizations in a timely manner.

STAFF RESPONSE: In response to the concerns from Commenters (18), (32), and (40), staff has revised the rule to ensure that the requirement to provide evidence that the nonprofit organization remains in good standing regarding its exemption will cause no burden to the organization as the evidence of good standing will be provided by the Applicant from sources provided by the Department.

(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 must provide evidence of its tax exempt status (e.g., a copy of its tax-exempt determination letter or its listing on a federal or state government website) and evidence it remains in good standing by providing evidence from a federal or state government database confirming that the exempt status

continues. An Organization must also provide evidence of its participation in the community in which the Development Site is located including, but not limited to, a listing of services and/or members, brochures, annual reports, etc. Letters of support from organizations that cannot provide reasonable evidence that they are active in the area that includes the location of the Development Site will not be awarded points. For purposes of this subparagraph, community and civic organizations do not include neighborhood organizations, governmental entities (excluding Special Management Districts as described in subparagraph C), or taxing entities.

22. §11.9(d)(7) – Concerted Revitalization Plan; (4), (18), (27), (28), (32), (34)

COMMENT SUMMARY: Commenter (4) asks what staff means by “current” in §11.9(d)(7)(A)(V), which reads, “The plan must be current at the time of Application and must officially continue for a minimum of three years thereafter.” Commenter (32) asks that staff explain what evidence will be accepted as proof, and if a letter from a city’s staff will suffice.

Commenters (18), (27), (32), and (34) ask that this three year requirement be removed. Commenter (27) argues that subclauses (IV) and (V) of §11.9(d)(7)(A)(ii) contradict each another. Subclause (IV) states that there must be evidence that the problems identified within the CRP have been significantly mitigated and addressed prior to the Development being placed in service. Subclause (V), however, states that “the plan must be current at the time of Application and must continue for a minimum of three years thereafter.” Commenter (27) therefore asks that the three year requirement be removed.

Commenter (18) asks that the requirement that the city adopt a resolution of support also be removed. The CRP language is already so restrictive and prescribed that it is at risk of missing true revitalizing and gentrifying areas, Commenter (18) says. Commenter (32) explains that it is unreasonable to ask a municipality to go on record affirming something that far in the future. Commenter (34) believes that such a requirement on a local jurisdiction is an overreach.

Commenter (5) asks why staff has added language in §11.9(d)(7)(ii)(II), allowing a municipality to select multiple CRPs for two additional points. Commenter (5) believes that this change opens doors to all Competitive HTC allocations going to CRP areas in a subregion. With the removal of Educational Quality from the QAP and the significance of Proximity to Urban Core as a scoring item and a tie-breaker factor, this change disadvantages high opportunity areas in urban subregions.

-Commenter (27) states that they do not mind this change; however, Commenter (27) finds the current language to be ambiguous as it does not clearly specify if a city may only have one CRP that has multiple districts, or if a city may have multiple separate CRPs that can each secure a resolution of support. Commenter (27) asks that staff make revisions to this section for the purpose of clarity. Commenter (27) also notes that for Rural CRP Developments, the current language specifies that a resolution of support must come from the municipality or the county *if the Development Site is completely outside of a city*. Commenter (27) notes that this language clearly specifies that a county may not support a CRP proposed Development *within* a city’s limits. However, such language is missing from §11.9(d)(7)(A)(ii)(II), regarding the resolution of support for Urban CRP proposed

Developments. Commenter (27) asks that Urban CRP requirements mirror Rural CRP requirements regarding this resolution of support for a proposed Development within a city's limits.

Commenter (27) recommends that staff adopt the following language for Urban CRP (with the red text representing Commenter (27)'s proposed changes):

(A) For Developments located in an Urban Area:

(i) An Application may qualify to receive points if the Development Site is located in a distinct area that was once vital and has lapsed into a situation requiring concerted revitalization, and where a concerted revitalization plan has been developed and executed. The area targeted for revitalization must be larger than the assisted housing footprint and should be a neighborhood or small group of contiguous neighborhoods with common attributes and problems. The Application must include a copy of the plan or a link to the online plan and a description of where specific information required below can be found in the plan. The concerted revitalization plan, which may be a Tax Increment Reinvestment Zone ("TIRZ") or Tax Increment Finance ("TIF") or similar plan, must meet the criteria described in subclauses (I) - (IV) of this clause:

(I) The concerted revitalization plan must have been adopted by the municipality or county in which the Development Site is located. The resolution adopting the plan, or if development of the plan and budget were delegated the resolution of delegation and other evidence in the form of certifications by authorized persons confirming the adoption of the plan and budget, must be submitted with the application.

(II) The problems in the revitalization area must be identified through a process in which affected local residents had an opportunity to express their views on problems facing the area, and how those problems should be addressed and prioritized. These problems may include the following:

(-a-) long-term disinvestment, such as significant presence of residential and/or commercial blight, streets infrastructure neglect such as inadequate drainage, and/or sidewalks in significant disrepair;

(-b-) declining quality of life for area residents, such as high levels of violent crime, property crime, gang activity, or other significant criminal matters such as the manufacture or distribution of illegal substances or overt illegal activities;

(III) Staff will review the target area for presence of the problems identified in the plan and for targeted efforts within the plan to address those problems. In addition, but not in lieu of, such a plan may be augmented with targeted efforts to promote a more vital local economy and a more desirable neighborhood, including but not limited to:

(-a-) creation of needed affordable housing by improvement of existing affordable housing that is in need of replacement or major renovation;

(-b-) attracting private sector development of housing and/or business; (-c-) developing health care facilities;

(-d-) providing public transportation;

(-e-) developing significant recreational facilities; and/or (-f-) improving

under-performing schools.

(IV) The adopted plan must have sufficient, documented and committed funding to accomplish its purposes on its established timetable. This funding must have been flowing in accordance with the plan, such that the problems identified within the plan will have been sufficiently mitigated and addressed prior to the Development being placed into service.

~~(V) The plan must be current at the time of Application and must officially continue for a minimum of three years thereafter.~~

(ii) Up to seven (7) points will be awarded based on:

(I) Applications will receive four (4) points for a letter from the appropriate local official providing documentation of measurable improvements within the revitalization area based on the target efforts outlined in the plan. The letter must also discuss how the improvements will lead to an appropriate area for the placement of housing; and

(II) Applications may receive (2) points in addition to those under subclause (I) of this clause if the Development is explicitly identified in a resolution by the municipality ~~or county~~ (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). A municipality or county may only identify one single Development 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, none of the Applications shall be eligible for the additional points, unless the resolutions address the respective and distinct areas described in the plan; and

(III) Applications will receive (1) point in addition to those under subclause (I) and (II) if the development is in a location that would score at least 4 points under Opportunity Index, §11.9(c)(4)(B), except for the criteria found in §11.9(c)(4)(A) and subparagraphs §11.9(c)(4)(A)(i) and §11.9(c)(4)(A)(ii).

Commenters (28) and (34) propose largely revamping the CRP language entirely, arguing that staff must do so to reduce barriers for local municipalities to implement and determine the best process for their own jurisdictions. Commenter (28) believes that staff has created overly restrictive requirements, despite the IRS having not provided any guidance on what benchmarks a CRP must meet, except to say that it should likely contain a QCT. Thus, Commenter (28) believes that a letter from an appropriate local official stating that a plan includes a public process, funding, and a stated objective for revitalization should supplant an actual Concerted Revitalization Plan itself. Commenter (34) states the same, and asks that TDHCA forego its onerous CRP requirements in light of Hurricane Harvey.

Commenters (28) and (34) recommend that staff adopt the following language for Urban CRP:

(i) An Application may qualify to receive points if the Development Site is located in a distinct area that was once vital and has lapsed into a situation requiring concerted revitalization, and where either the criteria described in subclause (I) or (II) is met:

(I) Concerted revitalization areas have been developed as confirmed by a letter from the appropriate local official. Such letter states:

(-a-) that the areas were 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;

(-b-) objectives for the revitalization of the once thriving area; and

(-c-) funding to achieve revitalization exists within the areas.

(II) a concerted revitalization plan has been developed and executed...

(~~V-e-~~) The plan must be current at the time of Application ~~and must officially continue for a minimum of three years thereafter.~~

STAFF RESPONSE: In response to Commenter (4)'s request that staff clarify what is meant by a "current" Concerted Revitalization Plan, current is common usage language that refers to a plan still in effect as of the Full Application Delivery Date. Staff believes that the plan itself should speak to whether or not the CRP is still in effect. Per the requirements of §11.9(d)(7)(A)(i)(IV), staff would expect to see "committed funding to accomplish [the CRP's] purposes on its established timetable." That timetable will indicate that a plan is current. A letter from the local jurisdiction alone is not provide sufficient evidence for this requirement.

Staff recommends no changes based on this comment.

Regarding Commenters (18), (27), (32), and (34)'s request that the language requiring that a CRP continue for a minimum of three years after the time of Application, staff believes it is important that the capital injection provided by a LIHTC Development continue alongside the ongoing funding efforts of a CRP. Given that the typical construction timeline for a LIHTC Development is three years, it is reasonable to require that a CRP continue in a similar timeline. Staff encourages HTC stakeholders to work alongside local jurisdictions in implementing robust, meaningful, and impactful CRPs that serve the needs of local communities.

Staff recommends no changes based on this comment.

In regards to Commenters (18) and (34)'s suggestion that staff remove the requirement that a municipality offer a resolution of support for a CRP, staff believes that it is important that local governments weigh in on how capital investments will be made in areas that they have specifically sought to revitalize with public money and through a public planning process. CRPs are inherently public-private partnerships. Furthermore, given many local jurisdictions' requirements to comply with the Affirmatively Further Fair Housing Rule, it is paramount that local jurisdictions be given deference in matters of such importance. Therefore, this requirement is not overreach on the Department's part, but rather duly required deference to the judgment of local jurisdictions themselves.

Staff recommends no changes based on this comment.

Regarding Commenter (5)'s concern about staff's now allowing a local governing body to submit multiple resolutions for proposed CRP Developments that best meet the revitalization needs of the city or county, staff believes that the Department's goals of dispersion, resident choice, and proximity to meaningful amenities are well-served by this change.

Staff recommends no changes based on this comment.

Regarding Commenter (27)'s request that staff explicitly demarcate the jurisdictional involvement of cities and counties for Urban CRP, as staff has already proposed doing in Rural CRP, staff agrees and has made the necessary change. In response to Commenter (27)'s request that staff better clarify how §11.9(d)(7)(A)(ii)(II) actually works—whether one CRP can have multiple sites that can secure resolutions of support or if a city / county can have multiple CRPs that can each provide proposed HTC Developments that can secure resolutions of support—staff agrees that this section warrants clarification and has adjusted the language accordingly:

(II) Applications may receive (2) points in addition to those under subclause (I) of this clause if the Development is explicitly identified in a resolution by the municipality, or county if the Development Site is completely outside of a city, as ~~contributing more than any other to~~ being necessary for the concerted revitalization efforts of the municipality or county (as applicable). A municipality or county may only identify one ~~single~~ 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; and

Regarding the proposal from Commenters (28) and (38) to completely revamp the CRP language, staff believes that this revision represents sufficiently substantive changes from what was proposed that it could not be accomplished without re-publication for public comment. These ideas could be taken into consideration for drafting the 2019 QAP. Staff encourages Commenters (28) and (38) to suggest this revision during planning for the 2019 QAP.

Staff recommends no changes based on this comment.

23. §11.9(e)(2) – Cost of Development per Square Foot; (3), (6), (7), (8), (9), (10), (11), (12), (13), (14), (15), (16), (17), (18), (27), (29), (30), (31), (32), (34), (35), (39), (40)

COMMENT SUMMARY: Commenters (27) and (29) state that SRO deals face a significant disadvantage in calculating Eligible Hard Costs compared to family developments. While this paragraph of the QAP allows for a Supportive Housing's NRA to include an additional 50 square feet per Unit for common area(s), Commenter (27) believes that it is not enough. Commenter (27)

proposes adding the sentence “If the proposed Development is also Single Room Occupancy, the NRA will also include interior corridors.” Commenter (27) states that this language was present in past QAPs but removed in 2014.

Commenters (4), (6), (7), (8), (31), (32), (34), (39), (40) state that, given either the steadily rising construction costs and pricing or the market effects of Hurricane Harvey, these cost per square foot thresholds should be raised. Commenters (4), (6), (8), (31), (34) recommend a 25% increase across the board. Commenter (7) recommends a 15% increase across the board. Commenter (40) states that it should be between 15% and 25%. Commenter (39) thanks staff for raising the cost per square foot threshold for the 2017 QAP, and asks that staff raise it by a similar percentage (2-3%) for the 2018 QAP.

Commenter (40) proposes replacing the concept of Net Rentable Area with gross square footage, presumably when calculating eligible basis for a Development’s HTCs.

Commenters (3), (4), (6), (8), (9), (10), (11), (12), (13), (14), (15), (16), (17), (18), (30), (31), (32), (34), (35) express their concern with the suggested changes to proposed cost of development per square foot rule for Applications proposing Adaptive Reuse or Rehabilitation (but excluding Reconstruction) in subparagraph (E).

Commenters (3) and (35) worry that the reduction in cost per square foot for these types of Developments will have a negative effect on the rehabilitation and reuse of historic structures. Because these buildings tend to have antiquated systems, their rehabilitation costs should more closely resemble the costs of New Construction Developments. Commenter (35) explains that this reduction may actually be in opposition to the requirements of Chapter 42 Section (m)(1)(C)(x) of the Internal Revenue Code and Texas Government Code Section 2306.6725(a)(6), both of which require that the historic nature of a proposed Development be considered by scoring measures—a requirement undone by this proposed change. By maintaining these lower cost thresholds, staff may be inadvertently creating a disincentive to restore and adaptively reuse historic buildings, Commenters (3), (9), (10), (11), (35) state, and therefore ask that staff reverse this change.

Commenter (18)’s concerns echo those above, and similarly, Commenter (18) asks that this subparagraph revert to the language of the 2017 QAP. Commenter (18) notes that, first, HUD properties are historically very small, with past units that they have renovated being only 413 and 526 square feet; second, the allowable rehab budget for such small units actually produces a maximum amount that is less than the TDHCA minimum required rehabilitation investment; third, the allowable rehab budget under these proposed guidelines are also too low for investor/lendor requirements; and, finally, the rubric for calculating the cost per square foot threshold is too complicated. Given that construction costs are rising (see exhibit provided by Commenter (18)), staff should consider raising cost thresholds.

Commenters (9), (10), (11), and (35) add that, when entities wish to revive an abandoned building on public property and place it back in service for a beneficial use, acquisition costs matter very little, and the Developer needs the entire cost per square foot threshold in order to adaptively reuse that structure. The current proposed cost threshold makes historic Adaptive Reuse infeasible, which would go against what TDHCA seeks to accomplish with its historic preservation provisions. A

satisfactory and reasonable cost per square foot threshold for historic Adaptive Reuse better allows Developments to leverage federal and state historic tax credits, which makes the allocation of LIHTC more efficient. Commenter (10) adds that securing historic tax credits in Texas adds nearly an additional 40% equity to the Development, which would otherwise not be available if the structure were torn down and built as New Construction. Commenter (11) points to his previous work in Texas using TDHCA issued HTCs, and notes that in three similar projects, the cost per square foot exceeded \$100. Copies of these Development's cost certifications are attached to Commenter (11)'s public comment. Commenter (11) also wishes to share that many other states besides Texas consider Adaptive Reuse on the same cost scale as New Construction, and Louisiana allows for higher costs than New Construction when doing historic Adaptive Reuse. Commenters (9), (10), and (11) ultimately propose that Adaptive Reuse have the same cost parameters as new construction, as the QAP has done every past year.

Commenters (12) argues that, with the proposed changes to §11.9(e)(2)(E) and the use of a square footage benchmark from which Applicants may either add or subtract additional dollars per square foot, staff has discriminated against USDA and Elderly rehabilitation. A 900 square foot unit across the board for an Elderly Development or USDA Development is untenable, and Commenter (12) notes that specific rules actually discourage such a unit size. For example, the maximum unit square footage on average for an elderly Development is 730 square feet, based on his calculations. Therefore, Commenter (12) asks that 730 square feet be the benchmark unit size for USDA or elderly Applications regarding this subparagraph. Commenter (12) also asks that staff clarify whether Applicants should use the fractional cent per square foot that results from this rule's calculation, or if Applicants should round down or up.

Commenters (13), (15), (16), (30) and (31) ask staff to reconsider the cost per square foot thresholds for Adaptive Reuse or Rehabilitation, and if higher amounts for cost and lower sizes for unit square footage cannot be adopted compared to what staff has proposed, then these Commenters ask staff to revert to the language of the 2017 QAP. Commenters (13) and (15), while recognizing staff's policy intention in removing acquisition costs from the cost per square foot calculation, argue that the final value must allow a Developer to perform a full rehabilitation of a viable property. Commenter (15) states that Developers want rules that incentivize the best possible housing for a community based on people's need, not the cost limitations of a rehab. Commenter (13) looked to its members' recent rehabilitation Developments to ascertain the most appropriate cost—roughly between \$80 and \$90. Commenter (14) submits similar cost estimates for Rehabilitation Developments, and also asks staff to consider the varying cost differences across the state. Commenter (15) expresses support for this \$90 cost per square foot threshold for voluntary Eligible Hard Costs, but leans more towards reverting to the 2017 QAP language. Commenter (16) proposes a \$65 - \$75 range if staff wishes to remove acquisition costs. However, if staff reverts the language to the 2017 QAP, Commenter (16) requests that the cost per square foot threshold be raised to \$125 for §11.9(e)(2)(E). Commenter (17) asks that the 2017 QAP cost thresholds for Rehabilitation and Adaptive Reuse be raised by 10%, given rising construction costs and Hurricane Harvey and given that costs in the QAP have not increased in the past three years. Commenter (31) proposes raising the cost thresholds by 25% if acquisition costs are left in.

If staff does not revert to the 2017 QAP language, then Commenters (13), (30), (31) recommend the following language for §11.9(e)(2)(E) (with red text being Commenter (13)'s proposed revisions):

- (E) Applications proposing Adaptive Reuse or Rehabilitation (excluding Reconstruction) will be eligible for points if one of the following condition is met:
- (i) Twelve (12) points for Applications which include voluntary Eligible Hard Costs that are less than ~~\$50~~ **\$80** per square foot, plus or minus \$1 per square foot for every 50 square feet above or below a ~~900~~ **700** square feet unit.
 - (ii) Twelve (12) points for Applications which include voluntary Eligible Hard Costs that are less than ~~\$50~~ **\$90** per square foot, plus or minus \$1 per square foot for every 50 square feet above or below a ~~900~~ **700** square feet unit, located in an Urban Area.
 - (iii) Eleven (12) points for Applications which include voluntary Eligible Hard Costs that are less than ~~\$50~~ **\$90** per square foot, plus or minus \$1 per square foot for every 50 square feet above or below a ~~900~~ **700** square feet unit.

Commenter (16) recommends the following language for §11.9(e)(2)(E) (with red text being Commenter (16)'s proposed revisions):

- (E) Applications proposing Adaptive Reuse or Rehabilitation (excluding Reconstruction) will be eligible for points if one of the following condition is met:
- (i) Twelve (12) points for Applications which include voluntary Eligible Hard Costs that are less than ~~\$50~~ **\$65** per square foot, plus or minus \$1 per square foot for every 50 square feet above or below a ~~900~~ **700** square feet unit.
 - (ii) Twelve (12) points for Applications which include voluntary Eligible Hard Costs that are less than ~~\$50~~ **\$75** per square foot, plus or minus \$1 per square foot for every 50 square feet above or below a ~~900~~ **700** square feet unit, located in an Urban Area.
 - (iii) Eleven (12) points for Applications which include voluntary Eligible Hard Costs that are less than ~~\$50~~ **\$75** per square foot, plus or minus \$1 per square foot for every 50 square feet above or below a ~~900~~ **700** square feet unit.

STAFF RESPONSE: Regarding Commenters (27) and (29) that the rules allow more square footage to be included in the eligible basis calculation for SROs, staff believes that this revision represents sufficiently substantive changes from what was proposed that it could not be accomplished without re-publication for public comment. These ideas could be taken into consideration for drafting the 2019 QAP. Staff encourages Commenters (27) and (29) to suggest this revision during planning for the 2019 QAP.

Staff recommends no changes based on this comment.

In regards to Commenters (4), (6), (7), (8), (31), (32), (34), (39), and (40)'s varying requests that staff raise the cost per square foot thresholds from anywhere from 2% to 25%, staff will rely on evidence in determining where thresholds should be set. During the 2017 Competitive HTC cycle, nearly 90%

of the priority Applications specified in their Applications that their true costs were *below* the specified thresholds for calculating costs per square foot. Only 10% of Applications voluntarily limited their costs for the purposes of this scoring item. Further discussion regarding a raising the cost ceilings should be based on evidence of increased costs.

Staff recommends no changes based on this comment.

Regarding Commenter (40)'s proposal that net rentable area be replaced with gross square footage, staff believes that these revisions represent sufficiently substantive changes from what was proposed that it could not be accomplished without re-publication for public comment. These ideas could be taken into consideration for drafting the 2019 QAP. Staff encourages Commenter to suggest this revision during planning for the 2019 QAP.

Staff recommends no changes based on this comment.

Staff agrees with Commenters (3), (4), (6), (9), (10), (11), (12), (13), (14), (15), (16), (17), (18), (30), (31), (32), (34), and (35) that the proposed cost per square foot thresholds for Adaptive Reuse and Rehabilitation (excluding Reconstruction) are too low. Because staff has proposed removing the cost of acquisition of the proposed Development from this cost per square foot calculation, the threshold amount was lowered from \$104 to \$50 for voluntary Eligible Hard Costs (12 points), \$135.20 to \$60 for voluntary Eligible Hard Costs in an Urban Area (12 points), and \$135.20 to \$60 for voluntary Eligible Hard Costs (11 points). In making these proposed changes, staff was attempting to realize a policy goal of excluding acquisition costs from the cost per square foot calculation, which then would only focus on the actual costs of Rehabilitation or Adaptive Reuse. Staff asks that the Department and stakeholders continue to discuss this policy goal in the coming year. This subparagraph will revert to the language of the 2017 QAP and will read as follows:

(E) Applications proposing Adaptive Reuse or Rehabilitation (excluding Reconstruction) will be eligible for points if one of the following conditions is met:

(i) Twelve (12) points for Applications which include voluntary Eligible Hard Costs plus acquisition costs included in Eligible Basis that are less than ~~\$104~~ \$50 per square foot, ~~plus or minus \$1 per square foot for every 50 square feet above or below a 900 square feet unit;~~

(ii) Twelve (12) points for Applications which include voluntary Eligible Hard Costs plus acquisition costs included in Eligible Basis that are less than ~~\$135.20~~ \$60 per square foot, ~~plus or minus \$1 per square foot for every 50 square feet above or below a 900 square feet unit,~~ located in an Urban Area, and that qualify for 5 or 7 points under subsection (c)(4) of this section, related to Opportunity Index; or

(iii) Eleven (11) points for Applications which include voluntary Eligible Hard Costs plus acquisition costs included in Eligible Basis that are less than ~~\$135.20~~

~~60 per square foot, plus or minus \$1 per square foot for every 50 square feet above or below a 900 square foot unit.~~

24. §11.9(e)(3) – Pre-Application Participation; (30), (31), (40)

COMMENT SUMMARY: Commenters (30), (31), and (40) ask that staff revert subparagraph (E) to the 2017 QAP language. The proposed change decreases the allowable point variation between pre-application and full Application from six points to four points. Commenter (30) finds this spread to be too narrow, especially in regards to scoring items that are outside an Applicant’s control, such as Representative support letters

STAFF RESPONSE: In regards to Commenter (30), staff reminds the Commenter that the point variation does not include those items not included in the Applicant’s self-score, such as items outside the Applicant’s control.

Staff recommends no changes based on this comment.

25. §11.9(e)(4) – Leveraging of Private, State, and Federal Resources; (4), (6), (7), (8), (31), (32), (34), (40)

COMMENT SUMMARY: Commenter (4) states that requirements of clauses (ii), (iii), and (iv) are too restrictive given steadily rising construction costs, increased land prices, and the downturn in the equity markets, thereby leading to underleveraged Developments. Commenter (4) proposes a two percentage point increase (+ 2%) across each of these clauses’ requirements. Commenters (6), (7), (31), (32), (34), and (40), with Commenter (8) deferring to Commenter (6)’s recommendations, also ask that this paragraph consider rising construction costs and/or Hurricane Harvey, and proposes, at the very least, an one percentage point increase (+ 1%), and perhaps a 2% increase, across each of these clauses’ requirements.

STAFF RESPONSE: In regards to Commenters (4), (6), (7), (8), (31), (32), (34), and (40), staff believes that this revision represents sufficiently substantive changes from what was proposed that it could not be accomplished without re-publication for public comment. These ideas could be taken into consideration for drafting the 2019 QAP. Staff encourages these Commenters to suggest this revision during planning for the 2019 QAP, but asks that any policy proposals regarding the costs of Development be accompanied by sufficient evidence.

26. §11.9(f) – Factors Affecting Eligibility in the 2019 Application Round; (18)

COMMENT SUMMARY: Commenter (18) requests that staff remove the added language in this subsection regarding future Application round penalties for Applications that received an award and failed to meet its original Carryover or 10 percent Test deadlines. There are a variety of factors beyond an Applicant’s control that can affect that Applicant’s ability to meet these deadlines. Commenter (18) notes that what matters most is that the Applicant comply with all federal tax credit dates. Future Application Round penalties should be associated only with egregious matters.

STAFF RESPONSE: Staff would like to point out to Commenter (18) that “will” was changed to “may.” Thus, staff will evaluate each situation for its extenuating factors to determine whether or not a recommendation of future penalties is necessary, and if so, the matter could be presented to the Governing Board.

Staff recommends no changes based on this comment.

27. §11.10 – Third Party Request for Administrative Deficiency for Competitive HTC Applications

COMMENT SUMMARY: Commenter (4) claims that the language added by staff to the end of this section—“Information received after the RFAD deadline will not be considered by staff or presented to the Board”—will force an Applicant to challenge all other Applications. This inclination is exacerbated by the proposed earlier RFAD deadline of May 1. Challenging all other Applications in one region can amount to a substantial cost for an Applicant. Because of this, Commenter (4) requests that the fee associated with filing a RFAD be lowered to \$100 per RFAD.

Commenter (4) also asks that staff consider adding language to the rule that allows the submittal of information after the RFAD deadline when an Applicant has made misrepresentations in his or her Application or otherwise acted in a fraudulent manner.

STAFF RESPONSE: Regarding Commenter (4)’s concern about the earlier RFAD deadline, Applicants have the choice to challenge any Application for which the Applicant believes there to be an issue. Staff does not believe the earlier deadline impedes this ability. Staff’s primary motive in making this change is to ensure that Application scores are finalized as early as possible to allow for appeals to the Board in time for Final Awards to be made by the statutory deadline of July 31. In order to meet this deadline, staff finds it prudent to address RFADs earlier in the application process, rather than later. Furthermore, having RFADs in hand at an earlier date assists staff in better reviewing Applications, as RFADs do at times point out issues that staff had not considered. With the proposed May 1 RFAD deadline, staff will be able to consolidate most Administrative Deficiencies into one request to an Applicant, which is beneficial for staff, the Applicant, and the Board. Regarding Commenter (4)’s request that the fees required to submit a RFAD be lowered, the staff time required to evaluate and process each request is reflected in the fee, multiple requests will not reduce that cost to the Department.

Staff recommends no changes based on this comment.

In response to Commenter (4)’s request that staff add language that allows the submission of information after the RFAD deadline when that information pertains to uncovering fraud, staff believes that the deadline for the submission of an RFAD should remain. Staff reminds the Commenter that “The purpose of the Third Party Request for Administrative Deficiency (‘RFAD’) process is to allow an unrelated person or entity to bring new, material information about an Application to staff’s attention. Such Person may request the staff to consider whether a matter in an Application in which the Person has no involvement should be the subject of an Administrative Deficiency.” Information about an Application must be submitted within the RFAD timeline. Allegations of fraud would not be something for staff to handle as the subject of an Administrative

Deficiency. Staff recommends that allegations of fraud be submitted according to the Department's existing protocols, which include information presented in 10 TAC Chapter 1, Subchapter A §1.2 and on the Department's website on the "Report Fraud, Waste, and Abuse" webpage (<https://www.tdhca.state.tx.us/fraud-waste-abuse.htm>).

Staff recommends no changes based on this comment.

The Board approved the final order adopting the amended 10 TAC Chapter 11 concerning the Housing Tax Credit Program Qualified Allocation Plan on November 9, 2017.

STATUTORY AUTHORITY. The amended sections are adopted pursuant to Texas Government Code §2306.053, which authorizes the Department to adopt rules. Additionally, the amended sections are proposed pursuant to Texas Government Code §2306.67022, which specifically authorizes the Department to adopt a qualified allocation plan.

Housing Tax Credit Program Qualified Allocation Plan

§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 Housing Tax Credits. The federal laws providing for the awarding and allocation of Housing Tax Credits require states to adopt a qualified allocation plan. Pursuant to Tex. Gov't Code, Chapter 2306, Subchapter DD, the Department is assigned responsibility for this activity. As required by Internal Revenue Code (the "Code"), §42(m)(1), the Department has developed this Qualified Allocation Plan ("QAP") and it has been duly approved to establish the procedures and requirements relating to an award and allocation of Housing Tax Credits. All requirements herein and all those applicable to a Housing Tax Credit Development or an Application under Chapter 10 of this title (relating to Uniform Multifamily Rules), or otherwise incorporated by reference herein collectively constitute the QAP required by Tex. Gov't Code §2306.67022.

(b) Due Diligence and Applicant Responsibility. Department staff may, from time to time, make available for use by Applicants information and informal guidance in the form of reports, frequently asked questions, and responses to specific questions. The Department encourages communication with staff in order to clarify any issues that may not be fully addressed in the QAP or may be unclear when applied to specific facts. However, while these resources are offered to help Applicants prepare and submit accurate information, Applicants should also appreciate that this type of guidance is limited by its nature and that staff will apply the rules of the QAP to each specific situation as it is presented in the submitted Application. The Multifamily Programs Procedures Manual and Frequently Asked Questions website posting are not rules and are provided as good faith guidance and assistance, but in all respects the statutes and rules governing the Low Income Housing Tax Credit program supersede these guidelines and are controlling. Moreover, after the time that an issue is initially presented and guidance is provided, additional information may be identified and/or the issue itself may continue to develop based upon additional research and guidance. Thus, until confirmed through final action of the Board, staff guidance must be considered merely as an aid and an Applicant continues to assume full responsibility for any actions Applicant takes regarding an Application. In addition, although the Department may compile data from outside sources in order to assist Applicants in the Application process, **it remains the sole responsibility of the Applicant to perform independently the necessary due diligence to research, confirm, and verify any data, opinions, interpretations, or other information upon which an Applicant bases an Application or includes in any submittal in connection with an Application.** As provided by Tex. Gov't Code §2306.6715(c), an Applicant is given until the later of the seventh day of the publication on the Department's website of a scoring log reflecting that applicant's score or the seventh day from the date of transmittal of a scoring notice; provided, however, that an applicant may not appeal any scoring matter after the award of credits unless they are within the above-described time limitations and have appeared at the meeting when the Department's Governing Board makes competitive tax credit awards and stated on the record that they have an actual or possible appeal that has not been heard. Appeal rights may be triggered by the publication on the Department's website of the results of the evaluation process.

(c) Competitive Nature of Program. Applying for 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 10 TAC §1.1. As a result of the highly competitive nature of applying for tax credits, an Applicant should proceed on the

assumption that deadlines are fixed and firm with respect to both date and time and cannot be waived except where authorized and for truly extraordinary circumstances, such as the occurrence of a significant natural disaster that could not have been anticipated and makes timely adherence impossible. If an Applicant chooses, where permitted, to submit by delivering an item physically to the Department, it is the Applicant's responsibility to be within the Department's doors by the appointed deadline. Applicants should further ensure that all required documents are included, legible, properly organized, and tabbed, and that materials in required formats involving digital media are complete and fully readable. Applicants are strongly encouraged to submit the required items well in advance of established deadlines. Staff, when accepting Applications, may conduct limited reviews at the time of intake as a courtesy only. If staff misses an issue in such a limited review, the fact that the Application was accepted by staff or that the issue was not identified does not operate to waive the requirement or validate the completeness, readability, or any other aspect of the Application.

(d) Definitions. The capitalized terms or phrases used herein are defined in §10.3 of this title (relating to Definitions), unless the context clearly indicates otherwise. Any capitalized terms that are defined in Tex. Gov't Code, Chapter 2306, §42 of the Code, or other Department rules have, when capitalized, the meanings ascribed to them therein. Defined terms when not capitalized, are to be read in context and construed according to common usage.

(e) Data. Where this chapter requires the use of American Community Survey data, the Department shall use the most current data available as of October 1, 2017, unless specifically otherwise provided in federal or state law or in the rules. All American Community Survey data must be 5-year estimates, unless otherwise specified. The availability of more current data shall be disregarded. Where other data sources are specifically required, such as Neighborhoodscout, the data available after October 1, but before Pre-Application Final Delivery Date, will be permissible. The NeighborhoodScout report submitted in the Application must include the report date.

(f) Deadlines. Where a specific date or deadline is identified in this chapter, the information or documentation subject to the deadline must be submitted on or before 5:00 p.m. Austin local time on the day of the deadline. If the deadline falls on a weekend or holiday, the deadline is 5:00 p.m. Austin local time on the next day which is not a weekend or holiday and on which the Department is open for general operation. Unless otherwise noted or provided in statute, deadlines are based on calendar days.

(g) Documentation to Substantiate Items and Representations in an Application. In order to ensure the appropriate level of transparency in this highly competitive program, Applications and all correspondence and other information relating to each Application are posted on the Department's website and updated on a regular basis. Applicants should use the Application form posted online to provide appropriate support for each item substantiating a claim or representation, such as claims for points, qualification for set-asides, or meeting of threshold requirements. Any Application that staff identifies as having insufficient support information will be directed to cure the matter via the Administrative Deficiency process, unless the missing documentation is determined to be a Material Deficiency. Applicants are reminded that this process may not be used to increase a scoring item's points or to change any aspect of the proposed Development, financing structure, or other element of the Application. The sole purpose of this mandatory Administrative Deficiency will be to substantiate one or more aspects of the Application to enable an efficient and effective review by staff. Although a responsive narrative will be created after Application submission, all facts and

materials to substantiate any item in response to such an Administrative Deficiency must have been clearly established at the time of submission of the Application,

§11.2.Program Calendar for Competitive Housing Tax Credits.

Non-statutory deadlines specifically listed in the Program Calendar may be extended by the Department for a period of not more than five (5) business days provided that the Applicant has, in writing, requested an extension prior to the date of the original deadline and has established to the reasonable satisfaction of the Department that there is good cause for the extension. Except as provided for under 10 TAC §1.1 relating to Reasonable Accommodation Requests, extensions relating to Administrative Deficiency deadlines may only be extended if documentation needed to resolve the item is needed from a Third Party or the documentation involves signatures needed on certifications in the Application.

Deadline	Documentation Required
01/04/2018	Application Acceptance Period Begins.
01/09/2018	Pre-Application Final Delivery Date (including waiver requests).
02/16/2018	Deadline for submission of application for .ftp access if pre-application not submitted
03/01/2018	<p>Full Application Delivery Date (including Quantifiable Community Participation documentation; Environmental Site Assessments (ESAs), Property Condition Assessments (PCAs); Appraisals; Primary Market Area Map; Site Design and Development Feasibility Report; all Resolutions necessary under §11.3 of this chapter related to Housing De-Concentration Factors).</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>
04/02/2018	Market Analysis Delivery Date pursuant to §10.205 of this title.
05/01/2018	Third Party Request for Administrative Deficiency
Mid-May	Scoring Notices Issued for Majority of Applications Considered “Competitive.”
06/22/2018	Public Comment to be included in the Board materials relating to presentation for awards are due in accordance with 10 TAC §1.10.
June	On or before June 30, publication of the list of Eligible Applications for

Deadline	Documentation Required
	Consideration for Award in July.
July	Final Awards.
Mid-August	Commitments are Issued.
11/01/2017 8	Carryover Documentation Delivery Date.
07/01/2019	10 Percent Test Documentation Delivery Date.
12/31/2020	Placement in Service.
Five (5) business days after the date on the Deficiency Notice (without incurring point loss)	Administrative Deficiency Response Deadline (unless an extension has been granted).

§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.

(ab) Two Mile Same Year Rule (Competitive HTC Only). As required by Tex. Gov't Code §2306.6711(f), staff will not recommend for award, and the Board will not make an award to an Application that proposes a Development Site located in a county with a population that exceeds one million if the proposed Development Site is also located less than two linear miles from the proposed Development Site of another Application within said county that is awarded in the same calendar year. If two or more Applications are submitted that would violate this rule, the lower scoring Application will be considered a non-priority Application and will not be reviewed unless the higher scoring Application is terminated or withdrawn.

(bc) Twice the State Average Per Capita. 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 of this chapter (relating to Program Calendar for Competitive Housing Tax Credits) or Resolutions Delivery Date in §10.4 of this title (relating to Program Dates), as applicable.

(ed) One Mile Three Year Rule. (§2306.6703(a)(3))

(1) An Application that proposes the New Construction or Adaptive Reuse of a Development that is located one linear mile or less (measured between closest boundaries by a straight line on a map) from another development that meets all of the criteria in subparagraphs (A) - (C) of this paragraph shall be considered ineligible.

(A) The Development serves the same type of household as the proposed Development, regardless of whether the Development serves families, elderly individuals, or another type of household; and

(B) The Development has received an allocation of Housing Tax Credits or private activity bonds for any New Construction at any time during the three-year period preceding the date the Application Round begins (or for Tax-Exempt Bond Developments the three-year period preceding the date the Certificate of Reservation is issued); and

(C) The Development has not been withdrawn or terminated from the Housing Tax Credit Program.

(2) Paragraph (1) of this subsection does not apply to a Development:

(A) that is using federal HOPE VI (or successor program) funds received through HUD;

(B) that is using locally approved funds received from a public improvement district or a tax increment financing district;

(C) that is using funds provided to the state under the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. §§12701 et seq.);

(D) that is using funds provided to the state and participating jurisdictions under the Housing and Community Development Act of 1974 (42 U.S.C. §§5301 et seq.);

(E) that is located in a county with a population of less than one million;

(F) that is located outside of a metropolitan statistical area; or

(G) that the Governing Body of the appropriate municipality or county where the Development is to be located has by vote specifically allowed the construction of a new Development located within one linear mile or less from a Development described under paragraph (1)(A) of this subsection. An acceptable, but not required, form of resolution may be obtained in the Uniform Multifamily Application Templates. Required documentation must be submitted by the Full Application Delivery Date as identified in §11.2 of this chapter or Resolutions Delivery Date in §10.4 of this title, as applicable.

(3) Where a specific source of funding is referenced in paragraph (2)(A) - (D) of this subsection, a commitment or resolution documenting a commitment of the funds must be provided in the Application.

(de) Limitations on Developments in Certain Census Tracts. An Application that proposes the New Construction or Adaptive Reuse of a Development proposed to be located in a census tract that has more than 20 percent Housing Tax Credit Units per total households as established by the 5-year American Community Survey shall be considered ineligible unless the Governing Body of the appropriate municipality or county containing the Development has, by vote, specifically allowed the Development and submits to the Department a resolution stating the proposed Development is consistent with the jurisdiction's obligation to affirmatively further fair housing. The resolution must be submitted by the Full Application Delivery Date as identified in §11.2 of this chapter or Resolutions Delivery Date in §10.4 of this title, as applicable.

(ef) Additional Phase. Applications proposing an additional phase of an existing tax credit Development serving the same Target Population or Applications proposing Developments that are adjacent to an existing tax credit Development serving the same Target Population, shall be considered ineligible unless the other Developments or phase(s) of the Development have been completed and have maintained occupancy of at least 90 percent for a minimum six (6) month period as reflected in the submitted rent roll. If the Application proposes the Rehabilitation or replacement of existing federally-assisted affordable housing units or federally-assisted affordable housing units demolished on the same site within two years of the beginning of the Application Acceptance Period, this provision does not apply.

(fg) Proximity of Development Sites. If two or more Competitive HTC Applications that are proposing Developments serving the same Target Population on contiguous sites are submitted in the same program year, the lower scoring Application, including consideration of tie-breaker factors if there are tied scores, will be considered a non-priority Application and will not be reviewed unless the higher scoring Application is terminated or withdrawn.

§11.4. Tax Credit Request and Award Limits.

(a) Credit Amount (Competitive HTC Only). (§2306.6711(b)) The Board may not award or allocate to an Applicant, Developer, Affiliate or Guarantor (unless the Guarantor is also the General Contractor or provides the guaranty only during the construction period, and is not a Principal of the Applicant, Developer or Affiliate of the Development Owner) Housing Tax Credits in an aggregate amount greater than \$3 million in a single Application Round. Prior to June 29, an Applicant that has Applications pending for more than \$3 million in credit may notify staff in writing or by email of the Application(s) they will not pursue in order to bring their request within the \$3 million cap. If the Applicant has not made this self-selection by this date, staff may make the selection. The methodology for making this determination will be to assign first priority to an Application that will enable the Department to comply with the state and federal non-profit set-asides and second to the highest scoring Application, including consideration of tie-breakers if there are tied scores. The Application(s) that does not meet Department criteria will not be considered a priority Application and will not be reviewed unless the Applicant withdraws a priority Application. The non-priority Application(s) will be terminated when the Department awards \$3 million to other Applications. Any Application terminated for this reason is subject to reinstatement if necessary to meet a required set-aside. All entities that are under common Control are Affiliates. For purposes of

determining the \$3 million limitation, a Person is not deemed to be an Applicant, Developer, Affiliate or Guarantor solely because it:

- (1) raises or provides equity;
- (2) provides "qualified commercial financing;"
- (3) is a Qualified Nonprofit Organization or other not-for-profit entity that is providing solely loan funds, grant funds or social services; or
- (4) receives fees as a consultant or advisor that do not exceed ~~\$150,000~~ 200,000.

(b) Maximum Request Limit (Competitive HTC Only). For any given Development, an Applicant may not request more than 150 percent of the credit amount available in the subregion based on estimates released by the Department on December 1, or \$1,500,000, whichever is less, or \$2,000,000 for Applications under the At-Risk Set-Aside. In addition, for Elderly Developments in a Uniform State Service Region containing a county with a population that exceeds one million, the request may not exceed the final amount published on the Department's website after the release of the Internal Revenue Service notice regarding the ~~2016-2018~~ credit ceiling. For all Applications, the Department will consider the amount in the funding request of the pre-application and Application to be the amount of Housing Tax Credits requested and will automatically reduce the Applicant's request to the maximum allowable under this subsection if exceeded. Regardless of the credit amount requested or any subsequent changes to the request made by staff, the Board may not award to any individual Development more than \$2 million in a single Application Round. (§2306.6711(b))

(c) Increase in Eligible Basis (30 percent Boost). Applications will be evaluated for an increase of up to but not to exceed 30 percent in Eligible Basis provided they meet the criteria identified in paragraphs (1) - (3) of this subsection, or if required under §42 of the Code. Staff will recommend no increase or a partial increase in Eligible Basis if it is determined it would cause the Development to be over sourced, as evaluated by the Real Estate Analysis division, in which case a credit amount necessary to fill the gap in financing will be recommended. In no instance will the boost exceed more than the amount of credits required to create the HTC rent-restricted units, as determined by the Real Estate Analysis division of TDHCA. The criteria in paragraph (3) of this subsection are not applicable to Tax-Exempt Bond Developments.

(1) The Development is located in a Qualified Census Tract (QCT) (as determined by the Secretary of HUD) that has less than 20 percent Housing Tax Credit Units per total households in the tract as established by the U.S. Census Bureau for the 5-year American Community Survey. New Construction or Adaptive Reuse Developments located in a QCT that has in excess of 20 percent Housing Tax Credit Units per total households in the tract are not eligible to qualify for a 30 percent increase in Eligible Basis, which would otherwise be available for the Development Site pursuant to §42(d)(5) of the Code. For Tax-Exempt Bond Developments, as a general rule, a QCT designation would have to coincide with the program year the Certificate of Reservation is issued in order for the Department to apply the 30 percent boost in its underwriting evaluation. For New Construction or Adaptive Reuse Developments located in a QCT with 20 percent or greater Housing Tax Credit Units per total households, the Development is eligible for the boost if the Application includes a resolution stating that the Governing Body of the appropriate municipality or county containing the Development has by vote specifically allowed the construction of the new Development and referencing this rule. 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 of

this chapter or Resolutions Delivery Date in §10.4 of this title, as applicable. Applicants must submit a copy of the census map that includes the 11-digit census tract number and clearly shows that the proposed Development is located within a QCT; OR

(2) The Development is located in a Small Area Difficult Development Area (“SADDA”) (based on Small Area Fair Market Rents (“FMRs”) as determined by the Secretary of HUD) that has high construction, land and utility costs relative to the AMGI. For Tax-Exempt Bond Developments, as a general rule, a SADDA designation would have to coincide with the program year the Certificate of Reservation is issued in order for the Department to apply the 30 percent boost in its underwriting evaluation. Applicants must submit a copy of the SADDA map that clearly shows the proposed Development is located within the boundaries of a SADDA; OR

(3) The Development meets one of the criteria described in subparagraphs (A) - (E) of this paragraph pursuant to §42(d)(5) of the Code:

(A) the Development is located in a Rural Area;

(B) the Development is proposing entirely Supportive Housing and is expected to be debt free or have no foreclosable or non-cash flow debt;

(C) the Development meets the criteria for the Opportunity Index as defined in §11.9(c)(4) of this chapter (relating to Competitive HTC Selection Criteria);

(D) the Applicant elects to restrict an additional 10 percent of the proposed low income Units for households at or below 30 percent of AMGI. These Units must be in addition to Units required under any other provision of this chapter, or required under any other funding source from the Multifamily Direct Loan program; or

(E) the Development is in an area covered by a concerted revitalization plan, is not an Elderly Development, and is not located in a QCT. A Development will be considered to be in an area covered by a concerted revitalization plan if it is eligible for and elects points under §11.9(d)(7) of this chapter.

§11.5. Competitive HTC Set-Asides. (§2306.111(d)) This section identifies the statutorily-mandated ~~s~~Set-asides which the Department is required to administer. An Applicant may elect to compete in each of the ~~s~~Set-asides for which the proposed Development qualifies. In order to be eligible to compete in the Set-~~A~~side, the Application must meet the requirements of the Set-~~A~~side as of the Full Application Delivery Date. Election to compete in a Set-~~A~~side does not constitute eligibility to compete in the Set-~~A~~side, and Applicants who are ultimately deemed not to qualify to compete in the Set-~~A~~side will be considered not to be participating in the Set-~~A~~side for purposes of qualifying for points under §11.9(3) of this chapter (related to ~~Pre-Application~~pre-application Participation). Commitments of ~~e~~Competitive HTCs issued by the Board in the current program year will be applied to each ~~s~~Set-aside, Rural regional allocation, Urban regional allocation, and/or USDA ~~s~~Set-aside for the current Application round as appropriate.

(1) Nonprofit Set-Aside. (§2306.6729 and §2306.6706(b)) At least 10 percent of the State Housing Credit Ceiling for each calendar year shall be allocated to Qualified Nonprofit Developments which meet the requirements of §42(h)(5) of the Code and Tex. Gov't Code §2306.6729 and §2306.6706(b). Qualified Nonprofit Organizations must have the controlling interest in the Development Owner applying for this ~~s~~Set-aside (*i.e.*, greater than 50 percent ownership in the General Partner). If the Application is filed on behalf of a limited partnership, the Qualified Nonprofit Organization must be the Managing General Partner. If the Application is filed on behalf

of a limited liability company, the Qualified Nonprofit Organization must be the controlling Managing Member. Additionally, for Qualified Nonprofit Development in the Nonprofit Set-Aside the nonprofit entity or its nonprofit Affiliate or subsidiary must be the Developer or a co-Developer as evidenced in the development agreement. An Applicant that meets the requirements to be in the Qualified Nonprofit Set-Aside is deemed to be applying under that sSet-aside unless their Application specifically includes an affirmative election to not be treated under that sSet-aside and a certification that they do not expect to receive a benefit in the allocation of tax credits as a result of being affiliated with a nonprofit. The Department reserves the right to request a change in this election and/or not recommend credits for those unwilling to change elections if insufficient Applications in the Nonprofit Set-Aside are received. Applicants may not use different organizations to satisfy the state and federal requirements of the sSet-aside.

(2) USDA Set-Aside. (§2306.111(d-2)) At least 5 percent of the State Housing Credit Ceiling for each calendar year shall be allocated to Rural Developments which are financed through USDA. If an Application in this sSet-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). ~~All Applications that can score under the USDA set aside will be considered Rural for all scoring items under this chapter. If a Property receiving USDA financing is unable to score under the USDA Set-Aside and it is located in an Urban subregion, it will be scored as Urban.~~

(A) Eligibility of Certain Developments to Participate in the USDA or Rural Set-Asides. (§2306.111(d-4)) A proposed or Existing Residential Development that, before September 1, 2013, has been awarded or has received federal financial assistance provided under Section 514, 515, or 516 of the Housing Act of 1949 (42 U.S.C. Section 1484, 1485, or 1486) may be attributed to and come from the At-Risk Development Set-Aside or the Uniform State Service Region in which the Development is located, regardless of whether the Development is located in a Rural area.

(B) All Applications that can score under the USDA Set-aside will be considered Rural for all scoring items under this chapter. If a Property receiving USDA financing is unable to score under the USDA Set-aside and it is located in an Urban subregion, it will be scored as Urban.

(3) At-Risk Set-Aside. (§2306.6714; §2306.6702)

(A) At least 15 percent of the State Housing Credit Ceiling for each calendar year will be allocated under the At-Risk Development Set-Aside and will be deducted from the State Housing Credit Ceiling prior to the application of the regional allocation formula required under §11.6 of this chapter (relating to Competitive HTC Allocation Process). Through this sSet-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 percent of the State Housing Credit Ceiling associated with this sSet-aside may be given priority to Rehabilitation Developments under the USDA Set-Aside.

(B) An At-Risk Development qualifying under Tex. Gov't Code §2306.6702(a)(5)(A) must meet the following requirements :

(i) Pursuant to Tex. Gov't Code §2306.6702(a)(5)(A)(i), a Development must have received a subsidy in the form of a qualified below-market interest rate loan, interest rate reduction, rental subsidy, Section 8 housing assistance payment, rental supplement payment, rental assistance payment, or equity incentive. Applications participating in the At-Risk Set-Aside must include evidence of the qualifying subsidy.

(ii) Any stipulation to maintain affordability in the contract granting the subsidy pursuant to Tex. Gov't Code §2306.6702(a)(5)(A)(ii)(a), or any HUD-insured or HUD-held mortgage will be considered to be nearing expiration or nearing the end of its term if expiration will occur or the term will end within two (2) years of July 31 of the year the Application is submitted. Developments with HUD-insured or HUD-held mortgages qualifying as At-Risk under §2306.6702(a)(5)(A)(ii)(b) may be eligible if the HUD-insured or HUD-held mortgage is eligible for prepayment or has been prepaid.

(iii) Developments with existing Department LURAs must have completed all applicable Right of First Refusal procedures prior to the ~~Pre-Application~~ pre-application Final Delivery Date.

(C) An At-Risk Development qualifying under Tex. Gov't Code §2306.6702(a)(5)(B) must meet one of the following requirements:

(i) Units to be Rehabilitated or Reconstructed must be owned by a public housing authority or a public facility corporation created by a public housing authority under Chapter 303, Local Government Code and ~~have received assistance under §9, United States Housing Act of 1937 (42 U.S.C. section 1437g); or and 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.~~

(ii) Units to be Rehabilitated or Reconstructed must have been ~~To the extent that an Application is eligible under §2306.6702(a)(5)(B)(ii) and the units being reconstructed were disposed of or demolished by a public housing authority prior to the beginning of the Application Acceptance Period, the housing units must have been disposed of or demolished in the two-year period preceding the a~~ Application for housing tax credits; and ~~The Application will be categorized as New Construction.~~

(iii) For Developments including Units to be Reconstructed, the Application will be categorized as New Construction; and

~~(iv)~~ To the extent that an Application is eligible under Tex. Gov't Code §2306.6702(a)(5)(B)(iii), the Development must receive assistance through the Rental Assistance Demonstration ("RAD") program administered by the United States Department of Housing and Urban Development ("HUD"). Applications must include evidence that RAD participation is included in the applicable public housing plan that was most recently approved by HUD, and evidence (in the form of a Commitment to enter into a Housing Assistance Payment ("CHAP")) that HUD has approved the units proposed for Rehabilitation or Reconstruction for participation in the RAD program; and

~~(v)~~ Notwithstanding any other provision of law, an 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) will not qualify as an At-Risk Development unless the redevelopment will include at least a portion of the same site. Alternatively, pursuant to Tex. Gov't Code §2306.6702(a)(5)(B), an Applicant may propose relocation of the existing units in an otherwise qualifying At-Risk Development if:

- (i) the affordability restrictions and any At-Risk eligible subsidies are approved to be transferred with the units proposed for Rehabilitation or Reconstruction prior to the tax credit Carryover deadline;
- (ii) the Applicant seeking tax credits must propose the same number of restricted units (*e.g.*, the Applicant may add market rate units); and
- (iii) the new Development Site must either qualify for points on the Opportunity Index under §11.9(c)(4) of this chapter (relating to Competitive HTC Selection Criteria); OR
- (iv) the local Governing Body of the applicable municipality or county (if completely outside of a municipality) in which that Development is located must submit a resolution confirming that the proposed Development is supported by the municipality or county in order to carry out a previously adopted plan that meets the requirements of §11.9(d)(7). Development Sites that cross jurisdictional boundaries must provide a resolution from both local governing bodies.

(E) If Developments at risk of losing affordability from the financial benefits available to the Development are able to retain, renew, or replace the existing financial benefits and affordability they must do so unless regulatory barriers necessitate elimination of all or a portion of that benefit for the Development.

(i) Evidence of the legal requirements that will unambiguously cause the loss of affordability and that this will occur within the two calendar years after the year in which the Application is made must be included with the application.

(ii) For Developments qualifying under Tex. Gov't Code §2306.6702(a)(5)(B), only a portion of the subsidy must be retained for the proposed Development, but no less than 25 percent of the proposed Units must be public housing units supported by public housing operating subsidy. (§2306.6714(a-1)). If less than 100 percent of the public housing benefits are transferred to the proposed Development, an explanation of the disposition of the remaining public housing benefits must be included in the Application, as well as a copy of the HUD-approved plan for demolition and disposition.

(F) Nearing expiration on a requirement to maintain affordability includes Developments eligible to request a Qualified Contract under §42 of the Code. 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~~ pre-application Final Delivery Date.

(G) An amendment to any aspect of the existing tax credit property sought to enable the Development to qualify as an At-Risk Development, that is submitted to the Department after the Application has been filed and is under review will not be accepted.

§11.6.Competitive HTC Allocation Process. This section identifies the general allocation process and the methodology by which awards are made.

(1) Regional Allocation Formula. The Department shall initially make available in each Rural Area and Urban Area of each Uniform State Service Region ("subregion") Housing Tax Credits in an amount consistent with the Regional Allocation Formula developed in compliance with Tex. Gov't Code §2306.1115. 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 regional allocation together with other policies and purposes set out in Tex. Gov't Code Chapter 2306 and the Department shall provide Applicants the opportunity to comment on and propose alternatives to such a recommendation. In general, such a recommendation shall not involve broad reductions in the funding request amounts solely to accommodate regional allocation and shall not involve rearranging the priority of Applications within a particular subregion or set-aside except as described herein. If the Department determines that an allocation recommendation would cause a violation of the \$3 million credit limit per Applicant, the Department will make its recommendation based on the criteria described in §11.4(a) of this chapter. Where sufficient credit becomes available to award an Application on the waiting list late in the calendar year, staff may allow flexibility in meeting the Carryover Allocation submission deadline and/or changes to the Application as necessary to ensure to the fullest extent feasible that available resources are allocated by December 31.

(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 will be prioritized for assignment, with highest priority given to those identified as most competitive based upon the Applicant self-score and an initial program review. The procedure identified in subparagraphs (A) - (F) of this paragraph will also be used in making recommendations to the Board.

(A) USDA Set-Aside Application Selection (Step 1). The first level of priority review will be those Applications with the highest scores in the USDA Set-Aside until the minimum requirements stated in §11.5(2) of this chapter (relating to Competitive HTC Set-Asides. (§2306.111(d)) are attained. The minimum requirement may be exceeded in order to award the

full credit request or underwritten amount of the last Application selected to meet the At-Risk Set-Aside requirement;

(B) At-Risk Set-Aside Application Selection (Step 2). The second level of priority review will be those Applications with the highest scores in the At-Risk Set-Aside statewide until the minimum requirements stated in §11.5(3) of this chapter are attained. This may require the minimum requirement to be exceeded to award the full credit request or underwritten amount of the last Application selected to meet the At-Risk Set-Aside requirement. This step may leave less than originally anticipated in the 26 subregions to award under the remaining steps;

(C) Initial Application Selection in Each Subregion (Step 3). The highest scoring Applications within each of the 26 subregions will then be selected provided there are sufficient funds within the subregion to fully award the Application. Applications electing the At-Risk or USDA Set-Asides will not be eligible to receive an award from funds made generally available within each of the subregions. The Department will, for each such Urban subregion, calculate the maximum percentage in accordance with Tex. Gov't Code §2306.6711(h) and will publish such percentages on its website.

(i) In Uniform State Service Regions containing a county with a population that exceeds one million, the Board may not allocate more than the maximum percentage of credits available for Elderly Developments, unless there are no other qualified Applications in the subregion.

(ii) In accordance with Tex Gov't Code, §2306.6711(g), in Uniform State Service Regions containing a county with a population that exceeds 1.7 million, the Board shall allocate competitive tax credits to the highest scoring development, if any, that is part of a concerted revitalization plan that meets the requirements of §11.9(d)(7) (except for §11.9(d)(7)(A)(ii)(III) and §11.9(d)(7)(B)(~~iv~~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 percent of the funds available to the State are allocated to Applications in Rural Areas. (§2306.111(d)(3)) In the event that more than one subregion is underserved by the same percentage, the priorities described in clauses (i) - (ii) of this subparagraph will be used to select the next most underserved subregion:

(i) the subregion with no recommended At-Risk Applications from the same Application Round; and

(ii) the subregion that was the most underserved during the Application Round during the year immediately preceding the current Application Round.

(E) Statewide Collapse (Step 5). Any credits remaining after the Rural Collapse, including those in any subregion in the State, will be combined into one "pool." The funds will be used to award the highest scoring Application (not selected 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 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. This process will continue until the funds remaining are insufficient to award the next highest scoring Application in the next most underserved subregion. In the event that more than one subregion is underserved by the same percentage, the priorities described in clauses (i) and (ii) of this subparagraph will be used to select the next most underserved subregion:

- (i) the subregion with no recommended At-Risk Applications from the same Application Round; and
- (ii) the subregion that was the most underserved during the Application Round during the year immediately preceding the current Application Round.

(F) Contingent Qualified Nonprofit Set-Aside Step (Step 6). If an insufficient number of Applications participating in the Nonprofit Set-Aside are selected after implementing the criteria described in subparagraphs (A) - (E) of this paragraph to meet the requirements of the 10 percent Nonprofit Set-Aside, action must be taken to modify the criteria described in subparagraphs (A) - (E) of this paragraph to ensure the sSet-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 Application to award. For example, if credits are returned, those credits will first be made available in the set-aside or subregion from which they were originally awarded. This means that the first Application on the waiting list is in part contingent on the nature of the credits that became available for award. The Department shall hold all credit available after the late-July awards until September 30 in order to collect credit that may become available when tax credit Commitments are submitted. Credit confirmed to be available, as of September 30, may be awarded to Applications on the waiting list unless insufficient credits are available to fund the next Application on the waiting list. For credit returned after September 30, awards from the waiting list will be made when the remaining balance is sufficient to award the next Application as may be amended on the waiting list based on the date(s) of returned credit. Notwithstanding the foregoing, if decisions related to any returns or rescissions of tax credits are under appeal or are otherwise contested, the Department may delay awards until resolution of such issues. The Department will evaluate all waiting list awards for compliance with requested sSet-asides. This may cause some lower scoring aApplications to be selected instead of a higher scoring aApplication. (§2306.6710(a) - (f); §2306.111)

(5) Credit Returns Resulting from Force Majeure Events. In the event that the Department receives a return of Competitive HTCs during the current program year from an Application that received a Competitive Housing Tax Credit award during any of the preceding three years, such returned credit will, if the Board determines that all of the requirements of this paragraph are met to its satisfaction, be allocated separately from the current year's tax credit allocation, and not be

subject to the requirements of paragraph (2) of this section. Requests to allocate returned credit separately where all of the requirements of this paragraph have not been met or requests for waivers of any part of this paragraph will not be considered. For purposes of this paragraph, credits returned after September 30 of the preceding program year may be considered to have been returned on January 1 of the current year in accordance with the treatment described in §(b)(2)(C)(iii) of Treasury Regulation 1.42-14. The Department's Governing Board may approve the execution of a current program year Carryover Agreement regarding the returned credits with the Development Owner that returned such credits only if:

(A) The credits were returned as a result of “*Force Majeure*” events that occurred after the start of construction and before issuance of Forms 8609. Force Majeure events are the following sudden and unforeseen circumstances outside the control of the Development Owner: acts of God such as fire, tornado, flooding, significant and unusual rainfall or subfreezing temperatures, or loss of access to necessary water or utilities as a direct result of significant weather events; explosion; vandalism; orders or acts of military authority; litigation; changes in law, rules, or regulations; national emergency or insurrection; riot; acts of terrorism; supplier failures; or materials or labor shortages. If a *Force Majeure* event is also a presidentially declared disaster, the Department may treat the matter under the applicable federal provisions. *Force Majeure* events must make construction activity impossible or materially impede its progress;

(B) Acts or events caused by the negligent or willful act or omission of the Development Owner, Affiliate or a Related Party shall under no circumstance be considered to be caused by *Force Majeure*;

(C) A Development Owner claiming *Force Majeure* must provide evidence of the type of event, as described in subparagraph (A) of this paragraph, when the event occurred, and that the loss was a direct result of the event;

(D) The Development Owner must prove that reasonable steps were taken to minimize or mitigate any delay or damages, that the Development Owner substantially fulfilled all obligations not impeded by the event, including timely closing of all financing and start of construction, that the Development and Development Owner was properly insured and that the Department was timely notified of the likelihood or actual occurrence of an event described in subparagraph (A) of this paragraph;

(E) The event prevents the Development Owner from meeting the placement in service requirements of the original allocation;

(F) The requested current year Carryover Agreement allocates the same amount of credit as that which was returned; and

(G) The Department's Real Estate Analysis Division determines that the Development continues to be financially viable in accordance with the Department's underwriting rules after taking into account any insurance proceeds related to the event.

§11.7. Tie Breaker Factors.

In the event there are Competitive HTC Applications that receive the same number of points in any given set-aside category, rural regional allocation or urban regional allocation, or rural or statewide collapse, the Department will utilize the factors in this section, in the order they are presented, to

determine which Development will receive preference in consideration for an award. For the purposes of this section, all measurements will include ingress/egress requirements and any easements regardless of how they will be held. The tie breaker factors are not intended to specifically address a tie between equally underserved subregions in the rural or statewide collapse.

- (1) Applications having achieved a score on Proximity to the Urban Core. This item does not apply to the At-Risk Set-Aside.
- (2) Applications scoring higher on the Opportunity Index under §11.9(c)(4) or Concerted Revitalization Plan under §11.9(d)(7) of this chapter (relating to Competitive HTC Selection Criteria) as compared to another Application with the same score.
- (3) Applications proposed to be located in a Place, or if located completely outside a Place, a county, that has the fewest HTC units per capita, as compared to another Application with the same score. The HTCs per capita measure (by Place or county) is located in the 2018 HTC Site Demographic Characteristics Report.
- (4) Applications proposed to be located in a census tract with the lowest poverty rate as compared to another Application with the same score.
- (5) Applications proposed to be located the greatest linear distance from the nearest Housing Tax Credit assisted Development. 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.

§11.8. Pre-Application Requirements (Competitive HTC Only).

(a) General Submission Requirements. The ~~Pre-Application~~pre-application process allows Applicants interested in pursuing an Application to assess potential competition across the thirteen (13) state service regions, subregions and set-asides. Based on an understanding of the potential competition they can make a more informed decision 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~~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~~pre-application fee as described in §10.901 of this title (relating to Fee Schedule), not later than the ~~Pre-application~~pre-application Final Delivery Date as identified in §11.2 of this chapter (relating to Program Calendar for Competitive Housing Tax Credits). If the ~~Pre-Application~~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~~pre-application.
- (2) Only one ~~Pre-Application~~pre-application may be submitted by an Applicant for each Development Site.
- (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~~pre-application does not ensure that an Applicant satisfies all Application eligibility, threshold or documentation requirements. While the ~~Pre-Application~~pre-application is more limited in scope than the Application, ~~Pre-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~~ pre-application.

(b) Pre-Application Threshold Criteria. Pursuant to Tex Gov't Code, §2306.6704(c) ~~Pre-Application~~ pre-application 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 §10.204(10) of this title (relating to Required Documentation for Application Submission). For purposes of meeting this specific requirement related to pre-application threshold criteria, proof of consideration and any documentation required for identity of interest transactions is not required at the time of pre-application submission but will be required at the time of full application submission;

(B) Funding request;

(C) Target Population;

(D) Requested set-asides (At-Risk, USDA, Nonprofit, and/or Rural);

(E) Total Number of Units proposed;

(F) Census tract number in which the Development Site is located, and a map of that census tract with an outline of the proposed Development Site;

(G) Expected score for each of the scoring items identified in the ~~Pre-Application~~ pre-application materials;

(H) Proposed name of ownership entity; and

(I) Disclosure of the following Undesirable Neighborhood Characteristics under §10.101(a)(3):-

(i) The Development Site is located in a census tract or within 1,000 feet of any census tract in an Urban Area and the rate of Part I violent crime is greater than 18 per 1,000 persons (annually) as reported on neighborhoodscout.com.

(ii) The Development Site is located within the attendance zones of an elementary school, a middle school or a high school that does not have a Met Standard rating by the Texas Education Agency.

(2) Evidence in the form of a certification provided in the ~~Pre-Application~~ pre-application, that all of the notifications required under this paragraph have been made. (§2306.6704)

(A) The Applicant must list in the pre-application all Neighborhood Organizations on record with the county or state whose boundaries include the entire proposed Development Site as of the beginning of the Application Acceptance Period.

(B) Notification Recipients. No later than the date the ~~Pre-Application~~ pre-application is submitted, notification must be sent to all of the persons or entities prescribed in clauses (i) – (viii) of this subparagraph. Developments located in an ETJ of a municipality are required to notify both municipal and county officials. The notifications may be sent by e-mail, fax or mail with registered return receipt or similar tracking mechanism in the format required in the Public Notification Template provided in the Uniform 2018 Multifamily Application Template. The Applicant is required to retain proof of delivery in the event the Department requests proof of notification. Acceptable evidence of such delivery is demonstrated by

signed receipt for mail or courier delivery and confirmation of delivery for fax and e-mail. Officials to be notified are those officials in office at the time the ~~Pre-Application~~pre-application is submitted. Note that between the time of pre-application (if made) and full Application, such officials may change and the boundaries of their jurisdictions may change. By way of example and not by way of limitation, events such as redistricting may cause changes which will necessitate additional notifications at full Application. Meetings and discussions do not constitute notification. Only a timely and compliant written notification to the correct person constitutes notification.

- (i) Neighborhood Organizations on record with the state or county as of the beginning of the Application Acceptance Period whose boundaries include the entire proposed Development Site;
- (ii) Superintendent of the school district in which the Development Site is located;
- (iii) Presiding officer of the board of trustees of the school district in which the Development Site is located;
- (iv) Mayor of the municipality (if the Development Site is within a municipality or its extraterritorial jurisdiction);
- (v) All elected members of the Governing Body of the municipality (if the Development Site is within a municipality or its extraterritorial jurisdiction);
- (vi) Presiding officer of the Governing Body of the county in which the Development Site is located;
- (vii) All elected members of the Governing Body of the county in which the Development Site is located; and
- (viii) State Senator and State Representative of the districts whose boundaries include the proposed Development Site;

(C) Contents of Notification.

- (i) The notification must include, at a minimum, all of the information described in subclauses (I) – (VI) of this clause.
 - (I) the Applicant's name, address, an individual contact name and phone number;
 - (II) the Development name, address, city, and county;
 - (III) a statement informing the entity or individual being notified that the Applicant is submitting a request for Housing Tax Credits with the Texas Department of Housing and Community Affairs;
 - (IV) whether the Development proposes New Construction, Reconstruction, Adaptive Reuse, or Rehabilitation;
 - (V) the physical type of Development being proposed (*e.g.* single family homes, duplex, apartments, high-rise, etc.); and
 - (VI) the approximate total number of Units and approximate total number of Low-Income Units.
- (ii) The Applicant must disclose that, in accordance with the Department's rules, aspects of the Development may not yet have been determined or selected or may be subject to change, such as changes in the amenities ultimately selected and provided;

(iii) The notification may not contain any false or misleading statements. Without limiting the generality of the foregoing, the notification may not create the impression that the proposed Development will serve a Target Population exclusively or as a preference unless such targeting or preference is documented in the Application and is in full compliance with all applicable state and federal laws, including state and federal fair housing laws; and

(iv) 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-Application~~pre-application which have satisfied all of the ~~Pre-Application~~pre-application requirements, including those in §11.9(e)(3) of this chapter, will be eligible for ~~Pre-Application~~pre-application points. The order and scores of those Developments released on the ~~Pre-Application~~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~~pre-application Submission Log. Inclusion of a ~~Pre-Application~~pre-application on the ~~Pre-Application~~pre-application Submission Log does not ensure that an Applicant will receive points for a ~~Pre-Application~~pre-application.

§11.9.Competitive HTC Selection Criteria.

(a) General Information. This section identifies the scoring criteria used in evaluating and ranking Applications. The criteria identified in subsections (b) - (e) of this section include those items required under Tex. Gov't Code, Chapter 2306, §42 of the Code, and other criteria established in a manner consistent with Chapter 2306 and §42 of the Code. There is no rounding of numbers in this section for any of the calculations in order to achieve the desired requirement or limitation, unless rounding is explicitly stated as allowed for that particular calculation or criteria. The Application must include one or more maps indicating the location of the Development Site and the related distance to the applicable facility. Distances are to be measured from the nearest boundary of the Development Site to the nearest boundary of the property or easement containing the facility, unless otherwise noted. For the purposes of this section, all measurements will include ingress/egress requirements and any easements regardless of how they will be held. Due to the highly competitive nature of the program, Applicants that elect points where supporting documentation is required but fail to provide any supporting documentation will not be allowed to cure the issue through an Administrative Deficiency. However, Department staff may provide the Applicant an opportunity to explain how they believe the Application, as submitted, meets the requirements for points or otherwise satisfies the requirements.

(b) Criteria promoting development of high quality housing.

(1) Size and Quality of the Units. (§2306.6710(b)(1)(D); §42(m)(1)(C)(iii)) An Application may qualify for up to fifteen (15) points under subparagraphs (A) and (B) of this paragraph.

(A) Unit Sizes (8 points). The Development must meet the minimum requirements identified in this subparagraph to qualify for points. Points for this item will be automatically granted for Applications involving Rehabilitation (excluding Reconstruction), for Developments receiving funding from USDA, or for Supportive Housing Developments without meeting these square footage minimums only if requested in the Self Scoring Form.

- (i) five-hundred fifty (550) square feet for an Efficiency Unit;
- (ii) six-hundred fifty (650) square feet for a one Bedroom Unit;
- (iii) eight-hundred fifty (850) square feet for a two Bedroom Unit;
- (iv) one-thousand fifty (1,050) square feet for a three Bedroom Unit; and
- (v) one-thousand two-hundred fifty (1,250) square feet for a four Bedroom Unit.

(B) Unit and Development Features (7 points). Applicants that elect in an Application to provide specific amenity and quality features in every Unit at no extra charge to the tenant will be awarded points based on the point structure provided in §10.101(b)(6)(B) of this title (relating to Site and Development Requirements and Restrictions) and as certified to in the Application. The amenities will be required to be identified in the LURA. Rehabilitation Developments will start with a base score of three (3) points and Supportive Housing Developments will start with a base score of five (5) points.

(2) Sponsor Characteristics. (§42(m)(1)(C)(iv)) An Application may qualify to receive either one (1) or two (2) points if it meets one of the following conditions. Any Application that includes a HUB must include a narrative description of the HUB's experience directly related to the housing industry.

(A) The ownership structure contains either a HUB certified by the Texas Comptroller of Public Accounts by the Full Application Delivery Date or it contains a Qualified Nonprofit Organization, provided the Application is under the Nonprofit Set-Aside. The HUB or Qualified Nonprofit Organization must have some combination of ownership interest in the General Partner of the Applicant, Cash Flow from operations, and Developer Fee which taken together equal at least 50 percent and no less than 5 percent for any category. For example, a HUB or Qualified Nonprofit Organization may have 20 percent ownership interest, 25 percent of the Developer Fee, and 5 percent of Cash Flow from operations. The HUB or Qualified Nonprofit Organization must also materially participate in the Development and operation of the Development throughout the Compliance Period and must have experience directly related to the housing industry, which may include experience with property management, construction, development, financing, or compliance. Material participation means that the HUB or Qualified Nonprofit is regularly, continuously, and substantially involved in providing services integral to the Development Team; providing services as an independent contractor is not sufficient. A Principal of the HUB or Qualified Nonprofit Organization cannot be a Related Party to any other Principal of the Applicant or Developer (excluding another Principal of said HUB or Qualified Nonprofit Organization). (2 points)

(B) The HUB or Nonprofit Organization must be involved with the Development Services or in the provision of on-site tenant services during the Development's Affordability Period. Selecting this item because of the involvement of a Nonprofit Organization does not make an Application eligible for the Nonprofit Set-Aside. A Principal of the HUB or ~~Qualified~~ Nonprofit Organization cannot be a Related Party to any other Principal of the Applicant or Developer (excluding another Principal of said HUB or ~~Qualified~~ Nonprofit Organization). (1 point)

(c) Criteria to serve and support Texans most in need.

(1) Income Levels of Tenants. (§§2306.111(g)(3)(B) and (E); 2306.6710(b)(1)(C) and (e); and §42(m)(1)(B)(ii)(I)) An Application may qualify for up to sixteen (16) points for rent and income restricting a Development for the entire Affordability Period at the levels identified in subparagraph (A) or (B) of this paragraph.

(A) For any Development located within a non-Rural Area of the Dallas, Fort Worth, Houston, San Antonio, or Austin MSAs:

(i) At least 40 percent of all ~~H~~ow-~~I~~ncome Units at 50 percent or less of AMGI (16 points);

(ii) At least 30 percent of all ~~H~~ow-~~I~~ncome Units at 50 percent or less of AMGI (14 points); or

(iii) At least 20 percent of all ~~H~~ow-~~I~~ncome Units at 50 percent or less of AMGI (12 points).

(B) For Developments proposed to be located in areas other than those listed in subparagraph (A) of this paragraph:

(i) At least 20 percent of all ~~H~~ow-~~I~~ncome Units at 50 percent or less of AMGI (16 points);

(ii) At least 15 percent of all ~~H~~ow-~~I~~ncome Units at 50 percent or less of AMGI (14 points); or

(iii) At least 10 percent of all ~~H~~ow-~~I~~ncome Units at 50 percent or less of AMGI (12 points).

(2) Rent Levels of Tenants. (§2306.6710(b)(1)(E)) An Application may qualify to receive up to thirteen (13) points for rent and income restricting a Development for the entire Affordability Period. These levels are in addition to those committed under paragraph (1) of this subsection.

(A) At least 20 percent of all ~~H~~ow-~~I~~ncome Units at 30 percent or less of AMGI for Supportive Housing Developments proposed by a Qualified Nonprofit (13 points);

(B) At least 10 percent of all ~~H~~ow-~~I~~ncome Units at 30 percent or less of AMGI or, for a Development located in a Rural Area, 7.5 percent of all low-income Units at 30 percent or less of AMGI (11 points); or

(C) At least 5 percent of all ~~H~~ow-~~I~~ncome Units at 30 percent or less of AMGI (7 points).

(3) Tenant Services. (§2306.6710(b)(1)(G) and §2306.6725(a)(1)) A Supportive Housing Development proposed by a Qualified Nonprofit may qualify to receive up to eleven (11) points and all other Developments may receive up to ten (10) points.

(A) By electing points, the Applicant certifies that the Development will provide a combination of supportive services, which are listed in §10.101(b)(7) of this title, appropriate for the proposed tenants and that there is adequate space for the intended services. The

provision and complete list of supportive services will be included in the LURA. The Owner may change, from time to time, the services offered; however, the overall points as selected at Application will remain the same. No fees may be charged to the tenants for any of the services. Services must be provided on-site or transportation to those off-site services identified on the list must be provided. The same service may not be used for more than one scoring item. (10 points for Supportive Housing, 9 points for all other Development)

(B) The Applicant certifies that the Development will contact local nonprofit and governmental providers of services that would support the health and well-being of the Department's tenants, and will make Development community space available to them on a regularly-scheduled basis to provide outreach services and education to the tenants. Applicants may contact service providers on the Department list, or contact other providers that serve the general area in which the Development is located. (1 point)

(4) Opportunity Index. The Department may refer to locations qualifying for points under this scoring item as high opportunity areas in some materials. A Development is eligible for a maximum of seven (7) Opportunity Index Points.

(A) A proposed Development is eligible for up to two (2) opportunity index points if it is located entirely within a census tract with a poverty rate of less than the greater of 20% or the median poverty rate for the region and meets the requirements in (i) or (ii) below.

(i) The Development Site is located entirely within a census tract that has a poverty rate of less than the greater of 20% or the median poverty rate for the region and a median household income rate in the two highest quartiles within the uniform service region. (2 points)

(ii) The Development Site is located entirely within a census tract that has a poverty rate of less than the greater of 20% or the median poverty rate for the region, with a median household income in the third quartile within the region, and is contiguous to a census tract in the first or second quartile, without physical barriers such as highways or rivers between, and the Development Site is no more than 2 miles from the boundary between the census tracts. For purposes of this scoring item, a highway is a limited-access road with a speed limit of 50 miles per hour or more; and, (1 points)

(B) An Application that meets the foregoing criteria may qualify for additional points for any one or more of the following factors. Each amenity may be used only once for scoring purposes, unless allowed within the scoring item, regardless of the number of categories it fits. All members of the Applicant or Affiliates cannot have had an ownership position in the amenity or served on the board or staff of a nonprofit that owned or managed that amenity within the year preceding the Pre-Application Final Delivery Date. All amenities must be operational or have started Site Work at the Pre-Application Final Delivery Date. Any age restrictions associated with an amenity must positively correspond to the target population of the proposed Development. ~~Any costs or membership fees associated with making use of a recreational amenity cannot exceed \$50 per person per month (assume cost is for a single admittance per month and membership fee is for annual membership paid on a monthly basis):~~

(i) For Developments located in an Urban Area (other than Applicants competing in the USDA Set-Aside), an Application may qualify to receive points through a combination of requirements in subclauses (I) through (XIV) of this subparagraph clause.

(I) The Development Site is located on an ~~accessible~~ route, with sidewalks for pedestrians, that is ~~less than~~ 1/2 mile or less from the entrance to a public park with an ~~accessible~~ playground. ~~The route and the playground both must meet 2010 ADA standards.~~ 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 an ~~accessible~~ route, with sidewalks for pedestrians, that is ~~less than~~ 1/2 mile or less 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. ~~The route and the public transportation stop must meet 2010 ADA standards.~~ For purposes of this scoring item, regular is defined as scheduled service beyond 8 a.m. to 5 p.m., plus weekend service (both Saturday and Sunday). (1 point)

(III) The Development Site is located within 1 mile of a full-service grocery store ~~or pharmacy~~. 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 ~~d~~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 ~~for grocery stores and 1 point for pharmacies~~)

(IV) The Development Site is located within 1 mile of a pharmacy. For the purposes of this menu item only, the pharmacy may be claimed if it is within the same building as a grocery store. (1 point)

(~~F~~V) The Development Site is located within 3 miles of a health-related facility, such as a full service hospital, community health center, minor emergency center, emergency room or urgent care facility. Physician offices and physician specialty offices are not considered in this category. (1 point)

(~~V~~I) The Development Site is within 2 miles of a center that is licensed by the Department of Family and Protective Services (“DFPS”) specifically to provide a school-age program or to provide a child care program for infants, toddlers, and/or pre-kindergarten. The Application must include evidence from DFPS that the center meets the above requirements. (1 point)

(~~V~~II) The Development Site is located in a census tract with a property crime rate of 26 per 1,000 persons or less as defined by neighborhoodscout.com, or local law enforcement data sources. If employing the latter source, the formula for

determining the crime rate will include only data relevant to the census tract in which the Development Site is located. (1 point)

(VIII) The development Site is located within 1 mile of a public library that has indoor meeting space, physical books that can be checked out and that are of a general and wide-ranging subject matter, computers and internet access, and that is open ~~during normal operating hours at least 6 days a~~ 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)

(~~VHIX~~) The Development Site is located within 5 miles of an accredited university or community college, as confirmed by the Texas Higher Education Coordination Board (“THECB”). To be considered a university for these purposes, the provider of higher education must have the authority to confer bachelor’s degrees. Two-year colleges are considered community colleges, and to be considered for these purposes must confer at least associate’s degrees. The university or community college must have a physical campus, where classes are regularly held for students pursuing their degrees, within the required distance; online-only institutions do not qualify under this item. (1 point)

(~~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 as tabulated by the 2011-2015 American Community Survey 5-year Estimate. (1 point)

(XI) Development Site is within 1 mile of an indoor recreation facility available to the public. Examples include a gym, health club, a bowling alley, a theater, or a municipal or county community center. (1 point)

(XII) Development Site is within 1 mile of an outdoor, dedicated, and permanent recreation facility available to the public. Examples include swimming pools or splash pads, tennis courts, golf courses, softball fields, or basketball courts. (1 point)

(XIII) Development Site is within 1 mile of community, civic or service organizations that provide regular and recurring substantive services 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)

(~~XIVH~~) Development Site is in the current service area of Meals on Wheels or similar nonprofit service that provides regular visits and meals to individuals in their homes. (1 point)

(ii) For Developments located in a Rural Area and any Application qualifying under the USDA set-aside, an Application may qualify to receive points through a combination of requirements in subclauses (I) through (XIII) of this subparagraph clause.

(I) The Development Site is located within 4 miles of a full-service grocery store ~~or pharmacy~~. 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 ~~d~~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 ~~for grocery stores and 1 point for pharmacies~~)

(II) The Development Site is located within 4 miles of a pharmacy. For the purposes of this menu item only, the pharmacy may be claimed if it is within the same building as a grocery store. (1 point)

(III) The Development Site is located within 4 miles of health-related facility, such as a full service hospital, community health center, or minor emergency center. Physician offices and physician specialty offices are not considered in this category. (1 point)

(IV) The Development Site is located within 4 miles of a center that is licensed by the Department of Family and Protective Services (“DFPS”) specifically to provide a school-age program or to provide a child care program for infants, toddlers, and/or pre-kindergarten. The Application must include evidence from DFPS that the center meets the above requirements. (1 point)

(V) The Development Site is located in a census tract with a property crime rate 26 per 1,000 or less, as defined by neighborhoodscout.com, or local law enforcement data sources. If employing the latter source, the formula for determining the crime rate will include only data relevant to the census tract in which the Development Site is located. (1 point)

(VI) The Development Site is located within 4 miles of a public library that has indoor meeting space, physical books that can be checked out and that are of a general and wide-ranging subject matter, computers and internet access, and that is open ~~during normal operating hours at least 5 days a~~ 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 ~~on an accessible route that is less than 1~~ within 4 miles from of a public park with an ~~accessible~~ playground. ~~The route and the playground both must meet 2010 ADA standards.~~ (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)

(~~IX~~) Development Site is within 3 miles of an indoor recreation facility available to the public. Examples include a gym, health club, a bowling alley, a theater, or a municipal or county community center. (1 point)

(~~X~~) Development Site is within 3 miles of an outdoor, dedicated, and permanent recreation facility available to the public. Examples include swimming pools or splash pads, tennis courts, golf courses, softball fields ,or basketball courts. (1 point)

(~~XI~~) Development Site is within 3 miles of community, civic or service organizations that provide regular and recurring substantive services 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)

(~~XII~~) Development Site is in the current service area of Meals on Wheels or similar nonprofit service that provides regular visits and meals to individuals in their homes. (1 point)

(5) Underserved Area. (§§2306.6725(b)(2); 2306.127(3), 42(m)(1)(C)(ii)) An Application may qualify to receive up to five (5) points if the Development Site is located in one of the areas described in subparagraphs (A) - (E) of this paragraph, and the Application contains evidence substantiating qualification for the points. 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. The Application must include evidence that the Development Site meets the requirements.

(A) The Development Site is located wholly or partially within the boundaries of a colonia as such boundaries are determined by the Office of the Attorney General and within 150 miles of the Rio Grande River border. For purposes of this scoring item, the colonia must lack water, wastewater, or electricity provided to all residents of the colonia at a level commensurate with the quality and quantity expected of a municipality and the proposed Development must make available any such missing water, wastewater, and electricity supply infrastructure physically within the borders of the colonia in a manner that would enable the current dwellings within the colonia to connect to such infrastructure (2 points);

(B) The Development Site is located entirely within the boundaries of an Economically Distressed Area (1 point);

(C) The Development Site is located entirely within a census tract that does not have a Development that was awarded ~~that is~~ less than 30 years ~~old~~ ago according to the Department's property inventory tab of the Site Demographic Characteristics Report; (3 points);

(D) For areas not scoring points for (C) above, the Development Site is located entirely within a census tract that does not have a Development that was awarded ~~that is~~ less than 15 years ~~old~~ ago according to the Department's property inventory tab of the Site Demographic Characteristics Report. (2 points);

(E) The Development Site is located entirely within a census tract whose boundaries are wholly within an incorporated area and the census tract itself and all of its contiguous census

tracts do not have a Development ~~that was awarded~~ ~~that is~~ less than 15 years ~~old~~ ~~ago~~ according to the Department's property inventory tab of the Site Demographic Characteristics Report. This item will apply in Places with a population of 150,000 or more, and will not apply in the At-Risk Set-Aside (5 points).

(6) Tenant Populations with Special Housing Needs. (§42(m)(1)(C)(v)) An Application may qualify to receive two (2) points by serving Tenants with Special Housing Needs. Points will be awarded as described in subparagraphs (A) - (C) of this paragraph. If pursuing these points, Applicants must try to score first with subparagraph (A) and then subparagraph (B), unless the Applicant can establish its lack of legal authority to commit Section 811 PRA Program units in a Development, both of which ~~Subparagraphs (A) and (B)~~ pertain to the requirements of the Section 811 Project Rental Assistance Program ("Section 811 PRA Program") (10 TAC Chapter 8). Only if an Applicant or Affiliate cannot meet the requirements of subparagraphs (A) or (B) may an Application qualify for subparagraph (C).

(A) An Applicant or Affiliate that Owns or Controls an Existing Development that is eligible to participate in the Department's Section 811 Project Rental Assistance Program ("Section 811 PRA Program") ~~will~~ must do so in order to receive two (2) points. In order to qualify for points, the Existing Development must commit to the Section 811 PRA Program at minimum 10 Section 811 PRA Program Units, unless the Integrated Housing Rule, 10 TAC §1.15, or the 811 Program Rental Assistance Rule ("811 Rule"), 10 TAC Chapter 8, limits the Existing Development to fewer than 10 Section 811 PRA Program Units. The same Section 811 PRA Program Units cannot be used to qualify for points in more than one HTC Application. The Applicant or Affiliate will comply with the requirements of 10 TAC Chapter 8.

(B) An Applicant or Affiliate that does not meet the Existing Development requirements of 10 TAC Chapter 8 but still meets the requirements of 10 TAC Chapter 8.3 is eligible to receive two (2) points by committing Units in the proposed Development to participate in the Department's Section 811 PRA Program. In order to be eligible for points, Applicants must commit at least 10 Section 811 PRA Program Units in the proposed Development for participation in the Section 811 PRA Program unless the Integrated Housing Rule, 10 TAC §1.15, or the 811 Program Rental Assistance Rule ("811 Rule"), 10 TAC Chapter 8, limits the Development to fewer than 10 Section 811 PRA Program Units. The same Section 811 PRA Program Units cannot be used to qualify for points in more than one HTC Application. The Applicant will comply with the requirements of 10 TAC Chapter 8.

(C) Applications ~~proposing Developments that do not~~ that are unable to meet the requirements of subparagraphs (A) or (B) of this paragraph may qualify for two (2) points by meeting the requirements of this subparagraph, (C). In order to qualify for points, Applicants must agree to set-aside at least 5 percent of the total Units for Persons with Special Needs. The units identified for this scoring item may not be the same units identified for Section 811 Project Rental Assistance Demonstration program. For purposes of this subparagraph, Persons with Special Needs is defined as households where one individual has alcohol and/or drug addictions, Colonia resident, Persons with Disabilities, Violence Against Women Act Protections (domestic violence, dating violence, sexual assault, and stalking), persons with HIV/AIDS, homeless populations, veterans, wounded warriors (as defined by the Caring for Wounded Warriors Act of 2008), and farmworkers. Throughout the Compliance Period, unless otherwise permitted by the Department, the

Development Owner agrees to affirmatively market Units to Persons with Special Needs. In addition, the Department will require an initial minimum twelve-month period during which Units must either be occupied by Persons with Special Needs or held vacant, unless the units receive HOME funds from any source. After the initial twelve-month period, the Development Owner will no longer be required to hold Units vacant for Persons with Special Needs, but will be required to continue to specifically market Units to Persons with Special Needs.

(7) Proximity to the Urban Core. A Development in a Place, as defined by the US Census Bureau, with a population over 200,000 may qualify for points under this item. The Development Site must be located within 4 miles of the main municipal government administration building if the population of the Place is ~~more than~~ 500,000 or more, or within 2 miles of the main municipal government administration building if the population of the city is 200,000 - 499,999. The main municipal government administration building will be determined by the location of regularly scheduled municipal governing body meetings. Distances are measured from the nearest property boundaries, not inclusive of non-contiguous parking areas. This scoring item will not apply to Applications under the At-Risk Set-Aside. (5 points)

(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 of this chapter. Such resolution(s) must specifically identify the Development whether by legal description, address, Development name, Application number or other verifiable method. In providing a resolution a municipality or county should consult its own staff and legal counsel as to whether such resolution will be consistent with Fair Housing laws as they may apply, including, as applicable, consistency with any Fair Housing Activity Statement-Texas (“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. 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)) An Application may receive one (1) point for a commitment of Development funding from the city (if located in a city) or county in which the Development Site is located. The commitment of Development funding must be reflected in the Application as a financial benefit to the Development, i.e. reported as a source of funds on the Sources and Uses Form and/or reflected in a lower cost in the Development Cost Schedule, such as notation of a reduction in building permits and related costs. Documentation must include a letter from an official of the municipality, county, or other instrumentality with jurisdiction over the proposed Development stating they will provide a loan, grant, reduced fees or contribution of other value that equals \$500 or more for Applications located in Urban subregions or \$250 or more for Applications located in Rural subregions for the benefit of the Development. The letter must describe the value of the contribution, the form of the contribution, e.g. reduced fees or gap funding, and any caveats to delivering the contribution. Once a letter is submitted to the Department it may not be changed or withdrawn.

(3) Declared Disaster Area. (§2306.6710(b)(1)(H)) An Application may receive ten (10) points if the Development Site is located in an area declared to be a disaster area under Tex. Gov't Code §418.014 at the time of Full Application Delivery Date or at any time within the two-year period preceding the Full Application Delivery Date.

(4) Quantifiable Community Participation. (§2306.6710(b)(1)(J); §2306.6725(a)(2)) An Application may qualify for up to nine (9) points for written statements from a Neighborhood Organization. In order for the statement to qualify for review, the Neighborhood Organization must have been in current, valid existence with boundaries that contain the entire Development Site as of the Pre-Application Final Delivery Date. In addition, the Neighborhood Organization must be on record with the Secretary of State or county in which the Development Site is located. 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 percent of the current membership of the Neighborhood Organization consists of homeowners and/or tenants living within the boundaries, of the Neighborhood Organization; and

(v) an explicit expression of support, opposition, or neutrality. Any expression of opposition must be accompanied with at least one reason forming the basis of that opposition. A Neighborhood Organization should be prepared to provide additional information with regard to opposition.

(B) Technical Assistance. For purposes of this paragraph, if and only if there is no Neighborhood Organization already in existence or on record, the Applicant, Development Owner, or Developer is allowed to provide technical assistance in the creation of and/or placing on record of a Neighborhood Organization. Technical assistance is limited to:

- (i) the use of a facsimile, copy machine/copying, email and accommodations at public meetings;
- (ii) assistance in completing the QCP Neighborhood Information Packet, providing boundary maps and assisting in the Administrative Deficiency process; and
- (iii) presentation of information and response to questions at duly held meetings where such matter is considered.

(C) Point Values for Quantifiable Community Participation. An Application may receive points based on the values in clauses (i) - (vi) of this subparagraph. Points will not be cumulative. Where more than one written statement is received for an Application, the average of all statements received in accordance with this subparagraph will be assessed and awarded.

- (i) nine (9) points for explicit support from a Neighborhood Organization that, during at least one of the three prior Application Rounds, provided a written statement that qualified as Quantifiable Community Participation opposing any Competitive Housing Tax Credit Application and whose boundaries remain unchanged;
- (ii) eight (8) points for explicitly stated support from a Neighborhood Organization;
- (iii) six (6) points for explicit neutrality from a Neighborhood Organization that, during at least one of the three prior Application Rounds provided a written statement, that qualified as Quantifiable Community Participation opposing any Competitive Housing Tax Credit Application and whose boundaries remain unchanged;
- (iv) four (4) points for statements of neutrality from a Neighborhood Organization or statements not explicitly stating support or opposition, or an existing Neighborhood Organization provides no statement of either support, opposition or neutrality, which will be viewed as the equivalent of neutrality or lack of objection;
- (v) four (4) points for areas where no Neighborhood Organization is in existence, equating to neutrality or lack of objection, or where the Neighborhood Organization did not meet the explicit requirements of this section; or
- (vi) zero (0) points for statements of opposition meeting the requirements of this subsection.

(D) Challenges to opposition. Any written statement from a Neighborhood Organization expressing opposition to an Application may be challenged if it is contrary to findings or determinations, including zoning determinations, of a municipality, county, school district, or other local Governmental Entity having jurisdiction or oversight over the finding or determination. If any such statement is challenged, the challenger must declare the basis for the challenge and submit such challenge by the Challenges to Neighborhood Organization Opposition Delivery Date May 1, 2018. The Neighborhood Organization expressing opposition will be given seven (7) calendar days to provide any information related to the issue of whether their assertions are contrary to the findings or determinations of a local Governmental Entity. All such materials and the analysis of the Department's staff will be

provided to a fact finder, chosen by the Department, for review and a determination of the issue presented by this subsection. The fact finder will not make determinations as to the accuracy of the statements presented, but only with regard to whether the statements are contrary to findings or determinations of a local Governmental Entity. The fact finder's determination will be final and may not be waived or appealed.

(5) Community Support from State Representative. (§2306.6710(b)(1)(J); §2306.6725(a)(2)) Applications may receive up to eight (8) points or have deducted up to eight (8) points for this scoring item. To qualify under this paragraph letters must be on the State Representative's letterhead, be signed by the State Representative, identify the specific Development and express whether the letter conveys support, neutrality, or opposition. This documentation will be accepted with the Application or through delivery to the Department from the Applicant or the State Representative and must be submitted no later than the Final Input from Elected Officials Delivery Date as identified in §11.2 of this chapter. Letters received by the Department setting forth that the State Representative objects to or opposes the Application or Development will be added to the Application posted on the Department's website. Once a letter is submitted to the Department it may not be changed or withdrawn. Therefore, it is encouraged that letters not be submitted well in advance of the specified deadline in order to facilitate consideration of all constituent comment and other relevant input on the proposed Development. State Representatives to be considered are those in office at the time the letter is submitted and whose district boundaries include the Development Site. If the office is vacant, the Application will be considered to have received a neutral letter. Neutral letters, letters of opposition, or letters that do not specifically refer to the Development will receive zero (0) points. A letter from a state representative expressing the level of community support may be expressly based on the representative's understanding or assessments of indications of support by others, such as local government officials, constituents, and/or other applicable representatives of the community.

(6) Input from Community Organizations. (§2306.6725(a)(2)) Where, at the time of Application, the Development Site does not fall within the boundaries of any qualifying Neighborhood Organization, then, in order to ascertain if there is community support, an Application may receive up to four (4) points for letters that qualify for points under subparagraphs (A), (B), and/or (C) of this paragraph. No more than four (4) points will be awarded under this point item under any circumstances. All letters of support must be submitted within the Application. Once a letter is submitted to the Department it may not be changed or withdrawn. Should an Applicant elect this option and the Application receives letters in opposition, then one (1) point will be subtracted from the score under this paragraph for each letter in opposition, provided that the letter is from an organization that would otherwise qualify under this paragraph. However, at no time will the Application receive a score lower than zero (0) for this item. Letters received by the Department setting forth that the community organization objects to or opposes the Application or Development will be added to the Application posted on the Department's website.

(A) An Application may receive two (2) points for each letter of support submitted from a community or civic organization that serves the community in which the Development Site is located. Letters of support must identify the specific Development and must state support of the specific Development at the proposed location. To qualify, the organization must be qualified as tax exempt and have as a primary (not ancillary or secondary) purpose the overall betterment, development, or improvement of the community as a whole or of a major aspect of the community such as improvement of schools, fire protection, law enforcement, city-wide transit, flood mitigation, or the like. The Applicant must provide evidence that

~~The community or civic organization must provide evidence of its tax-exempt status (e.g., a copy of its tax-exempt determination letter or its listing on a federal or state government website) and evidence it remains in good standing~~ by providing evidence from a federal or state government database confirming that the exempt status continues. An Organization must also provide evidence of its participation in the community in which the Development Site is located including, but not limited to, a listing of services and/or members, brochures, annual reports, etc. Letters of support from organizations that cannot provide reasonable evidence that they are active in the area that includes the location of the Development Site will not be awarded points. For purposes of this subparagraph, community and civic organizations do not include neighborhood organizations, governmental entities (excluding Special Management Districts as described in subparagraph C), or taxing entities.

(B) An Application may receive two (2) points for a letter of support from a property owners association created for a master planned community whose boundaries include the Development Site and that does not meet the requirements of a Neighborhood Organization for the purpose of awarding points under paragraph (4) of this subsection.

(C) An Application may receive two (2) points for a letter of support from a Special Management District whose boundaries, as of the Full Application Delivery Date as identified in §11.2 of this chapter (relating to Program Calendar for Competitive Housing Tax Credits), include the Development Site.

(D) Input that evidences unlawful discrimination against classes of persons protected by Fair Housing law or the scoring of which the Department determines to be contrary to the Department's efforts to affirmatively further fair housing will not be considered. If the Department receives input that could reasonably be suspected to implicate issues of non-compliance under the Fair Housing Act, staff will refer the matter to the Texas Workforce Commission for investigation, but such referral will not, standing alone, cause staff or the Department to terminate the Application. Staff will report all such referrals to the Board and summarize the status of any such referrals in any recommendations.

(7) Concerted Revitalization Plan. An Application may qualify for points under this paragraph only if no points are elected under subsection (c)(4) of this section, related to Opportunity Index.

(A) For Developments located in an Urban Area:

(i) An Application may qualify to receive points if the Development Site is located in a distinct area that was once vital and has lapsed into a situation requiring concerted revitalization, and where a concerted revitalization plan has been developed and executed. The area targeted for revitalization must be larger than the assisted housing footprint and should be a neighborhood or small group of contiguous neighborhoods with common attributes and problems. The Application must include a copy of the plan or a link to the online plan and a description of where specific information required below can be found in the plan. The concerted revitalization plan, which may be a Tax Increment Reinvestment Zone ("TIRZ") or Tax Increment Finance ("TIF") or similar plan, must meet the criteria described in subclauses (I) - (FV) of this clause:

(I) The concerted revitalization plan must have been adopted by the municipality or county in which the Development Site is located. The resolution adopting the plan, or if development of the plan and budget were delegated the resolution of delegation and other evidence in the form of certifications by authorized persons confirming the adoption of the plan and budget, must be submitted with the application.

(II) The problems in the revitalization area must be identified through a process in which affected local residents had an opportunity to express their views on problems facing the area, and how those problems should be addressed and prioritized. These problems may include the following:

(-a-) long-term disinvestment, such as significant presence of residential and/or commercial blight, streets infrastructure neglect such as inadequate drainage, and/or sidewalks in significant disrepair;

(-b-) declining quality of life for area residents, such as high levels of violent crime, property crime, gang activity, or other significant criminal matters such as the manufacture or distribution of illegal substances or overt illegal activities;

(III) Staff will review the target area for presence of the problems identified in the plan and for targeted efforts within the plan to address those problems. In addition, but not in lieu of, such a plan may be augmented with targeted efforts to promote a more vital local economy and a more desirable neighborhood, including but not limited to:

(-a-) creation of needed affordable housing by improvement of existing affordable housing that is in need of replacement or major renovation;

(-b-) attracting private sector development of housing and/or business;

(-c-) developing health care facilities;

(-d-) providing public transportation;

(-e-) developing significant recreational facilities; and/or

(-f-) improving under-performing schools.

(IV) The adopted plan must have sufficient, documented and committed funding to accomplish its purposes on its established timetable. This funding must have been flowing in accordance with the plan, such that the problems identified within the plan will have been sufficiently mitigated and addressed prior to the Development being placed into service.

(V) The plan must be current at the time of Application and must officially continue for a minimum of three years thereafter.

(ii) Up to seven (7) points will be awarded based on:

(I) Applications will receive four (4) points for a letter from the appropriate local official providing documentation of measurable improvements within the revitalization area based on the target efforts outlined in the plan. The letter must also discuss how the improvements will lead to an appropriate area for the placement of housing; and

(II) Applications may receive (2) points in addition to those under subclause (I) of this clause if the Development is explicitly identified in a resolution by the municipality, or county if the Development Site is completely outside of a city, as ~~contributing more than any other to~~ being necessary for the concerted revitalization efforts of the municipality or county (as applicable). A municipality or county may only identify one ~~single~~ 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; and

(III) Applications will receive (1) point in addition to those under subclause (I) and (II) if the development is in a location that would score at least 4 points under Opportunity Index, §11.9(c)(4)(B), except for the criteria found in §11.9(c)(4)(A) and subparagraphs §11.9(c)(4)(A)(i) and §11.9(c)(4)(A)(ii).

(B) For Developments located in a Rural Area.

(i) Applications will receive 4 points for the rehabilitation or demolition and reconstruction of a development in a rural area that has been leased at 85% or greater for the six months preceding Application by low income households and which was initially constructed 25 or more years prior to Application submission as either public housing or as affordable housing with support from USDA, HUD, the HOME program, or the CDBG program. The occupancy percentage will not include units that cannot be occupied due to needed repairs, as confirmed by the PCA or CNA. Demolition and relocation of units must be determined locally to be necessary to comply with the Affirmatively Furthering Fair Housing Rule, or if necessary to create an acceptable distance form Undesirable Site Features or Undesirable Neighborhood Characteristics.

(ii) Applications may receive (2) points in addition to those under clause (i) of this subparagraph if the Development is explicitly identified in a resolution by the municipality (or county if the Development Site is completely outside of a city) as contributing more than any other to the concerted revitalization efforts of the municipality or county (as applicable). Where a Development Site crosses jurisdictional boundaries, resolutions from all applicable governing bodies must be submitted. A municipality or county may only identify one single Development during each Application Round for each specific area to be eligible for the additional points under this subclause. If multiple Applications submit resolutions under this subclause from the

same Governing Body for a specific area described in the plan, none of the Applications shall be eligible for the additional points; and

(iii) Applications may receive (1) additional point if the development is in a location that would score at least 4 points under Opportunity Index, §11.9(c)(4)(B), except for the criteria found in §11.9(c)(4)(A) and subparagraphs §11.9(c)(4)(A)(i) and §11.9(c)(4)(A)(ii)..

(e) Criteria promoting the efficient use of limited resources and applicant accountability.

(1) Financial Feasibility. (§2306.6710(b)(1)(A)) An Application may qualify to receive a maximum of eighteen (18) points for this item. To qualify for points, a 15-year pro forma itemizing all projected income including Unit rental rate assumptions, operating expenses and debt service, and specifying the underlying growth assumptions and reflecting a minimum must-pay debt coverage ratio of 1.15 for each year must be submitted. The pro forma must include the signature and contact information evidencing that it has been reviewed and found to be acceptable by an authorized representative of a proposed Third Party construction or permanent lender. In addition to the signed pro forma, a lender approval letter must be submitted. An acceptable form of lender approval letter may be obtained in the Uniform Multifamily Application Templates. If the letter evidences review of the Development alone it will receive sixteen (16) points. If the letter evidences review of the Development and the Principals, it will receive eighteen (18) points.

(2) Cost of Development per Square Foot. (§2306.6710(b)(1)(F); §42(m)(1)(C)(iii)) An Application may qualify to receive up to twelve (12) points based on either the Eligible Building Cost or the Eligible Hard Costs per square foot of the proposed Development voluntarily included in eligible basis as originally submitted in the Application. For purposes of this-scoring item, Eligible Building Costs will be defined as Building Costs includable in Eligible Basis for the purposes of determining a Housing Credit Allocation. Eligible Building Costs will exclude structured parking or commercial space that is not included in Eligible Basis, and Eligible Hard Costs will include general contractor overhead, profit, and general requirements. Structured parking or commercial space costs must be supported by a cost estimate from a Third Party General Contractor or subcontractor with experience in structured parking or commercial construction, as applicable. The square footage used will be the Net Rentable Area (NRA). The calculations will be based on the cost listed in the Development Cost Schedule and NRA shown in the Rent Schedule. If the proposed Development is a Supportive Housing Development, the NRA will include common area up to 50 square feet per Unit.

(A) A high cost development is a Development that meets one of the following conditions:

(i) the Development is elevator served, meaning it is either a Elderly Development with an elevator or a Development with one or more buildings any of which have elevators serving four or more floors;

(ii) the Development is more than 75 percent single family design;

(iii) the Development is Supportive Housing; or

(iv) the Development Site qualifies for a minimum of five (5) points under subsection (c)(4) of this section, related to Opportunity Index, and is located in an Urban Area.

(B) Applications proposing New Construction or Reconstruction will be eligible for twelve (12) points if one of the following conditions is met:

(i) The voluntary Eligible Building Cost per square foot is less than \$72.80 per square foot;

(ii) The voluntary Eligible Building Cost per square foot is less than \$78 per square foot, and the Development meets the definition of a high cost development;

(iii) The voluntary Eligible Hard Cost per square foot is less than \$93.60 per square foot; or

(iv) The voluntary Eligible Hard Cost per square foot is less than \$104 per square foot, and the Development meets the definition of high cost development.

(C) Applications proposing New Construction or Reconstruction will be eligible for eleven (11) points if one of the following conditions is met:

(i) The voluntary Eligible Building Cost per square foot is less than \$78 per square foot;

(ii) The voluntary Eligible Building Cost per square foot is less than \$83.20 per square foot, and the Development meets the definition of a high cost development;

(iii) The voluntary Eligible Hard Cost per square foot is less than \$98.80 per square foot; or

(iv) The voluntary Eligible Hard Cost per square foot is less than \$109.20 per square foot, and the Development meets the definition of high cost development.

(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 \$93.60 per square foot; or

(ii) The voluntary Eligible Hard Cost is less than \$114.40 per square foot.

(E) Applications proposing Adaptive Reuse or Rehabilitation (excluding Reconstruction) will be eligible for points if one of the following conditions is met:

(i) Twelve (12) points for Applications which include voluntary Eligible Hard Costs plus acquisition costs included in Eligible Basis that are less than ~~\$104.50~~ per square foot, ~~plus or minus \$1 per square foot for every 50 square feet above or below a 900 square foot unit;~~

(ii) Twelve (12) points for Applications which include voluntary Eligible Hard Costs plus acquisition costs included in Eligible Basis that are less than ~~\$135.20~~ per square foot,

~~plus or minus \$1 per square foot for every 50 square feet above or below a 900 square feet unit, located in an Urban Area, and that qualify for 5 or 7 points under subsection (c)(4) of this section, related to Opportunity Index; or~~

(iii) Eleven (11) points for Applications which include voluntary Eligible Hard Costs plus acquisition costs included in Eligible Basis that are less than ~~\$135.20~~60 per square foot; ~~plus or minus \$1 per square foot for every 50 square feet above or below a 900 square feet unit.~~

(3) Pre-application Participation. (§2306.6704) An Application may qualify to receive up to six (6) points provided a pre-application was submitted by the ~~Pre-Application~~pre-application Final Delivery Date. Applications that meet the requirements described in subparagraphs (A) - (G) of this paragraph will qualify for six (6) points:

(A) The total number of Units does not increase by more than ten (10) percent from pre-application to Application;

(B) The designation of the proposed Development as Rural or Urban remains the same;

(C) The proposed Development serves the same Target Population;

(D) The pre-application and Application are participating in the same set-asides (At-Risk, USDA, Non-Profit, and/or Rural);

(E) The Application final score (inclusive of only scoring items reflected on the self score form) does not vary by more than four (4) points from what was reflected in the pre-application self score;

(F) The Development Site at Application is at least in part the Development Site at ~~Pre-Application~~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~~pre-application;

(G) The Development Site does not have the following Undesirable Neighborhood Characteristics as described in 10 TAC §10.101(a)(3) that were not disclosed with the pre-application:

(i) The Development Site is located in a census tract or within 1,000 feet of any census tract in an Urban Area and the rate of Part I violent crime is greater than 18 per 1,000 persons (annually) as reported on neighborhoodscout.com.

(ii) The Development Site is located within the attendance zones of an elementary school, a middle school or a high school that does not have a Met Standard rating by the Texas Education Agency.

(H) The ~~Pre-Application~~pre-application met all applicable requirements.

(4) Leveraging of Private, State, and Federal Resources. (§2306.6725(a)(3))

(A) An Application may qualify to receive up to three (3) points if at least five (5) percent of the total Units are restricted to serve households at or below 30 percent of AMGI (restrictions elected under other point items may count) and the Housing Tax Credit funding request for the proposed Development meet one of the levels described in clauses (i) - (iv) of this subparagraph:

(i) the Development leverages CDBG Disaster Recovery, HOPE VI, RAD, or Choice Neighborhoods funding and the Housing Tax Credit Funding Request is less than 9 percent of the Total Housing Development Cost (3 points). The Application must include a commitment of such funding; or

(ii) If the Housing Tax Credit funding request is less than eight (8) percent of the Total Housing Development Cost (3 points); or

(iii) If the Housing Tax Credit funding request is less than nine (9) percent of the Total Housing Development Cost (2 points); or

(iv) If the Housing Tax Credit funding request is less than ten (10) percent of the Total Housing Development Cost (1 point).

(B) The calculation of the percentages stated in subparagraph (A) of this paragraph will be based strictly on the figures listed in the Funding Request and Development Cost Schedule. Should staff issue an Administrative Deficiency that requires a change in either form, then the calculation will be performed again and the score adjusted, as necessary. However, points may not increase based on changes to the Application. In order to be eligible for points, no more than 50 percent of the developer fee can be deferred. Where costs or financing change after completion of underwriting or award (whichever occurs later), the points attributed to an Application under this scoring item will not be reassessed unless there is clear evidence that the information in the Application was intentionally misleading or incorrect.

(5) Extended Affordability. (§§2306.6725(a)(5); 2306.111(g)(3)(C); 2306.185(a)(1) and (c); 2306.6710(e)(2); and 42(m)(1)(B)(ii)(II)) In accordance with the Code, each Development is required to maintain its affordability for a 15-year Compliance Period and, subject to certain exceptions, an additional 15-year Extended Use Period. Development Owners that agree to extend the Affordability Period for a Development to thirty-five (35) years total may receive two (2) points.

(6) Historic Preservation. (§2306.6725(a)(5)) At least seventy-five percent of the residential units shall reside within the Certified Historic Structure and the Development must reasonably be expected to qualify to receive and document receipt of historic tax credits by issuance of Forms 8609. The Application must include either documentation from the Texas Historical Commission that the property is currently a Certified Historic Structure, or documentation determining preliminary eligibility for Certified Historic Structure status (5 points).

(7) Right of First Refusal. (§2306.6725(b)(1); §42(m)(1)(C)(viii)) An Application may qualify to receive (1 point) for Development Owners that will agree to provide a right of first refusal to purchase the Development upon or following the end of the Compliance Period in accordance with Tex Gov't Code, §2306.6726 and the Department's rules including §10.407 of this title

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

(8) Funding Request Amount. An Application may qualify to receive one (1) point if the Application reflects a Funding Request of Housing Tax Credits, as identified in the original Application submission, of no more than 100% of the amount available within the subregion or set-aside as determined by the application of the regional allocation formula on or before December 1, 2015.

(f) Factors Affecting Eligibility in the 2019 Application Round

Staff may recommend to the Board and the Board may find that an Applicant or Affiliate should be ineligible to compete in the 2019 Application Round or that it should be assigned a penalty deduction of one (1) point for each submitted Application (Tex. Gov't Code 2306.6710(b)(2)) because it made a deduction of up to five (5) points for any of the items listed in paragraphs (1) ~~– (4)~~ of this subsection, unless the person approving the extension (the Board or Executive Director, as applicable) makes an affirmative finding setting forth that the facts which gave rise to the need for the extension were beyond the reasonable control of the Applicant and could not have been reasonably anticipated. Any such matter to be presented for final determination of deduction by the Board must include notice from the Department to the affected party not less than fourteen (14) days prior to the scheduled Board meeting. The Executive Director may, but is not required, to issue a formal notice after disclosure if it is determined that the matter does not warrant point deductions. (§2306.6710(b)(2))

(1) If the Applicant or Affiliate failed to meet the original Carryover submission or 10 percent Test deadline(s) or has requested an extension of the Carryover submission deadline, the 10 percent Test deadline (relating to either submission or expenditure).

(2) If the Applicant or Affiliate failed to meet the commitment or expenditure requirements of a HOME or National Housing Trust Fund award from the Department.

(3) If the Developer or Principal of the Applicant violates the Adherence to Obligations.

(4) Any deductions assessed by the Board for paragraph (1) or (2) of this subsection based on a Housing Tax Credit Commitment from the preceding Application Round will be attributable to the Applicant or Affiliate of an Application submitted in the current Application Round.

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

The purpose of the Third Party Request for Administrative Deficiency ("RFAD") process is to allow an unrelated person or entity to bring new, material information about an Application to staff's attention. Such Person may request the staff to consider whether a matter in an Application in which the Person has no involvement should be the subject of an Administrative Deficiency. Staff will consider the request and proceed as it deems appropriate under the applicable rules including, if the Application in question is determined by staff to not be a priority Application, not reviewing the matter further. Requestors must provide, at the time of filing the challenge, all briefings, documentation, and other information that the requestor offers in support of the deficiency. A copy of the request and supporting information must be provided by the requestor directly to the

Applicant at the same time it is provided to the Department. Requestors must provide sufficient credible evidence that, if confirmed, would substantiate the deficiency request. Assertions not accompanied by supporting documentation susceptible to confirmation will not be considered. Staff shall provide to the Board a written report summarizing each third party request for administrative deficiency and the manner in which it was addressed. Interested persons may provide testimony on this report before the Board²s takes any formal action to accept the report. The results of a RFAD may not be appealed by the Requestor. Information received after the RFAD deadline will not be considered by staff or presented to the Board.

Index of Commenters

- (1) Mayor of Plano, Harry LaRosiliere
- (2) Representative Garnet F. Coleman
- (3) Representative Larry Phillips
- (4) Brownstone Affordable Housing, Leslie Holleman & Associates, Evolie Housing Partners, and Mears Development and Construction
- (5) Alyssa Carpenter
- (6) Texas Affiliation of Affordable Housing Providers
- (7) DMA Companies
- (8) Tim Smith
- (9) Dr. David Hicks
- (10) David Baca
- (11) Jim Sari
- (12) Charles Holcomb
- (13) Rural Rental Housing Association
- (14) Marlon Sullivan
- (15) Devin Baker
- (16) Dennis Hoover
- (17) Lucas & Associates
- (18) National Church Residences
- (19) Marilyn Hartman
- (20) Disability Rights Texas
- (21) Leslie Buck
- (22) Meredith Blackburn
- (23) Susan Raffle
- (24) Methodist Healthcare Ministries
- (25) Apolonio Flores
- (26) Five Woods, LLC
- (27) Foundation Communities
- (28) NEW HOPE
- (29) True Casa Consulting
- (30) Lisa Vecchietti
- (31) BETCO Consulting
- (32) Texas Coalition of Affordable Developers
- (33) Frazier Revitalization
- (34) Purple Martin Real Estate
- (35) Structure Development
- (36) Miller - Valentine Group
- (37) MGROUP Holdings
- (38) Brad Forslund
- (39) JES Dev Co
- (40) The NuRock Companies
- (41) Texas Low Income Housing Information Service
- (42) The Meals on Wheels Association of Texas

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Public Comment

(1) Mayor of Plano, Harry LaRosiliere

August 17, 2017

TDHCA Board Members
Tim Irvine, Executive Director
Texas Department of Housing and Community Development
221 East 11th Street
Austin, Texas 78701-2410

**RE: Support For Change To §11.9(c)(8) Of The 2018 Qualified Allocation Plan (“QAP”);
Permit Cities With Populations In Excess Of 200,000 To Qualify For “Urban Core” Points.**

Ladies and Gentlemen:

It has come to my attention that in the exceedingly competitive process of applying for 9% Housing Tax Credits, five (5) points could be claimed in 2017 by proposing a development site near the city’s “Urban Core” if the city has a population of more than 300,000 persons. Recently the TDHCA Staff has recommended that the population level for these points be changed to cities with more than 200,000 persons. I would like to register my support of this proposed change to §11.9(c)(8) of the QAP. If the Board does not support expanding the point item to include cities with populations of over 200,000, then I would encourage a smaller change to include cities with more than 250,000 persons.

“Proximity to the Urban Core” points are determined by establishing the linear distance between the development site and the main City Hall facility where regularly scheduled City Council, City Commission and similar governing body meetings take place. In cities with populations of more than 500,000, the development can be located within 4 miles of the City Hall facility. Currently, in cities with populations of 300,000 – 500,000, points can be awarded if the development is proposed to be within 2 miles of the City Hall facility.

The current draft QAP published by the TDHCA Staff provides that cities with populations of 200,000 – 499,999 can qualify for Urban Core points if located within 2 miles of the City Hall facility. This change would facilitate use of Housing Tax Credits to provide urban infill and redevelop the city centers of the 13 largest cities in Texas, instead of only the top 8 population centers. Having five points available in these instances should offset, to some extent, the scoring disadvantage that larger urban areas have due to an inability to qualify for Opportunity Index points provided in §11.9(c)(4) and Educational Quality points under §11.9(c)(5). Such point opportunities reward development sites in areas with higher incomes, lower poverty ratings and better schools - criteria which frequently do not correspond with the inner city areas of larger municipalities.

Thank you for your consideration of this request. I support the Housing Tax Credit Program administered by the TDHCA, and believe that the suggested change to the QAP will help to further the goal of providing affordable housing to Texas’ lower income households.

Sincerely,



Harry LaRosiliere
MAYOR

(2) Representative Garnet F. Coleman

STATE of TEXAS
HOUSE of REPRESENTATIVES



GARNET F. COLEMAN

STATE REPRESENTATIVE
DISTRICT 147

September 5, 2017

TDHCA Board Members
Tim Irvine, Executive Director
Texas Department of Housing and Community Development
221 East 11th Street
Austin, Texas 78701-2410

Re: Change To The 2018 Qualified Allocation Plan ("QAP").

Dear Board members and Executive Director Irvine,

We support the proposed changes to the 2018 Qualified Allocation Plan (QAP) regarding removing educational quality from the scoring process. Additionally, we would encourage the Board to review the 2018 QAP rules regarding educational quality as a threshold criteria. Specifically, we believe that Educational Quality as a threshold criteria should be made more flexible so that areas of the state that have improving educational opportunities will not be denied a fair shot at qualifying for competitive 9% tax credits.

We recommend that the 2018 QAP rules allow for application not to be denied eligibility if the school district certifies that the school will achieve a D or better rating within three years of the date of application; or the overall academic environment for the school is to be enhanced by a Turnaround Plan pursuant to Section 39.107 of the Texas Education Code; or the district will institute a shift to a K-8 structure to serve that same attendance zone within three years of the date of application; or the district will implement extended day pre-K to serve that same attendance zone within three years of the date of the application; or residents have the option of attending an elementary, middle, or high school of their choice within the same district that has a D or better rating.

These alternative methods to meet the Educational Quality threshold would allow areas of the state an equitable chance in receiving competitive 9% tax credits, while still ensuring that applications that are accepted allow for the students who live in those developments will receive a quality education. Due to nearly constant changes in the ratings of our schools it would be fair to allow schools to meet the threshold within three years as it takes time to adjust educational plans to changing standards. Shifting to a K-8 structure has been proven to improve educational quality within school districts because it creates a more coherent learning environment. Additionally, implementing extended day pre-K has proven to be beneficial to students. Finally, if school choices exist to go to qualifying schools the application should be allowed to have them used to meet the educational quality threshold.

Sincerely,

A handwritten signature in black ink, appearing to read "Garnet F. Coleman". The signature is fluid and cursive, with a large initial "G" and "C".

Rep. Garnet F. Coleman

(3) Representative Larry Phillips

TEXAS HOUSE OF REPRESENTATIVES

CAPITOL ADDRESS:
P.O. Box 2910
AUSTIN, TEXAS 78768-2910



(512) 463-0297 CAPITOL
(903) 891-7297 DISTRICT
LARRY.PHILLIPS@HOUSE.TEXAS.GOV

LARRY PHILLIPS DISTRICT 62

October 12, 2017

Texas Department of Housing and Community Affairs
Patrick Russell
QAP Public Comments
P.O. Box 13491
Austin, Texas 78711-3941

Dear Mr. Russell:

I write to comment on the Texas Department of Housing and Community Affairs' proposed amendments to 10 TAC Chapter 11, §§11.1 – 11.10, and specifically the changes proposed to §11.9(e)(2)(E) of the 2018 Qualified Allocation Plan. I am concerned with the change to the points awarded to applications for Adaptive Reuse and Rehabilitation (but excluding Reconstruction). I believe this change could potentially have a negative effect on the rehabilitation and reuse of existing historic structures. Many times these buildings have antiquated systems and the cost of replacing these systems is much closer to the cost of a new building rather than a cosmetic or lesser rehabilitation. These changes could disincentivize adaptive reuse of historic buildings by making adaptive reuse less competitive for LIHTC financing.

I do not believe that the Department intends this consequence, and therefore respectfully ask the Board not to adopt this change in the 2018 QAP. Thank you for your consideration, and please contact me if you would like to discuss this issue further.

Best regards,

A handwritten signature in black ink that reads "Larry Phillips".

Larry Phillips



INSURANCE, CHAIR • TRANSPORTATION

- (4) Brownstone Affordable Housing, Leslie Holleman & Associates, Evolie Housing Partners,
and Mears Development and Construction

Housing Tax Credit Program Qualified Allocation Plan

§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 Housing Tax Credits. The federal laws providing for the awarding and allocation of Housing Tax Credits require states to adopt a qualified allocation plan. Pursuant to Tex. Gov't Code, Chapter 2306, Subchapter DD, the Department is assigned responsibility for this activity. As required by Internal Revenue Code (the "Code"), §42(m)(1), the Department has developed this Qualified Allocation Plan ("QAP") and it has been duly approved to establish the procedures and requirements relating to an award and allocation of Housing Tax Credits. All requirements herein and all those applicable to a Housing Tax Credit Development or an Application under Chapter 10 of this title (relating to Uniform Multifamily Rules), or otherwise incorporated by reference herein collectively constitute the QAP required by Tex. Gov't Code, §2306.67022.

(b) Due Diligence and Applicant Responsibility. Department staff may, from time to time, make available for use by Applicants information and informal guidance in the form of reports, frequently asked questions, and responses to specific questions. The Department encourages communication with staff in order to clarify any issues that may not be fully addressed in the QAP or may be unclear when applied to specific facts. However, while these resources are offered to help Applicants prepare and submit accurate information, Applicants should also appreciate that this type of guidance is limited by its nature and that staff will apply the rules of the QAP to each specific situation as it is presented in the submitted Application. [The Multifamily Programs Procedures Manual and Frequently Asked Questions website posting are not rules and are provided as good faith guidance and assistance, but in all respects the statutes and rules governing the Low Income Housing Tax Credit program supersede these guidelines and are controlling.](#) Moreover, after the time that an issue is initially presented and guidance is provided, additional information may be identified and/or the issue itself may continue to develop based upon additional research and guidance. Thus, until confirmed through final action of the Board, staff guidance must be considered merely as an aid and an Applicant continues to assume full responsibility for any actions Applicant takes regarding an Application. In addition, although the Department may compile data from outside sources in order to assist Applicants in the Application process, **it remains the sole responsibility of the Applicant to perform independently the necessary due diligence to research, confirm, and verify any data, opinions, interpretations, or other information upon which an Applicant bases an Application or includes in any submittal in connection with an Application.** As provided by Tex. Gov't Code §2306.6715(c), an applicant is given until the later of the seventh day of the publication on the Department's website of a scoring log reflecting that applicant's score or the seventh day from the date of transmittal of a scoring notice; provided, however, that an applicant may not appeal any scoring matter after the award of credits unless they are within the above-described time limitations and have appeared at the meeting when the Department's Governing Board makes competitive tax credit awards and stated on the record that they have an actual or possible appeal that has not been heard. Appeal rights may be triggered by the publication on the Department's website of the results of the evaluation process. [Individual Scoring notices or similar communications are a courtesy only.](#)

(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 10 TAC §1.1.](#) As a result of the highly competitive nature of applying for tax credits, an Applicant should proceed on the assumption that deadlines are fixed and firm with respect to both date and time and cannot be waived except where authorized and for truly extraordinary circumstances, such as the occurrence

of a significant natural disaster that could not have been anticipated and makes timely adherence impossible. If an Applicant chooses where permitted, to submit by delivering an item physically to the Department, it is the Applicant's responsibility to be within the Department's doors by the appointed deadline. Applicants should further ensure that all required documents are included, legible, properly organized, and tabbed, and that materials in required formats involving digital media are complete and fully readable. Applicants are strongly encouraged to submit the required items well in advance of established deadlines. Staff, when accepting Applications, may conduct limited reviews at the time of intake as a courtesy only. If staff misses an issue in such a limited review, the fact that the Application was accepted by staff or that the issue was not identified does not operate to waive the requirement or validate the completeness, readability, or any other aspect of the Application.

(d) Definitions. The capitalized terms or phrases used herein are defined in §10.3 of this title (relating to Definitions), unless the context clearly indicates otherwise. Any capitalized terms that are defined in Tex Gov't Code, Chapter 2306, §42 of the Code, or other Department rules have, when capitalized, the meanings ascribed to them therein. Defined terms when not capitalized, are to be read in context and construed according to common usage.

(e) ~~Census Data.~~ Where this chapter requires the use of ~~census or~~ American Community Survey data, the Department shall use the most current data available as of October 1, 2017~~6~~, 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 ~~generally~~ be disregarded. Where other data sources are specifically required, such as Neighborhoodscout, the data available after October 1 at the time of site selection, but before Pre-Application Final Delivery Date, will be permissible, provided Applicants retain evidence of the applicable data on that date. The NeighborhoodScout report data submitted in the Application must include the report date on which the report was printed.

(f) Deadlines. Where a specific date or deadline is identified in this chapter, the information or documentation subject to the deadline must be submitted on or before 5:00 p.m. Austin local time on the day of the deadline. If the deadline falls on a weekend or holiday, the deadline is 5:00 p.m. Austin local time on the next day which is not a weekend or holiday and on which the Department is open for general operation. Unless otherwise noted or provided in statute, deadlines are based on calendar days.

~~(g) Documentation to Substantiate Items and Representations in an Application Transparency.~~ In order to ensure the appropriate level of transparency in this highly competitive program, Applications and all correspondence and other as well as information relating to the review of each Applications are posted on the Department's website and updated on a regular basis within 5 business days of receipt. Any Application that staff identifies as having insufficient support information will be directed to cure the matter via the Administrative Deficiency process, unless the missing documentation is determined to be a Material Deficiency. Applicants are reminded that this process may not be used to increase a scoring item's points or to change any aspect of the proposed Development, financing structure, or other element of the Application. The sole purpose of this mandatory Administrative Deficiency will be to substantiate one or more aspects of the Application to enable an efficient and effective review by staff. Although a responsive narrative will be created after Application submission, all facts and materials to substantiate any item in response to such an Administrative Deficiency must have been clearly established at the time of submission of the Application.

Commented [LHA1]: This language creates subjectivity in the Application Review process, and opens the door for RFADs to be filed, particularly if the Neighborhood Scout ("NS") crime rate goes up slightly after a site is put under contract.

As an example, Applicant A locates a site (in October), check NS, finds that the rate meets the criteria for scoring or threshold, and moves forward with the site based on this information. They retain a copy of the applicable rate, and never check NS again. Once full apps have been filed, a competitor checks NS and finds that in December, the rate was revised upward, and now slightly exceeds the criteria for scoring or threshold. The competitor files an RFAD showing the higher rate.

Which crime rate would the Department ultimately side with? We recommend that the Applicant's crime rate be used, and therefore offer the suggested language to the left.

Commented [LHA2]: We recommend moving this sentence (with a few edits) to 11.9(a). See 11.9(a) for edits.

Commented [LHA3]: This is already stated in 10.201(7)

Commented [LHA4]: The purpose of the Administrative Deficiency process is already stated in 10.201(7).

Commented [LHA5]: This is already stated in 11.9(a).

§11.2. Program Calendar for Competitive Housing Tax Credits.

Non-statutory deadlines specifically listed in the Program Calendar may be extended by the Department for a period of not more than five (5) business days provided that the Applicant has, in writing, requested an extension prior to the date of the original deadline and has established to the reasonable satisfaction of the Department that there is good cause for the extension. Except as provided for under 10 TAC §1.1 relating to Reasonable Accommodation Requests, extensions relating to Administrative Deficiency deadlines may only be extended if documentation needed to resolve the item is needed from a Third Party or the documentation involves signatures needed on certifications in the Application.

Deadline	Documentation Required
01/05 4 /2017 8	Application Acceptance Period Begins.
01/09/2017 8	Pre-Application Final Delivery Date (including waiver requests).
02/17 6 /2017 8	Deadline for submission of application for .ftp access if pre-application not submitted
03/01/2017 8	Full Application Delivery Date (including Quantifiable Community Participation documentation; Environmental Site Assessments (ESAs), Property Condition Assessments (PCAs); Appraisals; Primary Market Area Map; Site Design and Development Feasibility Report; all Resolutions necessary under §11.3 of this chapter related to Housing De-Concentration Factors). Final Input from Elected Officials Delivery Date (including Resolution for Local Government Support pursuant to §11.9(d)(1) of this chapter and State Representative Input pursuant to §11.9(d)(5) of this chapter).
04/04 2 /2017 8	Market Analysis Delivery Date pursuant to §10.205 of this title.
065/01/2018	Third Party Request for Administrative Deficiency
Mid-May	Final Scoring Notices Issued for Majority of Applications Considered "Competitive."
06/01/2017	Third Party Request for Administrative Deficiency
06/23 2 /2017 8	Public Comment to be included in the Board <u>materials relating to presentation for awards are due in accordance with 10 TAC §1.10.</u>
June	<u>On or before June 30, publication of the list of Release of</u> Eligible Applications for Consideration for Award in July.

Commented [LHA6]: By May 1-2017, only 29 of the 89 priority application had been fully reviewed by staff. This deadline will create MORE RFADS, not less, as Applicants will not have the benefit of knowing that staff has already identified an issue that would be the subject of an RFAD.

Deadline	Documentation Required
July	Final Awards.
Mid-August	Commitments are Issued.
11/01/2017	Carryover Documentation Delivery Date.
06/30/2018	10 Percent Test Documentation Delivery Date.
12/31/2019	Placement in Service.
Five (5) business days after the date on the Deficiency Notice (without incurring point loss)	Administrative Deficiency Response Deadline (unless an extension has been granted).

§11.3.Housing De-Concentration Factors. [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.](#)

(a) Two Mile Same Year Rule (Competitive HTC Only). As required by Tex. Gov't Code, §2306.6711(f), staff will not recommend for award, and the Board will not make an award to an Application that proposes a Development Site located in a county with a population that exceeds one million if the proposed Development Site is also located less than two linear miles from the proposed Development Site of another Application within said county that is awarded in the same calendar year. [If two or more Applications are submitted that would violate this rule, the lower scoring Application will be considered a non-priority Application and will not be reviewed unless the higher scoring Application is terminated or withdrawn.](#)

(b) Twice the State Average Per Capita. 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 [Round Acceptance Period](#) ~~begins~~ (or for Tax-Exempt Bond Developments, [Applications submitted after the Application Acceptance Period begins at the time the Certificate of Reservation is issued by the Texas Bond Review Board](#)), [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 of this chapter (relating to Program Calendar for

Commented [LHA7]: This word appears to have been capitalized in the calendar for stylistic purposes, but in a sentence, it should be lower case – Application Acceptance Period being the calendar defined term.

Commented [LHA8]: Same as above.

Competitive Housing Tax Credits) or Resolutions Delivery Date in §10.4 of this title (relating to Program Dates), as applicable.

(c) One Mile Three Year Rule. (§2306.6703(a)(3))

(1) An Application that proposes the New Construction or Adaptive Reuse of a Development that is located one linear mile or less (measured between closest boundaries by a straight line on a map) from another development that meets all of the criteria in subparagraphs (A) - (C) of this paragraph shall be considered ineligible.

(A) The ~~development~~ serves the same type of household as the proposed Development, regardless of whether the Development serves families, elderly individuals, or another type of household; and

(B) The ~~development~~ has received an allocation of Housing Tax Credits or private activity bonds for any New Construction at any time during the three-year period preceding the date the Application Round begins (or for Tax-Exempt Bond Developments the three-year period preceding the date the Certificate of Reservation is issued); and

(C) The ~~development~~ has not been withdrawn or terminated from the Housing Tax Credit Program.

(2) Paragraph (1) of this subsection does not apply to a Development:

(A) that is using federal HOPE VI (or successor program) funds received through HUD;

(B) that is using locally approved funds received from a public improvement district or a tax increment financing district;

(C) that is using funds provided to the state under the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. §§12701 et seq.);

(D) that is using funds provided to the state and participating jurisdictions under the Housing and Community Development Act of 1974 (42 U.S.C. §§5301 et seq.);

(E) that is located in a county with a population of less than one million;

(F) that is located outside of a metropolitan statistical area; or

(G) that the Governing Body of the appropriate municipality or county where the Development is to be located has by vote specifically allowed the construction of a new Development located within one linear mile or less from a Development described under paragraph (1)(A) of this subsection. An acceptable, but not required, form of resolution may be obtained in the Uniform Multifamily Application Templates. Required documentation must be submitted by the Full Application Delivery Date as identified in §11.2 of this chapter or Resolutions Delivery Date in §10.4 of this title, as applicable.

(3) Where a specific source of funding is referenced in paragraph (2)(A) - (D) of this subsection, a commitment or resolution documenting a commitment of the funds must be provided in the Application.

(d) Limitations on Developments in Certain Census Tracts. An Application that proposes the New Construction or Adaptive Reuse of a Development proposed to be located in a census tract that has more than 20 percent Housing Tax Credit Units per total households as established by the 5-year American Community Survey ~~and the Development is in a Place that has a population greater than 100,000~~ shall be considered ineligible unless the Governing Body of the appropriate municipality or county containing the Development has, by vote, specifically allowed the Development and submits to the Department a resolution stating the proposed Development is consistent with the jurisdiction's obligation to affirmatively further fair housing. The resolution must be submitted by the Full Application Delivery Date as identified in §11.2 of this chapter or Resolutions Delivery Date in §10.4 of this title, as applicable.

(e) Additional Phase. Applications proposing an additional phase of an existing tax credit Development serving the same Target Population, or Applications proposing Developments that are adjacent to an existing tax credit Development serving the same Target Population, ~~or Applications that are proposing a Development serving the same Target Population on a contiguous site to another Application awarded in the same program year,~~ shall be considered ineligible unless the other Developments or phase(s) of the Development have been completed and have maintained occupancy of at least 90 percent for a minimum six (6) month period as reflected in the submitted rent roll. If the Application proposes the Rehabilitation or replacement of existing federally-assisted affordable housing units or federally-assisted affordable housing units demolished on the same site within two years of the beginning of the Application Acceptance Period, this provision does not apply.

(f) Proximity of Development Sites. ~~If two or more Competitive HTC Applications that are proposing Developments serving the same Target Population on contiguous sites are submitted in the same program year, the lower scoring Application, including consideration of tie-breaker factors if there are tied scores, will be considered a non-priority Application and will not be reviewed unless the higher scoring Application is terminated or withdrawn.~~

§11.4. Tax Credit Request and Award Limits.

(a) Credit Amount (Competitive HTC Only). (§2306.6711(b)) The Board may not award or allocate to an Applicant, Developer, Affiliate or Guarantor (unless the Guarantor is also the General Contractor or provides the guaranty only during the construction period, and is not a Principal of the Applicant, Developer or Affiliate of the Development Owner) Housing Tax Credits in an aggregate amount greater than \$3 million in a single Application Round. ~~If the Department determines that an allocation recommendation would cause a violation of the \$3 million credit limit per Applicant, the Department will select the Development(s) that most effectively satisfies the Department's goals in fulfilling set aside priorities and are highest scoring in the regional allocation. Prior to June 29, an Applicant that has Applications pending for more than \$3 million in credit may notify staff in writing or by email of the Application(s) they will not pursue in order to bring their request within the \$3 million cap. If the Applicant has not made this self-selection by this date, staff may make the selection. The methodology for making this determination will be to assign first priority to an Application that will enable the Department to comply with the state and federal non-profit set-asides and second to the highest scoring Application, including consideration of tie-breakers if there are tied scores. The Application(s) that does not meet Department criteria will not be considered a priority Application and will not be reviewed unless the Applicant withdraws a priority Application. The non-priority Application(s) will be terminated when the Department awards \$3 million to other Applications. Any Application terminated for this reason is subject to reinstatement if necessary to meet a required set aside.~~ All entities that are under

Commented [LHA9]: We recommend leaving the existing language in place. The suggested revisions appear to give staff the ability to bypass certain Applications as "non-priority" which seems far too subjective for a highly competitive program of this nature and would deny Applicants due process. Practically speaking, if an Applicant had a cap issue, they would withdraw the Application of their choice before letting TDHCA make that decision for them.

Commented [LHA10]: Just because an allocation is made to the higher scoring Application at the July meeting doesn't mean that deal will ultimately receive a Carryover Agreement. The higher scoring Application could fail to achieve zoning, or other Commitment conditions, in which case the lower scoring deal could potentially be awarded from the waiting list. Therefore, the Department can't terminate the "non-priority" Application at the late July meeting.

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 ~~Development Consultant~~ ~~or advisor or Developer~~ that do not exceed ~~10 percent of the Developer Fee (or 20 percent for Qualified Nonprofit Developments and other Developments in which an entity that is exempt from federal income taxes owns at least 50% of the General Partner) to be paid or~~ \$150,000, whichever is greater.

(b) Maximum Request Limit (Competitive HTC Only). For any given Development, an Applicant may not request more than 150 percent of the credit amount available in the ~~sub region~~ ~~subregion~~ based on estimates released by the Department on December 1, or \$1,500,000, whichever is less, or \$2,000,000 for Applications under the At-Risk Set-Aside. In addition, for Elderly Developments in a Uniform State Service Region containing a county with a population that exceeds one million, the request may not exceed the final amount published on the Department's website after the release of the Internal Revenue Service notice regarding the 2016 credit ceiling. For all Applications, the Department will consider the amount in the ~~Funding Request~~ of the pre-application and Application to be the amount of Housing Tax Credits requested and will automatically reduce the Applicant's request to the maximum allowable under this subsection if exceeded. Regardless of the credit amount requested or any subsequent changes to the request made by staff, the Board may not award to any individual Development more than \$2 million in a single Application Round. (§2306.6711(b))

(c) Increase in Eligible Basis (30 percent Boost). Applications will be evaluated for an increase of up to but not to exceed 30 percent in Eligible Basis provided they meet the criteria identified in paragraphs (1) - (3) of this subsection, or if required under §42 of the Code. Staff will recommend no increase or a partial increase in Eligible Basis if it is determined it would cause the Development to be over sourced, as evaluated by the Real Estate Analysis division, in which case a credit amount necessary to fill the gap in financing will be recommended. ~~In no instance will the boost exceed more than the amount of credits required to create the HTC rent restricted units, as determined by the Real Estate Analysis division of TDHCA.~~ The criteria in paragraph (3) of this subsection are not applicable to Tax-Exempt Bond Developments.

(1) The Development is located in a Qualified Census Tract (QCT) (as determined by the Secretary of HUD) that has less than 20 percent Housing Tax Credit Units per total households in the tract as established by the U.S. Census Bureau for the 5-year American Community Survey. New Construction or Adaptive Reuse Developments located in a QCT that has in excess of 20 percent Housing Tax Credit Units per total households in the tract are not eligible to qualify for a 30 percent increase in Eligible Basis, which would otherwise be available for the Development Site pursuant to §42(d)(5) of the Code. For Tax-Exempt Bond Developments, as a general rule, a QCT designation would have to coincide with the program year the Certificate of Reservation is issued in order for the Department to apply the 30 percent boost in its underwriting evaluation. For New Construction or Adaptive Reuse Developments located in a QCT with 20 percent or greater Housing Tax Credit Units per total households, the Development is eligible for the boost if the Application includes a resolution stating that the Governing Body of the appropriate municipality or county containing the Development has by vote specifically allowed the

Commented [LHA11]: We recommend striking this sentence because it is vague and subjective. The subsection already allows for a lesser amount of boost with the phrase "up to but not to exceed..." Furthermore, there are no rules under 10.301 as to how a lesser amount of boost would be calculated. Without such underwriting criteria, this language should be stricken.

construction of the new Development and referencing this rule. 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 of this chapter or Resolutions Delivery Date in §10.4 of this title, as applicable. Applicants must submit a copy of the census map that includes the 11-digit census tract number and clearly shows that the proposed Development is located within a QCT; [OR](#)

(2) The Development is located in a Small Area Difficult Development Area (“SADDA”) (based on Small Area Fair Market Rents (“FMRs”) as determined by the Secretary of HUD) that has high construction, land and utility costs relative to the AMGI. For Tax-Exempt Bond Developments, as a general rule, an 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 percent boost in its underwriting evaluation. Applicants must submit a copy of the SADDA map that clearly shows the proposed Development is located within the boundaries of a SADDA; [OR](#)

(3) The Development meets one of the criteria described in subparagraphs (A) - (E) of this paragraph pursuant to §42(d)(5) of the Code:

(A) the Development is located in a Rural Area;

(B) the Development is proposing entirely Supportive Housing and is expected to be debt free or have no foreclosable or non-cash flow debt;

(C) the Development meets the criteria for the Opportunity Index as defined in §11.9(c)(4) of this chapter (relating to Competitive HTC Selection Criteria);

(D) the Applicant elects to restrict an additional 10 percent of the proposed low income Units for households at or below 30 percent of AMGI. These Units must be in addition to Units required under any other provision of this chapter, or required under any other funding source from the Multifamily Direct Loan program; or

(E) [the Development is in an area covered by a concerted revitalization plan](#) ~~the Development~~ is not an Elderly Development, and is not located in a QCT ~~that is in an area covered by a concerted revitalization plan~~. 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.

§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(3) of this chapter (related to Pre-Application Participation). [Commitments of competitive HTCs issued by the Board in the current program year will be applied to each set-aside, Rural regional allocation, Urban regional allocation, and/or USDA set-aside for the current Application round as appropriate.](#)

(1) Nonprofit Set-Aside. (§2306.6729 and §2306.6706(b)) At least 10 percent of the State Housing Credit Ceiling for each calendar year shall be allocated to Qualified Nonprofit Developments which meet the requirements of §42(h)(5) of the Code and Tex. Gov't Code, §2306.6729 and

§2306.6706(b). Qualified Nonprofit Organizations must have the controlling interest in the Development Owner applying for this set-aside (*e.g.i.e.*, greater than 50 percent ownership in the General Partner). If the Application is filed on behalf of a limited partnership, the Qualified Nonprofit Organization must be the Managing General Partner. If the Application is filed on behalf of a limited liability company, the Qualified Nonprofit Organization must be the controlling Managing Member. Additionally, for Qualified Nonprofit Development in the Nonprofit Set-Aside the nonprofit entity or its nonprofit Affiliate or subsidiary must be the Developer or a co-Developer as evidenced in the development agreement. An Applicant that meets the requirements to be in the Qualified Nonprofit Set-Aside is deemed to be applying under that set-aside unless their Application specifically includes an affirmative election to not be treated under that set-aside and a certification that they do not expect to receive a benefit in the allocation of tax credits as a result of being affiliated with a nonprofit. The Department reserves the right to request a change in this election and/or not recommend credits for those unwilling to change elections if insufficient Applications in the Nonprofit Set-Aside are received. Applicants may not use different organizations to satisfy the state and federal requirements of the set-aside.

(2) USDA Set-Aside. (§2306.111(d-2)) At least 5 percent of the State Housing Credit Ceiling for each calendar year shall be allocated to Rural Developments which are financed through USDA. If an Application in this set-aside involves Rehabilitation it will be attributed to and come from the At-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 sub-region/subregion unless the Application is receiving USDA Section 514 funding. Commitments of Competitive Housing Tax Credits issued by the Board in the current program year will be applied to each set aside, Rural Regional Allocation, Urban Regional Allocation and/or USDA Set-Aside for the current Application Round as appropriate. Applications must also meet all requirements of Tex Gov't Code, §2306.111(d-2). All Applications that can score under the USDA set-aside will be considered Rural for all scoring items under this chapter. If a Property receiving USDA financing is unable to score under the USDA Set-Aside and it is located in an Urban subregion, it will be scored as Urban.

~~(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 (§2306.111(d-4)).~~

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Commented [LHA12]: Can't have an (A) without a (B). Since it's only 1 sentence, the title can be removed, and the sentence added to the end of paragraph (2), with the statutory reference moved to the end.

(3) At-Risk Set-Aside. (§2306.6714; §2306.6702)

(A) At least 15 percent of the State Housing Credit Ceiling for each calendar year will be allocated under the At-Risk Development Set-Aside and will be deducted from the State Housing Credit Ceiling prior to the application of the regional allocation formula required under §11.6 of this chapter (relating to Competitive HTC Allocation Process). Through this set-aside, the Department, to the extent possible, shall allocate credits to Applications involving the preservation of Developments identified as At-Risk Developments. (§2306.6714) Up to 5 percent of the State Housing Credit Ceiling associated with this set-aside may be given priority to Rehabilitation Developments under the USDA Set-Aside.

(B) An At-Risk Development qualifying under Tex. Gov't Code §2306.6702(a)(5)(A) must meet ~~all the following requirements of Tex. Gov't Code, §2306.6702(a)(5)-:~~

(i) Pursuant to Tex. Gov't Code §2306.6702(a)(5)(A)(i), a Development must have received a subsidy in the form of a qualified below-market interest rate loan, interest rate reduction, rental subsidy, Section 8 housing assistance payment, rental supplement payment, rental assistance payment, or equity incentive. For purposes of this subparagraph, Applications participating in the At-Risk Set-Aside must include evidence of the qualifying subsidy.

(ii) ~~A~~Any stipulation to maintain affordability in the contract granting the subsidy pursuant to Tex. Gov't Code §2306.6702(a)(5)(A)(ii)(a), or any HUD-insured or HUD-held mortgage will be considered to be nearing expiration or nearing the end of its term if expiration will occur or the term will end within two (2) years of July 31 of the year the Application is submitted. Developments with HUD-insured or HUD-held mortgages qualifying as At-Risk under §2306.6702(a)(5)(A)(ii)(b) may be eligible if the HUD-insured or HUD-held mortgage is eligible for prepayment ~~without penalty or has been prepaid.~~

(iii) Developments with existing Department LURAs must have completed all applicable Right of First Refusal procedures prior to the Pre-Application Final Delivery Date.

(C) An At-Risk Development qualifying under Tex. Gov't Code §2306.6702(a)(5)(B) must meet one of the following requirements:

(i) Units to be Rehabilitated or Reconstructed must have received assistance under §9, United States Housing Act of 1937 (42 U.S.C. section 1437g) and 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. To the extent that an Application is eligible under §2306.6702(a)(5)(B)(ii)(b) and the units being reconstructed were ~~disposed of or demolished~~ prior to the beginning of the Application Acceptance Period, the housing units must have been disposed of or demolished in the two-year period preceding the application for housing tax credits. The Application will be categorized as New Construction.

(ii) To the extent that an Application is eligible under Tex. Gov't Code §2306.6702(a)(5)(B)(iii), the Development must receive assistance through the Rental Assistance Demonstration ("RAD") program administered by the United States Department of Housing and Urban Development ("HUD"). Applications must include evidence that RAD participation is included in the applicable public housing plan that was most recently approved by HUD, and evidence (in the form of a Commitment to enter into a Housing Assistance Payment ("CHAP")) that HUD has approved the units proposed for Rehabilitation or Reconstruction for participation in the RAD program.

(iii) 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.

Commented [LHA13]: This doesn't contemplate 2306.6702(a)(5)(B)(ii)

(~~C~~D) An Application for a Development that includes the demolition of the existing Units which have received the financial benefit described in Tex. Gov't Code, §2306.6702(a)(5) will not qualify as an At-Risk Development unless the redevelopment will include at least a portion of

the same site. Alternatively, pursuant to [Tex. Gov't Code §2306.6702\(a\)\(5\)\(B\)](#), an Applicant may propose relocation of the existing units in an otherwise qualifying At-Risk Development if:

(i) the affordability restrictions and any At-Risk eligible subsidies are approved to be transferred ~~to the Development Site (i.e. the site proposed in the tax credit Application) with the units proposed for Rehabilitation or Reconstruction~~ prior to the tax credit ~~Carryover 10% Test~~ deadline;

(ii) the Applicant seeking tax credits must propose the same number of restricted units (*e.g.*, the Applicant may add market rate units); and

(iii) the new Development Site must either qualify for points on the Opportunity Index under §11.9(c)(4) of this chapter (relating to Competitive HTC Selection Criteria); ~~OR~~

(iv) the local Governing Body of the applicable municipality or county (if completely outside of a municipality) in which that Development is located must submit a resolution confirming that the proposed Development is supported by the municipality or county in order to carry out a previously adopted plan that meets the requirements of §11.9(d)(7). Development Sites that cross jurisdictional boundaries must provide a resolution from both local governing bodies.

~~(DE)~~ If Developments at risk of losing affordability from the financial benefits available to the Development are able to retain, ~~or~~ renew, or replace the existing financial benefits and affordability they must do so unless regulatory barriers necessitate elimination of all or a portion of that benefit for the Development.

(i) Evidence of the legal requirements that will unambiguously cause the loss of affordability ~~and that this will occur within the two calendar years after the year in which of the Application is made submission~~ must be included with the ~~a~~ Application.

(ii) For Developments qualifying under [Tex. Gov't Code §2306.6702\(a\)\(5\)\(B\)](#), only a portion of the subsidy must be retained for the proposed Development, but no less than 25 percent of the proposed Units must be public housing units supported by public housing operating subsidy. (§2306.6714(a-1)). If less than 100 percent of the public housing benefits are transferred to the proposed Development, an explanation of the disposition of the remaining public housing benefits must be included in the Application, as well as a copy of the HUD-approved plan for demolition and disposition.

~~(EE)~~ Nearing expiration on a requirement to maintain affordability includes Developments eligible to request a Qualified Contract under §42 of the Code. 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.

~~(EG)~~ 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.

Commented [LHA14]: This deadline doesn't comport with how HUD approves these types of transfers. To receive this type of approval, the Applicant must submit a Mixed Finance Application to HUD, which can't be submitted until AFTER an allocation is made. This is also problematic for deals that may be awarded off the waiting list. A 10% Test deadline would solve these issues.

Commented [LHA15]: More concise language suggestion.

Commented [LHA16]: Capitalized term

§11.6.Competitive HTC Allocation Process. This section identifies the general allocation process and the methodology by which awards are made.

(1) Regional Allocation Formula. The Department shall initially make available in each Rural Area and Urban Area of each Uniform State Service Region ("~~sub-region~~~~subregion~~") Housing Tax Credits in an amount consistent with the Regional Allocation Formula developed in compliance with Tex. Gov't Code, §2306.1115. The process of awarding the funds made available within each ~~sub-region~~~~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 regional allocation together with other policies and purposes set out in Tex. Gov't Code, Chapter 2306 and the Department shall provide Applicants the opportunity to comment on and propose alternatives to such a recommendation. In general, such a recommendation shall not involve broad reductions in the funding request amounts solely to accommodate regional allocation and shall not involve rearranging the priority of Applications within a particular ~~sub-region~~~~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 ~~by selecting the Development(s) that most effectively satisfy the Department's goals in meeting set-aside and regional allocation goals based on the criteria described in §11.4(a) of this chapter.~~ Where sufficient credit becomes available to award an ~~a~~Application on the waiting list late in the calendar year, staff may allow flexibility in meeting the Carryover Allocation submission deadline ~~and/or changes to the Application as necessary~~ to ensure to the fullest extent feasible that available resources are allocated by December 31.

(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 ~~sub-region~~~~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 ~~sub-region~~~~subregion~~ and be awarded in the collapse process to an Application in another region, ~~sub-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 ~~and any remaining credits and~~ awarded to the next Application on the waiting list for the state collapse, if sufficient credits are available to meet the requirements of the Application ~~as may be amended~~ after underwriting review.

(3) Award Recommendation Methodology. (§2306.6710(a) - (f); §2306.111) The Department will assign, as described herein, Developments for review by the program and underwriting divisions. In general, Applications will be prioritized for assignment, with highest priority given to those identified as most competitive based upon the Applicant self-score and an initial program review. The procedure identified in subparagraphs (A) - (F) of this paragraph will also be used in making recommendations to the Board.

(A) USDA Set-Aside Application Selection (Step 1). The first level of priority review will be those Applications with the highest scores in the USDA Set-Aside until the minimum requirements stated in §11.5(2) of this chapter (relating to Competitive HTC Set-Asides. (§2306.111(d))) are attained. The minimum requirement may be exceeded in order to award the full credit request or underwritten amount of the last Application selected to meet the At-Risk Set-Aside requirement;

(B) At-Risk Set-Aside Application Selection (Step 2). The second level of priority review will be those Applications with the highest scores in the At-Risk Set-Aside statewide until the minimum requirements stated in §11.5(3) of this chapter are attained. This may require the minimum requirement to be exceeded to award the full credit request or underwritten amount of the last Application selected to meet the At-Risk Set-Aside requirement. This step may leave less than originally anticipated in the 26 ~~sub-region~~subregions to award under the remaining steps, ~~but these funds would generally come from the statewide collapse;~~

(C) Initial Application Selection in Each ~~Sub-Region~~Subregion (Step 3). The highest scoring Applications within each of the 26 ~~sub-region~~subregions will then be selected provided there are sufficient funds within the ~~sub-region~~subregion to fully award the Application. Applications electing the At-Risk or USDA Set-Asides will not be eligible to receive an award from funds made generally available within each of the subregions. The Department will, for each such Urban subregion, calculate the maximum percentage in accordance with Tex. Gov't Code, §2306.6711(h) and will publish such percentages on its website.

(i) In Uniform State Service Regions containing a county with a population that exceeds one million, the Board may not allocate more than the maximum percentage of credits available for Elderly Developments, unless there are no other qualified Applications in the subregion.

(ii) In accordance with Tex Gov't Code, §2306.6711(g), in Uniform State Service Regions containing a county with a population that exceeds 1.7 million, the Board shall allocate competitive tax credits to the highest scoring development, if any, that is part of a concerted revitalization plan that meets the requirements of §11.9(d)(7) (except for §11.9(d)(7)(A)(ii)(III) and §11.9(d)(7)(B)(iv)), 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 ~~sub-region~~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 ~~sub-region~~subregion as compared to the ~~sub-region~~subregion's allocation. This rural redistribution will continue until all of the tax credits in the "pool" are allocated to Rural Applications and at least 20 percent of the funds available to the State are allocated to Applications in Rural Areas. (§2306.111(d)(3)) In the event that more than one ~~sub-region~~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 ~~sub-region~~subregion:

(i) the ~~sub-region~~subregion with no recommended At-Risk Applications from the same Application Round; and

(ii) the ~~sub-region~~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 ~~sub-region~~subregion in the State, will be combined into one "pool." The funds will be used to award the highest scoring Application (not selected in a prior step) in the most underserved ~~sub-region~~subregion in the State compared to the amount originally made available in each ~~sub-region~~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 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. This process will continue until the funds remaining are insufficient to award the next highest scoring Application in the next most underserved ~~sub-region~~subregion. In the event that more than one ~~sub-region~~subregion is underserved by the same percentage, the priorities described in clauses (i) and (ii) of this subparagraph will be used to select the next most underserved ~~sub-region~~subregion:

- (i) the ~~sub-region~~subregion with no recommended At-Risk Applications from the same Application Round; and
- (ii) the ~~sub-region~~subregion that was the most underserved during the Application Round during the year immediately preceding the current Application Round.

(F) Contingent Qualified Nonprofit Set-Aside Step (Step 6). If an insufficient number of Applications participating in the Nonprofit Set-Aside are selected after implementing the criteria described in subparagraphs (A) - (E) of this paragraph to meet the requirements of the 10 percent Nonprofit Set-Aside, action must be taken to modify the criteria described in subparagraphs (A) - (E) of this paragraph to ensure the set-aside requirements are met. Therefore, the criteria described in subparagraphs (C) - (E) of this paragraph will be repeated after selection of the highest scoring Application(s) under the Nonprofit Set-Aside statewide are selected to meet the minimum requirements of the Nonprofit Set-Aside. This step may cause some lower scoring Applications in a ~~sub-region~~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 Application to award. For example, if credits are returned, those credits will first be made available in the set-aside or ~~sub-region~~subregion from which they were originally awarded. This means that the first Application on the waiting list is in part contingent on the nature of the credits that became available for award. The Department shall hold all credit available after the late-July awards until September 30 in order to collect credit that may become available when tax credit Commitments are submitted. Credit confirmed to be available, as of September 30, may be awarded to Applications on the waiting list unless insufficient credits are available to fund the next Application on the waiting list. For credit returned after September 30, awards from the waiting list will be made when the remaining balance is sufficient to award the next Application as may be amended on the waiting list based on the date(s) of returned credit. Notwithstanding the foregoing, if decisions related to any returns or rescissions of tax credits are under appeal or are otherwise contested, the Department may delay awards until resolution of such issues. ~~The Department will evaluate all waiting list awards for compliance with requested set asides. This may cause some lower scoring applications to be selected instead of a higher scoring application.~~ (§2306.6710(a) - (f); §2306.111)

(5) Credit Returns Resulting from Force Majeure Events. In the event that the Department receives a return of Competitive 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 ~~shall~~ not be subject to the requirements of paragraph (2) of this section. Requests to ~~separately~~ allocate returned credit separately where all of the requirements of this paragraph have not been met or

Commented [LHA17]: This is already accounted for in the rest of the QAP. The "higher scoring App" would initially be selected, reviewed, and if necessary, docked points, disqualified from a set-aside and/or terminated. All of this would trigger appeal rights. The second sentence is highly subjective and seems to give staff the ability to by-pass other parts of the rule. This would seem to deny the "higher scoring" Applicant due process.

requests for waivers of any part of this paragraph will not be considered. For purposes of this paragraph, credits returned after September 30 of the preceding program year may be considered to have been returned on January 1 of the current year in accordance with the treatment described in §(b)(2)(C)(iii) of Treasury Regulation 1.42-14. The Department's Governing Board may approve the execution of a current program year Carryover Agreement regarding the returned credits with the Development Owner that returned such credits only if:

(A) The credits were returned as a result of "*Force Majeure*" events that occurred after the start of construction and before issuance of Forms 8609. Force Majeure events are the following sudden and unforeseen circumstances outside the control of the Development Owner: acts of God such as fire, tornado, flooding, significant and unusual rainfall or subfreezing temperatures, or loss of access to necessary water or utilities as a direct result of significant weather events; explosion; vandalism; orders or acts of military authority; litigation; changes in law, rules, or regulations; national emergency or insurrection; riot; acts of terrorism; supplier failures; or materials or labor shortages. If a *Force Majeure* event is also a presidentially declared disaster, the Department may treat the matter under the applicable federal provisions. *Force Majeure* events must make construction activity impossible or materially impede its progress;

(B) Acts or events caused by the negligent or willful act or omission of the Development Owner, Affiliate or a Related Party shall under no circumstance be considered to be caused by *Force Majeure*;

(C) A Development Owner claiming *Force Majeure* must provide evidence of the type of event, as described in subparagraph (A) of this paragraph, when the event occurred, and that the loss was a direct result of the event;

(D) The Development Owner must prove that reasonable steps were taken to minimize or mitigate any delay or damages, that the Development Owner substantially fulfilled all obligations not impeded by the event, including timely closing of all financing and start of construction, that the Development and Development Owner was properly insured and that the Department was timely notified of the likelihood or actual occurrence of an event described in subparagraph (A) of this paragraph;

(E) The event prevents the Development Owner from meeting the placement in service requirements of the original allocation;

(F) The requested current year Carryover Agreement allocates the same amount of credit as that which was returned; ~~and~~

(G) The Department's Real Estate Analysis Division determines that the Development continues to be financially viable in accordance with the Department's underwriting rules after taking into account any insurance proceeds related to the event; ~~and~~

~~(H) The Development Owner submits a signed written request for a new Carryover Agreement concurrently with the voluntary return of the HTCs.~~

§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 ~~sub-regions~~subregions in the rural or statewide collapse.

(1) Applications having achieved a score on Proximity to the Urban Core. This item does not apply to the At-Risk Set-Aside.

(2) Applications scoring higher on the Opportunity Index under §11.9(c)(4) or Concerted Revitalization Plan under §11.9(d)(7) of this chapter (relating to Competitive HTC Selection Criteria) as compared to another Application with the same score.

~~(3) Applications having achieved the maximum Opportunity Index Score and the highest number of point items on the Opportunity Index menu that they were unable to claim because of the 7 point cap on that item.~~

~~(4) The Application with the highest average rating for the elementary, middle, and high school designated for attendance by the Development Site.~~

(3) Applications proposed to be located wholly within a Place, or if located completely outside a Place, a county, that has the fewest HTC units per capita, as compared to another Application with the same score. The HTCs per capita measure (by Place or county) is located in the 2018 HTC Site Demographic Characteristics Report. In the event a site straddles jurisdictional boundaries, the higher of the applicable per capita measures will be used for purposes of this paragraph.

(5) Applications proposed to be located in a census tract with the lowest poverty rate as compared to another Application with the same score.

(6) Applications proposed to be located the greatest linear distance from the nearest Housing Tax Credit assisted Development. 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. The linear measurement will be performed from closest boundary to closest boundary.

§11.8. Pre-Application Requirements (Competitive HTC Only).

(a) General Submission Requirements. The ~~p~~Pre-~~a~~Application process allows Applicants interested in pursuing an Application to assess potential competition across the thirteen (13) state service regions, ~~sub-regions~~subregions and set-asides. Based on an understanding of the potential competition they can make a more informed decision 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, ~~with all required information and exhibits provided pursuant to the Multifamily Programs Procedures Manual.~~

(1) The ~~p~~Pre-~~a~~Application must be submitted using the URL provided by the Department, as outlined in the Multifamily Programs Procedures Manual, along with the required ~~p~~Pre-~~a~~Application fee as described in §10.901 of this title (relating to Fee Schedule), not later than the Pre-application Final Delivery Date as identified in §11.2 of this chapter (relating to Program Calendar for Competitive Housing Tax Credits). If the ~~p~~Pre-~~a~~Application and corresponding fee is not submitted on or before this deadline the Applicant will be deemed to have not made a ~~p~~Pre-~~a~~Application.

(2) Only one ~~p~~Pre-aApplication may be submitted by an Applicant for each Development Site.

(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 ~~p~~Pre-aApplication does not ensure that an Applicant satisfies all Application eligibility, threshold or documentation requirements. While the ~~p~~Pre-aApplication is more limited in scope than ~~an~~-the Application, ~~p~~Pre-aApplications are subject to the same limitations, restrictions, or causes for disqualification or termination as ~~a full~~-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 ~~p~~Pre-aApplication.

(b) Pre-Application Threshold Criteria. Pursuant to Tex Gov't Code, §2306.6704(c) ~~p~~Pre-aApplications 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 §10.204(10) of this title (relating to Required Documentation for Application Submission). For purposes of meeting this specific requirement related to pre-application threshold criteria, proof of consideration and any documentation required for identity of interest transactions is not required at the time of pre-application submission but will be required at the time of full application submission;

(B) Funding request;

(C) Target Population;

(D) Requested set-asides (At-Risk, USDA, Nonprofit, and/or Rural);

(E) Total Number of Units proposed;

(F) Census tract number in which the Development Site is located, and a map of that census tract with an outline of the proposed Development Site;

(G) Expected score for each of the scoring items identified in the ~~p~~Pre-aApplication materials;

(H) Proposed name of ownership entity; and

(I) Disclosure of the following Undesirable Neighborhood Characteristics under §10.101(a)(43):

(i) The Development Site is located in a census tract or within 1,000 feet of any census tract in an Urban Area and the rate of Part I violent crime is greater than 18 per 1,000 persons (annually) as reported on neighborhoodscout.com.

(ii) The Development Site is located within the attendance zones of an elementary school, a middle school or a high school that does not have a Met Standard rating by the Texas Education Agency.

(2) Evidence in the form of a certification provided in the ~~p~~Pre-aApplication, that all of the notifications required under this paragraph have been made. (§2306.6704)

(A) The Applicant must list in the pre-application all Neighborhood Organizations on record with the county or state whose boundaries include the entire proposed Development Site as of the beginning of the Application Acceptance Period.

(B) Notification Recipients. No later than the date the ~~p~~Pre-aApplication is submitted, notification must be sent to all of the persons or entities prescribed in clauses (i) – (viii) of this subparagraph. Developments located in an ETJ of a ~~city-municipality~~ are required to notify both ~~city-municipal~~ and county officials. The notifications may be sent by e-mail, fax or mail with registered return receipt or similar tracking mechanism in the format required in the ~~Pre-application~~Public Notification Template provided in the ~~pre-application~~Uniform 2018 Multifamily Application Template. The Applicant is ~~encouraged-required~~ to retain proof of delivery in the event the Department ~~requires-requests~~ proof of notification. Acceptable evidence of such delivery is demonstrated by signed receipt for mail or courier delivery and confirmation of delivery for fax and e-mail. Officials to be notified are those officials in office at the time the ~~p~~Pre-aApplication is submitted. Note that between the time of pre-application (if made) and full Application, such officials may change and the boundaries of their jurisdictions may change. By way of example and not by way of limitation, events such as redistricting may cause changes which will necessitate additional notifications at full Application. Meetings and discussions do not constitute notification. Only a timely and compliant written notification to the correct person constitutes notification.

- (i) Neighborhood Organizations on record with the state or county as of the beginning of the Application Acceptance Period whose boundaries include the ~~entire~~ proposed Development Site;
- (ii) Superintendent of the school district in which the Development Site is located;
- (iii) Presiding officer of the board of trustees of the school district in which the Development Site is located;
- (iv) Mayor of the municipality (if the Development Site is within a municipality or its extraterritorial jurisdiction);
- (v) All elected members of the Governing Body of the municipality (if the Development Site is within a municipality or its extraterritorial jurisdiction);
- (vi) Presiding officer of the Governing Body of the county in which the Development Site is located;
- (vii) All elected members of the Governing Body of the county in which the Development Site is located; and
- (viii) State Senator and State Representative of the districts whose boundaries include the proposed Development Site;

(C) Contents of Notification.

- (i) The notification must include, at a minimum, all of the information described in subclauses (I) – (VI) of this clause.
 - (I) the Applicant's name, address, an individual contact name and phone number;
 - (II) the Development name, address, city, and county;
 - (III) a statement informing the entity or individual being notified that the Applicant is submitting a request for Housing Tax Credits with the Texas Department of Housing and Community Affairs;
 - (IV) whether the Development proposes New Construction, Reconstruction, Adaptive Reuse, or Rehabilitation;

(V) the physical type of Development being proposed (*e.g.* single family homes, duplex, apartments, high-rise etc.); and

(VI) the approximate total number of Units and approximate total number of ~~Low-~~Income Units.

(ii) The Applicant must disclose that, in accordance with the Department's rules, aspects of the Development may not yet have been determined or selected or may be subject to change, such as changes in the amenities ultimately selected and provided;

(iii) The notification may not contain any false or misleading statements. Without limiting the generality of the foregoing, the notification may not create the impression that the proposed Development will serve a Target Population exclusively or as a preference unless such targeting or preference is documented in the Application and is in full compliance with all applicable state and federal laws, including state and federal fair housing laws; and

(iv) Notifications or any other communications may not contain any statement that violates Department rules, statute, code, or federal requirements.

(c) Pre-Application Results. Only ~~Pre-Applications~~ which have satisfied all of the ~~Pre-Application~~ requirements, including those in §11.9(e)(3) of this chapter, will be eligible for ~~Pre-Application~~ points. The order and scores of those Developments released on the Pre-Application Submission Log do not represent a Commitment on the part of the Department or the Board to allocate tax credits to any Development and the Department bears no liability for decisions made by Applicants based on the results of the Pre-Application Submission Log. Inclusion of a ~~Pre-Application~~ on the Pre-Application Submission Log does not ensure that an Applicant will receive points for a ~~Pre-Application~~.

§11.9.Competitive HTC Selection Criteria.

(a) General Information. This section identifies the scoring criteria used in evaluating and ranking Applications. The criteria identified in subsections (b) - (e) of this section include those items required under Tex Gov't Code, Chapter 2306, §42 of the Code, and other criteria established in a manner consistent with Chapter 2306 and §42 of the Code. There is no rounding of numbers in this section for any of the calculations in order to achieve the desired requirement or limitation, unless rounding is explicitly stated as allowed for that particular calculation or criteria. The Application must include one or more maps indicating the location of the Development Site and the related distance to the applicable facility. Distances are to be measured from the nearest boundary of the Development Site to the nearest boundary of the property or easement containing the facility, unless otherwise noted. For the purposes of this section, all measurements will include ingress/egress requirements and any easements regardless of how they will be held. Applicants should provide appropriate support substantiating all claims for representation made in the Application, such as claims for points, qualification for set-asides, or meeting of threshold requirement. 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 to substantiate the election 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. ~~When providing a pre-application, Application or other materials to a state representative, local governmental body, Neighborhood Organization, or anyone else to secure~~

~~support or approval that may affect the Applicant's competitive posture, an Applicant must disclose that in accordance with the Department's rules aspects of the Development may not yet have been determined or selected or may be subject to change, such as changes in the amenities ultimately selected and provided.~~

(b) Criteria promoting development of high quality housing.

(1) Size and Quality of the Units. (§2306.6710(b)(1)(D); §42(m)(1)(C)(iii)) An Application may qualify for up to fifteen (15) points under subparagraphs (A) and (B) of this paragraph.

(A) Unit Sizes (8 points). The Development must meet the minimum requirements identified in this subparagraph to qualify for points. Points for this item will be automatically granted for Applications involving Rehabilitation (excluding Reconstruction), for Developments receiving funding from USDA, or for Supportive Housing Developments without meeting these square footage minimums only if requested in the Self Scoring Form.

- (i) five-hundred fifty (550) square feet for an Efficiency Unit;
- (ii) six-hundred fifty (650) square feet for a one Bedroom Unit;
- (iii) eight-hundred fifty (850) square feet for a two Bedroom Unit;
- (iv) one-thousand fifty (1,050) square feet for a three Bedroom Unit; and
- (v) one-thousand two-hundred fifty (1,250) square feet for a four Bedroom Unit.

(B) Unit and Development Features (7 points). Applicants that elect in an Application to provide specific amenity and quality features in every Unit at no extra charge to the tenant will be awarded points based on the point structure provided in §10.101(b)(6)(B) of this title (relating to Site and Development Requirements and Restrictions) and as certified to in the Application. The amenities will be required to be identified in the LURA. Rehabilitation Developments will start with a base score of three (3) points and Supportive Housing Developments will start with a base score of five (5) points.

(2) Sponsor Characteristics. (§42(m)(1)(C)(iv)) An Application may qualify to receive ~~either one (1) or two (2) points if it meets one of the following conditions the ownership structure contains a HUB certified by the Texas Comptroller of Public Accounts by the Full Application Delivery Date, or Qualified Nonprofit Organization provided the Application is under the Nonprofit Set Aside. Any Application that includes a HUB must include a narrative description of the HUB's experience directly related to the housing industry.~~

(A) ~~The ownership structure contains either a HUB certified by the Texas Comptroller of Public Accounts by the Full Application Delivery Date or it contains a Qualified Nonprofit Organization, provided the Application is under the Nonprofit Set-Aside.~~ The HUB or Qualified Nonprofit Organization must have some combination of ownership interest in the General Partner of the Applicant, ~~e~~Cash ~~f~~low from operations, and ~~d~~Developer ~~f~~ee which taken together equal at least ~~85~~0 percent and no less than 5 percent for any category. For example, a HUB or Qualified Nonprofit Organization may have 20 percent ownership interest, ~~30~~25 percent of the ~~d~~Developer ~~f~~ee, and ~~30~~5 percent of ~~e~~Cash ~~f~~low from operations.

~~(B)~~The HUB or Qualified Nonprofit Organization must also materially participate in the Development and operation of the Development throughout the Compliance Period and

must have experience directly related to the housing industry, which may include experience with property management, construction, development, financing, or compliance. Material participation means that the HUB or Qualified Nonprofit is regularly, continuously, and substantially involved in providing services integral to the Development Team; providing services as an independent contractor is not sufficient. A Principal of the HUB or Qualified Nonprofit Organization cannot be a Related Party to any other Principal of the Applicant or Developer (excluding another Principal of said HUB or Qualified Nonprofit Organization). (2 points)

(B) The HUB or Nonprofit Organization must be involved with the Development Services or in the provision of on-site tenant services during the Development's Affordability Period. Selecting this item because of the involvement of a Nonprofit Organization does not make an Application eligible for the Nonprofit Set-Aside. A Principal of the HUB or Qualified Nonprofit Organization cannot be a Related Party to any other Principal of the Applicant or Developer (excluding another Principal of said HUB or Qualified Nonprofit Organization). (1 point)

(c) Criteria to serve and support Texans most in need.

(1) Income Levels of Tenants. (§§2306.111(g)(3)(B) and (E); 2306.6710(b)(1)(C) and (e); and §42(m)(1)(B)(ii)(I)) An Application may qualify for up to sixteen (16) points for rent and income restricting a Development for the entire Affordability Period at the levels identified in subparagraph (A) or (B) of this paragraph.

(A) For any Development located within a non-Rural Area of the Dallas, Fort Worth, Houston, San Antonio, or Austin MSAs:

- (i) At least 40 percent of all low-income Units at 50 percent or less of AMGI (16 points);
- (ii) At least 30 percent of all low income Units at 50 percent or less of AMGI (14 points);
or
- (iii) At least 20 percent of all low-income Units at 50 percent or less of AMGI (12 points).

(B) For Developments proposed to be located in areas other than those listed in subparagraph (A) of this paragraph:

- (i) At least 20 percent of all low-income Units at 50 percent or less of AMGI (16 points);
- (ii) At least 15 percent of all low-income Units at 50 percent or less of AMGI (14 points);
or
- (iii) At least 10 percent of all low-income Units at 50 percent or less of AMGI (12 points).

(2) Rent Levels of Tenants. (§2306.6710(b)(1)(E)) An Application may qualify to receive up to thirteen (13) points for rent and income restricting a Development for the entire Affordability Period. These levels are in addition to those committed under paragraph (1) of this subsection.

(A) At least 20 percent of all low-income Units at 30 percent or less of AMGI for Supportive Housing Developments proposed by a Qualified Nonprofit (13 points);

(B) At least 10 percent of all low-income Units at 30 percent or less of AMGI or, for a Development located in a Rural Area, 7.5 percent of all low-income Units at 30 percent or less of AMGI (11 points); or

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

(3) Tenant Services. (§2306.6710(b)(1)(G) and §2306.6725(a)(1)) A Supportive Housing Development proposed by a Qualified Nonprofit may qualify to receive up to eleven (11) points and all other Developments may receive up to ten (10) points.

(A) By electing points, the Applicant certifies that the Development will provide a combination of supportive services, which are listed in §10.101(b)(7) of this title, appropriate for the proposed tenants and that there is adequate space for the intended services. The provision and complete list of supportive services will be included in the LURA. The Owner may change, from time to time, the services offered; however, the overall points as selected at Application will remain the same. No fees may be charged to the tenants for any of the services. Services must be provided on-site or transportation to those off-site services identified on the list must be provided. The same service may not be used for more than one scoring item. (10 points for Supportive Housing, 9 points for all other Development)

(B) The Applicant certifies that the Development will contact local nonprofit and governmental providers of services that would support the health and well-being of the Department's tenants, 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 ~~in~~ entirely within a census tract with a poverty rate of less than the greater of 20% or the median poverty rate for the region and meets the requirements in (i) or (ii) below.

(i) The Development Site is located entirely within ~~in~~ 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 ~~in~~ a census tract that has a poverty rate of less than the greater of 20% or the median poverty rate for the region, with a median household income in the third quartile within the region, and is contiguous to a census tract in the first or second quartile, without physical barriers such as highways or rivers between, and the Development Site is no more than 2 miles from the boundary between the census tracts. For purposes of this scoring item, a highway is a limited-access road with a speed limit of 50 miles per hour or more; and, (1 points)

(B) An application that meets the foregoing criteria may qualify for additional points ~~(for a maximum of seven (7) points)~~ for any one or more of the following factors. Each facility or 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. Any costs or membership fees associated with making use of a recreational amenity cannot exceed \$50 per person per month (assume cost is for a single admittance per month and membership fee is for annual membership paid on a monthly basis):

(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 clauses (I) through (XIII) of this subparagraph.

(I) The Development Site is located: (up to 2 points)

(-a-) less than 1/2 mile from a public park with a playground; or (1 point)

(-b-) less than 1/2 mile on an accessible route that is less than 1/2 mile in total length from the entrance to a public park with an accessible playground equipment in a public park. The route and the playground both of which must be compliant with meet 2010 ADA standards by the Full Application Delivery Date. In order to qualify for point, the Application must include a map showing the complete accessible route and a report from a qualified third-party attesting to accessibility compliance of both the complete route (identified in the aforementioned map) and the playground itself. (2+ point)

(II) The Development Site is located within a certain proximity of public transportation that provides regular service to employment and basic services. For purposes of this scoring item, regular is defined as scheduled service beyond 8 a.m. to 5 p.m., plus service on Saturdays and Sundays. (up to 2 points)

(-a-) Development Site is less than 1/2 mile from a public transportation stop of station. (1 point)

(-b-) Development Site is less than 1/2 mile on an accessible route that is less than 1/2 mile in total length from the entrance of a Public Transportation stop or station, with a route schedule that provides regular service to employment and basic services. Both the route and the public transportation stop must be compliant with meet 2010 ADA standards by the Full Application Delivery Date. In order to qualify for points, the Application must include a map showing the complete accessible route and a report from a qualified third-party attesting to accessibility compliance of both the complete route (identified in the aforementioned map) and the transportation stop itself. For purposes of this scoring item, regular is

~~defined as scheduled service beyond 8 a.m. to 5 p.m., plus weekend service (both Saturday and Sunday). (2+ points)~~

(III) The Development ~~s~~Site is located within 1 mile of a full-service grocery store and/or pharmacy. ~~For purposes of this subclause, these amenities may be situated within the same facility. (up to 2 points)~~

~~(-a-) A full service grocery store which 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 for grocery stores and 1 point for pharmacies)~~

~~(-b-) A retail pharmacy. (1 point)~~

(IV) The Development Site is located within 3 miles of a health-related facility, such as a full service hospital, community health center, minor emergency center, emergency room or urgent care facility, ~~or a primary care physician offices and physician specialty offices are not considered in this category. (1 point)~~

(V) The Development Site is within 2 miles of a center that is licensed by the Department of Family and Protective Services, (“DFPS”) specifically to provide a school-age program or to provide a child care program for infants, toddlers, and/or pre-kindergarten. ~~The Application must include evidence from DFPS that the center meets the above requirements. (1 point)~~

(VI) 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)~~

(VII) The development ~~s~~Site is located within 1 mile of a public library ~~that has indoor meeting space, physical books that can be checked out and that are of a general and wide-ranging subject matter, computers and internet access, and that is open during normal-regularly scheduled operating hours at least 6 days a week. The library must not be age or subject-restricted and must be at least partially funded with government funding (1 point)~~

(VIII) The Development Site is located within 5 miles of an ~~university or community college campus, as confirmed by the Texas Higher Education Coordination Board (“THECB”)US Department of Education (https://www.ed.gov/accreditation).~~ 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. -The universities and or community colleges must have a physical location/campus.~~

Commented [LHA18]: Because there is no longer a tiebreak related to menu items “above the line,” Applicant are only required to have 5 amenities total in order to achieve a maximum score on Opportunity Index. Because of this, it is unlikely that anyone will go after these two amenities due to the very strict (2010 ADA) standards. It follows that Applicants will not site their development in relation to parks or public transportation because they are disincentivized to do so because the criteria is too stringent. They can easily find 5 other amenities which don’t require the level of scrutiny that 2010 ADA compliance would.

It seems like good public policy to provide an incentive to site developments in relation to public transportation (and parks) and provide a FURTHER incentive for ADA compliance. We believe the suggested language to the left would accomplish both goals.

We also offer some suggestions to address issues that came up in the 2017 cycle.

Commented [LHA19]: This appears to mean subclause III is worth up to 2 points. If that is the case, we recommend the clarifications to the left. We also recommend allowing these two items to be within the same building, as many (if not most) full services groceries have their own pharmacies. As a practical matter, it’s very convenient for families to pick up their prescriptions while they do their grocery shopping.

Commented [LHA20]: Primary care doctors are a valuable amenity, offering preventative care, and are far cheaper than going to an emergency room.

Commented [LHA21]: For scoring purposes, there needs to be an “apples to apples” comparison so we recommend limiting this to NeighborhoodScout. However, we are supportive of allowing the threshold item in the MF Rule related to violent crime to use either NS or local data sources.

~~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 as tabulated by the 2010-2014 American Community Survey 5-year Estimate. (1 point)

~~(X) Development site is within 2 miles of a museum that is a government sponsored or non-profit, permanent institution open to the public and is not an ancillary part of an organization whose primary purpose is other than the acquisition, conservation, study, exhibition, and educational interpretation of objects having scientific, historical, or artistic value. (1 point)~~

(XI) Development Site is located within 1 mile of an indoor recreation facility available to the public. Examples include a gym, health club, a bowling alley, a theater, or a municipal or county community center. (1 point)

(XII) Development Site is located within 1 mile of an outdoor, dedicated, and permanent recreation facility available to the public. Examples include swimming pools or splash pads, tennis courts, golf courses, softball fields, or basketball courts. (1 point)

(XIII) Development Site is located within 1 mile of community, civic or service organizations that provide regular and recurring substantive services 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)~~

(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 clauses (I) through (XII) of this subparagraph.

(I) The Development Site is located within 4 miles of a full-service grocery store or pharmacy. For purposes of this subclause, these amenities may be situated within the same facility. (up to 2 points)

~~(-a-) A full service grocery store which 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 for grocery stores and 1 point for pharmacies)~~

~~(-b-) A retail pharmacy (1 point)~~

Commented [LHA22]: Accreditation by the Texas Higher Education Coordination Board alone is too narrow a criterion for this amenity. If the purpose is to provide tenants with the opportunity to attend a university or community college in close proximity to their home, accreditation of the institution by any organization recognized by the US Department of Education should be allowed as long as the institution can confer a bachelor's or associate's degree.

We further recommend adding trade schools.

Commented [LHA23]: It seems like this would fall under (XII) above as a community, civic or service organization, and therefore we recommend striking this as a standalone clause.

Commented [LHA24]: Same comment as above in Urban.

(II) The Development Site is located within 4 miles of health-related facility, such a full service hospital, community health center, or minor emergency center, ~~or primary care Physician offices and physician specialty offices are not considered in this category.~~ (1 point)

Commented [LHA25]: Same comment as above in Urban.

(III) The Development Site is located within 4 miles of a center that is licensed by the Department of Family and Protective Services ("DFPS") specifically to provide a school-age program or to provide a child care program for infants, toddlers, and/or pre-kindergarten. ~~The Application must include evidence from DFPS that the center meets the above requirements.~~ (1 point)

(IV) 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)

(V) The Development Site is located within 4 miles of a public library that has indoor meeting space, physical books that can be checked out and that are of a general and wide-ranging subject matter, computers and internet access, and that is open during normal-regularly schedule operating hours at least 5 days a week. ~~The library must not be age or subject-restricted and must be at least partially funded with government funding.~~ (1 point)

(VI) ~~The development site is located within 4 miles of a public park (1 point) The Development Site is located within 4 miles of a public park on an accessible route that is less than 1 mile from a public park with an accessible playground. The route and the playground both must meet 2010 ADA standards.~~ (1 point)

Commented [LHA26]: We believe this is wholly unachievable in Rural markets, and therefore recommend the requirement resort back to the 2017 language. If the Department wishes to incentivize accessible routes in Rural markets, we recommend the same tiered structure we suggested above in Urban (i.e. 1 point for just the park proximity, and an additional point for the accessibility).

(VII) The Development Site is located within 15 miles of an accredited university or community college campus, 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. 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)

Commented [LHA27]: We recommend adding trade schools.

(VIII) 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 2010-2014 American Community Survey 5-year Estimate.~~ (1 point)

~~(IX) Development site is within 4 miles of a museum that is a government-sponsored or non-profit, permanent institution open to the public and is not an ancillary part of an organization whose primary purpose is other than the acquisition, conservation, study, exhibition, and educational interpretation of objects having scientific, historical, or artistic value.~~ (1 point)

(IX) Development Site is within 3 miles of an indoor recreation facility available to the public. ~~Examples include a gym, health club, a bowling alley, a theater, or a municipal or county community center.~~ (1 point)

(XI) Development sSite is within 3 miles of an outdoor, dedicated, and permanent recreation facility available to the public. Examples include swimming pools or splash pads, tennis courts, golf courses, softball fields or basketball courts. (1 point)

(XII) Development sSite is within 3 miles of community, civic or service organizations that provide regular and recurring substantive services 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)

~~(XII) 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)~~

Commented [LHA28]: Same comment as above in Urban.

(5) Educational Quality.

~~In order to qualify for points under Educational Quality, the elementary school and the middle school or high school within the attendance zone of the Development must have a TEA rating of Met Standard. Except for Supportive Housing Developments, an Application may qualify to receive up to three (3) points for a Development Site located within the attendance zones of public schools meeting the criteria as described in subparagraphs (A)–(E) of this paragraph, as determined by the Texas Education Agency. A Supportive Housing Development may qualify to receive no more than two (2) points for a Development Site located within the attendance zones of public schools meeting the criteria as described in subparagraphs (A) or (B) of this paragraph, as determined by the Texas Education Agency. For districts without attendance zones, the schools closest to the site which may possibly be attended by the tenants must be used for scoring. Choice districts with attendance zones will use the school zoned to the Development site. Schools with an application process for admittance, limited enrollment or other requirements that may prevent a tenant from attending will not be considered as the closest school or the school which attendance zone contains the site. The applicable ratings will be the 2016 accountability rating determined by the Texas Education Agency for the State, Education Service Center region, or individual campus. School ratings will be determined by the school number, so that in the case where a new school is formed or named or consolidated with another school but is considered to have the same number that rating will be used. A school that has never been rated by the Texas Education Agency will use the district rating. If a school is configured to serve grades that do not align with the Texas Education Agency's conventions for defining elementary schools (typically grades K-5 or K-6), middle schools (typically grades 6-8 or 7-8) and high schools (typically grades 9-12), the school will be considered to have the lower of the ratings of the schools that would be combined to meet those conventions. In determining the ratings for all three levels of schools, ratings for all grades K-12 must be included, meaning that two or more schools' ratings may be combined. For example, in the case of an elementary school which serves grades K-4 and an intermediate school that serves grades 5-6, the elementary school rating will be the lower of those two schools' ratings. Also, in the case of a 9th grade center and a high school that serves grades 10-12, the high school rating will be considered the lower of those two schools' ratings. Sixth grade centers will be considered as part of the middle school rating.~~

~~(A) The Development Site is within the attendance zone of an elementary school, a middle school and a high school with an Index 1 score at or above the lower of the score for the Education Service Center region, or the statewide score (3 points);~~

~~(B) The Development Site is within the attendance zone of any two of the following three schools (an elementary school, a middle school, and a high school) with an Index 1 score at or above the lower of the score for the Education Service Center region, or the statewide score. (2 points, or 1 point for a Supportive Housing Development); or~~

~~(C) The Development Site is within the attendance zone of a middle school or a high school with an Index 1 score at or above the lower of the score for the Education Service Center region, or the statewide score. (1 point); or~~

~~(D) The Development Site is within the attendance zone of an elementary school with an Index 1 score in the first quartile of all elementary schools statewide. (1 point); or~~

~~(E) If the Development Site is able to score one or two points under clauses (B) through (D) above, one additional point may be added if one or more of the features described in subclause (1) – (4) is present:~~

~~(i) The Development Site is in the attendance zone of an elementary school that has Met Standard, and has earned at least one distinction designation by TEA (1 point);~~

~~(ii) The Development Site is located in the attendance zone of a general admission high school with a four year longitudinal graduation rate in excess of the statewide four year longitudinal graduation rate for all schools for the latest year available, based on the TEA 2016 Index 4: Postsecondary Readiness Data table for the district found at <http://tea.texas.gov/2016accountability.aspx>. (1 point)~~

~~(iii) The development is in the primary attendance zones for an elementary school that has met standard and offers an extended day Pre-K program. (1 point)~~

~~(iv) The development site within the attendance zone of an elementary school, a middle school and a high school that all have a Met Standard rating for the three years prior to application. (1 point)~~

~~(65) Underserved Area. (§§2306.6725(b)(2); 2306.127(3), 42(m)(1)(C)(ii)) An Application may qualify to receive up to five (5) points if the Development Site is located in one of the areas described in subparagraphs (A) - (E) of this paragraph, and the Application contains evidence substantiating qualification for the points. 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. The Application must include evidence that the Development Site meets the requirements.~~

(A) The Development Site is located wholly or partially within the boundaries of a colonia as such boundaries are determined by the Office of the Attorney General and within 150 miles of the Rio Grande River border. For purposes of this scoring item, the colonia must lack water, wastewater, or electricity provided to all residents of the colonia at a level commensurate with the quality and quantity expected of a municipality and the proposed Development must make available any such missing water, wastewater, and electricity

supply infrastructure physically within the borders of the colonia in a manner that would enable the current dwellings within the colonia to connect to such infrastructure (2 points); (B) The Development Site is located entirely within the boundaries of an Economically Distressed Area (1 point);

(C) The Development Site is located entirely within a census tract that does not have a Development that is less than 30 years old according to the Department's property inventory tab of the Site Demographic Characteristics Report; A census tract within the boundaries of an incorporated area that has not received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation for a Development within the past 15 years and continues to appear on the Department's inventory (3 points);

(D) For areas not scoring points for (C) above, the Development Site is located entirely within a census tract that does not have a Development that is less than 15 years old according to the Department's property inventory tab of the Site Demographic Characteristics Report. For areas not scoring points for (C) above, a census tract that does not have a Development subject to an active tax credit LURA (or has received a tax credit award but not yet reached the point where its LURA must be recorded); (2 points);

(E) The Development Site is located entirely within a A-census tract within the whose boundaries of are wholly within an incorporated area and the census tract itself and all of its contiguous census tracts for which neither the census tract in which the Development is located nor the contiguous census tracts do not have a Development that is less than 15 years old according to the Department's property inventory tab of the Site Demographic Characteristics Report received an award or HTC allocation within the past 15 years and continues to appear on the Department's inventory. This item will apply in cities-Places with a population of 300150,000 or more, and will not apply in the At-Risk Set-Aside (5 points).

Commented [LHA29]: When does the 30 year clock start? At award? At Placed in Service?

Commented [LHA30]: Same comment.

Commented [LHA31]: Same comment.

~~(76)~~ Tenant Populations with Special Housing Needs. (§42(m)(1)(C)(v)) An Application may qualify to receive ~~up to~~ two (2) points by serving Tenants with Special Housing Needs. For purposes of this paragraph, Existing Development has the meaning as defined in 10 TAC Chapter 8 and proposed Development is the subject of the Application. Points will be awarded as described in subparagraphs (A) – (C) of this paragraph. If pursuing these points, Applicants must try to score first with subparagraph (A) and then subparagraph (B), both of which pertain to the requirements of the Section 811 Project Rental Assistance Program ("Section 811 PRA Program") (10 TAC Chapter 8). Only if an Applicant or Affiliate cannot meet the requirements of subparagraphs (A) or (B) may an Application qualify for subparagraph (C).

(A) An Applicant or Affiliate that Owns or Controls an Existing Development that is eligible to participate in the Department's Section 811 Project Rental Assistance Program ("Section 811 PRA Program") will must do so in order to receive two (2) points under this paragraph for the subject Application. The same units cannot be used to qualify for points in more than one HTC Application. Once elected in the Application, Applicants may not withdraw their commitment to have the Existing Development participate in the Section 811 PRA Program unless the Department determines that the Existing Development cannot meet all of the Section 811 PRA Program criteria. In order to qualify for points, the Existing Development must commit to the Section 811 PRA Program at minimum 10 Section 811 PRA Program Units, unless the Integrated Housing Rule, 10 TAC §1.15, or the 811 Program Rental Assistance Rule ("811 Rule"), 10 TAC Chapter 8, limits the Existing Development to fewer than 10 Section 811 PRA Program Units. The same Section 811 PRA Program Units cannot be used to qualify for points in more than one HTC Application. The Applicant or Affiliate will comply with the requirements of 10 TAC Chapter 8.

~~(B) An Applicant or Affiliate that does not meet the Existing Development requirements of 10 TAC Chapter 8, or who's investors prohibit the Existing Development from participating in the Section 811 PRA Program, but still meets the requirements of 10 TAC Chapter 8.3 is eligible to receive two (2) points by committing Units in the proposed Development to participate in the Department's Section 811 PRA Program. In order to be eligible for points, Applicants must commit at least 10 Section 811 PRA Program Units in the proposed Development for participation in the Section 811 PRA Program unless the Integrated Housing Rule, 10 TAC §1.15, or the 811 Program Rental Assistance Rule ("811 Rule"), 10 TAC Chapter 8, limits the Development to fewer than 10 Section 811 PRA Program Units. The same Section 811 PRA Program Units cannot be used to qualify for points in more than one HTC Application. The Applicant will comply with the requirements of 10 TAC Chapter 8.~~

~~(C) Applicants proposing Developments that are unable do to not meet the requirements of subparagraphs (A) or (B) of this paragraph may qualify for two (2) points by meeting the requirements of this subparagraph. (C).~~ In order to qualify for points, Applicants must agree to set-aside at least 5 percent of the total Units for Persons with Special Needs. The units identified for this scoring item may not be the same units identified for Section 811 Project Rental Assistance Demonstration program. For purposes of this subparagraph, Persons with Special Needs is defined as households where one individual has alcohol and/or drug addictions, Colonia resident, Persons with Disabilities, Violence Against Women Act Protections (domestic violence, dating violence, sexual assault, and stalking), persons with HIV/AIDS, homeless populations, veterans, wounded warriors (as defined by the Caring for Wounded Warriors Act of 2008), and farmworkers. Throughout the Compliance Period, unless otherwise permitted by the Department, the Development Owner agrees to affirmatively market Units to Persons with Special Needs. In addition, the Department will require an initial minimum twelve-month period during which Units must either be occupied by Persons with Special Needs or held vacant, unless the units receive HOME funds from any source. After the initial twelve-month period, the Development Owner will no longer be required to hold Units vacant for Persons with Special Needs, but will be required to continue to ~~affirmatively-specifically~~ market Units to Persons with Special Needs.

Commented [LHA32]: We offer this suggested language as a clarification of the 811 process, and recommend including the investor prohibition as a valid reason to receive points in subparagraph (B).

~~(97)~~ Proximity to the Urban Core. A Development in a City-Place, as defined by the US Census Bureau, with a population over ~~3~~200,000 may qualify for points under this item. The Development Site must be located within 4 miles of the main City Hall facility/municipal government administration building if the population of the city-Place is more than 500,000, or within 2 miles of the main City Hall facility/municipal government administration building if the population of the city is ~~3~~200,000 - ~~500,000~~199,999. The main City Hall facility/municipal government administration building will be determined by the location of regularly scheduled City Council, City Commission, or similar/municipal governing body meetings. Distances are measured from the nearest property boundaries, not inclusive of non-contiguous parking areas. This scoring item will not apply to Applications under the At-Risk Set-Aside. (5 points)

(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 of this chapter. Such resolution(s) must specifically identify the Development whether by legal description, address, Development name, Application number or other verifiable method. In providing a resolution a municipality or county should consult its own staff and legal counsel as to whether such resolution will be consistent with Fair Housing laws as they may apply, including, as applicable, consistency with any Fair Housing Activity Statement-Texas ("FHAST") form on file, any current Analysis of Impediments to Fair Housing Choice, or any current plans such as one year action plans or five year consolidated plans for HUD block grant funds, such as HOME or CDBG funds. [Resolutions received by the Department setting forth that the municipality and/or county objects to or opposes the Application or Development will result in zero points awarded to the Application for that Governing Body. Such resolutions will be added to the Application posted on the Department's website.](#) Once a resolution is submitted to the Department it may not be changed or withdrawn. For an Application with a proposed Development Site that, at the time of the initial filing of the Application, is:

(A) Within a municipality, the Application will receive:

- (i) seventeen (17) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality supports the Application or Development; or
- (ii) fourteen (14) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality has no objection to the Application or Development.

(B) Within the extraterritorial jurisdiction of a municipality, the Application may receive points under clause (i) or (ii) of this subparagraph and under clause (iii) or (iv) of this subparagraph:

- (i) eight and one-half (8.5) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality supports the Application or Development; or
- (ii) seven (7) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality has no objection to the Application or Development; and
- (iii) eight and one-half (8.5) points for a resolution from the Governing Body of that county expressly setting forth that the county supports the Application or Development; or
- (iv) seven (7) points for a resolution from the Governing Body of that county expressly setting forth that the county has no objection to the Application or Development.

(C) Within a county and not within a municipality or the extraterritorial jurisdiction of a municipality:

- (i) seventeen (17) points for a resolution from the Governing Body of that county expressly setting forth that the county supports the Application or Development; or

(ii) fourteen (14) points for a resolution from the Governing Body of that county expressly setting forth that the county has no objection to the Application or Development.

(2) Commitment of Development Funding by Local Political Subdivision. (§2306.6725(a)(5)) An Application may receive one (1) point for a commitment of Development funding from the city (if located in a city) or county in which the Development Site is located. The commitment of ~~d~~Development funding must be reflected in the Application as a financial benefit to the Development, i.e. reported as a source of funds on the Sources and Uses Form and/or reflected in a lower cost in the Development Cost Schedule, such as notation of a reduction in building permits and related costs. Documentation must include a letter from an official of the municipality, county, or other instrumentality with jurisdiction over the proposed Development stating they will provide a loan, grant, reduced fees or contribution of other value that equals \$500 or more for Applications located in Urban subregions or \$250 or more for Applications located in Rural subregions for the benefit of the Development. The letter must describe the value of the contribution, the form of the contribution, e.g. reduced fees or gap funding, and any caveats to delivering the contribution. Once a letter is submitted to the Department it may not be changed or withdrawn.

(3) Declared Disaster Area. (§2306.6710(b)(1)(H)) An Application may receive ten (10) points if the Development Site is located in an area declared to be a disaster area under Tex. Gov't Code §418.014 at the time of Full Application Delivery Date submission or at any time within the two-year period preceding the Full Application Delivery dDate-of-submission, the Development Site is located in an area declared to be a disaster area under the Tex Gov't Code, §418.014.

(4) Quantifiable Community Participation. (§2306.6710(b)(1)(J); §2306.6725(a)(2)) An Application may qualify for up to nine (9) points for written statements from a Neighborhood Organization. In order for the statement to qualify for review, the Neighborhood Organization must have been in existence-current, valid existence with boundaries that contain the entire Development Site prior to as of the Pre-Application Final Delivery Date-and its boundaries must contain the entire Development Site. In addition, the Neighborhood Organization must be on record with the Secretary of State or county in which the Development Site is located. 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 percent of the current membership of the Neighborhood Organization consists of homeowners and/or tenants living within the boundaries, of the Neighborhood Organization; and

(v) an explicit expression of support, opposition, or neutrality. Any expression of opposition must be accompanied with at least one reason forming the basis of that opposition. A Neighborhood Organization ~~is encouraged to~~ should be prepared to provide additional information with regard to opposition.

(B) Technical Assistance. For purposes of this ~~section~~ paragraph, if and only if there is no Neighborhood Organization already in existence or on record, the Applicant, Development Owner, or Developer is allowed to provide technical assistance in the creation of and/or placing on record of a Neighborhood Organization. Technical assistance is limited to:

(i) the use of a facsimile, copy machine/copying, email and accommodations at public meetings;

(ii) assistance in completing the QCP Neighborhood Information Packet, providing boundary maps and assisting in the Administrative Deficiency process; and

(iii) presentation of information and response to questions at duly held meetings where such matter is considered.

(C) Point Values for Quantifiable Community Participation. An Application may receive points based on the values in clauses (i) - (vi) of this subparagraph. Points will not be cumulative. Where more than one written statement is received for an Application, the average of all statements received in accordance with this subparagraph will be assessed and awarded.

(i) nine (9) points for explicit support from a Neighborhood Organization that, during at least one of the three prior Application Rounds, provided a written statement that qualified as Quantifiable Community Participation opposing any Competitive Housing Tax Credit Application and whose boundaries remain unchanged;

(ii) eight (8) points for explicitly stated support from a Neighborhood Organization;

(iii) six (6) points for explicit neutrality from a Neighborhood Organization that, during at least one of the three prior Application Rounds provided a written statement, that

qualified as Quantifiable Community Participation opposing any Competitive Housing Tax Credit Application and whose boundaries remain unchanged;

(iv) four (4) points for statements of neutrality from a Neighborhood Organization or statements not explicitly stating support or opposition, or an existing Neighborhood 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, 2017~~8~~. The Neighborhood Organization expressing opposition will be given seven (7) calendar days to provide any information related to the issue of whether their assertions are contrary to the findings or determinations of a local Governmental Entity. All such materials and the analysis of the Department's staff will be provided to a fact finder, chosen by the Department, for review and a determination of the issue presented by this subsection. The fact finder will not make determinations as to the accuracy of the statements presented, but only with regard to whether the statements are contrary to findings or determinations of a local Governmental Entity. The fact finder's determination will be final and may not be waived or appealed.

(5) Community Support from State Representative. (§2306.6710(b)(1)(J); §2306.6725(a)(2)) Applications may receive up to eight (8) points or have deducted up to eight (8) points for this scoring item. To qualify under this paragraph letters must be on the State Representative's letterhead, be signed by the State Representative, identify the specific Development ~~and clearly state support for or opposition to 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 of this chapter. ~~Letters received by the Department setting forth that the State Representative objects to or opposes the Application or Development will be added to the Application posted on the Department's website.~~ Once a letter is submitted to the Department it may not be changed or withdrawn. Therefore, it is encouraged that letters not be submitted well in advance of the specified deadline in order to facilitate consideration of all constituent comment and other relevant input on the proposed Development. State Representatives to be considered are those in office at the time the letter is submitted and whose district boundaries include the Development Site. ~~If the office is vacant, the Application will be considered to have received a neutral letter.~~ Neutral letters, ~~letters of opposition,~~ or letters that do not specifically refer to the Development ~~or specifically express support or opposition~~ will receive zero (0) points. ~~A letter that does not directly express support but~~

~~expresses it indirectly by inference (e.g. “the local jurisdiction supports the Development and I support the local jurisdiction”) will be treated as a neutral letter. A letter from a state representative expressing the level of community support may be expressly based on the representative’s understanding or assessments of indications of support by others, such as local government officials, constituents, and/or other applicable representatives of the community.~~

Commented [LHA33]: Is such a letter scored as neutral or support? We recommend clarifying this sentence or removing it.

(6) Input from Community Organizations. (§2306.6725(a)(2)) Where, at the time of Application, the Development Site does not fall within the boundaries of any qualifying Neighborhood Organization, then, in order to ascertain if there is community support, an Application may receive up to four (4) points for letters that qualify for points under subparagraphs (A), (B), and/or (C) of this paragraph. No more than four (4) points will be awarded under this point item under any circumstances. All letters of support must be submitted within the Application. Once a letter is submitted to the Department it may not be changed or withdrawn. Should an Applicant elect this option and the Application receives letters in opposition, then one (1) point will be subtracted from the score under this paragraph for each letter in opposition, provided that the letter is from an organization that would otherwise qualify under this paragraph. However, at no time will the Application receive a score lower than zero (0) for this item. Letters received by the Department setting forth that the community organization objects to or opposes the Application or Development will be added to the Application posted on the Department’s website.

(A) An Application may receive two (2) points for each letter of support submitted from a community or civic organization that serves the community in which the Development Site is located. Letters of support must identify the specific Development and must state support of the specific Development at the proposed location. To qualify, the organization must be qualified as tax exempt and have as a primary (not ancillary or secondary) purpose the overall betterment, development, or improvement of the community as a whole or of a major aspect of the community such as improvement of schools, fire protection, law enforcement, city-wide transit, flood mitigation, or the like. The community or civic organization must provide evidence of its tax exempt status (e.g., a copy of its tax-exempt determination letter or its listing on a federal or state government website) and evidence it remains in good standing. An Organization must also provide evidence of its and its existence and participation in the community in which the Development Site is located including, but not limited to, a listing of services and/or members, brochures, annual reports, etc. Letters of support from organizations that cannot provide reasonable evidence that they are active in the area that includes the location of the Development Site will not be awarded points. For purposes of this subparagraph, community and civic organizations do not include neighborhood organizations, governmental entities (excluding Special Management Districts as described in subparagraph C), or taxing entities.

(B) An Application may receive two (2) points for a letter of support from a property owners association created for a master planned community whose boundaries include the Development Site and that does not meet the requirements of a Neighborhood Organization for the purpose of awarding points under paragraph (4) of this subsection.

(C) An Application may receive two (2) points for a letter of support from a Special Management District whose boundaries, as of the Full Application Delivery Date as identified in §11.2 of this chapter (relating to Program Calendar for Competitive Housing Tax Credits), include the Development Site.

(D) Input that evidences unlawful discrimination against classes of persons protected by Fair Housing law or the scoring of which the Department determines to be contrary to the Department's efforts to affirmatively further fair housing will not be considered. If the Department receives input that could reasonably be suspected to implicate issues of non-compliance under the Fair Housing Act, staff will refer the matter to the Texas Workforce Commission for investigation, but such referral will not, standing alone, cause staff or the Department to terminate the Application. Staff will report all such referrals to the Board and summarize the status of any such referrals in any recommendations.

(7) Concerted Revitalization Plan. An Application may qualify for points under this paragraph only if no points are elected under subsection (c)(4) of this section, related to Opportunity Index.

(A) For Developments located in an Urban Area:

(i) An Application may qualify to receive points if the Development Site is located in a distinct area that was once vital and has lapsed into a situation requiring concerted revitalization, and where a concerted revitalization plan has been developed and executed. The area targeted for revitalization must be larger than the assisted housing footprint and should be a neighborhood or small group of contiguous neighborhoods with common attributes and problems. [The Application must include a copy of the plan or a link to the online plan and a description of where specific information required below can be found in the plan.](#) The concerted revitalization plan, [which may be a Tax Increment Reinvestment Zone \("TIRZ"\) or Tax Increment Finance \("TIF"\) or similar plan, that must](#) meet the criteria described in subclauses (I) - (IV) of this clause:

(I) The concerted revitalization plan must have been adopted by the municipality or county in which the Development Site is located. The resolution adopting the plan, or if development of the plan and budget were delegated the resolution of delegation and other evidence in the form of certifications by authorized persons confirming the adoption of the plan and budget, must be submitted with the application.

(II) The problems in the revitalization area must be identified through a process in which affected local residents had an opportunity to express their views on problems facing the area, and how those problems should be addressed and prioritized. These problems may include the following:

(-a-) long-term disinvestment, such as significant presence of residential and/or commercial blight, streets infrastructure neglect such as inadequate drainage, and/or sidewalks in significant disrepair;

(-b-) declining quality of life for area residents, such as high levels of violent crime, property crime, gang activity, or other significant criminal matters such as the manufacture or distribution of illegal substances or overt illegal activities;

(III) Staff will review the target area for presence of the problems identified in the plan and for targeted efforts within the plan to address those problems. In addition, but not in lieu of, such a plan may be augmented with targeted efforts to promote a more vital local economy and a more desirable neighborhood, including but not limited to:

(-a-) creation of needed affordable housing by improvement of existing affordable housing that is in need of replacement or major renovation;

(-b-) attracting private sector development of housing and/or business;

(-c-) developing health care facilities;

(-d-) providing public transportation;

(-e-) developing significant recreational facilities; and/or

(-f-) improving under-performing schools.

(IV) The adopted plan must have sufficient, documented and committed funding to accomplish its purposes on its established timetable. This funding must have been flowing in accordance with the plan, such that the problems identified within the plan will have been sufficiently mitigated and addressed prior to the Development being placed into service.

(V) The plan must be **current** at the time of Application and must officially continue for a minimum of three years thereafter.

Commented [LHA34]: Please clarify what constitutes "current".

(ii) Up to seven (7) points will be awarded based on:

(I) Applications will receive four (4) points for a letter from the appropriate local official providing documentation of measurable improvements within the revitalization area based on the target efforts outlined in the plan. The letter must also discuss how the improvements will lead to an appropriate area for the placement of housing; and

(II) Applications may receive (2) points in addition to those under subclause (I) of this clause if the Development is explicitly identified in a resolution by the city municipality or county as contributing more than any other to the concerted revitalization efforts of the city municipality or county (as applicable). A city municipality or county may only identify one single Development 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 city 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, none of the Applications shall be eligible for the additional points, unless the resolutions address the respective and distinct areas described in the plan; and

(III) Applications will receive (1) point in addition to those under subclause (I) and (II) if the development is in a location that would score at least 4 points under Opportunity Index, §11.9(c)(4)(B), except for the criteria found in §11.9(c)(4)(A) and subparagraphs §11.9(c)(4)(A)(i) and §11.9(c)(4)(A)(ii).

(B) For Developments located in a Rural Area.

(i) Applications will receive 4 points for the rehabilitation or demolition and reconstruction of a development in a rural area that ~~is currently has been~~ leased at 85% or greater ~~for the six months preceding Application~~ by low income households and which was initially constructed ~~prior to 1985~~ ~~25 or more years prior to Application submission~~ as either public housing or as affordable housing with support from USDA, HUD, the HOME program, or the CDBG program. ~~The occupancy percentage will not include units that cannot be occupied due to needed repairs, as confirmed by the PCA or CNA.~~ Demolition and relocation of units must be determined locally to be necessary to comply with the Affirmatively Furthering Fair Housing Rule, or if necessary to create an acceptable distance from Undesirable Site Features or Undesirable Neighborhood Characteristics.

~~(ii) Applications will receive 3 points for the rehabilitation of a development in a rural area that is currently leased at 85% or greater by low income households and which was initially constructed prior to 1985 as either public housing or as affordable housing with support from USDA, HUD, the HOME program, or the CDBG program if the proposed location requires no disclosure of Undesirable Neighborhood Features under Section §10.101(a)(4) or required such disclosure but the disclosed items were found acceptable.~~

~~(iii) Applications may receive (2) points in addition to those under subclause (i) or (ii) of this clause if the Development is explicitly identified in a letter by the city or county as contributing more than any other Development to the concerted revitalization efforts of the city or county (as applicable). A city or county may only identify one single Development during each Application Round for the additional points under this subclause. The letter from the Governing Body of the city or county that approved the plan is required to be submitted in the Application. If multiple Applications submit valid letters under this subclause from the same Governing Body, none of the Applications shall be eligible for the additional points. A city or county may, but is not required, to identify a particular Application as contributing more than any other Development to concerted revitalization efforts. Applications may receive (2) points in addition to those under clause (i) of this subparagraph if the Development is explicitly identified in a resolution by the municipality (or county if the Development Site is completely outside of a city) as contributing more than any other to the concerted revitalization efforts of the municipality or county (as applicable). Where a Development Site crosses jurisdictional boundaries, resolutions from all applicable governing bodies must be submitted. A municipality or county may only identify one single Development during each Application Round for each specific area to be eligible for the additional points under this subclause. If multiple Applications submit resolutions under this subclause from the same Governing Body for a specific area described in the plan, none of the Applications shall be eligible for the additional points; and~~

~~(iii^w) Applications may receive (1) additional point if the development is in a location that would score at least 4 points under Opportunity Index, §11.9(c)(4)(B), except for the criteria found in §11.9(c)(4)(A) and subparagraphs §11.9(c)(4)(A)(i) and §11.9(c)(4)(A)(ii).~~

(e) Criteria promoting the efficient use of limited resources and applicant accountability.

(1) Financial Feasibility. (§2306.6710(b)(1)(A)) An Application may qualify to receive a maximum of eighteen (18) points for this item. To qualify for points, a 15-year pro forma itemizing all projected income including Unit rental rate assumptions, operating expenses and debt service, and specifying the underlying growth assumptions and reflecting a minimum must-pay debt coverage ratio of 1.15 for each year must be submitted. The pro forma must include the signature and contact information evidencing that it has been reviewed and found to be acceptable by an authorized representative of a proposed Third Party construction or permanent lender. In addition to the signed pro forma, a lender approval letter must be submitted. An acceptable form of lender approval letter may be obtained in the Uniform Multifamily Application Templates. If the letter evidences review of the Development alone it will receive sixteen (16) points. If the letter evidences review of the Development and the Principals, it will receive eighteen (18) points.

(2) Cost of Development per Square Foot. (§2306.6710(b)(1)(F); §42(m)(1)(C)(iii)) An Application may qualify to receive up to twelve (12) points based on either the Eligible Building Cost or the Eligible Hard Costs per square foot of the proposed Development voluntarily included in eligible basis as originally submitted in the Application. For purposes of this-scoring item, Eligible Building Costs will be defined as Building Costs includable in Eligible Basis for the purposes of determining a Housing Credit Allocation. Eligible Building Costs will exclude structured parking or commercial space that is not included in Eligible Basis, and Eligible Hard Costs will include general contractor overhead, profit, and general requirements. Structured parking or commercial space costs must be supported by a cost estimate from a Third Party General Contractor or subcontractor with experience in structured parking or commercial construction, as applicable. The square footage used will be the Net Rentable Area (NRA). The calculations will be based on the cost listed in the Development Cost Schedule and NRA shown in the Rent Schedule. If the proposed Development is a Supportive Housing Development, the NRA will include common area up to 50 square feet per Unit.

(A) A high cost development is a Development that meets one of the following conditions:

- (i) the Development is elevator served, meaning it is either a Elderly Development with an elevator or a Development with one or more buildings any of which have elevators serving four or more floors;
- (ii) the Development is more than 75 percent single family design;
- (iii) the Development is Supportive Housing; or
- (iv) the Development Site qualifies for a minimum of five (5) points under subsection (c)(4) of this section, related to Opportunity Index, and is located in an Urban Area.

(B) Applications proposing New Construction or Reconstruction will be eligible for twelve (12) points if one of the following conditions is met:

- (i) The voluntary Eligible Building Cost per square foot is less than \$72.80 per square foot;
- (ii) The voluntary Eligible Building Cost per square foot is less than \$78 per square foot, and the Development meets the definition of a high cost development;

(iii) The voluntary Eligible Hard Cost per square foot is less than \$93.60 per square foot; or

(iv) The voluntary Eligible Hard Cost per square foot is less than \$104 per square foot, and the Development meets the definition of high cost development.

(C) Applications proposing New Construction or Reconstruction will be eligible for eleven (11) points if one of the following conditions is met:

(i) The voluntary Eligible Building Cost per square foot is less than \$78 per square foot;

(ii) The voluntary Eligible Building Cost per square foot is less than \$83.20 per square foot, and the Development meets the definition of a high cost development;

(iii) The voluntary Eligible Hard Cost per square foot is less than \$98.80 per square foot; or

(iv) The voluntary Eligible Hard Cost per square foot is less than \$109.20 per square foot, and the Development meets the definition of high cost development.

(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 \$93.60 per square foot; or

(ii) The voluntary Eligible Hard Cost is less than \$114.40 per square foot.

Commented [LHA35]: Given steadily rising construction pricing, we recommend a 25% increase to each of these criteria.

(E) Applications proposing Adaptive Reuse or Rehabilitation (excluding Reconstruction) will be eligible for points if one of the following conditions is met:

(i) Twelve (12) points for Applications which include voluntary Eligible Hard Costs ~~plus acquisition costs included in Eligible Basis~~ that are less than ~~\$104 per square foot~~ 50 per square foot, plus or minus \$1 per square foot for every 50 square feet above or below a 900 square feet unit;

(ii) Twelve (12) points for Applications which include voluntary Eligible Hard Costs ~~plus acquisition costs included in Eligible Basis~~ that are less than ~~\$135.20 per square foot~~ 60 per square foot, plus or minus \$1 per square foot for every 50 square feet above or below a 900 square feet unit, located in an Urban Area, and that qualify for 5 or 7 points under subsection (c)(4) of this section, related to Opportunity Index; or

(iii) Eleven (11) points for Applications which include voluntary Eligible Hard Costs ~~plus acquisition costs included in Eligible Basis~~ that are less than ~~\$135.20 per square foot~~ 60 per square foot, plus or minus \$1 per square foot for every 50 square feet above or below a 900 square feet unit.

Commented [LHA36]: These levels don't seem high enough for a rehab, let alone an adaptive reuse. Also, the language is unclear with respect to the "plus or minus \$1" for every 50sf "above or below." It seems to indicate that for every 50sf less than 900sf, the \$/sf would go DOWN by \$1, when it should go the other way – a smaller unit has the same fixed costs as a larger unit in a smaller footprint (kitchen, baths, other plumbing, rough electrical, etc.).

(3) Pre-application Participation. (§2306.6704) An Application may qualify to receive up to six (6) points provided a pre-application was submitted ~~during-by~~ the Pre-Application ~~Acceptance~~

~~Period~~Final Delivery Date. Applications that meet the requirements described in subparagraphs (A) - (G) of this paragraph will qualify for six (6) points:

(A) The total number of Units does not increase by more than ten (10) percent from pre-application to Application;

(B) The designation of the proposed Development as Rural or Urban remains the same;

(C) The proposed Development serves the same Target Population;

(D) The pre-application and Application are participating in the same set-asides (At-Risk, USDA, Non-Profit, and/or Rural);

(E) The Application final score (inclusive of only scoring items reflected on the self score form) does not vary by more than ~~six-four (64)~~ 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 ~~p~~Pre-aApplication, 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 ~~p~~Pre-aApplication;

(G) The Development Site does not have the following Undesirable Neighborhood Characteristics as described in 10 TAC §10.101(a)~~(43)~~ that were not disclosed with the pre-application:

(i) The Development Site is located in a census tract or within 1,000 feet of any census tract in an Urban Area and the rate of Part I violent crime is greater than 18 per 1,000 persons (annually) as reported on neighborhoodscout.com.

(ii) The Development Site is located within the attendance zones of an elementary school, a middle school or a high school that does not have a Met Standard rating by the Texas Education Agency.

(H) The ~~p~~Pre-aApplication met all applicable requirements.

(4) Leveraging of Private, State, and Federal Resources. (§2306.6725(a)(3))

(A) An Application may qualify to receive up to three (3) points if at least five (5) percent of the total Units are restricted to serve households at or below 30 percent of AMGI (restrictions elected under other point items may count) and the Housing Tax Credit funding request for the proposed Development meet one of the levels described in clauses (i) - (iv) of this subparagraph:

(i) the Development leverages CDBG Disaster Recovery, HOPE VI, RAD, or Choice Neighborhoods funding and the Housing Tax Credit Funding Request is less than 9 percent of the Total Housing Development Cost (3 points). The Application must include a commitment of such funding; or

(ii) If the Housing Tax Credit funding request is less than ~~eight-ten (810)~~ percent of the Total Housing Development Cost (3 points); or

(iii) If the Housing Tax Credit funding request is less than ~~nine-eleven (911)~~ percent of the Total Housing Development Cost (2 points); or

(iv) If the Housing Tax Credit funding request is less than ~~ten-twelve (120)~~ percent of the Total Housing Development Cost (1 point).

(B) The calculation of the percentages stated in subparagraph (A) of this paragraph will be based strictly on the figures listed in the Funding Request and Development Cost Schedule. Should staff issue an Administrative Deficiency that requires a change in either form, then the calculation will be performed again and the score adjusted, as necessary. However, points may not increase based on changes to the Application. In order to be eligible for points, no more than 50 percent of the developer fee can be deferred. Where costs or financing change after completion of underwriting or award (whichever occurs later), the points attributed to an Application under this scoring item will not be reassessed unless there is clear evidence that the information in the Application was intentionally misleading or incorrect.

Commented [LHA37]: Given steadily rising construction costs, increased land prices, and the downturn in the equity market, these levels leave Developments significantly underleveraged. The 2016 deals that had to be restructured in the wake of the equity collapse ended up being well over 9% at the end of the day.

(5) Extended Affordability. (§§2306.6725(a)(5); 2306.111(g)(3)(C); 2306.185(a)(1) and (c); 2306.6710(e)(2); and 42(m)(1)(B)(ii)(II)) In accordance with the Code, each Development is required to maintain its affordability for a 15-year Compliance Period and, subject to certain exceptions, an additional 15-year Extended Use Period. Development Owners that agree to extend the Affordability Period for a Development to thirty-five (35) years total may receive two (2) points.

(6) Historic Preservation. (§2306.6725(a)(5)) At least seventy-five percent of the residential units shall reside within the Certified Historic Structure and the Development must reasonably be expected to qualify to receive and document receipt of historic tax credits by issuance of Forms 8609. The Application must include either documentation from the Texas Historical Commission that the property is currently a Certified Historic Structure, or documentation determining preliminary eligibility for Certified Historic Structure status (5 points).

(7) Right of First Refusal. (§2306.6725(b)(1); §42(m)(1)(C)(viii)) An Application may qualify to receive (1 point) for Development Owners that will agree to provide a right of first refusal to purchase the Development upon or following the end of the Compliance Period in accordance with Tex Gov't Code, §2306.6726 and the Department's rules including §10.407 of this title (relating to Right of First Refusal) and §10.408 of this title (relating to Qualified Contract Requirements).

(8) Funding Request Amount. An Application may qualify to receive one (1) point if the Application reflects a Funding Request of Housing Tax Credits, as identified in the original Application submission, of no more than 100% of the amount available within the ~~sub-region~~subregion or set-aside as determined by the application of the regional allocation formula on or before December 1, 2015.

(f) Point Adjustments: Factors Affecting Eligibility in the 2019 Application Round

Staff ~~will~~ may recommend to the Board and the Board may find that an Applicant or Affiliate should be ineligible to compete in the 2019 Application Round or that it should be assigned a penalty deduction of one (1) point for each submitted Application (Tex. Gov't Code 2306.6710(b)(2)) because it make a deduction of up to five (5) points for any of the items listed in paragraph (1) of this subsection, unless the person approving the extension (the Board or Executive Director, as applicable) makes an affirmative finding setting forth that the facts which gave rise to the need for the extension were beyond the reasonable control of the Applicant and could not have been reasonably anticipated. Any such matter to be presented for final determination of deduction by the Board must include notice from the Department to the affected party not less than fourteen (14) days prior to the scheduled Board meeting. The Executive Director may, but is not required, to issue a formal notice after disclosure if it is determined that the matter does not warrant point deductions. (§2306.6710(b)(2))

(1) If the Applicant or Affiliate failed to meet the original Carryover submission or 10 percent Test deadline(s) or has requested an extension of the Carryover submission deadline, the 10 percent Test deadline (relating to either submission or expenditure).

(2) If the Applicant or Affiliate failed to meet the commitment or expenditure requirements of a HOME or National Housing Trust Fund award from the Department.

(3) If the Developer or Principal of the Applicant violates the Adherence to Obligations.

(4) Any deductions assessed by the Board for paragraph (1) or (2) of this subsection based on a Housing Tax Credit Commitment from the preceding Application Round will be attributable to the Applicant or Affiliate of an Application submitted in the current Application Round.

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

The purpose of the Third Party Request for Administrative Deficiency ("RFAD") process is to allow an unrelated person or entity to bring new, material information about an Application to staff's attention. Such Person may request the staff to consider whether a matter in an Application in which the Person has no involvement should be the subject of an Administrative Deficiency. Staff will consider the request and proceed as it deems appropriate under the applicable rules including, if the Application in question is determined by staff to not be a priority Application, not reviewing the matter further. Requestors must provide, at the time of filing the challenge, all briefings, documentation, and other information that the requestor offers in support of the deficiency. A copy of the request and supporting information must be provided by the requestor directly to the Applicant at the same time it is provided to the Department. Requestors must provide sufficient credible evidence that, if confirmed, would substantiate the deficiency request. Assertions not accompanied by supporting documentation susceptible to confirmation will not be considered. Staff shall provide to the Board a written report summarizing each third party request for administrative deficiency and the manner in which it was addressed. Interested persons may provide testimony on this report before the Board's takes any formal action to accept the report. The results of a RFAD may not be appealed by the Requestor. Information received after the RFAD deadline will not be considered by staff or presented to the Board, unless the issue rises to the level of material misrepresentation or ineligibility.

Commented [LHA38]: This, along with the very early deadline, forces an Applicant to challenge ALL application in their respective subregion. In larger regions, this could amount to a substantial cost over an above the cost outlined in the Public Benefit/Cost Note, and Adverse Impact on Small or Micro-Business (\$9,000 in Region 3 Urban for 2017). Because of this, we request that the fee associated with an RFAD to be lowered (no more than \$100/RFAD) or eliminated altogether.

Furthermore, there needs to be room in the rule for information to be brought forth which shows that an Applicant misrepresented specific information in an Application, or otherwise acted in fraudulent manner. If evidence was brought to light (after the RFAD deadline) that an Applicant bribed a local official (or committed some other sort of fraud), TDHCA must have the ability to take action, despite the RFAD deadline passing.

Uniform Multifamily Rules

Subchapter A – General Information and Definitions

§10.1.Purpose. This chapter applies to an award of multifamily development funding or other assistance including the award of Housing Tax Credits by the Texas Department of Housing and Community Affairs (the "Department") and establishes the general requirements associated in making such awards. Applicants pursuing such assistance from the Department are required to certify, among other things, that they have familiarized themselves with the rules that govern that specific program including, but not limited to, Chapter 1 ~~Subchapter C of this title (relating to Previous Participation Administration)~~, Chapter 8 of this title (relating to 811 Project Rental Assistance Program Rule), Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan), Chapter 12 of this title (relating to Multifamily Housing Revenue Bond Rules), Chapter 13 (relating to Multifamily Direct Loan Rule), and other Department rules. This chapter does not apply to any project-based rental assistance or operating assistance programs or funds unless incorporated by reference in whole or in part in a Notice of Funding Availability ("NOFA") or rules for such a program except to the extent that Developments receiving such assistance and otherwise subject to this chapter remain subject to this chapter.

§10.2.General.

(a) Due Diligence and Applicant Responsibility. Department staff may, from time to time, make available for use by Applicants information and informal guidance in the form of reports, frequently asked questions, rent and income limits, 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 multifamily rules 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 multifamily rules to each specific situation as it is presented in the submitted 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 independently perform the necessary due diligence to research, confirm, and verify any data, opinions, interpretations or other information upon which Applicant bases an Application. The provisions of the rules, including the Qualified Allocation Plan, are controlling and supersede any and all staff guidance. If there is a disagreement as to how a provision of a rule ought to be applied, it is the province of the Board, not staff, to make a final determination as to its interpretation of its rules.

(b) Board Standards for Review. Some issues may require or benefit from board review. The Board is not constrained to a particular standard, and while its actions on one matter are not binding as to how it will address another matter, the Board does seek to promote consistency with its policies, including the policies set forth in this chapter.

(c) Census Data. Where this chapter requires the use of ~~census or~~ American Community Survey data, the Department shall use the most current data available as of October 1, ~~2016~~2017, 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 ~~generally~~ be disregarded. ~~For Rural Area and Urban Area designations, the Department shall use in establishing the designations, the U.S. Census Bureau's Topographically Integrated Geographic Encoding and Referencing ("TIGER") shape files applicable for the population dataset used in making such designations.~~ Where other data sources are specifically required, such as Neighborhoodscout, the data available after October 1 at the time of site selection but before the Application Acceptance Period, will be permissible, provided Applicants retain evidence of the applicable data on that date. The NeighborhoodScout report data submitted in the Application must include the report date on which the report was printed.

Commented [LHA1]: Same comment as 11.1(e)

(d) 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, and as a waiver of any of the applicable provisions of Tex. Gov't Code, Chapter 552, with the exception of any such provisions, ~~if any, as that~~ are considered by law as confidential and have been identified as such by the Applicant, not subject to a waiver. The fact that an Applicant identifies any particular materials as confidential does not mean that they will, if made the subject of a request under the Texas Open Records Act, be withheld from production, that being a matter to be determined by the Office of the Attorney General. To the extent that an Applicant provides materials from a third party it is the responsibility of the Applicant to confirm with the third party whether any assertion of confidentiality is applicable. The Department will proceed on the basis of those assertions in or in connection with the Application having been reviewed by the Applicant with such persons as it deemed necessary, and no third party may assert the confidentiality of any such materials that were not, at the time of submission, identified as confidential.

Commented [LHA2]: We have concerns with the idea of an Applicant being able to deem part of an Application "confidential." Applications and all associated 3-party reports have always been public information. We believe this language could be used to limit transparency.

(e) Responsibilities of Municipalities and Counties. In providing resolutions regarding housing de-concentration issues, threshold requirements, or scoring criteria, municipalities and counties should consult their own staff and legal counsel as to whether such resolution(s) will be consistent 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, any current Assessment of Fair Housing ~~Affirmatively Further Fair Housing analysis~~, 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.

(f) Deadlines. Where a specific date or deadline is identified in this chapter, the information or documentation subject to the deadline must be submitted 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 otherwise required in statute deadlines are based on calendar days.

§10.3.Definitions.

(a) Terms defined in this chapter apply to the Housing Tax Credit Program, Multifamily Housing Revenue Bond Program, Direct Loan Program and any other programs for the development of affordable rental property administered by the Department and as may be defined in this title. Any capitalized terms not specifically mentioned in this section or any section referenced in this document shall have the meaning as defined in Tex. Gov't Code Chapter 2306, Internal Revenue Code (the "Code") §42, the HOME Final Rule, and other Department rules, as applicable.

(1) Adaptive Reuse--The change-in-use of an existing building not, at the time of Application, being used, in whole or in part, for residential purposes (e.g., school, warehouse, office, hospital, hotel, etc.), into a building which will be used, in whole or in part, for residential purposes. Adaptive reuse requires that the exterior walls of the existing building remain in place. All units must be contained within the original exterior walls of the existing building. Porches and patios may protrude beyond the exterior walls. Ancillary non-residential buildings, such as a clubhouse, leasing office and/or amenity center may be newly constructed outside the walls of the existing building or as detached buildings on the Development Site. Adaptive Reuse Developments will be considered as New Construction.

(2) Administrative Deficiencies--Information requested by Department staff that ~~is~~staff requires~~d~~ to clarify or explain or correct one or more inconsistencies; ~~or~~ to provide non-material missing information in the original Application; or to assist staff in evaluating the Application that, in the Department staff's reasonable judgment, may be cured by supplemental information or explanation which will not necessitate a substantial reassessment or re-evaluation of the Application. Administrative Deficiencies may be issued at any time while the Application or Contract is under consideration by the Department, including at any time while reviewing performance under a Contract, processing documentation for a Commitment of Funds, closing of a loan, processing of a disbursement request, close-out of a Contract, or resolution of any issues related to compliance. A matter may begin as an Administrative Deficiency but later be determined to have constituted a Material Deficiency. Any missing item(s) relating to a scoring item will be deemed by staff to have constituted a Material Deficiency that supports the non-award of the points. By way of example, if an Applicant checks a box for three points for a particular scoring item but provides supporting documentation that would support two points, staff would treat this as an inconsistency and issue an Administrative Deficiency which might ultimately lead to a correction of the checked boxes to align with the provided supporting documentation and support an award of two points. However, if the supporting documentation was missing altogether, this could not be remedied and the point item would be assigned no points.

(3) Affiliate--An individual, corporation, partnership, joint venture, limited liability company, trust, estate, association, cooperative or other organization or entity of any

nature whatsoever that directly, or indirectly through one or more intermediaries, has Control of, is Controlled by, or is under common Control with any other Person. All entities that share a Principal are Affiliates.

(4) Affordability Period--The Affordability Period commences as specified in the Land Use Restriction Agreement (LURA) or federal regulation, or commences on the first day of the Compliance Period as defined by the Code §42(i)(1), and continues through the appropriate program's affordability requirements or termination of the LURA, whichever is earlier. The term of the Affordability Period shall be imposed by the LURA or other deed restriction and may be terminated upon foreclosure or deed in lieu of foreclosure. The Department reserves the right to extend the Affordability Period for Direct Loan Developments that fail to meet program requirements. During the Affordability Period, the Department shall monitor to ensure compliance with programmatic rules as applicable, regulations, and Application representations.

(5) Applicable Percentage--The percentage used to determine the amount of the Housing Tax Credit for any Development, as defined more fully in the Code §42(b).

(A) for purposes of the Application, the Applicable Percentage will be projected at:

(i) nine percent for 70 percent present value credits, pursuant to the Code, §42(b);
or

(ii) fifteen basis points over the current applicable percentage for 30 percent present value credits, unless fixed by Congress, pursuant to §42(b) of the Code for the month in which the Application is submitted to the Department.

(B) For purposes of making a credit recommendation at any other time, the Applicable Percentage will be based on:

(i) the percentage indicated in the Agreement and Election Statement, if executed;
or

(ii) the percentage as calculated in subparagraph (A) of this paragraph if the Agreement and Election Statement has not been executed and no buildings have been placed in service.

(6) Applicant--Means any individual or a group of individuals and any Affiliates who file an Application for funding or tax credits subject to the requirements of this chapter or 10 TAC Chapters 11, 12, or 13 and who have undertaken or may contemplate the later formation of one or more business entities, such as a limited partnership, that is to be engaged in the ownership of a Development. In administering the application process the Department staff will assume that the applicant will be able to form any such entities 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 11, 12 and 13, as applicable.

(7) Application Acceptance Period--That period of time during which Applications may be submitted to the Department. For Tax-Exempt Bond Developments it is the date the Application is submitted to the Department.

(8) Award Letter and Loan Term Sheet--A document that may be issued to an awardee of a Direct Loan before the issuance of a Commitment and/or Contract which preliminarily sets forth the terms and conditions under which the Direct Loan will be made available. An Award Letter and Loan Term Sheet will typically be contingent on the awardee satisfying certain requirements prior to executing a Commitment and/or Contract.

(9) Bank Trustee--A federally insured bank with the ability to exercise trust powers in the State of Texas.

(10) Bedroom--A portion of a Unit which is no less than 100 square feet; has no width or length less than 8 feet; is self contained with a door (or the Unit contains a second level sleeping area of 100 square feet or more); has at least one window that provides exterior access; and has at least one closet that is not less than 2 feet deep and 3 feet wide and high enough to accommodate 5 feet of hanging space. A den, study or other similar space that could reasonably function as a bedroom and meets this definition is considered a bedroom.

(11) Breakeven Occupancy--The occupancy level at which rental income plus secondary income is equal to all operating expenses, including replacement reserves and taxes, and mandatory debt service requirements for a Development.

(12) Building Costs--Cost of the materials and labor for the vertical construction or rehabilitation of buildings and amenity structures.

(13) Carryover Allocation--An allocation of current year tax credit authority by the Department pursuant to the provisions of the Code, §42(h)(1)(C) and U.S. Treasury Regulations, §1.42-6.

(14) Carryover Allocation Agreement--A document issued by the Department, and executed by the Development Owner, pursuant to §10.402(f) of this chapter (relating to Housing Tax Credit and Tax Exempt Bond Developments).

(15) Cash Flow--The funds available from operations after all expenses and debt service required to be paid have been considered.

(16) Certificate of Reservation--The notice given by the Texas Bond Review Board ("TBRB") to an issuer reserving a specific amount of the state ceiling for a specific issue of bonds.

(17) Code--The Internal Revenue Code of 1986, as amended from time to time, together with any applicable regulations, rules, rulings, revenue procedures, information statements or other official pronouncements issued thereunder by the U.S. Department of the Treasury or the Internal Revenue Service ("IRS").

(18) Code of Federal Regulations ("CFR")--The codification of the general and permanent rules and regulations of the federal government as adopted and published in the Federal Register.

(19) Commitment (also referred to as Contract)--A legally binding written contract, setting forth the terms and conditions under which housing tax credits, loans, grants or other sources of funds or financial assistance from the Department will be made available.

(20) Commitment of Funds--Occurs after the Development is approved by the Board and once a Commitment or Award Letter and Loan Term Sheet is executed between the Department and Development Owner. For Direct Loan Programs, this process is distinct from "Committing to a specific local project" as defined in 24 CFR Part 92, which may occur when the activity is set up in the disbursement and information system established by HUD; known as the Integrated Disbursement and Information System (IDIS). The Department's commitment of funds may not align with commitments made by other financing parties.

(21) Committee--See *Executive Award and Review Advisory Committee*.

(22) Comparable Unit--A Unit, when compared to the subject Unit, is similar in net rentable square footage, number of bedrooms, number of bathrooms, overall condition, location (with respect to the subject Property based on proximity to employment centers, amenities, services and travel patterns), age, unit amenities, utility structure, and common amenities.

(23) Competitive Housing Tax Credits ("HTC")--Tax credits available from the State Housing Credit Ceiling.

(24) Compliance Period--With respect to a building financed by Housing Tax Credits, the period of fifteen (15) taxable years, beginning with the first taxable year of the credit period pursuant to §42(i)(1) of the Code.

(25) Continuously Occupied--The same household has resided in the Unit for at least twelve (12) months.

(26) Contract--See *Commitment*.

(27) Contract Rent--Net rent based upon current and executed rental assistance contract(s), typically with a federal, state or local governmental agency.

(28) Contractor--See *General Contractor*.

(29) Control (including the terms "Controlling," "Controlled by," and/or "under common Control with")--The power, ability, or authority, acting alone or in concert with others, directly or indirectly, to manage, direct, superintend, restrict, regulate, govern, administer, or oversee. As used herein "acting in concert" involves more than merely serving as a single member of a multi-member body. For example a single director on a five person board is not automatically deemed to be acting in concert with the other members of the board because they retain independence of judgment. However, [by way of illustration](#), if that director is one of three directors on a five person board who all represent a single shareholder, they clearly represent a single interest and are presumptively acting in concert. Similarly, a single shareholder owning only a five percent interest might not exercise control under ordinary circumstances, but if they were in a voting trust under which a majority block of shares were voted as a group, they would be acting in concert with others and in a control position. However, even if a member of a multi-member body is not acting in concert and therefore does not exercise control in that role, they may have other roles, such as executive officer positions, which involve actual or apparent authority to exercise control. Controlling entities of a partnership include the general partners, may include special limited partners when applicable, but not investor limited partners or special limited partners who do not possess other factors or attributes that give them Control. Controlling entities of a limited liability company include but are not limited to the managers, managing members, any members with 10 percent or more ownership of the limited liability company, and any members with authority similar to that of a general partner in a limited partnership, but not investor members who do not possess other factors or attributes that give them Control. Controlling individuals or entities of a corporation, including non-profit corporations [where such powers have been specifically delegated to one or more members](#), include voting members of the corporation's board, whether or not any one member did not participate in a particular decision due to recusal or absence. Multiple Persons may be deemed to have Control simultaneously.

~~(30) Credit Underwriting Analysis Report--Sometimes referred to as the "Report." A decision making tool used by the Department and Board containing a synopsis and reconciliation of the Application information submitted by the Applicant.~~

~~(304) 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.~~

~~(312) Deferred Developer Fee--The portion of the Developer Fee used as a source of funds to finance the development and construction of the Property.~~

~~(323) 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.~~

~~(334) 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).

~~(345)~~ Developer--Any Person entering into a contractual relationship with the Owner to provide Developer Services with respect to the Development and receiving 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 ~~and receiving less than 10 percent of the total Developer Fee~~. The Developer may or may not be a Related Party or Principal of the Owner.

~~(356)~~ Developer Fee--Compensation in amounts defined in §10.302(e)(7) of this chapter (relating to Underwriting Rules and Guidelines) paid by the Owner to the Developer for Developer Services inclusive of compensation to a Development Consultant(s), Development Team member or any subcontractor that performs Developer Services or provides guaranties on behalf of the Owner will be characterized as Developer Fee.

~~(367)~~ Developer Services--A scope of work relating to the duties, activities and responsibilities for pre-development, development, design coordination, and construction oversight of the Property generally including but not limited to:

- (A) site selection and purchase or lease contract negotiation;
- (B) identifying and negotiating sources of construction and permanent financing, including financing provided by the Department;
- (C) coordination and administration of activities, including the filing of applications to secure such financing;
- (D) coordination and administration of governmental permits, and approvals required for construction and operation;
- (E) selection and coordination of development consultants including architect(s), engineer(s), third-party report providers, attorneys, and other design or feasibility consultants;
- (F) selection and coordination of the General Contractor and construction contract(s);
- (G) construction oversight;
- (H) other consultative services to and for the Owner;
- (I) guaranties, financial or credit support if a Related Party; and
- (J) any other customary and similar activities determined by the Department to be Developer Services.

~~(378)~~ Development--A residential rental housing project that consists of one or more buildings under common ownership and financed under a common plan which has applied for Department funds. This includes a project consisting of multiple buildings that are located on scattered sites and contain only rent restricted units. (§2306.6702)

~~(389)~~ Development Consultant or Consultant--Any Person ~~(with or without ownership interest in the Development)~~ who provides professional or consulting services relating to the filing of an Application, or post award documents as required by the program.

~~(3940)~~ Development Owner (also referred to as "Owner")--Any Person, General Partner, or Affiliate of a Person who owns or proposes a Development or expects to acquire Control of a Development under a purchase contract or ground lease approved by the Department and is responsible for performing under the allocation and/or Commitment with the Department. (§2306.6702)

~~(404)~~ Development Site--The area, or if scattered site, areas on which the Development is proposed and to be encumbered by a LURA.

~~(412)~~ Development Team--All Persons and Affiliates thereof that play a role in the development, construction, rehabilitation, management and/or continuing operation of the subject Development, including any Development Consultant and Guarantor.

~~(423)~~ Direct Loan--Funds provided through the HOME Program, Neighborhood Stabilization Program, National Housing Trust Fund, Tax Credit Assistance Program Repayment ("TCAP Repayment") or State Housing Trust Fund or other program available through the Department for multifamily development. The terms and conditions for Direct Loans -will be determined by [provisions in Chapter 13 of this title \(relating to Multifamily Direct Loan Rule\)](#) and the NOFA under which they are awarded, the Contract or the loan documents. The tax-exempt bond program is specifically excluded.

~~(434)~~ Economically Distressed Area--An area that is in a census tract that has a median household income that is 75 percent or less of the statewide median household income and in a municipality or, if not within a municipality, in a county that has been awarded funds under the Economically Distressed Areas Program administered by the Texas Water Development Board within the five (5) years ending at the beginning of the Application Acceptance Period. Notwithstanding all other requirements, for funds awarded to another type of political subdivision (*e.g.*, a water district), the Development Site must be within the jurisdiction of the political subdivision.

~~(445)~~ Effective Gross Income ("EGI")--The sum total of all sources of anticipated or actual income for a rental Development, less vacancy and collection loss, leasing concessions, and rental income from employee-occupied units that is not anticipated to be charged or collected.

~~(456)~~ Efficiency Unit--A Unit without a separately enclosed Bedroom designed principally for use by a single person.

~~(467)~~ Elderly Development--A Development that is subject to an Elderly Limitation or a Development that is subject to an Elderly Preference.

(A) Elderly Limitation Development--A Development subject to an "elderly limitation" is a Development that meets the requirements of the Housing for Older Persons Act ("HOPA") under the Fair Housing Act and receives no funding that requires leasing to persons other than the elderly (unless the funding is from a federal program for which the Secretary of HUD has confirmed that it may operate as a Development that meets the requirements of HOPA); or

(B) Elderly Preference Development--A property receiving ~~certain types HUD funding and certain other types~~ of federal assistance is a Development subject to an "elderly preference." A Development subject to an Elderly Preference must lease to other populations, including in many cases elderly households with children. A property that is deemed to be a Development subject to an Elderly Preference must be developed and operated in a manner which will enable it to serve reasonable foreseeable demand for households with children, including, but not limited to, making provision for such in developing its unit mix and amenities.

~~(478)~~ Eligible Hard Costs--Hard Costs includable in Eligible Basis for the purposes of determining a Housing Credit Allocation.

~~(489)~~ Environmental Site Assessment ("ESA")--An environmental report that conforms to the Standard Practice for Environmental Site Assessments: Phase I Assessment Process (ASTM Standard Designation: E 1527) and conducted in accordance with §10.305 of this chapter (relating to Environmental Site Assessment Rules and Guidelines) as it relates to a specific Development.

~~(4950)~~ Executive Award and Review Advisory Committee ("EARAC" also referred to as the "Committee")--The Department committee ~~required by created under~~ Tex. Gov't Code §2306.1112.

~~(504)~~ Existing Residential Development--Any Development Site which contains existing residential units at any time after the beginning of the Application Acceptance Period.

~~(512)~~ 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 Land Use Restriction Agreement or
- (B) the date which is fifteen (15) years after the close of the Compliance Period.

~~(523)~~ 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.

~~(534)~~ General Contractor (including "Contractor")--One who contracts ~~for to perform~~ the construction or rehabilitation of an entire Development, rather than a portion of the work. The General Contractor hires subcontractors, such as plumbing contractors, electrical contractors, etc., coordinates all work, and is responsible for payment to the

subcontractors. A prime subcontractor will also be treated as a General Contractor, and any fees payable to the prime subcontractor will be treated as fees to the General Contractor, in the scenarios described in subparagraphs (A) and (B) of this paragraph:

(A) any subcontractor, material supplier, or equipment lessor receiving more than 50 percent of the contract sum in the construction contract will be deemed a prime subcontractor; or

(B) if more than 75 percent of the contract sum in the construction contract is subcontracted to three or fewer subcontractors, material suppliers, and equipment lessors, such parties will be deemed prime subcontractors.

~~(545)~~ General Partner--Any person or entity identified as a general partner in a certificate of formation for the partnership 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.

~~(556)~~ 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.

~~(567)~~ Governmental Entity--Includes federal, state or local agencies, departments, boards, bureaus, commissions, authorities, and political subdivisions, special districts, tribal governments and other similar entities.

~~(578)~~ Gross Capture Rate--Calculated as the Relevant Supply divided by the Gross Demand.

~~(589)~~ Gross Demand--The sum of Potential Demand from the Primary Market Area ("PMA"); ~~and demand from other sources, and Potential Demand from a Secondary Market Area ("SMA") to the extent that SMA demand does not exceed 25 percent of Gross Demand.~~

~~(5960)~~ 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.

~~(604)~~ 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.

~~(612)~~ HTC Development (also referred to as "HTC Property")--A Development subject to an active LURA for Housing Tax Credits allocated by the Department.

~~(623)~~ HTC Property--See *HTC Development*.

(634) Hard Costs--The sum total of Building Costs, Site Work costs, Off-Site Construction costs and contingency.

(645) Historically Underutilized Businesses ("HUB")--An entity that is certified as such under and in accordance with Tex. Gov't Code, Chapter 2161 ~~by the State of Texas~~.

(656) 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.

(667) Housing Credit Allocation--An allocation of Housing Tax Credits by the Department to a Development Owner for a specific Application in accordance with the provisions of this chapter and Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan).

(678) Housing Credit Allocation Amount--With respect to a Development or a building within a Development, the amount of Housing Tax Credits the Department determines to be necessary for the financial feasibility of the Development and its viability as a Development throughout the Affordability Period and which the Board allocates to the Development.

(689) Housing Quality Standards ("HQS")--The property condition standards described in 24 CFR §982.401.

(6970) 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.

(704) Integrated Disbursement and Information System ("IDIS")--The electronic grants management information system established by HUD to be used for tracking and reporting HOME funding and progress and which may be used for other sources of funds as established by HUD.

(712) 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)

(723) Low-Income Unit--A Unit that is intended to be restricted for occupancy by an income eligible household, as defined by the Department utilizing its published income limits.

(734) Managing General Partner--A general partner of a partnership (or, as provided for in paragraph (55) of this subsection, its functional equivalent) that is vested with the authority to take actions that are binding on behalf of the partnership and the other partners. The term Managing General Partner can also refer to a manager or managing member of a limited liability company where so designated to bind the limited liability company and its members under its Agreement or any other person that has such powers in fact, regardless of their organizational title.

(745) Market Analysis--Sometimes referred to as "Market Study." An evaluation of the economic conditions of supply, demand and rental rates conducted in accordance with §10.303 of this chapter (relating to Market Analysis Rules and Guidelines) as it relates to a specific Development.

(756) Market Analyst--A real estate appraiser or other professional familiar with the subject property's market area who prepares a Market Analysis.

(767) 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.

(778) Market Study--See *Market Analysis*.

(789) Material Deficiency--Any deficiency in an Application or other documentation that exceeds the scope of an Administrative Deficiency. May include a group of Administrative Deficiencies that, taken together, create the need for a substantial re-assessment or reevaluation of the Application.

(798) 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.

(804) Net Operating Income ("NOI")--The income remaining after all operating expenses, including replacement reserves and taxes that have been paid.

(812) Net Program Rent--Calculated as Gross Program Rent less Utility Allowance.

(823) Net Rentable Area ("NRA")--The unit space that is available exclusively to the tenant and is typically heated and cooled by a mechanical HVAC system. NRA is measured to the outside of the studs of a unit or to the middle of walls in common with other units. NRA does not include common hallways, stairwells, elevator shafts, janitor closets, electrical

closets, balconies, porches, patios, or other areas not actually available to the tenants for their furnishings, nor does NRA include the enclosing walls of such areas.

~~(834)~~ Non-HTC Development--Sometimes referred to as Non-HTC Property. Any Development not utilizing Housing Tax Credits or Exchange funds.

~~(845)~~ 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.

~~(856)~~ 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.

~~(867)~~ Office of Rural Affairs--An office established within the Texas Department of Agriculture; formerly the Texas Department of Rural Affairs.

~~(878)~~ One Year Period ("1YP")--The period commencing on the date on which the Department and the Owner agree to the Qualified Contract price in writing and continuing for twelve (12) calendar months.

~~(889)~~ 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.

~~(904)~~ 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.

~~(912)~~ Physical Needs Assessment--See *Property Condition Assessment*.

~~(923)~~ 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.

(934) Post ~~AwardCarryover~~ 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. ~~post carryover activities, or for Tax Exempt Bond Developments, the requirements and guidance for post Determination Notice activities.~~

(945) 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.

(956) Primary Market--Sometimes referred to as "Primary Market Area." The area defined by the Market Analyst as described in §10.303 of this chapter from which a proposed or existing Development is most likely to draw the majority of its prospective tenants or homebuyers.

(967) Primary Market Area ("PMA")--See *Primary Market*.

(978) Principal--Persons that will be capable of exercising ~~exercise~~ Control (which includes voting board members pursuant to §10.3(a)(29) of this chapter) over a partnership, corporation, limited liability company, trust, or any other private entity. In the case of:

(A) partnerships, Principals include all General Partners, and Principals with ownership interest and special limited partners with ownership interest who also possess factors or attributes that give them Control;

(B) corporations, Principals include any officer authorized by the board of directors, regardless of title, to act on behalf of the corporation, including but not limited to the president, vice president, secretary, treasurer, and all other executive officers, and each stock holder having a 10 percent or more interest in the corporation, and any individual who has Control with respect to such stock holder; and

(C) limited liability companies, Principals include all managers, managing members, members having a 10 percent or more interest in the limited liability company, any individual Controlling such members, or any officer authorized to act on behalf of the limited liability company.

(989) 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.

(99100) Property--The real estate and all improvements thereon which are the subject of the Application (including all items of personal property affixed or related thereto), whether currently existing or proposed to be built thereon in connection with the Application.

(1004) Property Condition Assessment ("PCA")--Sometimes referred to as "Physical Needs Assessment," "Project Capital Needs Assessment," or "Property Condition Report." The PCA provides an evaluation of the physical condition of an existing Property to evaluate the immediate cost to rehabilitate and to determine costs of future capital improvements to maintain the Property. The PCA must be prepared in accordance with §10.306 of this chapter (relating to Property Condition Assessment Guidelines) as it relates to a specific Development.

(1012) 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.

(1023) Qualified Contract Price ("QC Price")--Calculated purchase price of the Development as defined within §42(h)(6)(F) of the Code and as further delineated in §10.408 of this chapter (relating to Qualified Contract Requirements).

(1034) Qualified Contract Request ("Request")--A request containing all information and items required by the Department relating to a Qualified Contract.

(1045) Qualified Entity--Any entity permitted under §42(i)(7)(A) of the Code and any entity controlled by such qualified entity.

(1056) Qualified Nonprofit Development--A Development which meets the requirements of §42(h)(5) of the Code, includes the required involvement of a Qualified Nonprofit Organization, and is seeking Competitive Housing Tax Credits.

(1067) Qualified Nonprofit Organization--An organization that meets the requirements of §42(h)(5)(C) of the Code for all purposes, and for an allocation in the nonprofit set-aside or subsequent transfer of the property, when applicable, meets the requirements of Tex. Gov't Code §2306.6706, and §2306.6729, and §42(h)(5) of the Code.

(1078) Qualified Purchaser--Proposed purchaser of the Development who meets all eligibility and qualification standards stated in this chapter of the year the Request is received, including attending, or assigning another individual to attend, the Department's Property Compliance Training.

(1089) Reconstruction--The demolition of one or more residential buildings in an Existing Residential Development and the construction of an equal number of units or less on the Development Site. At least one Unit must be reconstructed in order to qualify as Reconstruction.

(1094) Rehabilitation--The improvement or modification of an Existing Residential Development through alteration, incidental addition or enhancement. The term includes the demolition of an Existing Residential Development and the Reconstruction of a Development on the Development Site, but does not include Adaptive Reuse.

(§2306.004(26-a)) More specifically, Rehabilitation is the repair, refurbishment and/or replacement of existing mechanical and 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.

(1104) Related Party--As defined in Tex. Gov't Code, §2306.6702.

(1112) Relevant Supply--The supply of Comparable Units in proposed and Unstabilized Developments targeting the same population including:

(A) the proposed subject Units;

(B) Comparable Units in another proposed development within the PMA with a priority Application over the subject, based on the Department's evaluation process described in §10.201(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; and

~~(D) Comparable Units in previously approved but Unstabilized Developments in the Secondary Market Area (SMA), in the same proportion as the proportion of Potential Demand from the SMA that is included in Gross Demand.~~

(1123) Report--See ~~Credit Underwriting Analysis Report~~.

(1134) Request--See *Qualified Contract Request*.

(1145) Reserve Account--An individual account:

(A) created to fund any necessary repairs for a multifamily rental housing Development; and

(B) maintained by a First Lien Lender or Bank Trustee.

(1156) Right of First Refusal ("ROFR")--An Agreement to provide a right to purchase the Property to a Qualified Entity or a Qualified Nonprofit Organization, as applicable, with priority to that of any other buyer at a price established in accordance with an applicable LURA.

(1167) 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 §10.204(5)(A) of this chapter (relating to Required Documentation for Application Submission) or as requested in accordance with §10.204(5)(B).

~~(118) Secondary Market--Sometimes referred to as "Secondary Market Area." The area defined by the Qualified Market Analyst as described in §10.303 of this chapter.~~

~~(119) Secondary Market Area ("SMA")--See Secondary Market.~~

~~(117120)~~ 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.

~~(118121)~~ Site Control--Ownership or a current contract or series of contracts, that meets the requirements of §10.204(10) of this chapter, that is legally enforceable giving the Applicant the ability, not subject to any legal defense by the owner, to develop a Property and subject it to a LURA reflecting the requirements of any awards of assistance it may receive from the Department.

~~(119122)~~ Site Work--Materials and labor for the horizontal construction generally including excavation, grading, paving, underground utilities, and site amenities.

~~(1203)~~ State Housing Credit Ceiling--The aggregate amount of Housing Credit Allocations that may be made by the Department during any calendar year, as determined from time to time by the Department in accordance with applicable federal law, including §42(h)(3)(C) of the Code, and Treasury Regulation §1.42-14.

~~(1214)~~ 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.

~~(1225)~~ Supportive Housing--~~A Residential rental~~ ~~Developments~~ that is:

(A) intended for occupancy by ~~individuals or~~ households in need of specialized and specific non-medical services in order to maintain independent living;

(B) the provision of services are provided primarily on-site by the Applicant, an Affiliate of the Applicant or a third party provider and that service provider has demonstrated an established and compliant track record of providing such services in residential settings for at least three years;

(C) the services offered generally include case management and tenant services that either aid tenants in addressing debilitating conditions or assist tenants in securing the skills, assets, and connections needed for independent living post residency and, if the population is anticipated to have issues such as substance abuse or psychiatric disorders, an on-site person able to coordinate responses to a wide variety of situations reasonably anticipated to arise in the population served (such on-site position to be staffed and available on a 24/7 basis). Resident populations primarily include the homeless and those at-risk of homelessness; and

(D) the Applicant, General Partner, or Guarantor must meet the following:

(i) demonstrate that it, alone or in partnership with a third party provider, has at least three years experience in developing and operating housing similar to the proposed housing;

(ii) demonstrate that it has secured sufficient funds necessary to maintain the Development's operations through the Affordability Period; and

(iii) provide evidence of a history of fundraising activities sufficient to fill unanticipated operating losses;

(E) is not financed, except for construction financing, with any debt containing foreclosure provisions or debt that contains must-pay repayment provisions (including cash-flow debt). Permanent foreclosable, must-pay debt is permissible if sourced by federal funds but the Development will not be exempted from Subchapter D of this chapter (relating to Underwriting and Loan Policy). Any amendment to an Application or LURA pertaining to debt will result in the issuance of IRS Form(s) 8609.

~~. Supportive housing developments generally include established funding sources outside of project cash flow that require certain populations be served and/or certain services provided. The developments are expected to be debt free or have no permanent foreclosable or noncash flow debt. A Supportive Housing Development financed with tax-exempt bonds with a project based rental assistance contract for a majority of the Units may be treated as Supportive Housing under all subchapters of this chapter, except Subchapter D of this chapter (relating to Underwriting and Loan Policy). If the bonds are expected to be redeemed upon construction completion, placement in service or stabilization and no other permanent debt will remain, the Supportive Housing Development may be treated as Supportive Housing under Subchapter D of this chapter.~~

~~The services offered generally include case management and address special attributes of such populations as Transitional Housing for homeless and at risk of homelessness, persons who have experienced domestic violence or single parents or guardians with minor children.~~

(1236) 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 Subchapter F of this chapter (relating to Compliance Monitoring), and published on the Department's web site (www.tdhca.state.tx.us).

(1247) Target Population--The designation of types of housing populations shall include Elderly Developments, and those that are ~~entirely~~ Supportive Housing. All others will be considered to serve general populations without regard to any subpopulations. ~~An existing Development that has been designated as a Development serving the general population may not change to become an Elderly Development, or vice versa, without Board approval.~~

(1258) Tax-Exempt Bond Development--A Development requesting or having been awarded Housing Tax Credits and which receives a portion of its financing from the proceeds of tax-exempt bonds which are subject to the state volume cap as described in §42(h)(4) of the Code, such that the Development does not receive an allocation of tax credit authority from the State Housing Credit Ceiling.

(1269) 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.

(127130) Third Party--A Person who is not:

(A) an Applicant, General Partner, Developer, or General Contractor; or

(B) an Affiliate to the Applicant, General Partner, Developer, or General Contractor; or

(C) anyone receiving any portion of the administration, contractor, or Developer fees from the Development; or

(D) any individual that is an executive officer or member of the governing board or has greater than 10 percent ownership interest in any of the entities are identified in subparagraphs (A) - (C) of this paragraph.

(128131) 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.

(129132) Transitional Housing--A Supportive Housing development that includes living Units with more limited individual kitchen facilities and is:

(A) used exclusively to facilitate the transition of homeless individuals and those at-risk of becoming homeless, to independent living within twenty-four (24) months; and

(B) is owned by a Development Owner that includes a governmental entity or a ~~qualified~~ non-profit 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.

(1303) U.S. Department of Agriculture ("USDA")--Texas Rural Development Office ("TRDO") serving the State of Texas.

(1314) 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.

(135) Underwriter--The author(s) of the ~~Credit~~ Underwriting ~~Analysis~~ Report.

(136) Underwriting Report--Sometimes referred to as the "Report." A decision making tool used by the Department and Board containing a synopsis and reconciliation of the Application information submitted by the Applicant.

(1376) Uniform Multifamily Application Templates--The collection of sample resolutions and form letters, produced by the Department, as may be required under this chapter, Chapter 11, 12 or 13 and ~~Chapter 12~~ of this title that may be used, (but are not required to be used), to satisfy the requirements of the applicable rule.

(1387) Uniform Physical Condition Standards ("UPCS")--As developed by the Real Estate Assessment Center of HUD.

(1398) 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.

(14039) Unit Type--Units will be considered different Unit Types if there is any variation in the number of bedroom, full bathrooms or a square footage difference equal to or more than 120 square feet. For example: A two Bedroom/one full bath Unit is considered a different Unit Type than a two Bedroom/two full bath Unit. A three Bedroom/two full bath Unit with 1,000 square feet is considered a different Unit Type than a three Bedroom/two full bath Unit with 1,200 square feet. A one Bedroom/one full bath Unit with 700 square feet will be considered an equivalent Unit Type to a one Bedroom/one full bath Unit with 800 square feet. A powder room is the equivalent of a half-bathroom but does not by itself constitute a change in Unit Type.

(14~~10~~) Unstabilized Development--A development with Comparable Units that has been approved for funding by the Department's Board of Directors or is currently under construction or has not maintained a 90 percent occupancy level for at least twelve (12) consecutive months 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.

(14~~21~~) Urban Area--A Place that is located within the boundaries of a primary metropolitan statistical area or a metropolitan statistical area other than a Place described by paragraph (116~~17~~)(A) of this subsection. For areas not meeting the definition of a Place, the designation as a Rural Area or Urban Area is assigned in accordance with §10.204(5) of this chapter.

(14~~32~~) Utility Allowance--The estimate of tenant-paid utilities made in accordance with Treasury Regulation, §1.42-10 and §10.614 of this chapter (relating to Utility Allowances).

(14~~43~~) Work Out Development--A financially distressed Development for which the Owner and/or a primary financing participant is seeking a change in the terms of Department funding or program restrictions.

(b) Request for Staff Determinations. Where the definitions of Development, Development Site, New Construction, Rehabilitation, Reconstruction, Adaptive Reuse, and Target Population ~~fail to account fully for~~ do not readily align with the activities proposed in an Application, an Applicant may request and Department staff may provide a determination to an Applicant explaining how staff will review an Application in relation to these specific terms and their usage within the applicable rules. Such 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's determination may take into account the purpose of or policies addressed by a particular rule or requirement, materiality of elements, substantive elements of the development plan that relate to the term or definition, the common usage of the particular term, or other issues relevant to the rule or requirement. All such determinations will be conveyed in writing. If the determination is finalized after submission of the pre-application or Application, the Department may allow corrections to the pre-application or the Application that are directly related to the issues in the determination. It is an Applicant's sole responsibility to request a determination and an Applicant may not rely on any determination for another Application regardless of similarities in a particular fact pattern. For any Application that does not request and subsequently receive a determination, the definitions and applicable rules will be applied as used and defined herein. Such a determination is intended to provide clarity with regard to Applications proposing activities such as: scattered site development or combinations of construction activities (e.g., Rehabilitation with some New Construction). An Applicant may appeal a determination for their Application if the determination provides for a treatment that relies on factors other than the explicit

definition. A Board determination or a staff determination not timely appealed cannot be further appealed or challenged.

§10.4.Program Dates. This section reflects key dates for all multifamily development programs except for the Competitive Housing Tax Credit Program. A program calendar for the Competitive Housing Tax Credit Program is provided in Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan). Applicants are strongly encouraged to submit the required items well in advance of established deadlines. Non-statutory deadlines specifically listed in this section may be extended by the Department for a period of not more than five (5) business days provided; however, that the Applicant requests an extension prior to the date of the original deadline and has established to the reasonable satisfaction of the Department that there is good cause for the extension. Except as provided for under 10 TAC §1.1 relating to Reasonable Accommodation Requests, extensions relating to Administrative Deficiency deadlines may only be extended if documentation needed to resolve the item is needed from a Third Party or the documentation involves signatures needed on certifications in the Application.

(1) Full Application Delivery Date. The deadline by which the Application must be submitted to the Department. For Direct Loan Applications, such deadline will generally be defined in the applicable NOFA and for Tax-Exempt Bond Developments, such deadlines are more fully explained in §10.201(2) of this chapter (relating to Procedural Requirements for Application Submission).

(2) Notice to Submit Lottery Application Delivery Date. No later than December 8, 2017~~9, 2016~~, Applicants that receive an advance notice regarding a Certificate of Reservation must submit a notice to the Department, in the form prescribed by the Department.

(3) Applications Associated with Lottery Delivery Date. No later than December 15, 2017~~16, 2016~~, Applicants that participated in the Texas Bond Review Board Lottery must submit the complete tax credit Application to the Department.

(4) Administrative Deficiency Response Deadline. Such deadline shall be five (5) business days after the date on the deficiency notice without incurring a penalty fee pursuant to §10.901 of this chapter (relating to Fee Schedule).

(5) Third Party Report Delivery Date (Environmental Site Assessment (ESA), Property Condition Assessment (PCA), Appraisal (if applicable), Market Analysis and the Site Design and Development Feasibility Report). For Direct Loan Applications, the Third Party reports meeting specific requirements described in §10.205 must be submitted with the Application in order for it to be considered a complete Application, unless the Application is made in conjunction with an Application for Housing Tax Credits or Tax-Exempt Bond, in which case the Delivery Date for those programs will apply. For Tax-Exempt Bond Developments, the Third Party Reports must be submitted no later than seventy-five (75) calendar days prior to the Board meeting at which the tax credits will be considered. The seventy-five (75) calendar day deadlines are available on the Department's website.

(6) Resolutions Delivery Date. Resolutions required for Tax-Exempt Bond Developments must be submitted no later than fourteen (14) calendar days before the Board meeting at which consideration of the award will occur. If the Direct Loan Application is made in conjunction with an Application for Housing Tax Credits, or Tax-Exempt Bond Developments, the Resolution Delivery Date for those programs will apply to the Direct Loan Application.

(7) Challenges to Neighborhood Organization Opposition Delivery Date. No later than forty-five (45) calendar days prior to the Board meeting at which consideration of the award will occur.

Subchapter B – Site and Development Requirements and Restrictions

§10.101. Site and Development Requirements and Restrictions.

(a) Site Requirements and Restrictions. The purpose of this section is to identify specific requirements and restrictions related to a Development Site seeking multifamily funding or assistance from the Department.

(1) Floodplain. New Construction or Reconstruction Developments located within a one-hundred (100) year floodplain as identified by the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps must develop the site in full compliance with the National Flood Protection Act and all applicable federal and state statutory and regulatory requirements. The Applicant will have to use floodplain maps and comply with regulation as they exist at the time of commencement of construction. Even if not required by such provisions, the Site must be developed so that all finished ground floor elevations are at least one foot above the floodplain and parking and drive areas are no lower than six inches below the floodplain. If there are more stringent local requirements they must also be met. If no FEMA Flood Insurance Rate Maps are available for the proposed Development Site, flood zone documentation must be provided from the local government with jurisdiction identifying the one-hundred (100) year floodplain. Rehabilitation (excluding Reconstruction) Developments with existing and ongoing federal funding assistance from the U.S. Department of Housing and Urban Development (HUD) or U.S. Department of Agriculture (USDA) are exempt from this requirement. However, where existing and ongoing federal assistance is not applicable such Rehabilitation (excluding Reconstruction) Developments will be allowed in the one-hundred (100) year floodplain provided the local government has undertaken and can substantiate sufficient mitigation efforts and such documentation is submitted in the Application or the existing structures meet the requirements that are applicable for New Construction or Reconstruction Developments, as certified to by a Third Party engineer.

(2) Undesirable Site Features. Development Sites within the applicable distance of any of the undesirable features identified in subparagraphs (A) - (K) of this paragraph ~~may will~~ be considered ineligible ~~unless it is as~~ determined by the Board, ~~unless the Applicant provides that~~ information regarding mitigation of the applicable undesirable site feature(s) ~~is sufficient and supports Site eligibility.~~ Requests for pre-determinations on eligibility can be submitted beginning December 1, 2017, and will be heard by the Board in January 2018. Rehabilitation (excluding Reconstruction) Developments with ongoing and existing federal assistance from HUD, USDA, or Veterans Affairs (“VA”) may be granted an exemption by the Board; however, depending on the undesirable site feature(s) staff may recommend mitigation still be provided as appropriate. Such an exemption must be requested at the time of or prior to the filing of an Application. Historic Developments that would otherwise qualify under §11.9(e)(6) of this title (relating to the Qualified Allocation Plan) may be granted an exemption by the Board, and such exemption must be requested at the time of or prior to the filing of an Application. The distances are to be measured from the nearest boundary of the Development Site to the nearest boundary of the property or easement containing the undesirable feature, unless otherwise noted below. Where there is a local ordinance

Commented [LHA1]: Applicants, in good faith, may believe that a site should be eligible, so there needs to be a pre-determination process for unusual features that may or may not be deemed ineligible by the Board (particularly under subparagraph (K)). This will allow an Applicant to avoid unnecessary filing of a full Application, in the event the Board disagrees with a site's eligibility. Allowing a pre-determination to be heard by the Board in January, will allow Applicants to terminate land contracts that are no longer viable, before going through the time and expense of filing a full Application.

that regulates the proximity of such undesirable feature to a multifamily development that has smaller distances than the minimum distances noted below, then such smaller distances may be used and documentation such as a copy of the local ordinance identifying such distances relative to the Development Site must be included in the Application. [If a state or federal cognizant agency would require a new facility under its jurisdiction to have a minimum separation from housing, the Department will defer to that agency and require the same separation for a new housing facility near an existing regulated or registered facility.](#) In addition to these limitations, a Development Owner must ensure that the proposed Development Site and all construction thereon comply with all applicable state and federal requirements regarding separation for safety purposes. If Department staff identifies what it believes would constitute an undesirable site feature not listed in this paragraph or covered under subparagraph (K) of this paragraph, staff may request a determination from the Board as to whether such feature is acceptable or not. If the Board determines such feature is not acceptable and that, accordingly, the Site is ineligible, the Application shall be terminated and such determination of Site ineligibility and termination of the Application cannot be appealed.

(A) Development Sites located within 300 feet of junkyards. For purposes of this paragraph, a junkyard shall be defined as stated in Transportation Code, §396.001;

(B) Development Sites located within 300 feet of a solid waste [facility](#) or sanitary landfill [facilities or illegal dumping sites \(as such dumping sites are identified by the local municipality\)](#);

(C) Development Sites located within 300 feet of a sexually-oriented business. For purposes of this paragraph, a sexually-oriented business shall be defined in Local Government Code, §243.002, or as zoned, licensed and regulated as such by the local municipality;

~~(D) Development Sites in which the buildings are located within the easement 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 500-100 feet of active railroad tracks, measured from the closest rail to the boundary of the Development Site, unless the Applicant provides evidence that the city/community has adopted a Railroad Quiet Zone or the railroad in question is commuter or light rail;~~

(F) Development Sites located within 500 feet of heavy industry ~~via~~ (i.e. facilities that require extensive ~~capital investment in use of~~ land and machinery, ~~are not easily relocated and~~ produce high levels of external noise, ~~dust or fumes~~ such as manufacturing plants, fuel storage facilities (excluding gas stations) etc. ~~or that in the course of normal business there is a high volume of rail or truck traffic to deliver materials or transport goods~~);

(G) Development Sites located within 10 miles of a nuclear plant;

Commented [LHA2]: We recommend reverting to the 2016 language.

Commented [LHA3]: 500 feet is too large of a distance, particularly in Urban Core settings. We recommend 100 feet, as effective mitigation for noise and safety concerns can be undertaken at that distance.

Commented [LHA4]: This is overly broad and will open the flood gates of frivolous RFADs. It should be removed.

Commented [LHA5]: This phrase is overly broad, and seems to prohibit location of sites near job producing facilities such as retail distributions centers.

(H) Development Sites in which the buildings are located within the accident zones or clear zones of any airport;

(I) Development Sites that contain one or more pipelines, situated underground or aboveground, which carry highly volatile liquids. Development Sites located adjacent to a pipeline easement (for a pipeline carrying highly volatile liquids), the Application must include a plan for developing near the pipeline(s) and mitigation, if any, in accordance with a report conforming to the Pipelines and Informed Planning Alliance (“PIPA”);

(J) Development Sites located within 2 miles of refineries capable of refining more than 100,000 barrels of oil daily; or

(K) Any other Site deemed unacceptable, which would include, without limitation, those with exposure to an environmental factor that may adversely affect the health and safety of the residents [or render the Site inappropriate for housing use](#) and which cannot be adequately mitigated.

(3) Undesirable Neighborhood Characteristics.

(A) If the Development Site has any of the characteristics described in subparagraph (B) of this paragraph, the Applicant must disclose the presence of such characteristics in the Application submitted to the Department. [For Competitive HTC Applications, an Applicant must disclose at pre-application as required by 11.8\(b\) of this title \(relating to Pre-Application Requirements\). For all other Applications, Anan](#) Applicant may choose to disclose the presence of such characteristics at the time the pre-application (if applicable) is submitted to the Department. Requests for pre-determinations of Site eligibility prior to pre-application or Application submission will not be binding on full Applications submitted at a later date. For Tax-Exempt Bond Developments where the Department is the Issuer, the Applicant may submit the documentation described under subparagraphs (C) and (D) of this paragraph at pre-application or for Tax-Exempt Bond Developments utilizing a local issuer such documentation may be submitted with the request for a pre-determination and staff may perform an assessment of the Development Site to determine Site eligibility. The Applicant understands that any determination made by staff or the Board at that point in time regarding Site eligibility based on the documentation presented, is preliminary in nature. Should additional information related to any of the undesirable neighborhood characteristics become available while the full Application is under review, or the information by which the original determination was made changes in a way that could affect eligibility, then such information will be re-evaluated and presented to the Board. Should staff determine that the Development Site has any of the characteristics described in subparagraph (B) of this paragraph and such characteristics were not disclosed, the Application may be subject to termination. ~~Termination due to non-disclosure may be appealed pursuant to §10.902 of this chapter (relating to Appeals Process (§2306.0321; §2306.6715)). 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

Commented [LHA6]: We are supportive of the TAAHP and TX-CAD recommendations to remove this section in its entirety. With the dismissal of the ICP litigation, we do not believe that TDHCA should continue to operate under the remediation plan imposed by the court. In the event that this section is not removed, we support the revised language submitted by TAAHP.

prompt staff to perform an assessment of the Development Site and neighborhood, which may include a site visit, and include, where applicable, a review as described in subparagraph (C) of this paragraph. The assessment of the Development Site and neighborhood will be presented to the Board with a recommendation with respect to the eligibility of the Development Site. Factors to be considered by the Board, despite the existence of the undesirable neighborhood characteristics are identified in subparagraph (E) of this paragraph. Preservation of affordable units alone does not present a compelling reason to support a conclusion of eligibility. Should the Board make a determination that a Development Site is ineligible, the termination of the Application resulting from such Board action is not subject to appeal.

(B) The undesirable neighborhood characteristics include those noted in clauses (i) – (iv) of this subparagraph and additional information as applicable to the undesirable neighborhood characteristic(s) disclosed as provided in subparagraphs (C) and (D) of this paragraph must be submitted in the Application. If an Application for a Development Site involves three or more undesirable neighborhood characteristics, in order to be found eligible it will be expected that, in addition to demonstrating satisfactory mitigation for each characteristic disclosed, the Development Site must be located within an area in which there is a concerted plan of revitalization already in place or that private sector economic forces, such as those referred to as gentrification are already underway and indicate a strong likelihood of a reasonably rapid transformation of the area to a more economically vibrant area. In order to be considered as an eligible Site despite the presence of such undesirable neighborhood characteristic, an Applicant must demonstrate actions being taken that would lead a reader to conclude that there is a high probability –and reasonable expectation the undesirable characteristic will be sufficiently mitigated or significantly improved within a reasonable time, typically prior to placement in service, and that the undesirable characteristic demonstrates a positive trend and continued improvement. Conclusions for such reasonable expectation may need to be affirmed by an industry professional, as appropriate, and may be dependent upon the severity of the undesirable neighborhood characteristic disclosed.

(i) The Development Site is located within a census tract that has a poverty rate above 40 percent for individuals (or 55 percent for Developments in regions 11 and 13).

(ii) The Development Site is located in a census tract or within 1,000 feet of any census tract in an Urban Area and the rate of Part I violent crime is greater than 18 per 1,000 persons (annually) as reported on neighborhoodscout.com.

(iii) The Development Site is located within 1,000 feet (measured from nearest boundary of the Site to the nearest boundary of blighted structure) of multiple vacant structures that have fallen into such significant disrepair, overgrowth, and/or vandalism that they would commonly be regarded as blighted or abandoned.

(iv) The Development Site is located within the attendance zones of an elementary school, a middle school or a high school that does not have a Met

Standard rating by the Texas Education Agency. Any school in the attendance zone that has not achieved Met Standard for three consecutive years and has failed by at least one point in the most recent year, unless there is a clear trend indicating imminent compliance, shall be unable to mitigate due to the potential for school closure as an administrative remedy pursuant to Chapter 39 of the Texas Education Code. In districts with district-wide enrollment or choice districts an Applicant shall use the rating of the closest elementary, middle and high school, respectively, which may possibly be attended by the tenants in determining whether or not disclosure is required. [Schools with an application process for admittance, limited enrollment or other requirements that may prevent a child from attending will not be considered as the closest school or the school which attendance zone contains the site.](#) The applicable school rating will be the ~~20172016~~ accountability rating assigned by the Texas Education Agency. School ratings will be determined by the school number, so that in the case where a new school is formed or named or consolidated with another school but is considered to have the same number that rating will be used. A school that has never been rated by the Texas Education Agency will use the district rating. If a school is configured to serve grades that do not align with the Texas Education Agency's conventions for defining elementary schools (typically grades K-5 or K-6), middle schools (typically grades 6-8 or 7-8) and high schools (typically grades 9-12), the school will be considered to have the lower of the ratings of the schools that would be combined to meet those conventions. In determining the ratings for all three levels of schools, ratings for all grades K-12 must be included, meaning that two or more schools' ratings may be combined. For example, in the case of an elementary school which serves grades K-4 and an intermediate school that serves grades 5-6, the elementary school rating will be the lower of those two schools' ratings. Also, in the case of a 9th grade center and a high school that serves grades 10-12, the high school rating will be considered the lower of those two schools' ratings. Sixth grade centers will be considered as part of the middle school rating. Development Sites subject to an Elderly Limitation is considered exempt and does not have to disclose the presence of this characteristic.

(C) Should any of the undesirable neighborhood characteristics described in subparagraph (B) of this paragraph exist, the Applicant must submit the Undesirable Neighborhood Characteristics Report that contains the information described in clauses (i) - (viii) of this subparagraph and [mitigation pursuant to](#) subparagraph (D) of this paragraph as such information might be considered to pertain to the undesirable neighborhood characteristic(s) disclosed so that staff may conduct a further Development Site and neighborhood review.

(i) A determination regarding neighborhood boundaries, which will be based on the review of a combination of natural and manmade physical features (rivers, highways, etc.), apparent changes in land use, the Primary Market Area as defined in the Market Analysis, census tract or municipal boundaries, and information obtained from any Site visits;

- (ii) An assessment of general land use in the neighborhood, including comment on the prevalence of residential uses;
- (iii) An assessment concerning any of the features reflected in paragraph (2) of this subsection if they are present in the neighborhood, regardless of whether they are within the specified distances referenced in paragraph (2) of this subsection;
- (iv) An assessment of the number of existing affordable rental units (generally includes rental properties subject to TDHCA, HUD, or USDA restrictions) in the Primary Market Area, including comment on concentration based on the size of the Primary Market Area;
- (v) An assessment of the percentage of households residing in the census tract that have household incomes equal to or greater than the median household income for the MSA or county where the Development Site is located;
- (vi) An assessment of the number of market rate multifamily units in the neighborhood and their current rents and levels of occupancy;
- (vii) An assessment of school performance for each of the schools in the attendance zone containing the Development that did not achieve ~~the a 2017~~ [Met Standard rating, for the previous two academic years \(regardless of whether the school Met Standard in those years\), that includes the TEA Accountability Rating Report, a discussion of performance indicators and what progress has been made over the prior year, and progress relating to the goals and objectives identified in the campus improvement plan in effect. This is not just the submission of the campus improvement plan, but an update to the plan or if such update is not available, information from a school official that speaks to progress made under the plan as further indicated under subparagraph \(D\)\(iv\) of this paragraph;](#) and
- (viii) Any additional information necessary to complete an assessment of the Development Site, as requested by staff.

(D) Information regarding mitigation of undesirable neighborhood characteristics should be relevant to the undesirable characteristics that are present in the neighborhood. Mitigation must include documentation of efforts underway at the time of Application and may include, but is not limited to, the measures described in clauses (i) - (iv) of this subparagraph. In addition to those measures described herein, documentation from the local municipality may also be submitted stating the Development is consistent with their obligation to affirmatively further fair housing.

(i) Evidence that the poverty rate within the census tract has decreased over the five-year period preceding the date of Application, or that the census tract is contiguous to a census tract with a poverty rate below 20% and there are no physical barriers between them such as highways or rivers which would be reasonably considered as separating or dividing the neighborhood containing

the proposed Development from the low poverty area must be submitted. Other mitigation may include, but is not limited to, evidence of ~~the availability of adult education and job training that will lead to full time permanent employment for tenants~~sustained job growth and employment opportunities, career training opportunities or job placement services, evidence of gentrification in the area (including an increase in property values) which may include contiguous census tracts that could conceivably be considered part of the neighborhood containing the proposed Development, and a clear and compelling reason that the Development should be located at the Site.

(ii) Evidence that crime rates are decreasing, based on violent crime data from the city's police department or county sheriff's department, for the police beat or patrol area within which the Development Site is located, based on the population of the police beat or patrol area that would yield a crime rate below the threshold indicated in this section. The instances of violent crimes within the police beat or patrol area that encompass the census tract, calculated based on the population of the census tract, may also be used. A map plotting all instances of violent crimes within a one-half mile radius of the Development Site may also be submitted, provided that it reflects that the crimes identified are not at a level that would warrant an ongoing concern. The data must include incidents reported during the entire ~~2015 and 2016~~2016 and 2017 calendar year. Violent crimes reported through the date of Application submission may be requested by staff as part of the assessment performed under subparagraph (C) of this paragraph. A written statement from the local police department or local law enforcement agency, including a description of efforts by such enforcement agency addressing issues of crime and the results of their efforts may be provided, and depending on the data provided by the Applicant, such written statement may be required, as determined by staff. For Rehabilitation or Reconstruction Developments, to the extent that the high level of criminal activity is concentrated at the Development Site, documentation may be submitted to indicate such issue(s) could be remedied by the proposed Development. Evidence of such remediation should go beyond what would be considered a typical scope of work and should include a security plan, partnerships with external agencies, or other efforts to be implemented that would deter criminal activity. Information on whether such security features have been successful at any of the Applicant's existing properties should also be submitted, if applicable.

(iii) Evidence of mitigation efforts to address blight or abandonment may include new construction in the area already underway that evidences public and/or private investment. Acceptable mitigation to address extensive blight should include a plan whereby it is contemplated that a responsible party will use the property in a manner that complies with local ordinances. In instances where blight exists but may only include a few properties, mitigation efforts could include partnerships with local agencies to engage in community-wide clean-up efforts, or other efforts to address the overall condition of the neighborhood.

(iv) Evidence of mitigation for all of the schools in the attendance zone that have not achieved Met Standard will include documentation from a school official with oversight of the school in question that indicates current progress towards meeting the goals and performance objectives identified in the Campus Improvement Plan. For schools that have not achieved Met Standard for two consecutive years, a letter from the superintendent, member of the school board or a member of the transformation team that has direct experience, knowledge and oversight of the specific school must also be submitted. The letter should, at a minimum and to the extent applicable, identify the efforts that have been undertaken to increase student performance, decrease mobility rate, benchmarks for re-evaluation, increased parental involvement, plans for school expansion, [plans to implement early childhood education](#), and long-term trends that would point toward their achieving Met Standard by the time the Development is placed in service. The letter from such education professional should also speak to why they believe the staff tasked with carrying out the plan will be successful at making progress towards acceptable student performance considering that prior Campus Improvement Plans were unable to do so. Such assessment could include whether the team involved has employed similar strategies at prior schools and were successful. In addition to the aforementioned letter from the school official, information should also be provided that addresses the types of services and activities offered at the Development or external partnerships that will facilitate and augment classroom performance.

(E) In order for the Development Site to be found eligible by the Board, despite the existence of undesirable neighborhood characteristics, the Board must find that the use of Department funds at the Development Site must be consistent with achieving the goals in clauses (i) - (iii) of this subparagraph.

(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) ~~Factual-d~~Determination that the undesirable characteristic(s) that has been disclosed are not of such a nature or severity that should render the Development Site ineligible based on the assessment and mitigation provided under subparagraphs (C) and (D) of this paragraph; or

(iii) The Applicant has requested a waiver of the presence of undesirable neighborhood characteristics on the basis that the Development is necessary to enable the state, a participating jurisdiction, or an entitlement community to comply with its obligation to affirmatively further fair housing, a HUD approved Conciliation Agreement, or a final and non-appealable court order and such documentation is submitted with the disclosure.

(b) Development Requirements and Restrictions. The purpose of this section is to identify specific restrictions on a proposed Development submitted for multifamily funding by the Department.

(1) Ineligible Developments. A Development shall be ineligible if any of the criteria in subparagraphs (A) or (B) of this paragraph are deemed to apply.

(A) General Ineligibility Criteria.

- (i) Developments such as hospitals, nursing homes, trailer parks, dormitories (or other buildings that will be predominantly occupied by students) or other facilities that are usually classified as transient housing (as provided in the §42(i)(3)(B)(iii) and (iv) of the Code);
- (ii) Any Development with any building(s) with four or more stories that does not include an elevator;
- (iii) A Housing Tax Credit Development that provides on-site continual or frequent nursing, medical, or psychiatric services. Refer to IRS Revenue Ruling 98-47 for clarification of assisted living;
- (iv) A Development that violates §1.15 of this title (relating to Integrated Housing Rule);
- (v) A Development seeking Housing Tax Credits that will not meet the general public use requirement under Treasury Regulation, §1.42-9 or a documented exception thereto; or
- (vi) A Development utilizing a Direct Loan that is subject to the Housing and Community Development Act, §104(d) requirements and proposing Rehabilitation or Reconstruction, if the Applicant is not proposing at least the one-for-one replacement of the existing unit mix. Adding additional units would not violate this provision.

(B) Ineligibility of Elderly Developments.

- (i) Any Elderly Development of two stories or more that does not include elevator service for any Units or ~~living space~~common areas above the ~~first~~ground floor;
- (ii) Any Elderly Development with any Units having more than two bedrooms with the exception of up to three employee Units reserved for the use of the manager, maintenance, and/or security officer. These employee Units must be specifically designated as such; or
- (iii) Any Elderly Development (including Elderly in a Rural Area) proposing more than 70 percent two-bedroom Units.

(2) Development Size Limitations. The minimum Development size is 16 Units. New Construction or Adaptive Reuse Developments in Rural Areas are limited to a

maximum of 80 total Units. Other Developments do not have a limitation as to the maximum number of Units.

(3) Rehabilitation Costs. Developments involving Rehabilitation must establish a scope of work that will substantially improve the interiors of all units and exterior deferred maintenance and, ~~The~~ 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.

(A) For Housing Tax Credit Developments under the USDA Set-Aside the minimum Rehabilitation will involve at least \$25,000 per Unit in Building Costs and Site Work;

(B) For Tax-Exempt Bond Developments, less than twenty (20) years old, based on the placed in service date, the minimum Rehabilitation will involve at least \$20,000 per Unit in Building Costs and Site Work. If such Developments are greater than twenty (20) years old, based on the placed in service date, the minimum Rehabilitation will involve at least \$30,000 per Unit in Building Costs and Site Work; or

(C) For all other Developments, the minimum Rehabilitation will involve at least \$30,000 per Unit in Building Costs and Site Work.

(4) Mandatory Development Amenities. (§2306.187) New Construction, Reconstruction or Adaptive Reuse Units must include all of the amenities in subparagraphs (A) - (M) of this paragraph. Rehabilitation (excluding Reconstruction) Developments must provide the amenities in subparagraphs (D) - (M) of this paragraph unless stated otherwise. Supportive Housing Developments are not required to provide the amenities in subparagraph (B), (E), (F), (G), (I), 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 tenants. Tenants must be provided written notice of the applicable required amenities for the Development.

(A) All bedrooms, the dining room and living room in Units must be wired with current cabling technology for data and phone; RG-6/U COAX or better and CAT3 phone cable or better, wired to each bedroom, dining room and living room;

(B) Laundry connections;

(C) Exhaust/vent fans (vented to the outside) in the bathrooms;

(D) Screens on all operable windows;

(E) Disposal and Energy-Star rated dishwasher (not required for USDA; Rehabilitation Developments exempt from dishwasher if one was not originally in the Unit);

(F) Energy-Star rated refrigerator;

(G) Oven/Range;

(H) Blinds or window coverings for all windows;

(I) At least one Energy-Star rated ceiling fan per Unit;

(J) Energy-Star rated lighting in all Units which may include compact fluorescent or LED light bulbs;

(K) Plumbing fixtures must meet performance standards of Texas Health and Safety Code, Chapter 372;

(L) All areas of the Units must have central heating and air-conditioning (Packaged Terminal Air Conditioners meet this requirement for SRO or Efficiency Units only or historic preservation where central would be cost prohibitive); and

(M) Adequate parking spaces consistent with local code, unless there is no local code, in which case the requirement would be one and a half (1.5) spaces per Unit for non- Elderly Developments and one (1) space per Unit for Elderly Developments. The minimum number of required spaces must be available to the tenants at no cost.

Commented [LHA7]: What about exterior storage space typically placed on a patio/balcony? Does this "area" really need to be air-conditioned?

(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. For Developments with 41 Units or more, at least two (2) of the required threshold points must come from subparagraph (C)(xxxi) of this paragraph.

Commented [LHA8]: We believe this requirement should be kept. It incentivizes using healthy finishing products, and things that make a property more efficient to operate.

- (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 tenants and made available throughout normal business hours and maintained throughout the Affordability Period. Tenants must be provided written notice of the elections made by the Development Owner. If fees 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 spaces or size requirement for a listed amenity is

~~not specified then the amenity must be reasonably adequate based on the Development size, for activities must be sized appropriately to serve the proposed Target Population.~~ 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, which includes those amenities required under subparagraph (C)(xxxiii) of this paragraph.~~ ~~If scattered site with fewer than 41 Units per site, at a minimum at least some of the amenities required under subparagraph (C)(xxxiii) of this paragraph~~ must be distributed proportionately across all sites. In the case of additional phases of a Development any amenities that are anticipated to be shared with the first phase development cannot be claimed for purposes of meeting this requirement for the second phase. The second phase must include enough points to meet this requirement that are provided on the Development Site. For example, if a swimming pool exists on the phase one property and it is anticipated that the second phase tenants will be allowed it use it, the swimming pool cannot be claimed for points for purposes of this requirement for the second phase Development. All amenities ~~must be accessible and~~ must be available to all units via an accessible route.

(C) The common amenities and respective point values are set out in clauses (i) - (xxxi) of this subparagraph. ~~Some amenities may be restricted for Applicants proposing a specific Target Population.~~ 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) Full perimeter fencing that includes parking areas and all amenities (excludes guest or general public parking areas); (2 points);
- (ii) Controlled gate access for entrance and exit areas, intended to provide access that is limited to the Development's tenancy (2 points);
- (iii) Gazebo or covered pavilion w/sitting area (seating must be provided) (1 point);
- (iv) Accessible walking/jogging path separate from a sidewalk and in addition to required accessible routes to Units or other amenities (1 point);
- (v) Community laundry room with at least one washer and dryer for every 40 Units (3 points);
- (vi) 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);
- (vii) Swimming pool (3 points);
- (viii) Splash pad/water feature play area (1 point);
- (ix) Furnished fitness center. Equipped with a variety of fitness equipment ~~options that includes with~~ at least one of the following option perfor every 40 Units ~~or partial increment of 40 Units~~: stationary bicycle, elliptical trainer, treadmill, rowing machine, universal gym, multi-functional weight bench, ~~sauna~~, stair-climber, 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. All Developments must have at least two equipment options but are not required to have more than five equipment options regardless of number of Units~~ (2 points);

(x) Equipped ~~and functioning~~ business/computer center ~~or equipped computer learning center~~. Must be equipped with 1 computer for every 40 Units (maximum of 5 computers needed) loaded with basic applications/programs to enable email/internet access, word processing, Excel, etc. (~~maximum of 5 computers needed~~), 1 laser printer per computer lab and at least one scanner which may be integrated with printer (2 points);

(xi) Furnished Community room (2 points);

(xii) Library with an accessible sitting area (separate from the community room) (1 point);

(xiii) Enclosed community sun porch or covered community porch/patio (1 point);

(xiv) Service provider office in addition to leasing offices (1 point);

(xv) Regularly staffed service provider office in addition to leasing offices (3 points);

(xvi) Activity Room stocked with supplies (Arts and Crafts, board games, etc.) (2 points);

~~(xvii) Health Screening Room (1 point);~~

(xviii) Secured Entry (applicable only if all Unit entries are within the building's interior) (1 point);

~~(xviii*)~~ Horseshoe pit; putting green; shuffleboard court; pool table; or video game console(s) with a variety of games and a dedicated location accessible to all tenants to play such games (1 point);

~~(xix*)~~ Community Dining Room with full or warming kitchen furnished with adequate tables and seating (3 points);

~~(xxi)~~ One Children's Playscape Equipped for 5 to 12 year olds, or one Tot Lot (2 points). Must be covered with a shade canopy or awning, intended to keep equipment cool, provide shade and ultraviolet protection. Can only select this item if clause ~~(xxi*)~~ of this subparagraph is not selected; or

~~(xxii)~~ Two Children's Playscapes Equipped for 5 to 12 year olds, two Tot Lots, or one of each (4 points). Must be covered with a shade canopy or awning, intended to keep equipment cool, provide shade and ultraviolet protection. Can only select this item if clause ~~(xxi*)~~ of this subparagraph is not selected;

~~(xxiii)~~ Sport Court (Tennis, Basketball or Volleyball) (2 points);

~~(xxiii*)~~ Furnished and staffed Children's Activity Center that must have age appropriate furnishings and equipment. Appropriate levels of staffing must be provided during after-school hours and during school vacations (3 points);

(xxiv) 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 tenants; and theater seating (3 points);

(xxv) 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 ~~or a dog wash station with plumbing for hot and cold water connections and tub drainage~~ (requires that the Development allow dogs) (1 point);

(xxvi) ~~Common area~~ Wi-Fi (with coverage throughout the clubhouse and/or community building) (1 point);

(xxvii) Twenty-four hour, seven days a week monitored camera/security system in each building. Monitoring may be on-site or off-site. (3 points);

(xxviii) Bicycle parking that allows for, at a minimum, 1 bicycle for every 5 Units, within reasonable proximity to each residential building that allows for bicycles to be secured with lock (lock not required to be provided to tenant) and allows sufficient parking relative to the development size (1 point);

(xxix) Shaded rooftop or structural viewing deck of at least 500 square feet (2 points);

(xxx) Porte-cochere (1 point); or

(xxxi) Green Building Features. Points under this item are intended to promote energy and water conservation, operational savings and sustainable building practices. Points may be selected from only one of ~~four~~ three categories: ~~Limited Green Amenities~~, Enterprise Green Communities, Leadership in Energy and Environmental Design (LEED), and ICC 700 National Green Building Standard. A Development may qualify for no more than ~~four~~ two (2) points total under this clause.

~~(i) Limited Green Amenities (2 points). The items listed in subclauses (i) – (iv) of this clause constitute the minimum requirements for demonstrating green building of multifamily Developments. Six (6) of the twenty two (22) items listed under items (a) – (v) of this subclause must be met in order to qualify for the maximum number of two (2) points under this subclause;~~

~~(a) a rain water harvesting/collection system and/or locally approved greywater collection system;~~

~~(b) newly installed native trees and plants that minimize irrigation requirements and are appropriate to the Development Site's soil and microclimate to allow for shading in the summer and heat gain in the winter. For Rehabilitation Developments this would be applicable to new landscaping planned as part of the scope of work;~~

~~(c) water conserving fixtures that meet the EPA's WaterSense Label. Such fixtures must include low flow or high efficiency toilets, bathroom lavatory faucets, and showerheads. Rehabilitation Developments may~~

~~install WaterSense faucet aerators (minimum of 30% more efficient) instead of replacing the entire faucets;~~
~~(d) Energy Star qualified water heaters or install those that are part of an overall Energy Star efficient system;~~
~~(e) install individual or sub-metered utility meters for electric and water. Rehabilitation Developments may claim sub-meter only if not already sub-metered at the time of Application;~~
~~(f) healthy finish materials including the use of paints, stains, and sealants consistent with the Green Seal 11 standard or other applicable Green Seal standard;~~
~~(g) install daylight sensor, motion sensors or timers on all exterior lighting and install fixtures that include automatic switching on timers or photocell controls for all lighting not intended for 24-hour operation or required for security;~~
~~(h) recycling service (includes providing a storage location and service for pick-up) provided throughout the Compliance Period;~~
~~(i) construction waste management system provided by contractor that meets LEEDs minimum standards;~~
~~(j) for Rehabilitation Developments clothes dryers vented to the outside;~~
~~(k) for Developments with 41 units or less, at least 25% by cost FSC certified salvaged wood products;~~
~~(l) locate water fixtures within 20 feet of water heater;~~
~~(m) drip irrigate at non-turf areas;~~
~~(n) radiant barrier decking for New Construction Developments or other "cool" roofing materials (documentation must be submitted that substantiates the "cool" roofing materials used are durable and that there are energy savings associated with them);~~
~~(o) permanent shading devices for windows with solar orientation (does not include solar screens, but may include permanent awnings, fixed overhangs, etc.);~~
~~(p) Energy Star certified insulation products (For Rehabilitation Developments, this would require installation in all places where insulation could be installed, regardless of whether the area is part of the scope of work);~~
~~(q) full cavity spray foam insulation in walls;~~
~~(r) Energy Star-rated windows;~~
~~(s) FloorScore certified vinyl flooring, Green Label certified carpet, or resilient flooring;~~
~~(t) sprinkler system with rain sensors;~~
~~(u) NAUF (No Added Urea Formaldehyde) cabinets;~~

~~(v) Solar screens on all windows (north-facing windows may exclude solar screens if north-facing operable windows provide insect screens).~~

~~(II) Enterprise Green Communities (4 points).~~ 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>.

~~(III) LEED (4 points).~~ 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).

~~(III) ICC 700 National Green Building Standard (4 points).~~ The Development must incorporate, at a minimum, all of the applicable criteria necessary to obtain a NAHB Green Certification, regardless of the rating level achieved (i.e. Bronze, Silver, Gold, or Emerald).

Commented [LHA9]: We recommend reinstating this section – as it encourages the use of healthy materials, and products that make a property more efficient to run.

(6) Unit Requirements.

(A) Unit Sizes. Developments proposing New Construction or Reconstruction will be required to meet the minimum sizes of Units as provided in clauses (i) - (v) of this subparagraph. These minimum requirements are not associated with any selection criteria. Developments proposing Rehabilitation (excluding Reconstruction) or Supportive Housing Developments will not be subject to the requirements of this subparagraph.

- (i) five hundred (500) square feet for an Efficiency Unit;
- (ii) six hundred (600) square feet for a one Bedroom Unit;
- (iii) eight hundred (800) square feet for a two Bedroom Unit;
- (iv) one thousand (1,000) square feet for a three Bedroom Unit; and
- (v) one thousand, two-hundred (1,200) square feet for a four Bedroom Unit.

(B) Unit and Development Construction Features. Housing Tax Credit Applicants may select amenities for the score of an Application under this section, but must maintain the points associated with those amenities by maintaining the amenity selected or providing substitute amenities with equal or higher point values. Tax-Exempt Bond Developments must include enough amenities to meet a minimum of seven (7) points. Direct Loan Applications not layered with Housing Tax Credits must include enough amenities to meet a minimum of four (4) points. The amenity shall be for every Unit at no extra charge to the tenant. The points selected at Application and corresponding list of amenities will be required to be identified in the LURA, and the points selected at Application must be maintained throughout the Affordability Period. Applications involving scattered site Developments must have a specific amenity located within each Unit to count for points. Rehabilitation Developments will start

with a base score of three (3) points and Supportive Housing Developments will start with a base score of five (5) points.

- (i) Covered entries (0.5 point);
- (ii) Nine foot ceilings in living room and all bedrooms (at minimum) (0.5 point);
- (iii) Microwave ovens (0.5 point);
- (iv) Self-cleaning or continuous cleaning ovens (0.5 point);
- (v) Refrigerator with icemaker (0.5 point);
- (vi) Storage room or closet, of approximately 9 square feet or greater, separate from and in addition to bedroom, entryway or linen closets and which does not need to be in the Unit but must be on the property site (0.5 point);
- (vii) Energy-Star qualified laundry equipment (washers and dryers) for each individual Unit; must be front loading washer and dryer in required accessible Units (2 points);
- (viii) Covered patios or covered balconies (0.5 point);
- (ix) Covered parking (~~including~~ may be garages or carports, attached or freestanding) and include ~~at~~ at least one covered space per Unit (1.5 points);
- (x) 14 SEER HVAC (or greater) or for Rehabilitation (excluding Reconstruction) where such systems are not being replaced as part of the scope of work, a radiant barrier in the attic is provided (1.5 points);
- (xi) High Speed Internet service to all Units (can be wired or wireless; required equipment for either must be provided) (1 point);
- ~~(xii) Built in (recessed into the wall) computer nook (0.5 point);~~
- ~~(xiii) Built-in (recessed into the wall) shelving unit (0.5 point);~~
- ~~(xiv) Recessed or track LED lighting in kitchen and living areas (1 point);~~
- ~~(xv) Thirty (30) year shingle or metal roofing (excludes Thermoplastic Polyolefin (TPO) roofing material) (0.5 point);~~
- ~~(xvi) Greater than 30 percent stucco or masonry (includes stone, cultured stone, and brick but excludes cementitious and metal siding) on all building exteriors; the percentage calculation may exclude exterior glass entirely (2 points);~~
- ~~(xvii) Breakfast Bar (a space, generally between the kitchen and dining area, that includes an area for seating although actual seating such as bar stools does not have to be provided) (0.5 points); and~~
- ~~(xviii) Walk-in closet in master bedroom (0.5 points).~~

(7) Tenant Supportive Services. The supportive services include those listed in subparagraphs (A) - (Z) of this paragraph. Tax Exempt Bond Developments must select a minimum of eight (8) points; Direct Loan Applications not layered with Housing Tax Credits must include enough services to meet a minimum of four (4) points. The points selected and complete list of supportive services will be included in the LURA and the timeframe by which services are offered must be in accordance with §10.619 of this chapter (relating to Monitoring for Social Services) and maintained throughout the

Affordability Period. The Owner may change, from time to time, the services offered; however, the overall points as selected at Application must remain the same. The services provided should be those that will directly benefit the Target Population of the Development. Tenants must be provided written notice of the elections made by the Development Owner. No fees may be charged to the tenants 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.

- (A) partnership with local law enforcement to provide quarterly on-site social and interactive activities intended to foster relationships with residents (such activities could include playing sports, having a cook-out, swimming, card games, etc.) (3 points);
- (B) weekday character building program (shall include at least on a monthly basis a curriculum based character building presentation on relevant topics, for example teen dating violence, drug prevention, bullying, teambuilding, internet/social media dangers, stranger danger, etc.) (2 points);
- (C) daily transportation such as bus passes, cab vouchers, specialized van on-site (4 points);
- (D) Food pantry consisting of an assortment of non-perishable food items and common household items (i.e. laundry detergent, toiletries, etc.) accessible to residents at least on a monthly basis or upon request by a tenant. While it is possible that transportation may be provided to a local food bank to meet the requirement of this tenant service, the tenant must not be required to pay for the items they receive at the food bank (1 point);
- (E) GED preparation classes (shall include an instructor providing on-site coursework and exam) (2 points);
- (F) English as a second language classes (shall include an instructor providing on-site coursework and exam) (1 point);
- (G) quarterly financial planning courses (i.e. homebuyer education, credit counseling, investing advice, retirement plans, etc.). Courses must be offered through an on-site instructor; a CD or online course is not acceptable (1 point);
- (H) annual health fair provided by a health care professional(1 point);
- (I) quarterly health and nutritional courses (1 point);
- (J) organized youth programs or other recreational activities such as games, movies or crafts offered by the Development (1 point);

(K) scholastic tutoring (shall include daily (Monday – Thursday) homework help or other focus on academics) (3 points);

(L) Notary Services during regular business hours (§2306.6710(b)(3)) (1 point);

(M) weekly exercise classes (offered at times when most residents would be likely to attend) (2 points);

(N) twice monthly arts, crafts, and other recreational activities (*e.g.* Book Clubs and creative writing classes) (2 points);

(O) 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) (1 point);

(P) monthly transportation to community/social events such as mall trips, community theatre, bowling, organized tours, etc. (1 point);

(Q) twice monthly on-site social events (i.e. potluck dinners, game night, sing-a-longs, movie nights, birthday parties, etc.) (1 point);

(R) specific case management services offered by a qualified Owner or Developer, qualified provider or through external, contracted parties for seniors, Persons with Disabilities or Supportive Housing (2 points);

(S) 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);

(T) 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);

(U) contracted career training and placement partnerships with local worksource offices, culinary programs, or vocational counseling services; also resident training programs that train and hire residents for job opportunities inside the development in areas like leasing, tenant services, maintenance, landscaping, or food and beverage operation (2 points);

(V) external partnerships for provision of weekly substance abuse meetings at the Development Site (2 points);

(W) 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);

(X) a full-time resident services coordinator with a dedicated office space at the Development (2 points);

(Y) a resident-run community garden with annual soil preparation and mulch provided by the Owner and access to water (1 point); and

(Z) Development Sites located within a one mile radius of one of the following can also qualify for one (1) point provided they also have a referral process in place and provide transportation to and from the facility:

- (i) Facility for treatment of alcohol and/or drug dependency;
- (ii) Facility for treatment of PTSD and other significant psychiatric or psychological conditions;
- (iii) Facility providing therapeutic and/or rehabilitative services relating to mobility, sight, speech, cognitive, or hearing impairments; or
- (iv) Facility providing medical and/or psychological and/or psychiatric assistance for persons of limited financial means.

(8) Development Accessibility Requirements. All Developments must meet all specifications and accessibility requirements as identified in subparagraphs (A) - (C) of this paragraph and any other applicable state or federal rules and requirements. The accessibility requirements are further identified in the Certification of Development Owner as provided in the Application.

(A) The Development shall comply with the accessibility requirements under Federal law and as further defined in Chapter 1, Subchapter B of this title (relating to Accessibility Requirements). (§§2306.6722; 2306.6730)

(B) Regardless of building type, all Units accessed by the ground floor or by elevator ("affected units") must comply with the visitability requirements in clauses (i) - (iii) of this subparagraph. Design specifications for each item must comply with the standards of the Fair Housing Act Design Manual. Buildings occupied for residential use on or before March 13, 1991 are exempt from this requirement.

(i) All common use facilities must be in compliance with the Fair Housing Design Act Manual;

(ii) There must be an accessible or exempt route, as provided for in the Fair Housing Design Act Manual, from common use facilities to the affected units;

(iii) Each affected unit must include the features in subclauses (a) - (e) of this clause.

(a) at least one zero-step, accessible entrance;

(b) at least one visitable 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;

(c) 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;

(d) 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

(e) light switches, electrical outlets, and thermostats on the entry level must be at accessible heights. ~~New Construction (excluding New Construction of non-residential buildings) Developments where some Units are normally exempt from Fair Housing accessibility requirements, a minimum of 20% of each Unit Type (i.e., one bedroom one bath, two bedroom one bath, two bedroom two bath, three bedroom two bath) of otherwise exempt units (i.e. single family residence, duplexes, triplexes, and townhomes) must provide an accessible entry level and all common-use facilities in compliance with the Fair Housing Guidelines, and include a minimum of one bedroom and one bathroom or powder room at the entry level.~~

(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~~Substantial Alteration~~, in accordance with Chapter 1, Subchapter B of this title (relating to Section 504 of the Rehabilitation Act of 1973 and the Fair Housing Act).

Subchapter C

Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules ~~for Applications~~

§10.201.Procedural Requirements for Application Submission. This subchapter establishes the procedural requirements for Application submission. Only one Application may be submitted for a Development Site in an Application Round. While the Application Acceptance Period is open or prior to the Application deadline, an Applicant may withdraw an Application and subsequently file a new Application utilizing the original pre-application fee (as applicable) that was paid as long as no substantive evaluation was performed by the Department and the re-submitted Application relates to the same Development Site, consistent with §11.9(e)(3) regarding pre-application Site changes. Applicants are subject to the schedule of fees as set forth in §10.901 of this chapter (relating to Fee Schedule). When providing a pre-application, Application [\(or notices thereof\)](#), or other materials to a state representative, local governmental body, Neighborhood Organization, or anyone else to secure support or approval that may affect the Applicant's competitive posture, an Applicant must disclose that in accordance with the Department's rules aspects of the Development may not yet have been determined or selected or may be subject to change, such as changes in the amenities ultimately selected and provided.

(1) General Requirements.

(A) An Applicant requesting funding from the Department must submit an Application in order to be considered for an award. An Application must be complete (including all required exhibits and supporting materials) and submitted by the required program deadline. If an Application, including the corresponding Application fee as described in §10.901 of this chapter, is not submitted to the Department on or before the applicable deadline, the Applicant will be deemed not to have made an Application; provided, however, that errors in the calculation of applicable fees may be cured via an Administrative Deficiency. The deficiency period for curing fee errors will be three business days and may not be extended. Failure to cure such an error timely will be grounds for termination.

(B) Applying for multifamily funds from the Department is a technical process that must be followed completely. As a result of the competitive nature of some funding sources, an Applicant should proceed on the assumption that deadlines are fixed and firm with respect to both date and time and cannot be waived except where authorized and for truly extraordinary circumstances, such as the occurrence of a significant natural disaster that makes timely adherence impossible. If an Applicant chooses to submit by delivering an item physically to the Department, it is the Applicant's responsibility to be within the Department's doors by the appointed deadline. Applicants are strongly encouraged to submit the required items well in advance of established deadlines. Applicants must ensure that all documents are legible, properly organized and tabbed, and that materials provided in digital media are fully readable by the Department.

Department staff receiving an application may perform a cursory review to see if there are any glaring [or readily apparent](#) problems. This is a cursory review and may not be relied upon as confirmation that the Application was complete or in proper form.

(C) The Applicant must [timely](#) upload a PDF copy and Excel copy of the complete Application to the Department's secure web transfer server. Each copy must be in a single file and individually bookmarked as further described in the Multifamily Programs Procedures Manual. Additional files required for Application submission (e.g., Third Party Reports) outside the Uniform Application must also be uploaded to the secure web transfer server. It is the responsibility of the Applicant to confirm the upload to the Department's secure web transfer server was successful and to do so in advance of the deadline. Where there are instances of computer problems, mystery glitches, etc. that prevents 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 may be submitted to the Department as described in subparagraphs (A) and (B) of this paragraph. Multiple site applications by the same Applicant for Tax-Exempt Bond Developments will be considered to be one Application as identified in Tex. Gov't Code, Chapter 1372. Applications will be required to satisfy the requirements of the Qualified Allocation Plan (QAP) and Uniform Multifamily Rules in place at the time the Application is received by the Department. Applications that receive a Traditional Carryforward designation after November 15 will not be accepted until after January 2 and will be subject to the QAP and Uniform Multifamily Rules in place at the time the Application is received by the Department.

(A) Lottery Applications. For Applicants participating in the TBRB lottery for private activity bond volume cap and whereby advance notice is given regarding a Certificate of Reservation, the Applicant must submit a Notice to Submit Lottery Application form to the Department no later than the Notice to Submit Lottery Application Delivery Date described in §10.4 of this chapter (relating to Program Dates). The complete Application, accompanied by the Application Fee described in §10.901 of this chapter must be submitted no later than the Applications Associated with Lottery Delivery Date described in §10.4 of this chapter.

(B) Waiting List Applications. Applications designated as Priority 1 or 2 by the TBRB and receiving advance notice of a Certificate of Reservation for private activity bond volume cap must submit Parts 1 - 4 of the Application and the Application Fee described in §10.901 of this chapter prior to the issuance of the Certificate of Reservation by the TBRB. The remaining parts of the Application must be submitted at

least seventy-five (75) days prior to the Board meeting at which the decision to issue a Determination Notice would be made. An Application designated as Priority 3 will not be accepted until after the issuer has induced the bonds, with such documentation included in the Application, and is subject to the following additional timeframes:

(i) The Applicant must submit to the Department confirmation that a Certificate of Reservation from the TBRB has been issued not more than thirty (30) days after the Application is received by the Department. The Department may, for good cause, administratively approve an extension for up to an additional thirty (30) days to submit confirmation the Certificate of Reservation has been issued. The Application ~~will~~may be terminated if the Certificate of Reservation is not received within the required timeframe;

(ii) The Department will require at least seventy-five (75) days to review an Application, unless Department staff can complete its evaluation in sufficient time for Board consideration. Applicants should be aware that unusual financing structures, portfolio transactions, and the need to resolve Administrative Deficiencies may require additional time to review and the prioritization of Applications will be subject to the review priority established in paragraph (6) of this subsection;

(iii) Department staff may choose to delay presentation to the Board in instances in which an Applicant is not reasonably expected to close within sixty (60) days of the issuance of a Determination Notice. Applications that receive Traditional Carryforward will be subject to closing within the same timeframe as would be typical of the Certificate of Reservation. This will be a condition of the award and reflected in the Determination Notice.

(3) Certification of Tax Exempt Bond Applications with New Docket Numbers.

Applications that receive an affirmative Board Determination, but for which closing on the bonds does not occur prior to the Certificate of Reservation expiration date, and which subsequently have that docket number withdrawn from the TBRB, may have their Determination Notice reinstated. In the event that the Department's Board has not yet approved the Application, the Application will continue to be processed and ultimately provided to the Board for consideration. The Applicant would need to receive a new docket number from the TBRB and meet the requirements described in subparagraphs (A) - (C) of this paragraph:

(A) The Application must remain unchanged ~~with regard to; which means that at a minimum, the following cannot have changed:~~ Site Control, total number of Units, unit mix (bedroom sizes and income restrictions), design/site plan documents, financial structure including bond and Housing Tax Credit amounts, development costs, rent schedule, operating expenses, sources and uses, ad valorem tax exemption status, Target Population, scoring criteria (if TDHCA is bond issuer) or TBRB priority status including the effect on the inclusive capture rate. The entities involved in the Applicant entity and Developer cannot change; however, the certification can be submitted even if

the lender, syndicator or issuer changes, as long as the financing structure and terms remain unchanged. [Should any of the aforementioned items have changed, but in staff's determination and review such change is determined not to be material or determined not to have an effect on the original underwriting or program review then the Applicant may be allowed to submit the certification and subsequently have the Determination Notice re-issued.](#) Notifications under §10.203 of this chapter (relating to Public Notifications (§2306.6705(9))) are not required to be reissued. A revised Determination Notice will be issued once notice of the assignment of a new docket number has been provided to the Department and the Department has confirmed that the capture rate and market demand remain acceptable. This certification must be submitted no later than thirty (30) calendar days after the date the TBRB issues the new docket number; or

(B) the new docket number may not be issued more than four (4) months from the date the original application was withdrawn from the TBRB. The new docket number must be from the same program year as the original docket number or, for Applications that receive a new docket number from the program year that is immediately succeeding the program year of the original docket number, the requirements in clauses (i) and (ii) of this subparagraph must be met:

(i) The Applicant must certify that the Development will meet all rules and requirements in effect at the time the new docket number is issued; and

(ii) The Department must determine that the changes in the rules applicable to the program(s) under which the Application was originally awarded are not of a material nature that would necessitate a new Application and that any new forms and clarifications to the Application are of a nature that can be resolved through the Administrative Deficiency process; or

(C) if there are changes to the Application as referenced in subparagraph (A) of this paragraph or if such changes in the rules pursuant to subparagraph (B)(ii) of this paragraph are of a material nature the Applicant will be required to submit a new Application in full, along with the applicable fees, to be reviewed and evaluated in its entirety for a new Determination Notice to be issued. If there is public opposition but the Application remains the same pursuant to subparagraph (A) of this paragraph, a new Application will not be required to be submitted; however, the Application must be presented before the Board for consideration of the re-issuance of the Determination Notice.

(4) Withdrawal of Application. An Applicant may withdraw an Application prior to or after receiving an award of funding by submitting to the Department written notice of the withdrawal. [For Tax-Exempt Bond Applications that are under review by staff and there are changes to or a lapse in the financing structure or there are still aspects of the Application that are in flux, staff may consider the Application withdrawn and will provide the Applicant of notice to that effect. Once it is clear to staff that the various aspects of the Application have been solidified staff may re-instate the Application and allow the updated](#)

[information, exhibits, etc. to supplement the existing Application, or staff may require an entirely new Application be submitted if it is determined that such changes will necessitate a new review of the Application. This provision does not apply to Direct Loan Applications that may be layered with Tax-Exempt Bonds.](#)

(5) Evaluation Process. Priority Applications, which shall include those Applications believed likely to be competitive, will undergo a program review for compliance with submission requirements and selection criteria, as applicable. In general, Application reviews by the Department shall be prioritized based upon the likelihood that an Application will be competitive for an award based upon the set-aside, self score, received date, or other ranking factors. Thus, non-competitive or lower scoring Applications may never be reviewed. The Director of Multifamily Finance will identify those Applications that will receive a full program review based upon a reasonable assessment of each Application's priority, but no Application with a competitive ranking shall be skipped or otherwise overlooked. This initial assessment may be a high level assessment, not a full assessment. Applications deemed to be priority Applications may change from time to time. The Real Estate Analysis division shall underwrite Applications that received a full program review and remain competitive to determine financial feasibility and an appropriate funding amount. In making this determination, the Department will use §10.302 of this chapter (relating to Underwriting Rules and Guidelines) and §~~13.60.307~~ of this ~~title~~chapter (relating to [Multifamily Direct Loan RuleRequirements](#)). The Department may have an external party perform all or part of the underwriting evaluation and components thereof to the extent it determines appropriate. The expense of any external underwriting shall be paid by the Applicant prior to the commencement of the aforementioned evaluation pursuant to §10.901(5) of this chapter (relating to Fee Schedule, Appeals and other Provisions). Applications will undergo a previous participation review in accordance with Chapter 1 Subchapter C of this title (relating to Previous Participation) and a Development Site may be evaluated by the Department or its agents through a physical site inspection or site visit, (which may include neighboring areas), independent of or concurrent with a site visit that may be performed in conjunction with §10.101(a)(3) (relating to Undesirable Neighborhood Characteristics). The Department will, from time to time during the review process, publish an application log which shall include the self-score and any scoring adjustments made by staff. The posting of such scores on the application log may trigger appeal rights and corresponding deadlines pursuant to Tex. Gov't. Code §2306.6715 and §10.902 of this chapter (relating to Appeals Process). The Department may also provide a courtesy scoring notice reflecting such score to the Applicant.

(6) Prioritization of Applications under various Programs. This paragraph identifies how ties or other prioritization matters will be handled when dealing with de-concentration requirements, capture rate calculations, and general review priority of Applications submitted under different programs.

(A) De-concentration and Capture Rate. Priority will be established based on the earlier date associated with an Application. The dates that will be used to establish priority are as follows:

- (i) For Tax-Exempt Bond Developments, the issuance date of the Certificate of Reservation issued by the TBRB; or in instances where there is Traditional Carryforward associated with an Application the Department will utilize the date the complete HTC Application that is associated with the Traditional Carryforward is submitted to the Department; and
- (ii) For all other Developments, the date the Application is 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. Review priority for Applications under various multifamily programs will be established based on Department staff's consideration of any statutory timeframes associated with a program or Application in relation to the volume of Applications being processed. ~~In general, those~~Those with statutory deadlines or more restrictive deadlines will be prioritized for review and processing ahead of those that are not subject to the same constraints. In general, any non-Competitive Housing Tax Credit Applications received during the competitive tax credit round that include a request to be placed on the May, June or July Board agendas will not be prioritized for review or underwriting due to the statutory constraints on the award and allocation of competitive tax credits. Applicants are advised to keep this in consideration when planning the submission of an Application and issuance of the Certificate of Reservation. Should an Applicant submit an Application regardless of this provision, the Department is not obligated to include the Application on the requested Board meeting agenda and the Applicant should be prepared to be placed on a subsequent Board meeting agenda. Moreover, Applications that have undergone a program review and there are threshold, eligibility or other items that remain unresolved, staff may suspend further review and processing of the Application, including underwriting and previous participation reviews, until such time the item(s) has been resolved or there has been a specific and reasonable timeline provided by which the item(s) will be resolved. By way of illustration, if during staff's review a question has been raised regarding whether the Applicant has demonstrated sufficient site control, such Application will not be prioritized for further review until the matter has been sufficiently resolved to the satisfaction of staff.

(7) Administrative Deficiency Process. The purpose of the Administrative Deficiency process is to allow an Applicant to provide clarification, ~~correction~~explanation, or non-material missing information to resolve inconsistencies in the original Application or to assist staff in evaluating the Application. Applicants are encouraged to utilize manuals, frequently asked questions, or other materials produced by staff, as additional guidance in conjunction with the rules to provide appropriate support for each item substantiating a claim or representation, such as claims for points, qualification for set-asides, or meeting of threshold requirements. Applicants are also encouraged to contact staff directly with

questions regarding completing parts of the Application. Any Application that staff identifies as having insufficient support information will be directed to cure the matter via the Administrative Deficiency process. Applicants are reminded that this process may not be used to increase a scoring item's points or to change any aspect of the proposed development, financing structure, or other element of the Application. The sole purpose of the Administrative Deficiency will be to substantiate one or more aspects of the Application to enable an efficient and effective review by staff. Any narrative created by response to the Administrative Deficiency cannot contain new information. Staff will request such information via a deficiency notice. Because the review of an Application occurs in several phases, deficiency notices may be issued during any of these phases. Staff will send the deficiency notice via an e-mail to the Applicant and one other contact party if identified by the Applicant in the Application. The time period for responding to a deficiency notice commences on the first business day following the deficiency notice date. Deficiency notices may be sent to an Applicant prior to or after the end of the Application Acceptance Period and may also be sent in response to reviews on post-award submissions. Responses are required to be submitted electronically as a PDF or multiple PDF files. A review of the response provided by the Applicant may reveal that issues initially identified as an Administrative Deficiency are actually determined to be beyond the scope of an Administrative Deficiency process, meaning that they in fact implicated matters of a material nature not susceptible to being resolved. Department staff may in good faith provide an Applicant confirmation that an Administrative Deficiency response has been received or that such response is satisfactory. Communications from staff that the response was satisfactory do not establish any entitlement to points, eligibility status, or to any presumption of having fulfilled any requirements. Final determinations regarding the sufficiency of documentation submitted to cure an Administrative Deficiency as well as the distinction between material and non-material missing information are reserved for the Director of Multifamily Finance, Executive Director, and Board.

(A) It is critical that the use of the Administrative Deficiency process not unduly slow the review process, and since the process is intended to clarify or ~~correct~~explain matters or obtain at the Department's request non-material missing information (that should already ~~been~~ be in existence prior to Application submission), there is a reasonable expectation that a party responding to an Administrative Deficiency will be able to respond immediately. It is the responsibility of a person who receives an Administrative Deficiency to address the matter fully by the close of business on the date by which resolution must be complete and the Administrative 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 a point deductions or termination.

(B) Administrative Deficiencies for Competitive HTC Applications. Unless an extension has been timely requested and granted, if an Administrative Deficiency is not fully resolved to the satisfaction of the Department by 5:00 p.m. on the fifth business day following the date of the deficiency notice, then (5 points) -shall be deducted from the selection criteria score for each additional day the deficiency remains unresolved. If Administrative Deficiencies are not resolved by 5:00 p.m. on the seventh business day

following the date of the deficiency notice, then the Application shall be terminated, subject to appeal. An Applicant may not change or supplement any part of an Application in any manner after the filing deadline or while the Application is under consideration for an award, and may not add any set-asides, increase the requested credit amount, revise the Unit mix (both income levels and Bedroom mixes), or adjust their self-score except in response to a direct request from the Department to do so as a result of an Administrative Deficiency. (§2306.6708(b); §2306.6708) To the extent that the review of Administrative Deficiency documentation or the imposing of point reductions for late responses alters the score assigned to the Application, such score will be reflected in the updated application log published on the Department's website.

(C) Administrative Deficiencies for all other Applications or sources of funds. ~~If Administrative Deficiencies are not 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, ~~then an Administrative Deficiency Notice Late Fee of \$500 for each business day the deficiency remains unresolved will be assessed, and the Application will not be presented to the Board for consideration until all outstanding fees have been paid.~~ Applications with unresolved deficiencies after 5:00 p.m. on the ~~seventh~~^{tenth} business day following the date of the deficiency notice will be ~~terminated or~~ suspended from further processing ~~and the Applicant will be provided with notice to that effect, until such time the item(s) are sufficiently resolved to the satisfaction of the Department.~~ ~~so long as the active Application does not impact the processing or underwriting of other Applications. The Applicant will be responsible for the payment of fees accrued pursuant to this paragraph regardless of any termination. Department staff may or may not assess an Administrative Deficiency Notice Late Fee for or terminate. If, during the period of time when the Application is suspended from review Applications for Tax-Exempt Bond or Direct Loan Developments during periods when private activity bond volume cap or Direct Loan funds become oversubscribed, the Applicant will be informed that unless the outstanding item(s) are resolved within one business day the Application will be terminated. For purposes of priority under the Direct Loan set-asides, if the outstanding item(s) are resolved within one business day, the date by which the item is submitted shall be the new received date pursuant to §13.5(c) of this chapter (relating to Multifamily Direct Loan Rule).~~ ~~are undersubscribed.~~ Applicants should be prepared for additional time needed for completion of staff reviews as described in paragraph (2)(B) of this section.

(8) Limited Priority Reviews. If, after the submission of the Application, an Applicant identifies an error in the Application that could likely be the subject of an Administrative Deficiency, the Applicant may request a limited priority review of the specific and limited issues in need of clarification or correction. The issue may not relate to the score of an Application. This limited priority review may only cover the specific issue and not the entire Application. If the limited priority review results in the identification of an issue that requires correction or clarification, staff will request such through the Administrative Deficiency process as stated in paragraph (7) of this section, if deemed appropriate. A limited priority review is intended to address:

(A) clarification of issues that Department staff would have difficulty identifying due to the omission of information that the Department may have access to only through Applicant disclosure, such as a prior removal from a tax credit transaction or participation in a Development that is not identified in the previous participation portion of the Application; or

(B) technical correction of non-material information that would cause an Application deemed non-competitive to be deemed competitive and, therefore, subject to a staff review. For example, failure to mark the Nonprofit Set-Aside in an Application that otherwise included complete submission of documentation for participation in the Nonprofit Set-Aside.

(9) Challenges to Opposition. Any written statement from a Neighborhood Organization expressing opposition to an Application may be challenged if it is contrary to findings or determinations, including zoning determinations, of a municipality, county, school district, or other local Governmental Entity having jurisdiction or oversight over the finding or determination. If any such comment is challenged, the challenger must declare the basis for the challenge and submit such challenge by the Challenges to Neighborhood Organization Opposition Delivery Date as identified in §10.4 of this chapter and no later than May 1, ~~2018~~²⁰¹⁷ for Competitive HTC Applications. The Neighborhood Organization expressing opposition will be given seven (7) calendar days to provide any information related to the issue of whether their assertions are contrary to the findings or determinations of a local Governmental Entity. All such materials and the analysis of the Department's staff will be provided to a fact finder, chosen by the Department, for review and a determination of the issue presented by this subsection. The fact finder will not make determinations as to the accuracy of the statements presented, but only with regard to whether the statements are contrary to findings or determinations of a local Governmental Entity. The fact finder's determination will be final and may not be waived or appealed.

§10.202. Ineligible Applicants and Applications. The purpose of this section is to identify those situations in which an Application or Applicant may be considered ineligible for Department funding and subsequently terminated. Such matters may be brought to the attention of staff by anyone, including members of the general public. If such ineligibility is raised by non-staff members it must be made in writing to the Executive Director and the Applicant and must cite the specific ineligible criteria under paragraph (1) of this section and provide factual evidence to support the claim. Any unsupported claim or claim determined to be untrue may be subject to all remedies available to the Department or Applicant. Staff will make enquiry as it deems appropriate and may send a notice to the Applicant and provide them the opportunity to explain how they believe they or their Application is eligible. Staff will present the matter to the Board, accompanied by staff's recommendation. The Board may take such action as it deems warranted by the facts presented, including any testimony that may be provided, either declining to take action, in which case the Applicant or Application, as applicable, remains eligible, or finding the Applicant is ineligible, or, for a matter relating to a specific Application, that that Application is ineligible. A Board finding of ineligibility is final. The items listed in this section include those requirements in §42 of the Code, Tex. Gov't Code, Chapter 2306, and

other criteria considered important by the Department, and does not represent an exhaustive list of ineligibility criteria that may otherwise be identified in applicable rules or a NOFA specific to the programmatic funding. One or more of the matters enumerated in paragraph (1) of this section may also serve as a basis for debarment, or the assessment of administrative penalties, and nothing herein shall limit the Department's ability to pursue any such matter.

(1) Applicants. An Applicant may be considered ineligible if any of the criteria in subparagraphs (A) - (M) 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 procurement in a state or Federal program, including listed in HUD's System for Award Management (SAM); (§2306.0504)

(B) has been convicted of a state or federal felony crime involving fraud, bribery, theft, misrepresentation of material fact, misappropriation of funds, or other similar criminal offenses within fifteen (15) years preceding the Application submission;

(C) is, at the time of Application, subject to an order in connection with an enforcement or disciplinary action under state or federal securities law or by the NASD; subject to a federal tax lien (other than a contested lien for which provision has been made); or the subject of a proceeding in which a Governmental Entity has issued an order to impose penalties, suspend funding, or take adverse action based on an allegation of financial misconduct or uncured violation of material laws, rules, or other legal requirements governing activities considered relevant by the Governmental Entity;

(D) has materially breached a contract with a public agency, and, if such breach is permitted to be cured under the contract, has been given notice of the breach and a reasonable opportunity to cure, and failed to cure that breach within the time specified in the notice of breach;

(E) has misrepresented to a subcontractor the extent to which the Developer has benefited from contracts or financial assistance that has been awarded by a public agency, including the scope of the Developer's participation in contracts with the agency, and the amount of financial assistance awarded to the Developer by the agency;

(F) has been found by the Board to be ineligible based on a previous participation review performed in accordance with Chapter 1 Subchapter C of this title;

(G) is delinquent in any loan, fee, or escrow payments to the Department in accordance with the terms of the loan, as amended, or is otherwise in default with any provisions of such loans;

(H) has failed to cure any past due fees owed to the Department within the time frame provided by notice from the Department and at least ten (10) days prior to the Board meeting at which the decision for an award is to be made;

(I) would be prohibited by a state or federal revolving door or other standard of conduct or conflict of interest statute, including Tex. Gov't Code, §2306.6733, or a provision of Tex. Gov't Code, Chapter 572, from participating in the Application in the manner and capacity they are participating;

(J) has, without prior approval from the Department, had previous Contracts or Commitments that have been partially or fully deobligated during the twelve (12) months prior to the submission of the Application, and through the date of final allocation due to a failure to meet contractual obligations, and the Person is on notice that such deobligation results in ineligibility under this chapter;

(K) has provided false~~ified~~ or misleading documentation or made other intentional or negligent material misrepresentations or omissions in or in connection with an Application (and certifications contained therein), ~~or~~ 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 re-affirmed or Department funds repaid; or

(M) fails to disclose, in the Application, any Principal or any entity or Person in the Development ownership structure who was or is involved as a Principal in any other affordable housing transaction, that has terminated voluntarily or involuntarily within the past ten (10) years or plans to or is negotiating to terminate their relationship with any other affordable housing development. Failure to disclose is grounds for termination. The disclosure must identify the person or persons and development involved, the identity of each other development, and contact information for the other Principals of each such development, a narrative description of the facts and circumstances of the termination or proposed termination, and any appropriate supporting documents. An Application may be referred to the Board for termination based upon factors in the disclosure. Staff shall present a determination to the Board as to a person's fitness to be involved as a principal with respect to an Application using the factors described in clauses (i) – (v) of this subparagraph as considerations:

(i) The amount of resources in a 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.

(2) Applications. An Application shall be ineligible if any of the criteria in subparagraphs (A) - (C) of this paragraph apply to the Application:

(A) a violation of Tex. Gov't Code, §2306.1113, exists relating to Ex Parte Communication. An ex parte communication occurs when an Applicant or Person representing an Applicant initiates substantive contact (other than permitted social contact) with a board member, or vice versa, in a setting other than a duly posted and convened public meeting, in any manner not specifically permitted by Tex. Gov't Code, §2306.1113(b). Such action is prohibited. For Applicants seeking funding after initial awards have been made, such as waiting list Applicants, the ex parte communication prohibition remains in effect so long as the Application remains eligible for funding. The ex parte provision does not prohibit the Board from participating in social events at which a Person with whom communications are prohibited may, or will be present; provided that no matters related to any Application being considered by the Board may be discussed. An attempted but unsuccessful prohibited ex parte communication, such as a letter sent to one or more board members but not opened, may be cured by full disclosure in a public meeting, and the Board may reinstate the Application and establish appropriate consequences for cured actions, such as denial of the matters made the subject to the communication.

(B) the Application is submitted after the Application submission deadline (time or date); is missing multiple parts of the Application; or has a Material Deficiency; or

(C) for any Development utilizing Housing Tax Credits or Tax-Exempt Bonds:

(i) at the time of Application or at any time during the two-year period preceding the date the Application Round begins (or for Tax-Exempt Bond Developments any time during the two-year period preceding the date the Application is submitted to the Department), the Applicant or a Related Party is or has been a person covered by Tex. Gov't Code, §2306.6703(a)(1) or §2306.6733;

(ii) the Applicant proposes to replace in less than fifteen (15) years any private activity bond financing of the Development described by the Application, unless the exceptions in Tex. Gov't Code, §2306.6703(a)(2) of the are met.

§10.203. Public Notifications (§2306.6705(9)). A certification, as provided in the Application, that the Applicant met the requirements and deadlines identified in paragraphs (1) - (3) of this section must be submitted with the Application. For Applications utilizing Competitive Housing Tax Credits, notifications must not be older than three (3) months from the first day of the Application Acceptance Period. For Tax-Exempt Bond Developments notifications and proof thereof must not be older than three (3) months prior to the date Parts 5 and 6 of the Application are submitted, and for all other Applications no older than three (3) months prior to the date the Application is submitted. If notifications were made in order to satisfy requirements of pre-application submission (if applicable to the program) for the same Application, then no additional notification is required at Application. However, re-notification is required by all Applicants who have submitted a change from pre-application to Application that reflects a total Unit increase of greater than 10 percent or a 5 percent increase in density (calculated as units per acre) as a result of a change in the size of the Development Site. In addition, should a change in elected official occur between the submission of a pre-application and the submission of an Application, Applicants are required to notify the newly elected (or appointed) official no later than the Full Application Delivery Date.

(1) Neighborhood Organization Notifications.

(A) The Applicant must identify and notify all Neighborhood Organizations on record with the county or the state as of 30 days prior to the Full Application Delivery Date 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 Application, all Neighborhood Organizations on record with the county or state as of 30 days prior to the Full Application Delivery Date and whose boundaries include the proposed Development Site as of the submission of the Application.

(2) Notification Recipients. No later than the date the Application is submitted, notification must be sent to all of the persons or entities identified in subparagraphs (A) - (H) of this paragraph. Developments located in an Extra Territorial Jurisdiction (ETJ) of a city are required to notify both city and county officials. The notifications may be sent by e-mail, fax or mail with return receipt requested or similar tracking mechanism in the format required 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 [discouraged](#) to retain proof of delivery in the event it is requested by the Department. Evidence of proof of delivery is demonstrated by a signed receipt for mail or courier delivery and confirmation of receipt by recipient for fax and e-mail. Officials to be notified are those officials in office at the time the Application is submitted. Note that between the time of pre-application (if made) and full Application, such officials may change and the boundaries of their jurisdictions may change. By way of example and not by way of limitation, events such as redistricting may cause changes which will necessitate additional notifications at full Application. Meetings and discussions do not constitute

notification. Only a timely and compliant written notification to the correct person constitutes notification.

- (A) Neighborhood Organizations on record with the state or county as of 30 days prior to the Full Application Delivery Date whose boundaries include the [entire](#) Development Site;
- (B) Superintendent of the school district in which the Development Site is located;
- (C) Presiding officer of the board of trustees of the school district in which the Development Site is located;
- (D) Mayor of the municipality (if the Development Site is within a municipality or its extraterritorial jurisdiction);
- (E) All elected members of the Governing Body of the municipality (if the Development Site is within a municipality or its extraterritorial jurisdiction);
- (F) Presiding officer of the Governing Body of the county in which the Development Site is located;
- (G) All elected members of the Governing Body of the county in which the Development Site is located; and
- (H) State Senator and State Representative of the districts whose boundaries include the Development Site.

(3) Contents of Notification.

(A) The notification must include, at a minimum, all information described in clauses (i) - (vi) 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.); and
- (vi) the total number of Units proposed and total number of low-income Units proposed.

(B) [The Applicant must disclose that, in accordance with the Department's rules, aspects of the Development may not yet have been determined or selected or may be subject to change, such as changes in the amenities ultimately selected and provided;](#)

(C) The notification may not contain any false or misleading statements. Without limiting the generality of the foregoing, the notification may not create the impression that the proposed Development will serve a Target Population exclusively [or as a preference](#) unless such targeting or preference is documented in the Application and is or will be in full compliance with all applicable state and federal laws, including state and federal fair housing laws; [and](#).

(D) Notifications or any other communications may not contain any statement that violates Department rules, statute, code, or federal requirements.

§10.204. Required Documentation for Application Submission. The purpose of this section is to identify the documentation that is required at the time of Application submission, unless specifically indicated or otherwise required by Department rule. If any of the documentation indicated in this section is not resolved, clarified or corrected to the satisfaction of the Department through either original Application submission or the Administrative Deficiency process, the Application will be terminated. Unless stated otherwise, all documentation identified in this section must not be dated more than six (6) months prior to the close of the Application Acceptance Period or the date of Application submission as applicable to the program. The Application may include, or Department staff may request, documentation or verification of compliance with any requirements related to the eligibility of an Applicant, Application, Development Site, or Development.

(1) Certification, Acknowledgement and Consent of Development Owner. A certification of the information in this subchapter as well as Subchapter B of this chapter must be executed by the Development Owner and addresses the specific requirements associated with the Development. The Person executing the certification is responsible for ensuring all individuals referenced therein are in compliance with the certification [and](#), that they have given it with all required authority and with actual knowledge of the matters certified.

(A) The Development will adhere to the Texas Property Code relating to security devices and other applicable requirements for residential tenancies, and will adhere to local building codes or, if no local building codes are in place, then to the most recent version of the International Building Code.

(B) This Application and all materials submitted to the Department constitute records of the Department subject to Tex. Gov't Code, Chapter 552, ~~and the Texas Public Information Act.~~

(C) All representations, undertakings and commitments made by Applicant in the Application process for Development assistance expressly constitute conditions to any Commitment, Determination Notice, Carryover Allocation, or Direct Loan Commitment for such Development which the Department may issue or award, and the violation of any such condition shall be sufficient cause for the cancellation and rescission of such Commitment, Determination Notice, Carryover Allocation, or Direct Loan Commitment by the Department. If any such representations, undertakings and commitments

concern or relate to the ongoing features or operation of the Development, they shall each and all shall be enforceable even if not reflected in the Land Use Restriction Agreement. All such representations, undertakings and commitments are also enforceable by the Department and the tenants of the Development, including enforcement by administrative penalties for failure to perform, in accordance with the Land Use Restriction Agreement.

(D) The Development Owner has read and understands the Department's fair housing educational materials posted on the Department's website as of the beginning of the Application Acceptance Period.

(E) The Development Owner agrees to implement a plan to use Historically Underutilized Businesses (HUB) in the development process consistent with the Historically Underutilized Business Guidelines for contracting with the State of Texas. The Development Owner will be required to submit a report of the success of the plan as part of the cost certification documentation, in order to receive IRS Forms 8609 or, if the Development does not have Housing Tax Credits, release of retainage.

(F) The Applicant will attempt to ensure that at least 30 percent of the construction and management businesses with which the Applicant contracts in connection with the Development are Minority Owned Businesses as further described in Tex. Gov't Code, §2306.6734.

(G) The Development Owner will ~~specifically affirmatively~~ market to veterans through direct marketing or contracts with veteran's organizations. The Development Owner will be required to identify how they will ~~affirmatively~~specifically market to veterans and report to the Department in the annual housing report on the results of the marketing efforts to veterans. Exceptions to this requirement must be approved by the Department.

(H) The Development Owner will comply with any and all notices required by the Department.

(I) If the Development has an existing LURA with the Department, the Development Owner will comply with the existing restrictions.

(2) Applicant Eligibility Certification. A certification of the information in this subchapter as well as Subchapter B of this chapter must be executed by any individuals required to be listed on the organizational chart and also identified in subparagraphs (A) – (D) below. The certification must identify the various criteria relating to eligibility requirements associated with multifamily funding from the Department, including but not limited to the criteria identified under §10.202 of this chapter (relating to Ineligible Applicants and Applications).

(A) for for-profit corporations, any officer authorized by the board of directors, regardless of title, to act on behalf of the corporation, including but not limited to the

president, vice president, secretary, treasurer, and all other executive officers, and each stock holder having a 10 percent or more interest in the corporation, and any individual who has Control with respect to such stock holder;

(B) for non-profit corporations or governmental instrumentalities (such as housing authorities), any officer authorized by the board, regardless of title, to act on behalf of the corporation, including but not limited to the president, vice president, secretary, treasurer, and all other executive officers, the Audit committee chair, the Board chair, and anyone identified as the Executive Director or equivalent;

(C) for trusts, all beneficiaries that have the legal ability to Control the trust who are not just financial beneficiaries; and

(D) for limited liability companies, all managers, managing members, members having a 10 percent or more interest in the limited liability company, any individual Controlling such members, or any officer authorized to act on behalf of the limited liability company.

(3) Architect Certification Form. The certification, addressing all of the accessibility requirements [applicable to the Development Site](#), must be executed by the Development engineer; ~~or an accredited architect or Third Party accessibility specialist after careful review of the Department's accessibility requirements.~~ (§2306.6722; §2306.6730) [The certification must include a statement describing how the accessibility requirements relating to Unit distribution will be met. An acceptable, but not required, form of such statement may be obtained in the Multifamily Programs Procedures Manual.](#)

(4) Notice, Hearing, and Resolution for Tax-Exempt Bond Developments. In accordance with Tex. Gov't Code, §2306.67071, the following actions must take place with respect to the filing of an Application and any Department awards for a Tax-Exempt Bond Development.

(A) Prior to submission of an Application to the Department, an Applicant must provide notice of the intent to file the Application in accordance with §10.203 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 FFAST 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 ~~extraterritorial jurisdiction (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 §10.4 of this chapter (relating to Program Dates). An acceptable, but not required, form of resolution may be obtained in the Multifamily Programs Procedures Manual. Applicants should ensure that the resolutions all have the appropriate references and certifications or the ~~resolution may be determined by staff to be invalid. Application may be terminated.~~ 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) ~~and subparagraph (A) of this paragraph;~~
- (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 subparagraph (B) of this paragraph;~~ and
- (iv) After due consideration of the information provided by the Applicant and public comment, the Governing Body does not object to the proposed Application.

(5) Designation as Rural or Urban.

(A) Each Application must identify whether the Development Site is located in an Urban Area or Rural Area of a Uniform State Service Region. The Department shall make

available a list of Places meeting the requirements of Tex. Gov't Code, §2306.004(28-a)(A) and (B), for designation as a Rural Area and those that are an Urban Area in the Site Demographics Characteristics Report. Some Places are municipalities. For any Development Site located in the ETJ of a municipality and not in a Place, the Application shall have the Rural Area or Urban Area designation of the municipality whose ETJ within which the Development Site is located. For any Development Site not located within the boundaries of a Place or the ETJ of a municipality, the applicable designation is that of the closest Place.

(B) Certain areas located within the boundaries of a primary metropolitan statistical area or a metropolitan statistical area can request a Rural designation from the Department for purposes of receiving an allocation Housing Tax Credits (§2306.6740). In order to apply for such a designation, a letter must be submitted from a duly authorized official of the political subdivision or census designated place addressing the factors outlined in clauses (i) – (vi) of this subparagraph. Photographs and other supporting documentation are strongly encouraged. In order for the area to be designated Rural by the Department for the ~~2018~~²⁰¹⁷ Application Round, such requests must be made no later than ~~December 15, 2017~~^{December 16, 2016}. 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 fifty percent contiguity with urban designated places is presumptively rural in nature;

(iv) The political subdivision or census designated place contains a significant number of unimproved roads or relies on unimproved roads to connect it to other places;

(v) The political subdivision or census designated place lacks major amenities commonly associated with urban or suburban areas; and

(vi) The boundaries of the political subdivision or census designated place contain, or are surrounded by, significant areas of undeveloped or agricultural land. For purposes of this assessment, significant being more than one-third of the total surface area of political subdivision/census designated place, or a minimum of 1,000 acres immediately contiguous to the border.

(6) Experience Requirement. Evidence that meets the criteria as stated in subparagraph (A) of this paragraph must be provided in the Application, unless an experience certificate was issued by the Department in the years 2014 through 2017, 2015 or 2016 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 in the development and placement in service of 150 units or more. 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) Experience may not be established for a Person who at any time within the preceding three years has been involved with affordable housing in another state in which the Person or Affiliate has been the subject of issued IRS Form 8823 citing non-compliance that has not been or is not being corrected with reasonable due diligence.

(D) If a Principal is determined by the Department to not have the required experience, an acceptable replacement for that Principal must be identified prior to the date the award is made by the Board.

(E) Notwithstanding the foregoing, no person may be used to establish such required experience if that Person or an Affiliate of that Person would not be eligible to be an Applicant themselves.

(7) Financing Requirements.

(A) Non-Department Debt Financing. Interim and permanent financing sufficient to fund the proposed Total Housing Development Cost less any other funds requested from the Department must be included in the Application. For any Development that is a part of a larger development plan on the same site, the Department may request and evaluate information related to the other components of the development plan in instances in which the financial viability of the Development is in whole or in part dependent upon the other portions of the development plan. Any local, state or federal financing identified in this section which restricts household incomes at any level that is lower than restrictions required pursuant to this chapter or elected in accordance with Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan) must be identified in the rent schedule and the local, state or federal income restrictions must include corresponding rent levels in accordance with §42(g) of the Code. The income and corresponding rent restrictions will be memorialized in a recorded LURA and monitored for compliance. Financing amounts must be consistent throughout the Application and acceptable documentation shall include those described in clauses (i) and (ii) of this subparagraph.

(i) Financing is in place as evidenced by:

(I) a valid and binding loan agreement; and

(II) a valid recorded deed(s) of trust lien on the Development in the name of the Development Owner as grantor in favor of the party providing such financing and covered by a lender's policy of title insurance in their name;

(ii) Term sheets for interim and permanent loans issued by a lending institution or mortgage company that is actively and regularly engaged in the business of lending money must:

(I) have been signed by the lender;

(II) be addressed to the Development Owner or Affiliate;

(III) for a permanent loan, include a minimum loan term of fifteen (15) years with at least a thirty (30) year amortization;

- (IV) include either a committed and locked interest rate, or the currently projected interest rate and the mechanism for determining the interest rate;
- (V) include all required Guarantors, if known;
- (VI) include the principal amount of the loan;
- (VII) include an acknowledgement of the amounts and terms of all other anticipated sources of funds; and
- (VIII) include and address any other material terms and conditions applicable to the financing. The term sheet may be conditional upon the completion of specified due diligence by the lender and upon the award of tax credits, if applicable; or

(iii) For Developments proposing to refinance an existing USDA Section 515 loan, a letter from the USDA confirming that it has been provided with the Preliminary Assessment Tool.

[\(iv\) For Direct Loan Applications or Tax-Exempt Bond Development Applications utilizing FHA financing, the Application shall include the applicable pages from the HUD Application for Multifamily Housing Project. If the HUD Application has not been submitted at the time the Application is submitted then a statement to that effect should be included in the Application along with an estimated date for submission. Applicants should be aware that staff's underwriting of an Application will not be finalized and presented to the Board until staff has evaluated the HUD Application relative to the Application.](#)

(B) Gap Financing. Any anticipated federal, state, local or private gap financing, whether soft or hard debt, must be identified and described in the Application. Applicants must provide evidence that an application for such gap financing has been made. Acceptable documentation may include a letter from the funding entity confirming receipt of an application or a term sheet from the lending agency which clearly describes the amount and terms of the financing. Other Department funding requested with Housing Tax Credit Applications must be on a concurrent funding period with the Housing Tax Credit Application, and no term sheet is required for such a request. Permanent loans must include a minimum loan term of fifteen (15) years with at least a thirty (30) year amortization or for non-amortizing loan structures a term of not less than thirty (30) years. A term loan request must also comply with the applicable terms of the NOFA under which an Applicant is applying.

(C) Owner Contributions. If the Development will be financed in part by a capital contribution by the General Partner, Managing General Partner, any other partner or investor that is not a partner providing the syndication equity, a guarantor or a Principal in an amount that exceeds 5 percent of the Total Housing Development Cost, a letter from a Third Party CPA must be submitted that verifies the capacity of the contributor to provide the capital from funds that are not otherwise committed or pledged. Additionally, a letter from the contributor's bank(s) or depository(ies) must be submitted confirming sufficient funds are readily available to the contributor. The

contributor must certify that the funds are and will remain readily available at Commitment and until the required investment is completed. Regardless of the amount, all capital contributions other than syndication equity will be deemed to be a part of and therefore will be added to the Deferred Developer Fee for feasibility purposes under §10.302(i)(2) of this chapter (relating to Underwriting Rules and Guidelines) or where scoring is concerned, unless the Development is a Supportive Housing Development, the Development is not supported with Housing Tax Credits, or the ownership structure includes a nonprofit organization with a documented history of fundraising sufficient to support the development of affordable housing.

(D) Equity Financing. (§2306.6705(2) and (3)) If applicable to the program, the Application must include a term sheet from a syndicator that, at a minimum, includes:

- (i) an estimate of the amount of equity dollars expected to be raised for the Development;
- (ii) the amount of Housing Tax Credits requested for allocation to the Development Owner;
- (iii) pay-in schedules;
- ~~(iv) anticipated developer fees paid during construction;~~
- (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.

(E) Financing Narrative. (§2306.6705(1)) A narrative must be submitted that describes all aspects of the complete financing plan for the Development, including but not limited to, the sources and uses of funds; construction, permanent and bridge loans, rents, operating subsidies, project-based assistance, and replacement reserves; and the status (dates and deadlines) for applications, approvals and closings, etc. associated with the commitments for all funding sources. For applicants requesting HOME-Direct Loan funds, Match in the amount of at least 5 percent of the HOME-Direct Loan funds requested 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 HOME-Direct Loan funds, if applicable. The information provided must be consistent with all other documentation in the Application.

(8) Operating and Development Cost Documentation.

(A) 15-year Pro forma. All Applications must include a 15-year pro forma estimate of operating expenses, in the form provided by the Department. Any "other" debt service included in the pro forma must include a description.

(B) Utility Allowances. This exhibit, as provided in the Application, must be submitted along with documentation from the source of the utility allowance estimate used in completing the Rent Schedule provided in the Application. This exhibit must clearly indicate which utility costs are included in the estimate and must comply with the requirements of §10.614 of this chapter (relating to Utility Allowances), including deadlines for submission. Where the Applicant uses any method that requires Department review, documentation indicating that the requested method has been granted by the Department must be included in the Application.

(C) Operating Expenses. This exhibit, as provided in the Application, must be submitted indicating the anticipated operating expenses associated with the Development. Any expenses noted as "other" in any of the categories must be identified. "Miscellaneous" or other nondescript designations are not acceptable.

(D) Rent Schedule. This exhibit, as provided in the Application, must indicate the type of Unit designation based on the Unit's rent and income restrictions. The rent and utility limits available at the time the Application is submitted should be used to complete this exhibit. Gross rents cannot exceed the maximum rent limits unless documentation of project-based rental assistance is provided and rents are consistent with such assistance and applicable legal requirements. The unit mix and net rentable square footages must be consistent with the site plan and architectural drawings. For Units restricted in connection with Direct Loans, the restricted Units will generally be designated "floating" unless specifically disallowed under the program specific rules. For Applications that propose utilizing Direct Loan funds, at least 90 percent of the Units restricted in connection with the Direct Loan program must be available to households or families whose incomes do not exceed 60 percent of the Area Median Income.

(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 the Off-Site Cost Breakdown prepared by a Third Party engineer must be provided. The certification from a Third Party engineer must describe the necessity of the off-site improvements, including the relevant requirements of the local jurisdiction with authority over building codes. If any Off-Site Construction costs are included in Eligible Basis, a letter must be provided from a certified public

accountant allocating which portions of those costs should be included in Eligible Basis. If off-site costs are included in Eligible Basis based on PLR 200916007, a statement of findings from a CPA must be provided which describes the facts relevant to the Development and affirmatively certifies that the fact pattern of the Development matches the fact pattern in PLR 200916007.

(F) Rental Assistance/Subsidy. (§2306.6705(4)) If rental assistance, an operating subsidy, an annuity, or an interest rate reduction payment is proposed to exist or continue for the Development, any related contract or other agreement securing those funds or proof of application for such funds must be provided. Such documentation shall, at a minimum, identify the source and annual amount of the funds, the number of units receiving the funds, and the term and expiration date of the contract or other agreement.

(G) Occupied Developments. The items identified in clauses (i) - (vi) of this subparagraph must be submitted with any Application where any structure on the Development Site is occupied at any time after the Application Acceptance Period begins or if the Application proposes the demolition of any housing occupied at any time after the Application Acceptance Period begins. [For Applications that do not include Direct Loan funds or 811 PRA](#), ~~If~~ the current property owner is unwilling to provide the required documentation then a signed statement from the Applicant attesting to that fact must be submitted. If one or more of the items described in clauses (i) - (vi) of this subparagraph is not applicable based upon the type of occupied structures on the Development Site, the Applicant must provide an explanation of such non-applicability. Applicant must submit:

(i) at least one of the items identified in subclauses (I) - (IV) of this clause:

(I) historical monthly operating statements of the Existing Residential Development for twelve (12) consecutive months ending not more than three (3) months from the first day of the Application Acceptance Period;

(II) the two (2) most recent consecutive annual operating statement summaries;

(III) the most recent consecutive six (6) months of operating statements and the most recent available annual operating summary; or

(IV) all monthly or annual operating summaries available; and

(ii) a rent roll not more than six (6) months old as of the first day the Application Acceptance Period that discloses the terms and rate of the lease, rental rates offered at the date of the rent roll, Unit mix, and tenant names or vacancy;

(iii) a written explanation of the process used to notify and consult with the tenants in preparing the Application; (§2306.6705(6))

(iv) a relocation plan outlining relocation requirements and a budget with an identified funding source; (§2306.6705(6))

- (v) any documentation necessary for the Department to facilitate, or advise an Applicant with respect to or to ensure compliance with the Uniform Relocation Act and any other relocation laws or regulations as may be applicable; and
- (vi) if applicable, evidence that the relocation plan has been submitted to all appropriate legal or governmental agencies or bodies. (§2306.6705(6))

(9) Architectural Drawings. All Applications must include the items identified in subparagraphs (A) - (D) of this paragraph, unless specifically stated otherwise, and must be consistent with all applicable exhibits throughout the Application. The drawings must have a legible scale and show the dimensions of each perimeter wall and floor heights.

(A) For all New Construction, Reconstruction and Adaptive Reuse Developments a site plan is submitted that includes the items identified in clauses (i) – (v) of this subparagraph and for all Rehabilitation Developments, the site plan includes the items identified in clauses (i) – (ix) of this subparagraph:

- (i) includes a unit and building type table matrix that is consistent with the Rent Schedule and Building/Unit Configuration forms provided in the Application;
- (ii) identifies all residential and common buildings;
- (iii) clearly delineates the flood plain boundary lines and shows all easements;
- (iv) if applicable, indicates possible placement of detention/retention pond(s);
- (v) indicates the location and number of the parking spaces;
- (vi) indicates the location and number of the accessible parking spaces;
- (vii) describes, if applicable, how flood mitigation or any other required mitigation will be accomplished;
- (viii) delineates compliant accessible routes; and
- (ix) indicates the distribution of accessible Units.

(B) Building floor plans must be submitted for each building type. ~~Applications for Rehabilitation (excluding Reconstruction) are not required to submit building floor plans unless the floor plan changes. Applications for Adaptive Reuse are only required to include building plans delineating each Unit by number and type.~~ Building floor plans must include the locations of the accessible Units and must also include square footage calculations for balconies, breezeways, corridors and any other areas not included in net rentable area;

(C) Unit floor plans for each type of Unit must be included in the Application and must include the square footage for each type of Unit. Unit floor plans must be submitted for the accessible Units. Applications for Adaptive Reuse are only required to include Unit floor plans for each distinct ~~typical Unit type~~ floor plan such as one-bedroom, two-bedroom and for all ~~Unit types~~ floor plans that vary in Net Rentable Area by 10 percent from the typical ~~Unit~~ floor plan; and

(D) Elevations must be submitted for each side of each building type (or include a statement that all other sides are of similar composition as the front) and include a percentage estimate of the exterior composition and proposed roof pitch. Applications for Rehabilitation and Adaptive Reuse may submit photographs if the Unit configurations are not being altered and post-renovation drawings must be submitted if Unit configurations are proposed to be altered.

(10) Site Control.

(A) Evidence that the Development Owner has Site Control must be submitted. If the evidence is not in the name of the Development Owner, then an Affiliate of the Development Owner must have Site Control that allows for an ability to assign the Site Control to the Development Owner. All of the sellers of the proposed Property for the thirty-six (36) months prior to the first day of the Application Acceptance Period and their relationship, if any, to members of the Development Team must be identified at the time of Application. The Department may request documentation at any time after submission of an Application of the Development Owner's ability to compel title of any affiliated property acquisition(s) and the Development Owner must be able to promptly provide such documentation or the Application, award, or Commitment may be terminated. The Department acknowledges and understands that the Property may have one or more encumbrances at the time of Application submission and the Department will take into account whether any such encumbrance is reasonable within the legal and financial ability of the Development Owner to address without delaying development on the timeline contemplated in the Application. Tax-Exempt Bond Lottery Applications must have Site Control valid through December 1 of the prior program year with the option to extend through March 1 of the current program year.

(B) In order to establish Site Control, one of the items described in clauses (i) - (iii) of this subparagraph must be provided. In the case of land donations, Applicants must demonstrate that the entity donating the land has Site Control as evidenced through one of the items described in clauses (i) - (iii) of this subparagraph or other documentation acceptable to the Department.

(i) a recorded warranty deed vesting indefeasible title in the Development Owner or, if transferrable to the Development Owner, an Affiliate of the Owner, with corresponding executed settlement statement (or functional equivalent for an existing lease with at least forty-five (45) years remaining); or

(ii) a contract or option for lease with a minimum term of forty-five (45) years that includes a price; address and/or legal description; proof of consideration in the form specified in the contract; and expiration date; or

(iii) a contract for sale or an option to purchase that includes a price; address and/or legal description; proof of consideration in the form specified in the contract; and expiration date;

(C) If the acquisition can be characterized as an identity of interest transaction, as described in §10.302 of this chapter, then the documentation as further described therein must be submitted in addition to that of subparagraph (B) of this paragraph.

(11) Zoning. (§2306.6705(5)) Acceptable evidence of zoning for all Developments must include one of subparagraphs (A) - (D) of this paragraph. In instances where annexation of a Development Site occurs while the Application is under review, the Applicant must submit evidence of appropriate zoning with the Commitment or Determination Notice.

(A) No Zoning Ordinance in Effect. The Application must include a letter from a local government official with appropriate jurisdiction stating that the Development is located within the boundaries of a political subdivision that has no zoning.

(B) Zoning Ordinance in Effect. The Application must include a letter from a local government official with appropriate jurisdiction stating the Development is permitted under the provisions of the zoning ordinance that applies to the location of the Development.

(C) Requesting a Zoning Change. The Application must include evidence in the form of a letter from a local government official with jurisdiction over zoning matters that the Applicant or Affiliate has made formal application for a required zoning change and that the jurisdiction has received a release whereby the applicant for the zoning change has agreed to hold the political subdivision and all other parties harmless in the event the appropriate zoning is not granted. Documentation of final approval of appropriate zoning must be submitted to the Department with the Commitment or Determination Notice.

(D) Zoning for Rehabilitation Developments. In an area with zoning, the Application must include documentation of current zoning. If the Property is currently conforming but with an overlay that would make it a non-conforming use as presently zoned, the Application must include a letter from a local government official with appropriate jurisdiction which addresses the items in clauses (i) - (v) of this subparagraph:

- (i) a detailed narrative of the nature of non-conformance;
- (ii) the applicable destruction threshold;
- (iii) that it will allow the non-conformance;
- (iv) Owner's rights to reconstruct in the event of damage; and
- (v) penalties for noncompliance.

(12) Title Commitment/Policy. A title commitment or title policy must be submitted that includes a legal description that is consistent with the Site Control. If the title commitment or policy is dated more than six (6) months prior to the beginning of the Application Acceptance Period, then a letter from the title company indicating that nothing further has transpired during the six-month period on the commitment or policy must be submitted.

(A) The title commitment must list the name of the Development Owner as the proposed insured and lists the seller or lessor as the current owner of the Development Site.

(B) The title policy must show that the ownership (or leasehold) of the Development Site is vested in the name of the Development Owner.

(13) Ownership Structure and Previous Participation.

(A) Organizational Charts. A chart must be submitted that clearly illustrates the complete organizational structure of the final proposed Development Owner and of any Developer and Guarantor, identifying all Principals thereof and providing the names and ownership percentages of all Persons having an ownership interest in the Development Owner, Developer and Guarantor, as applicable, whether directly or through one or more subsidiaries. Nonprofit entities, public housing authorities, publicly traded corporations, individual board members, and executive directors must be included in this exhibit and trusts must list all beneficiaries that have the legal ability to control or direct activities of the trust and are not just financial beneficiaries. The List of Organizations form, as provided in the Application, must include all Persons identified on the organizational charts, and further identify which of those Persons listed exercise Control of the Development.

(B) Previous Participation. Evidence must be submitted that each entity shown on the organizational chart described in subparagraph (A) of this paragraph that the Development Owner and each Affiliate (with an ownership interest in the Development), including entities and individuals (unless excluded under 10 TAC Chapter 1, Subchapter C) has provided a copy of the completed previous participation information to the Department. Individual Principals of such entities identified on the organizational chart and on the List of Organizations form, must provide the previous participation information, unless excluded from such requirement pursuant to Chapter 1 Subchapter C of this title. ~~In addition, any Person (regardless of any Ownership interest or lack thereof) receiving more than 10 percent of the Developer Fee is also required to submit this information.~~ The information must include a list of all developments that are, or were, previously under ownership or Control of the Applicant and/or each Principal, including any Person providing the required experience. All participation in any Department funded or monitored activity, including non-housing activities, as well as Housing Tax Credit developments or other programs administered by other states using state or federal programs must be disclosed. The individuals providing previous participation information will authorize the parties overseeing such assistance to release compliance histories to the Department.

(14) Nonprofit Ownership. Applications that involve a §501(c)(3) or (4) nonprofit General Partner or Owner shall submit the documentation identified in subparagraph (A) or (B) of this paragraph as applicable.

(A) Competitive HTC Applications. Applications for Competitive Housing Tax Credits involving a §501(c)(3) or (4) nonprofit General Partner and which meet the Nonprofit Set-Aside requirements, must submit all of the documents described in this subparagraph and indicate the nonprofit status on the carryover documentation and IRS Forms 8609. (§2306.6706) Applications that include an affirmative election to not be treated under the set-aside and a certification that they do not expect to receive a benefit in the allocation of tax credits as a result of being affiliated with a nonprofit only need to submit the documentation in subparagraph (B) of this paragraph.

(i) An IRS determination letter which states that the nonprofit organization has been determined by the Internal Revenue Service to be tax-exempt under §501(c)(3) or (4) of the Code;

(ii) The Nonprofit Participation exhibit as provided in the Application, including a list of the names and contact information for all board members, directors, and officers;

(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 §42(h)(5) of the Code and the basis for that opinion;

(III) that one of the exempt purposes of the nonprofit organization is to provide low-income housing;

(IV) that the nonprofit organization prohibits a member of its board of directors, other than a chief staff member serving concurrently as a member of the board, from receiving material compensation for service on the board;

(V) that the Qualified Nonprofit Development will have the nonprofit entity or its nonprofit Affiliate or subsidiary be the Developer or co-Developer as evidenced in the development agreement;

(VI) that the nonprofit organization has the ability to do business as a nonprofit in Texas;

(iv) a copy of the nonprofit organization's most recent financial statement as prepared by a Certified Public Accountant; and

(v) evidence in the form of a certification that a majority of the members of the nonprofit organization's board of directors principally reside:

(I) in this state, if the Development is located in a Rural Area; or

(II) not more than ninety (90) miles from the Development, if the Development is not located in a Rural Area.

(B) All Other Applications. Applications that involve a §501(c)(3) or (4) nonprofit General Partner or Owner must submit an IRS determination letter which states that

the nonprofit organization has been determined by the Internal Revenue Service to be tax-exempt under §501(c)(3) or (4) of the Code; and the Nonprofit Participation exhibit as provided in the Application. If the Application involves a nonprofit that is not exempt from taxation under §501(c)(3) or (4) of the Code, then they must disclose in the Application the basis of their nonprofit status.

(15) Site Design and Development Feasibility Report. This report, compiled by the Applicant or Third Party Consultant, and prepared in accordance with this paragraph, which reviews site conditions and development requirements of the Development and Development Site, is required for any New Construction or Reconstruction Development.

(A) Executive Summary as a narrative overview of the Development in sufficient detail that would help a reviewer of the Application better understand the site, the site plan, off site requirements (including discussion of any seller contributions or reimbursements), any other unique development requirements, and their impact on Site Work and Off Site Construction costs. The summary should contain a general statement regarding the level of due diligence that has been done relating to site development (including discussions with local government development offices). Additionally, the overview should contain a summary of zoning requirements, subdivision requirements, property identification number(s) and millage rates for all taxing jurisdictions, development ordinances, fire department requirements, site ingress and egress requirements, building codes, and local design requirements impacting the Development (include website links but do not attach copies of ordinances). Careful focus and attention should be made regarding any atypical items materially impacting costs or the successful and timely execution of the Development plan.

(B) Survey or current plat as defined by the Texas Society of Professional Surveyors in their Manual of Practice for Land Surveying in Texas (Category 1A - Land Title Survey or Category 1B - Standard Land Boundary Survey). Surveys may not be older than twelve (12) months from the beginning of the Application Acceptance Period. Plats must include evidence that it has been recorded with the appropriate local entity and that, as of the date of submission, it is the most current plat. Applications proposing noncontiguous single family scattered sites are not required to submit surveys or plats at Application, but this information may be requested during the Real Estate Analysis review.

(C) Preliminary site plan prepared by the civil engineer with a statement that the plan materially adheres to all applicable zoning, site development, and building code ordinances. The site plan must identify all structures, site amenities, parking spaces (include handicap spaces and ramps) and driveways, topography (using either existing seller topographic survey or U.S. Geological Survey (USGS)/other database topography), site drainage and detention, water and waste water utility tie-ins, general placement of retaining walls, set-back requirements, and any other typical or locally required items. Off-site improvements required for utilities, detention, access or other requirement must be shown on the site plan or ancillary drawings.

(D) Architect or civil engineer prepared statement describing the entitlement, site development permitting process and timing, building permitting process and timing, and an itemization specific to the Development of total anticipated impact, site development permit, building permit, and other required fees.

~~(16) Section 811 Project Rental Assistance Program.—All Competitive HTC Applications, Direct Loan only Applications and Tax-Exempt Bond Development Applications that are layered with Direct Loan funds must meet the requirements of subparagraphs (A) or (B) of this paragraph. Applications that are unable meet the requirements of subparagraphs (A) or (B) must certify to that effect in the Application.~~

~~(A) Applicants must apply for and obtain a determination by the Department that an Existing Development is approved to participate in the Department’s Section 811 Project Rental Assistance Program (“Section 811 PRA Program”). The approved Existing Development must commit at least the lower of 10 units or 10% of the total number of Units in the Development to the Section 811 PRA Program unless the Integrated Housing Rule (10 TAC §1.15) or Section 811 PRA Program guidelines (§PRA.305) or other requirements limit the proposed Development to fewer than 10 Units. An approved Existing Development may be used to satisfy the requirements of this paragraph in more than one Housing Tax Credit or other Multifamily Housing program Application, as long as at the time of Carryover, Award Letter or Determination Notice, as applicable, the minimum number of Units as stated above are provided for each Development awarded housing tax credits or Direct Loan funds. Once an Applicant submits their Application, Applicants may not withdraw their commitment to satisfy the threshold criteria of this subparagraph, although an Applicant may request to utilize a different approved Existing Development than the one submitted in association with the awarded Application to satisfy this criteria. Existing Developments that are included in an Application that does not receive an award are not obligated to participate in the Section 811 PRA Program. An Applicant may be exempt from having to provide 811 units in an Existing Development if approval from either their lender or investor cannot be obtained and documentation to that effect is submitted in the Application, but they would be required to provide such Units through subparagraph (B) of this paragraph.~~

~~(B) Applicants that cannot meet the requirements of subparagraph (A) of this paragraph must submit evidence of such through a self certification that the Applicant and any Affiliate do not have an ownership interest in or control of any Existing Development that would meet the criteria outlined in the Section 811 PRA Program Request for Applications, and if applicable, by submitting a copy of any rejection letter(s) that have been provided in response to the Request for Applications. In such cases, the Applicant is able to satisfy the threshold requirement of this paragraph through this subparagraph (B). Applications must meet all of the requirements in clauses (i) — (v) of this subparagraph. Applicants must commit at least the lower of 10 Units or 10% of the total number of Units in the Development for which the Application(s) has been submitted for participation in the Section 811 PRA Program unless the Integrated Housing Rule (10 TAC §1.15) or Section 811 PRA Program guidelines or other requirements limit the proposed Development to fewer than 10 Units. Once elected in the Application(s), Applicants may not withdraw their~~

~~commitment to have the proposed Development participate in the Section 811 PRA Program unless the Department determines that the Development cannot meet all of the Section 811 PRA Program criteria or the Applicant chooses to request an amendment by Carryover, Award Letter, or subsequent to the issuance of the Determination Notice but prior to closing (for Tax-Exempt Bond Developments), or to place the Units on an Approved Existing Development. If the Applicant or an Affiliate obtain an ownership interest in an Approved Existing Development, the Applicant can submit an Amendment request authorizing that the Application satisfies this criteria under subparagraph (A), not subparagraph (B). Such an Amendment request will be considered a non-material change that has not been implemented, and Applicants will not be subject to the amendment fee required under §10.901(13) (relating to Fee Schedule, Appeals and other Provisions).~~

~~(i) The Development must not be an ineligible Elderly Development;~~

~~(ii) Unless the Development is also proposing to use any federal funding, the Development must not be originally constructed before 1978;~~

~~(iii) The Development must have Units available to be committed to the Section 811 PRA Program in the Development, meaning that those Units do not have any other sources of project-based rental assistance within 6 months of receiving Section 811 PRA Program assistance, not have an existing use restriction for Extremely Low-income households, and the Units do not have an existing restriction for Persons with Disabilities;~~

~~(iv) The Development Site must be located in one of the following areas: Austin-Round Rock MSA, Brownsville-Harlingen MSA, Corpus Christi MSA; Dallas-Fort Worth-Arlington MSA; El Paso MSA; Houston-The Woodlands-Sugar Land MSA; McAllen-Edinburg-Mission MSA; or San Antonio-New Braunfels MSA; and~~

~~(v) No new construction activities or projects shall be located in the mapped 500-year floodplain or in the 100-year floodplain according to FEMA's Flood Insurance Rate Maps (FIRM). Rehabilitation Developments that have previously received HUD funding or obtained HUD insurance do not have to follow sections (i) – (iii) of this subparagraph. Existing structures may be assisted in these areas, except for sites located in coastal high hazard areas (V Zones) or regulatory floodways, but must meet the following requirements:~~

~~(I) The existing structures must be flood-proofed or must have the lowest habitable floor and utilities elevated above both the 500-year floodplain and the 100-year floodplain.~~

~~(II) The project must have an early warning system and evacuation plan that includes evacuation routing to areas outside of the applicable floodplains.~~

~~(III) Project structures in the 100-year floodplain must obtain flood insurance under the National Insurance Program. No activities or projects located within the 100-year~~

~~floodplain may be assisted in a community that is not participating in or has been suspended from the National Flood Insurance Program.~~

§10.205. Required Third Party Reports. The Environmental Site Assessment, Property Condition Assessment, Appraisal (if applicable), and the Market Analysis must be submitted no later than the Third Party Report Delivery Date as identified in §10.4 of this chapter (relating to Program Dates). For Competitive HTC Applications, the Environmental Site Assessment, Property Condition Assessment, Appraisal (if applicable), and the Primary Market Area map (with definition based on census tracts, and site coordinates in decimal degrees, area of PMA in square miles, and list of census tracts included) must be submitted no later than the Full Application Delivery Date as identified in §11.2 of this title (relating to Program Calendar for Competitive Housing Tax Credits) and the Market Analysis must be submitted no later than the Market Analysis Delivery Date as identified in §11.2 of this title. For Competitive HTC Applications, if the reports, in their entirety, are not received by the deadline, the Application will be terminated. An electronic copy of the report in the format of a single file containing all information and exhibits clearly labeled with the report type, Development name and Development location are required. All Third Party reports must be prepared in accordance with Subchapter D of this chapter (relating to Underwriting and Loan Policy). The Department may request additional information from the report provider or revisions to the report as needed. In instances of non-response by the report provider, the Department may substitute in-house analysis. The Department is not bound by any opinions expressed in the report.

(1) Environmental Site Assessment. This report, required for all Developments and prepared in accordance with the requirements of §10.305 of this chapter (relating to Environmental Site Assessment Rules and Guidelines), must not be dated more than twelve (12) months prior to the first day of the Application Acceptance Period. If this timeframe is exceeded, then a letter or updated report must be submitted, dated not more than three (3) months prior to the first day of the Application Acceptance Period from the Person or organization which prepared the initial assessment confirming that the site has been re-inspected and reaffirming the conclusions of the initial report or identifying the changes since the initial report.

(A) Existing Developments funded by USDA will not be required to supply this information; however, it is the Applicant's responsibility to ensure that the Development is maintained in compliance with all state and federal environmental hazard requirements.

(B) If the report includes a recommendation that an additional assessment be performed, then a statement from the Applicant must be submitted with the Application indicating those additional assessments and recommendations will be performed prior to closing. If the assessments require further mitigating recommendations, then evidence indicating the mitigating recommendations have been carried out must be submitted at cost certification.

(2) Market Analysis. The Market Analysis, required for all Developments and prepared in accordance with the requirements of §10.303 of this chapter (relating to Market Analysis Rules and Guidelines), must not be dated more than six (6) months prior to the first day of the Application Acceptance Period. If the report is older than six (6) months, but not more than twelve (12) months prior to the first day of the Application Acceptance Period, the Qualified Market Analyst that prepared the report may provide a statement that reaffirms the findings of the original Market Analysis. The statement may not be dated more than six (6) months prior to the first day of the Application Acceptance Period and must be accompanied by the original Market Analysis.

(A) The report must be prepared by a disinterested Qualified Market Analyst approved by the Department in accordance with the approval process outlined in §10.303 of this chapter;

(B) Applications in the USDA Set-Aside proposing Rehabilitation with residential structures at or above 80 percent occupancy at the time of Application submission, the appraisal, required for Rehabilitation Developments and Identity of Interest transactions prepared in accordance with §10.304 of this chapter (relating to Appraisal Rules and Guidelines), will satisfy the requirement for a Market Analysis; however, the Department may request additional information as needed. (§2306.67055; §42(m)(1)(A)(iii))

(C) It is the responsibility of the Applicant to ensure that this analysis forms a sufficient basis for the Applicant to be able to use the information obtained to ensure that the Development will comply with fair housing laws.

(3) Property Condition Assessment (PCA). This report, required for Rehabilitation (excluding Reconstruction) and Adaptive Reuse Developments and prepared in accordance with the requirements of §10.306 of this chapter (relating to Property Condition Assessment Guidelines), must not be dated more than six (6) months prior to the first day of the Application Acceptance Period. If the report is older than six (6) months, but not more than twelve (12) months prior to the first day of the Application Acceptance Period, the report provider may provide a statement that reaffirms the findings of the original PCA. The statement may not be dated more than six (6) months prior to the first day of the Application Acceptance Period and must be accompanied by the original PCA. For Developments which require a capital needs assessment from USDA the capital needs assessment may be substituted and may be more than six (6) months old, as long as USDA has confirmed in writing that the existing capital needs assessment is still acceptable and it meets the requirements of §10.306 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.

(4) Appraisal. This report, required for all Rehabilitation Developments and prepared in accordance with the requirements of §10.304 of this chapter, is required for any

Application claiming any portion of the building acquisition in Eligible Basis, and Identity of Interest transactions pursuant to Subchapter D of this chapter, must not be dated more than six (6) months prior to the first day of the Application Acceptance Period. For Developments that require an appraisal from USDA, the appraisal may be more than six (6) months old, as long as USDA has confirmed in writing that the existing appraisal is still acceptable.

§10.206. Board Decisions (§§2306.6725(c); 2306.6731; and 42(m)(1)(A)(iv)). The Board's decisions regarding awards shall be based upon the Department's and the Board's evaluation of the proposed Developments' consistency with, and fulfillment of, the criteria and requirements set forth in this chapter, Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan) and other applicable Department rules and other applicable state, federal and local legal requirements, whether established in statute, rule, ordinance, published binding policy, official finding, or court order. The Board shall document the reasons for each Application's selection, including any discretionary factors used in making its determination, including good cause, and the reasons for any decision that conflicts with the recommendations made by Department staff. Good cause includes the Board's decision to apply discretionary factors where authorized. The Department reserves the right to reduce the amount of funds requested in an Application, condition the award recommendation or terminate the Application based on the Applicant's inability to demonstrate compliance with program requirements.

§10.207. Waiver of Rules ~~for Applications.~~

~~(a) General Waiver Process.~~ This waiver section, unless otherwise specified, is applicable to Subchapter A of this chapter (relating to General Information and Definitions), Subchapter B of this chapter (relating to Site and Development Requirements and Restrictions), Subchapter C of this chapter (relating to Application Submission Requirements, Ineligibility Criteria, Board Decisions, and Waiver of Rules for Applications), Subchapter D of this chapter (relating to Underwriting and Loan Policy), Subchapter E of this chapter (relating to Post Award and Asset Management Requirements), Subchapter F of this chapter (relating to Compliance Monitoring) Subchapter G of this chapter (relating to Fee Schedule, Appeals, and Other Provisions), Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan), Chapter 12 of this title (relating to Multifamily Housing Revenue Bond Rules), and Chapter 13 (relating to Multifamily Direct Loan Program Rules). An Applicant may request a waiver in writing at or prior to the submission of the pre-application (if applicable) or the Application or subsequent to an award. Waiver requests on Competitive HTC Applications will not be accepted between submission of the Application and any award for the Application. Staff may identify and initiate a waiver request as part of another Board action request. Where appropriate, the Applicant is encouraged to submit with the requested waiver any plans for mitigation or alternative solutions. Any such request for waiver must be specific to the unique facts and circumstances of an actual proposed Development and must be submitted to the Department in the format required in the Multifamily Programs Procedures Manual. Any waiver, if granted, shall apply solely to the Application and shall not constitute a general modification or waiver of the rule involved. ~~Waiver requests that are limited to~~

~~Development design and construction elements not specifically required in Tex. Gov't Code, Chapter 2306 must meet the requirements of paragraph (1) of this subsection. All other waiver requests must meet the requirements of paragraphs (1) and (2) of this subsection.~~

(1) The waiver request must establish ~~how the need for the waiver was both not reasonably foreseeable and was not preventable by the Applicant good cause for the Board to grant the waiver~~ In applicable circumstances, this which 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. ~~Staff may recommend the Board's approval for such a waiver if the Executive Director finds that the Applicant has established good cause for the waiver.~~ 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 under this paragraph~~ as such waiver request would be either or both foreseeable and preventable.

(2) The waiver request must establish how, ~~it is necessary to address circumstances beyond the Applicant's control and how, by granting the waiver, it~~ if the waiver is not granted, the Department will not fulfill some specific requirement of law. In this regard, 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.

(3b) Waivers Granted by the Board. ~~The Board may not grant a waiver, in its discretion, may waive any one or more of the rules in Subchapters A through G of this chapter, Chapter 11, Chapter 12 and Chapter 13, except no waiver shall be granted to provide directly or implicitly any forward commitments or any waiver that is prohibited by statute (i.e., statutory requirements may not be waived). The Board, in its discretion,~~ may grant a waiver that is in response to a natural, federally declared disaster that occurs after the adoption of the multifamily rules to the extent authorized by a governor declared disaster proclamation suspending regulatory requirements.

Subchapter G – Fee Schedule, Appeals and other Provisions

§10.901. Fee Schedule. Any fees, as stated in this section, not paid will cause an Applicant to be ineligible to apply for Department funding, ineligible to receive additional Department funding associated with a Commitment, Determination Notice or Contract, and ineligible to submit extension requests, ownership transfers, and Application amendments until such time the Department receives payment. Payments of the fees shall be in the form of a check and to the extent there are insufficient funds available, it may cause the Application, Commitment, Determination Notice or Contract to be terminated or Allocation rescinded. [Other forms of payment may be considered on a case-by-case basis.](#) The Department may extend the deadline for specific extenuating and extraordinary circumstances, provided the Applicant submits a written request for an extension no later than ten (10) business days prior to the deadline associated with the particular fee. For those requests that do not have a specified deadline, the written request for a fee waiver and description of extenuating and extraordinary circumstances must be included in the original request cover letter.

(1) Competitive Housing Tax Credit Pre-Application Fee. A pre-application fee, in the amount of \$10 per Unit, based on the total number of Units reflected in the pre-application, must be submitted with the pre-application in order for the pre-application to be considered accepted by the Department. Pre-applications in which a Community Housing Development Corporation (CHDO) or a private Qualified Nonprofit Organization intends to serve as the Managing General Partner of the Development Owner, or Control the Managing General Partner of the Development Owner, may be eligible to receive a discount of 10 percent off the calculated pre-application fee provided such documentation is submitted with the fee. (§2306.6716(d))

(2) Refunds of Pre-application Fees. (§2306.6716(c)) Upon written request from the Applicant, the Department shall refund the balance of the pre-application fee for a pre-application that is withdrawn by the Applicant and that is not fully processed by the Department. The amount of refund will be commensurate with the level of review completed. Initial processing will constitute 50 percent of the review, threshold review prior to a deficiency issued will constitute 30 percent of the review, and deficiencies submitted and reviewed constitute 20 percent of the review.

(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 percent off the calculated Application fee provided such documentation is submitted with the fee. (§2306.6716(d))

(B) Direct Loan Applications. The fee will be \$1,000 per Application except for those Applications that are layered with Housing Tax Credits and submitted simultaneously with the Housing Tax Credit Application. Pursuant to Tex. Gov't Code §2306.147(b), the Department is required to waive Application fees for private nonprofit organizations that offer expanded services such as child care, nutrition programs, job training assistance, health services, or human services and if HOME funds are awarded. In lieu of the Application fee, these organizations must include proof of their exempt status and a description of their supportive services as part of the Application. The Application fee is not a reimbursable cost under the HOME Program.

(4) Refunds of Application Fees. Upon written request from the Applicant, the Department shall refund the balance of the Application fee for an Application that is withdrawn by the Applicant and that is not fully processed by the Department. The amount of refund will be commensurate with the level of review completed. Initial processing will constitute 1020 percent, the site visit will constitute 1020 percent, program review will constitute 40 percent,⁷ and underwriting review will constitute 4020 percent.

(5) Third Party Underwriting Fee. Applicants will be notified in writing prior to the evaluation in whole or in part of a Development by an independent external underwriter if such a review is required. The fee must be received by the Department prior to the engagement of the underwriter. The fees paid by the Development Owner to the Department for the external underwriting will be credited against the Commitment or Determination Notice Fee, as applicable, established in paragraphs (8) and (9) of this section, in the event that a Commitment or Determination Notice is issued by the Department to the Development Owner.

~~**(6) Administrative Deficiency Notice Late Fee.** (Not applicable for Competitive Housing Tax Credit Applications.) Applications that fail to resolve Administrative Deficiencies pursuant to §10.201(7) of this chapter may incur a late fee in the amount of \$500 for each business day the deficiency remains unresolved.~~

~~**(67) Third Party Deficiency Request Fee.** For Competitive Housing Tax Credits (HTC) Applications, a fee equal to \$5100 must be submitted with a Third Party Request for Administrative Deficiency that is submitted per Application pursuant to §11.10 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan).~~

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

Commented [LHA1]: If the early RFAD deadline is maintained, we recommend reducing the fee to \$100. Applicants rely on staff reviews, and would prefer not to file RFADs – but if those review have not been published, Applicants must file an RFAD to ensure an issue is addressed by staff. The earlier deadline means MORE RFADs will need to be filed, and therefore the fee should be reduced.

(89) Tax Exempt Bond Development Determination Notice Fee. No later than the expiration date in the Determination Notice, a fee equal to 4 percent of the annual Housing Credit Allocation amount must be submitted. If the Development Owner has paid the fee and is not able close on the bonds ~~within ninety (90) days of the issuance date of the Determination Notice~~, then a refund of 50 percent of the Determination Notice Fee may be issued upon request.

(910) Building Inspection Fee. (For Housing Tax Credit and Tax-Exempt Bond Developments only.) No later than the expiration date in the Commitment or Determination Notice, a fee of \$750 must be submitted. ~~Building inspection fees in excess of \$750 may be charged to the Development Owner not to exceed an additional \$250 per Development. If the Development Owner has paid the fee and returns the Housing Credit Allocation or for Tax-Exempt Bond Developments, is not able to close on the bonds, then the Building Inspection Fee may be refunded upon request.~~

(1011) Tax-Exempt Bond Credit Increase Request Fee. Requests for increases to the credit amounts to be issued on IRS Forms 8609 for Tax-Exempt Bond Developments must be submitted with a request fee equal to 4 percent of the amount of the credit increase for one (1) year.

(1112) Extension Fees. All extension requests for deadlines relating to the Carryover, 10 Percent Test (submission and expenditure), Construction Status Reports, or Cost Certification requirements submitted at least thirty (30) calendar days in advance of the applicable original deadline will not be required to submit an extension fee. Any extension request submitted fewer than thirty (30) days in advance or after the original deadline must be accompanied by an extension fee of \$2,500. ~~Fees for each subsequent extension request on the same activity will increase by increments of \$500. A subsequent request on the same activity, regardless of whether the first request was submitted thirty (30) calendar days in advance of the applicable deadline, must include a fee of \$3,000 and if a third request for such amendment is made, it must include a fee of \$3,500.~~ 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.

(1213) Amendment Fees. An amendment request for a non-material change that has not been implemented will not be required to pay an amendment fee. Material amendment requests (whether implemented or not), or non-material amendment requests that have already been implemented will be required to submit an amendment fee of \$2,500. Fees for each subsequent amendment request related to the same application will increase by increments of \$500. A subsequent request, related to the same application, regardless of whether the first request was non-material and did not require a fee, must include a fee of

\$3,000 ~~and if a third request for such amendment is made, it must include a fee of \$3,500.~~
Amendment fees and fee increases are not required for the Direct Loan programs.

(1314) 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.

(1415) 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.

(1516) 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.

(1617) Ownership Transfer Fee. Requests to approve an ownership transfer must be accompanied by a non-refundable processing fee of \$1,000.

(1718) Unused Credit or Penalty Fee. Development Owners who have more tax credits allocated to them than they can substantiate through Cost Certification will return those excess tax credits prior to issuance of IRS Form 8609. For Competitive Housing Tax Credit Developments, a penalty fee equal to the one year credit amount of the lost credits (10 percent of the total unused tax credit amount) will be required to be paid by the Owner prior to the issuance of IRS Form 8609 if the tax credits are not returned, and 8609's issued, within one hundred eighty (180) days of the end of the first year of the credit period. This penalty fee may be waived without further Board action if the Department recaptures and re-issues the returned tax credits in accordance with Internal Revenue Code, §42. If an Applicant returns a full credit allocation after the Carryover Allocation deadline required for that allocation, the Executive Director ~~may~~ recommend to the Board the imposition of a penalty on the score for any Competitive Housing Tax Credit Applications submitted by that Applicant or any Affiliate for any Application in an Application Round occurring concurrent to the return of credits or if no Application Round is pending, the Application Round immediately following the return of credits. If any such point penalty is recommended to be assessed and presented for final determination by the Board, it must include notice from the Department to the affected party not less than fourteen (14) calendar days prior to the scheduled Board meeting. The Executive Director may, but is not required, to issue a formal notice after disclosure if it is determined that the matter does not warrant point penalties. The penalty will be assessed in an amount that reduces the Applicant's final awarded score by an additional 20 percent.

(1819) Compliance Monitoring Fee. Upon receipt of the cost certification for HTC Developments or HTC Developments that are layered with Direct Loan funds, or upon the completion of the 24-month development period and the beginning of the repayment period for Direct Loan only Developments, the Department will invoice the Development Owner for compliance monitoring fees. The amount due will equal \$40 per tax credit Unit

and \$34 per Direct Loan designated Unit, with two fees due for units that are dually designated. For HTC Developments, the fee will be collected, retroactively if applicable, beginning with the first year of the credit period. For Direct Loan only Developments, the fee will be collected beginning with the first year of the repayment period. The invoice must be paid prior to the issuance of IRS Form 8609 for HTC properties. Subsequent anniversary dates on which the compliance monitoring fee payments are due shall be determined by the month the first building is placed in service. Compliance fees may be adjusted from time to time by the Department.

(1920) 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.

(2021) Adjustment of Fees by the Department and Notification of Fees. (§2306.6716(b)) All fees charged by the Department in the administration of the tax credit and [Direct Loan/HOME](#) 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.

§10.902.Appeals Process (§2306.0321; §2306.6715).

(a) An Applicant or Development Owner may appeal decisions made by the Department pursuant to the process identified in this section. Matters that can be appealed include:

- (1) A determination regarding the Application's satisfaction of applicable requirements, Subchapter B of this chapter (relating to Site and Development Requirements and Restrictions) and Subchapter C of this chapter (relating to Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules for Applications), pre-application threshold criteria, underwriting criteria;
- (2) The scoring of the Application under the applicable selection criteria;
- (3) A recommendation as to the amount of Department funding to be allocated to the Application;
- (4) Misplacement of an Application or parts of an Application, mathematical errors in scoring an Application, or procedural errors resulting in unequal consideration of the Applicant's proposal;
- (5) Denial of a change to a Commitment or Determination Notice;
- (6) Denial of a change to a loan agreement;

(7) Denial of a change to a LURA;

(8) Any Department decision that results in the ~~erroneous~~ termination of an Application; and

(9) Any other matter for which an appeal is permitted under this chapter.

(b) An Applicant or Development Owner may not appeal a decision made regarding an Application filed by or an issue related to another Applicant or Development Owner.

(c) An Applicant or Development Owner must file its appeal in writing with the Department not later than seven (7) calendar days after the date the Department publishes the results of any stage of the Application evaluation or otherwise notifies the Applicant or Development Owner of a decision subject to appeal. The appeal must be signed by the person designated to act on behalf of the Applicant or an attorney that represents the Applicant. For Application related appeals, the Applicant must specifically identify the Applicant's grounds for appeal, based on the original Application and additional documentation filed with the original Application as supplemented in accordance with the limitations and requirements of this chapter.

(d) The Executive Director may respond in writing not later than fourteen (14) calendar days after the date of actual receipt of the appeal by the Department. If the Applicant is not satisfied with the Executive Director's response to the appeal or the Executive Director does not respond, the Applicant may appeal directly in writing to the Board. While additional information can be provided in accordance with any rules related to public comment before the Board, the Department expects that a full and complete explanation of the grounds for appeal and circumstances warranting the granting of an appeal be disclosed in the appeal documentation filed with the Executive Director. Full disclosure allows the Executive Director to make a fully informed decision based on a complete analysis of the circumstances, and verification of any information that may warrant a granting of the appeal in the Applicant's or Development Owner's favor.

(e) An appeal filed with the Board must be received by Department staff not more than seven (7) days after a response from the Executive Director and at least seven (7) days prior to the applicable Board meeting or if the period for an Executive Director response has elapsed the appeal can be heard by the Board if filed at least three (3) days prior to the applicable meeting.

(f) Board review of an Application related appeal will be based on the original Application.

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

(h) The Department will post to its website an appeal filed with the Department or Board and any other document relating to the processing of an Application related appeal. (§2306.6717(a)(5))

§10.903. Adherence to Obligations. (§2306.6720) Any Applicant, Development Owner, or other Person that fails to adhere to its obligations with regard to the programs of the Department, whether contractual or otherwise, made false or misleading representations to the Department with regard to an Application, request for funding, or compliance requirements, or otherwise violated a provision of Tex. Gov't Code, Chapter 2306 or a rule adopted under that chapter, may be subject to:

(1) Assessment of administrative penalties in accordance with the Department's rules regarding the assessment of such penalties. Each day the violation continues or occurs is a separate violation for purposes of imposing a penalty; and/or

(2) in the case of the competitive Low Income Housing Tax Credit Program, a point reduction of up to ten (10) points for any Application involving that Applicant over the next two Application Rounds succeeding the date on which the Department first gives written notice of any such failure to adhere to obligations or false or misleading representations. Point reductions under this section may be appealed to the Board.

§10.904. Alternative Dispute Resolution (ADR) Policy. In accordance with Tex. Gov't Code, §2306.082, it is the Department's policy to encourage the use of appropriate ADR procedures under the Governmental Dispute Resolution Act, Tex. Gov't Code, Chapter 2010, to assist in resolving disputes under the Department's jurisdiction. As described in Civil Practices and Remedies Code, Chapter 154, ADR procedures include mediation. Except as prohibited by law and the Department's Ex Parte Communications policy, the Department encourages informal communications between Department staff and Applicants, and other interested persons, to exchange information and informally resolve disputes. The Department also has administrative appeals processes to fairly and expeditiously resolve disputes. If at any time an Applicant or other person would like to engage the Department in an ADR procedure, the person may send a proposal to the Department's Dispute Resolution Coordinator. For additional information on the Department's ADR Policy, see the Department's General Administrative Rule on ADR at §1.17 of this title. Any Applicant may request an informal conference with staff to attempt to resolve any appealable matter, and the Executive Director may toll the running of periods for appeal to accommodate such meetings. In the event a successful resolution cannot be reached, the statements made in the meeting process may not be used by the Department as admissions.

(5) Alyssa Carpenter

October 12, 2017

Patrick Russell
Texas Department of Housing and Community Affairs
221 E. 11th Street
Austin, Texas 78701

RE: Comment on the Draft 2018 Multifamily Rules and Qualified Allocation Plan

Dear Mr. Russell:

The following comments are in response to the draft 2018 Multifamily Rules and Qualified Allocation Plan published in the *Texas Register* on September 22, 2017. I thank Staff for the opportunity to provide input on this document.

2018 Qualified Allocation Plan

11.1(e) Data

I strongly encourage Staff to compare Neighborhoodscout data to local data sources that were submitted during the 2017 Application Round for violent crime and property crime so that they may confirm that there are serious discrepancies between Neighborhoodscout data and actual police data. I have brought issues with Neighborhoodscout to Staff's attention in the past. Between the property crime scoring item and violent crime Undesirable Neighborhood Characteristics item in the Rules, I have serious concerns about Staff requiring the development community to spend hundreds of dollars monthly on a third-party commercial website that has inaccurate data. My comment is that all references and requirements regarding Neighborhoodscout be removed from the QAP and Rules.

11.2 Program Calendar

I would like to thank Staff for moving the Third Party Request for Administrative Deficiency date to May 1, 2018. I would still like to suggest that that TDHCA go back to a "Volume 4" type Application of many years ago where each Application goes through a first review of only scoring items to finalize scores immediately after Full Application Submission. As we saw in the 2017 round, this type of review would be beneficial so that Staff does not waste time on full reviews of Applications that are not accurately scored.

Additionally, the Carryover Documentation Delivery Date should be corrected to indicate 2018.

11.4(a) Credit Amount

I am unsure why any Application would be terminated at Award due to the \$3 million cap. Such Applications submitted an Application fee and should receive the same treatment as any other Application. Furthermore, there are program milestones at Commitment Notice and Carryover as well as REA conditions that may not be met on awarded Applications. I urge TDHCA to remove the termination language and replace with the language that any such Application would "be considered a non-priority Application and will not be reviewed unless the higher scoring Application is terminated or withdrawn."

The \$150,000 limit on consultant fees was added to the QAP in 2004 and has not changed. The alternative to use an amount equal to less than 10% of developer fee has been removed by Staff in this draft, in some cases reducing the maximum for consultant fees. I suggest that Staff reinstate the 10% of developer fee option as well as increase the \$150,000 amount to \$225,000 to account for inflation from 2004 to 2018.

11.9(c)(2) Rent Levels of Tenants and 11.9(C)(3) Tenant Services

As a result of a 2017 appeal regarding an Application that selected additional points for Supportive Housing when it was not a Supportive Housing development, these two scoring items should be clarified such that they are only “for Supportive Housing Developments that meet the definition of Supportive Housing and select that Population in the Application.”

11.7 Tie Breaker Factors

Because Urban Core is already a significant scoring item, I do not think that it should also be a tiebreaker item. There is no other tiebreaker item that is also a scoring item. I suggest that staff remove any tiebreaker for Urban Core.

Making tiebreaker (2) even for high opportunity and revitalization Applications devalues high opportunity areas and does not make sense given that the top scores for high opportunity and revitalization are the same. I urge Staff to remove the addition of revitalization under this tiebreaker item.

The change to move Applications proposed in a Place with the fewest HTC units per capita to the third tiebreaker has the effect in Rural Areas to drive development to very small cities with populations of less than 2,000 people because they have never had an HTC award....regardless of whether such areas have an adequate housing market to support the development in the long term. For Rural areas, I urge staff to skip tiebreaker (3) fewest HTC units per capita and therefore make (3) for Urban Areas only.

11.9(c)(4) Opportunity Index

The addition of a maximum \$50 fee for recreation seems arbitrary. Some gyms in high opportunity areas and/or with extensive amenities and services such as indoor pools, tennis courts, and included exercise classes might exceed \$50 per month. The free market determines the cost that may be charged for amenities in a certain location and it should not be arbitrarily limited by the QAP. I suggest that this dollar amount be removed entirely.

11.9(c)(5) Underserved Area

I would like to thank Staff for their changes to this section to make the language consistent; however, I think the language is unclear. Currently, the language reads “does not have a Development that is less than 30 years old according to the Department’s property inventory tab of the Site Demographic Characteristics Report.” Does Staff mean to say “does not have a Development award” or “does not have an HTC allocation” that is less than 30 years old? The reason being is that the current language could refer to the physical age of the Development and there are historic adaptive reuse developments and rehabilitation developments that have been awarded HTCs in the last 5 years but are technically “Developments that are more than” 15 or 30 years old based on the original date of construction. I suggest that staff revise this

scoring item to read “The Development Site is located entirely within a census tract that has not received an HTC allocation within the last 30 [or 15] years.”

Additionally, please add clarification of how this will be reviewed for a census tract that has part of an existing development, which is not indicated in the Site Demographic Characteristics Report. There are developments that span two census tracts or are scattered site but the Report only lists one census tract. I also suggest that Staff clarify how mistakes in the Report will be handled.

11.9(c)(6) Tenant Populations

The language referencing a lender or syndicator that does not approve of the addition of 811 units has been removed from the 2018 Rules as well as the separate Section 811 Rule that has been proposed. Because not all lenders or syndicators are comfortable allowing these units with the associated requirements on an operating development, the 2017 language should be reinstated and included in this section: “An Applicant may be exempt from having to provide 811 units in an Existing Development if approval from either their lender or investor cannot be obtained and documentation to that effect is submitted in the Application, but they would be required to provide such Units through subparagraph (B) of this paragraph.”

11.9(d)(4) Quantifiable Community Participation

I would like to thank Staff for their clarification of the actual date for the valid existence of the organization and its boundaries. I would still like to have a discussion about a neighborhood organization’s ability to expand its boundaries to include a Development Site with the sole purpose of opposing the Application. I propose that Staff consider adding language under 11.9(d)(4)(D) that specifically states that that if a challenge to opposition is found to be warranted and the opposition is contrary to the findings and determinations of the local government, then the Application would receive 4 points under this subsection and be eligible for points under 11.9(d)(6) Input from Community Organizations.

11.9(d)(7) Concerted Revitalization Plan

Why has Staff changed the language to allow multiple Applications to be considered by a City or County to be those “contributing more than any other” for 2 points under this subsection? While a City or County may have multiple revitalization areas, this change in language means that all awards in a region like Austin could be in revitalization areas. With the deletion of the Educational Excellence scoring item, Urban Core scoring points being so significant, and the currently proposed tiebreaker (2) being the same for high opportunity and revitalization Applications, this change means that some regions will have several Urban Core revitalization Applications scoring the most points. In such case, High Opportunity sites will be at a disadvantage and TDHCA will see less Applications and awards in High Opportunity areas.

2018 Multifamily Rules

10.101(a)(2) Undesirable Site Features

10.101(a)(2)(F) has items added to describe “heavy industry” but do not always describe “heavy industry.” For example, “or that in the course of normal business there is a high volume of rail or truck traffic to deliver materials or transport goods” is subjective (because what really defines “high volume”) and it could describe a warehouse/distribution center, but warehouses would not

be considered to be "heavy industry." Even something like a post office of UPS/FedEx ship center could have a "high volume" of "truck traffic" because of delivery trucks. This definition needs to be clarified to follow a true definition of "heavy industry" and should have some sort of reference to local zoning because commercial areas and light industrial could also be construed by a competitor to fall under this definition.

10.101(a)(2)(J) has a prohibition on developments located within 2 miles of oil refineries. This seems like an arbitrary distance not based on safety and will have the effect of hindering the rebuilding of the Texas coast after Hurricane Harvey. For example, Entire towns like La Marque and Texas City would be completely ineligible. The 2-mile prohibition should be reduced or deleted.

Thank you for your consideration of these items. Please contact me with any questions.

Regards,

A handwritten signature in black ink, consisting of a stylized 'A' followed by a long, sweeping horizontal line that curves slightly upwards at the end.

Alyssa Carpenter
ajcarpen@gmail.com

(6) Texas Affiliation of Affordable Housing Providers



TAAHP

TEXAS AFFILIATION OF AFFORDABLE HOUSING PROVIDERS | 221 E. 9th street, ste. 408 | Austin, TX 78701
tel 512.476.9901 fax 512.476.9903 taahp.org texashousingconference.org

October 5, 2017

Patrick Russell
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701

Dear Patrick:

This letter submits TAAHP's written comments on the drafts of the 2018 Qualified Allocation Plan and the Multifamily Rules that were published in the Texas Register on September 22, 2017. TAAHP has more than 300 members including affordable housing professionals who are active in the development, ownership and management of affordable housing in the State of Texas.

It is TAAHP's policy to submit only recommendations that represent consensus opinions from the membership. TAAHP's recommendations were developed at a meeting with the TAAHP Membership on May 31, 2017 and in subsequent subcommittee meetings. With those comments as an introduction, please consider the following recommendations, which should be considered in conjunction with our prior comments submitted to you on May 12, 2017, June 27, 2017, and August 25, 2017 with regard to specific provisions of the rules:

Qualified Allocation Plan

Section 11.7 Tie Breaker Factors

TAAHP recommends deleting two times per capital as the third tie breaker and poverty rate as the fourth tie breaker because they create several negative dynamics. The first is that a census tract-based number and a place-based number create scenarios where developers are finding multiple sites in the same smaller communities, often in the same census tracts. This creates upward pressure on land prices and discourages city governments from issuing resolutions of support. The second is that these tie breakers disadvantage urban areas. While the urban core points are helpful in reversing the program's recent trend of favoring suburbs, these two prominent tie breakers incentivize developers to choose sites in more remote areas that either have low poverty rates or no market for tax credit properties. There are many places that score a 0 on the two times per capita calculation because there is not a sufficient market to support a tax credit development. Therefore, the concern is that this tie breaker will incentivize developers to go to places that lack a market.

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Section 11.9(b)(4) Opportunity Index

TAAHP members feel strongly that the accessible route concept should be removed from this scoring item because it caused so much controversy and used so much staff and applicant time during last year's round. While we appreciate and understand the need to create accessible environments within our development sites, this requirement to assess and argue the accessibility of off-site amenities, often with the need to hire licensed civil engineers, is costly and simply untenable, and does not promote the housing policy goal of enhancing accessibility within our housing developments.

Section 11.9(e)(3) Cost of Development per Square Foot

Due to the impact of Hurricane Harvey on construction pricing, TAAHP's primary concern with the QAP is this point category as well as the leveraging point category. In our June 27th letter, TAAHP recommended a simple increase factor of 15% for each dollar figure cited in the scoring criteria in the 2017 QAP and that the concept of NRA be replaced by gross square footage. We now request a 25% increase factor due to the cost implications of Harvey.

TAAHP members also have serious concerns over the change to the Adaptive Reuse or Rehabilitation provisions. Consensus is that the cost limits are too low.

Section 11.9(e)(4) Leveraging of Private, State and Federal Resources

The impact on Hurricane Harvey on construction pricing supports our prior recommendation to increase by one percentage point each of the percentages for this scoring category. Deals structured in the current environment, which also suffer because of depressed equity pricing, are under leveraged with tax credits due to this point category. It is very important that these percentage limits be increased 1% if not 2% across the board so that the 2018 deals are not under leveraged.

Subchapter B – Site and Development Requirements and Restrictions

Section 10.101(a)(2) Undesirable Site Features

TAAHP requests changes to this section, which are included on the attached pages.

Regarding proximity to railroad tracks, TAAHP recommends a 100-foot distance instead of the proposed 500-foot distance. 100 feet is more reasonable, given that HUD does not have a minimum distance to railroads but rather a decibel level requirement of less than 65 decibels which can be reached by the use of construction materials and/or architectural features. TDHCA's 500-foot distance completely disregards an important aspect of this analysis, which is mitigation through the use of even the most standard construction materials.



TAAHP

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Regarding proximity to overhead transmission lines, TAAHP requests that this language reverts to the 2017 language which only requires that buildings be located outside the easements of overhead transmission lines. The new requirement that the buildings be more than 100-foot from transmission lines is too restrictive in cases where the transmission line is only 40 feet high, for example. Because power lines come in all heights ranging from 30 feet to 120 feet, this one size fits all approach is problematic.

10.101(a)(2)(B) Undesirable Neighborhood Characteristics

TAAHP requests that this entire section be deleted.

This section is a remnant of the remediation plan and should be removed from the rules in the wake of the dismissal of the ICP litigation. It is an anti-urban provision that works to eliminate large swaths of urban areas from the competition. Furthermore, because that data sources like neighborhood scout and school performance data are inherently faulty and produce inconsistent results, such measures are of questionable value in determining the worth of certain neighborhoods.

In the event that TDHCA does not support an entire removal of this section, we recommend the attached revisions.

Section 10.101(b)(5) Commons Amenities

TAAHP requests that the Limited Green Amenities be added back to the list of Green Building Features in subsection (xxxi). These green building features amenities contribute to the quality and long-term maintenance of developments in the same way that the more formal green building programs listed in this section contribute.

We thank you for your time and consideration of these recommendations. Please note that representatives from the TAAHP QAP Committee are happy to meet with your staff in order to discuss these recommendations more fully.

Thank you for your service to Texas.

Sincerely,

Janine Sisak
QAP Chair

cc: Tim Irvine – TDHCA Executive Director
Marni Holloway, TDHCA- Director of MF Finance
TAAHP Membership

(2) Undesirable Site Features. Development Sites within the applicable distance of any of the undesirable features identified in subparagraphs (A) - (K) of this paragraph ~~may will~~ be considered ineligible unless it is as determined by the Board, unless the Applicant provides that information regarding mitigation of the applicable undesirable site feature(s) is sufficient and supports Site eligibility. Rehabilitation (excluding Reconstruction) Developments with ongoing and existing federal assistance from HUD, USDA, or Veterans Affairs ("VA") may be granted an exemption by the Board; ~~however, depending on the undesirable site feature(s) staff may recommend mitigation still be provided as appropriate.~~ Such an exemption must be requested at the time of or prior to the filing of an Application. Historic Developments that would otherwise qualify under §11.9(e)(6) of this title (relating to the Qualified Allocation Plan) may be granted an exemption by the Board, and such exemption must be requested at the time of or prior to the filing of an Application. The distances are to be measured from the nearest boundary of the Development Site to the nearest boundary of the property or easement containing the undesirable feature, unless otherwise noted below. Where there is a local ordinance that regulates the proximity of such undesirable feature to a multifamily development that has smaller distances than the minimum distances noted below, then such smaller distances may be used and documentation such as a copy of the local ordinance identifying such distances relative to the Development Site must be included in the Application. ~~If a state or federal cognizant agency would require a new facility under its jurisdiction to have a minimum separation from housing, the Department will defer to that agency and require the same separation for a new housing facility near an existing regulated or registered facility.~~ In addition to these limitations, a Development Owner must ensure that the proposed Development Site and all construction thereon comply with all applicable state and federal requirements regarding separation for safety purposes. If Department staff identifies what it believes would constitute an undesirable site feature not listed in this paragraph or covered under subparagraph (K) of this paragraph, staff may request a determination from the Board as to whether such feature is acceptable or not. If the Board determines such feature is not acceptable and that, accordingly, the Site is ineligible, the Application shall be terminated and such determination of Site ineligibility and termination of the Application cannot be appealed.

(D) Development Sites in which the buildings are located within ~~100 feet~~ the easement 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~~ 100 feet of active railroad tracks, measured from the closest rail to the boundary of the Development Site, unless the Applicant provides evidence that the city/community has adopted a Railroad Quiet Zone or the railroad in question is commuter or light rail;

(F) Development Sites located within 500 feet of heavy industrial (i.e. facilities that require extensive ~~capital investment in~~ use of land and machinery, ~~are not easily relocated and~~ produce high levels of external noise, dust or fumes such as manufacturing plants, fuel storage facilities (excluding gas stations) etc. ~~or that in the course of normal business there is a high volume of rail or truck traffic to deliver materials or transport goods~~);

(3) Undesirable Neighborhood Characteristics.

(A) If the Development Site has any of the characteristics described in subparagraph (B) of this paragraph, the Applicant must disclose the presence of such characteristics in the Application submitted to the Department. ~~For Competitive HTC Applications, an Applicant must disclose at pre-application as required by 11.8(b) of this title (relating to Pre-Application Requirements). For all other Applications, An~~ Applicant may choose to disclose the presence of such characteristics at the time the pre-application (if applicable) is submitted to the Department. Requests for pre-determinations of Site eligibility prior to preapplication or Application submission will not be binding on full Applications submitted at a later date. For Tax-Exempt Bond Developments where the Department is the Issuer, the Applicant may submit the documentation described under subparagraphs (C) and (D) of this paragraph at pre-application or for Tax-Exempt Bond Developments utilizing a local issuer such documentation may be submitted with the request for a pre-determination and staff may perform an assessment of the Development Site to determine Site eligibility. The Applicant understands that any determination made by staff or the Board at that point in time regarding Site eligibility based on the documentation presented, is preliminary in nature. Should additional information related to any of the undesirable neighborhood characteristics become available while the full Application is under review, or the information by which the original determination was made changes in a way that could affect eligibility, then such information will be re-evaluated and presented to the Board. Should staff determine that the Development Site has any of the characteristics described in subparagraph (B) of this paragraph and such characteristics were not disclosed, the Application may be subject to termination. ~~Termination due to non-disclosure may be appealed pursuant to §10.902 of this chapter (relating to Appeals Process (§2306.0321; §2306.6715)). An Applicant's own non-disclosure is not appealable as such appeal is in direct conflict with certifications made in the Application and within the control of the Applicant.~~ The presence of any characteristics listed in subparagraph (B) of this paragraph will prompt staff to perform an assessment of the Development Site and neighborhood, which may include a site visit, and include, where applicable, a review as described in subparagraph (C) of this paragraph. The assessment of the Development Site and neighborhood will be presented to the Board with a recommendation with respect to the eligibility of the Development Site. Factors to be considered by the Board, despite the existence of the undesirable neighborhood characteristics are identified in subparagraph (E) of this paragraph. Preservation of affordable units alone does not present a compelling reason to support a conclusion of eligibility. Should the Board make a determination that a Development Site is ineligible, the termination of the Application resulting from such Board action is not subject to appeal.

(B) The undesirable neighborhood characteristics include those noted in clauses (i) – (iv) of this subparagraph and additional information as applicable to the undesirable neighborhood characteristic(s) disclosed as provided in subparagraphs (C) and (D) of this paragraph must be submitted in the Application. If an Application for a Development Site involves three or more undesirable neighborhood characteristics, in order to be found eligible it will be expected that, in addition to demonstrating satisfactory mitigation for each characteristic disclosed, the Development Site must be located within an area in which there is a concerted plan of revitalization already in place or that private sector economic forces, such as those referred to as gentrification are already underway and indicate a

strong likelihood of a reasonably rapid transformation of the area to a more economically vibrant area. In order to be considered as an eligible Site despite the presence of such undesirable neighborhood characteristic, an Applicant must demonstrate actions being taken that would lead a reader to conclude that there is a high probability and reasonable expectation the undesirable characteristic will be sufficiently mitigated or significantly improved within a reasonable time, typically prior to placement in service, and that the undesirable characteristic demonstrates a positive trend and continued improvement. Conclusions for such reasonable expectation may need to be affirmed by an industry professional, as appropriate, and may be dependent upon the severity of the undesirable neighborhood characteristic disclosed.

(i) The Development Site is located within a census tract that has a poverty rate above 40 percent for individuals (or 55 percent for Developments in regions 11 and 13).

(ii) The Development Site is located in a census tract or within 1,000 feet of any census tract in an Urban Area and the rate of Part I violent crime is greater than 18 per 1,000 persons (annually) as reported on neighborhoodscout.com. Should neighborhoodscout.com indicate Part I violent crime greater than 18 per 1,000 persons, the Applicant may present violent crime statistics from the city's police department or county sheriff's department for the police beat or patrol area within which the Development Site is located, indicating that based on the population of the police beat or patrol area that violent crime is not greater than 18 per 1,000 persons. Such local law enforcement statistics will supersede the rating of neighborhoodscout.com and the Development Site will be not to have an undesirable neighborhood characteristic related to violent crime.

(iii) The Development Site is located within 1,000 feet (measured from nearest boundary of the Site to the nearest boundary of blighted structure) of multiple vacant structures that have fallen into such significant disrepair, overgrowth, and/or vandalism that they would commonly be regarded as blighted or abandoned.

(iv) The Development Site is located within the attendance zones of an elementary school, a middle school or a high school that does not have a Met Standard rating by the Texas Education Agency. Any school in the attendance zone that has not achieved Met Standard for three consecutive years and has failed by at least one point in the most recent year, unless there is a clear trend indicating imminent compliance, shall be unable to mitigate due to the potential for school closure as an administrative remedy pursuant to Chapter 39 of the Texas Education Code. In districts with district-wide enrollment or choice districts an Applicant shall use the rating of the closest elementary, middle and high school, respectively, which may possibly be attended by the tenants in determining whether or not disclosure is required. Schools with an application process for admittance, limited enrollment or other requirements that may prevent a child from attending will not be considered as the closest school or the school which attendance zone contains the site. The applicable school rating will be the ~~2017~~2016 accountability rating assigned by the Texas Education Agency. School ratings will be determined by the school number, so that in the case where a new school is formed or named or consolidated with another school but is considered to have the same number that rating will be used. A school that has never been rated by the Texas Education Agency will use the district rating. If a school is configured to serve grades that do not align with the Texas Education Agency's conventions for defining elementary schools (typically grades K-5 or K- 6), middle schools (typically grades 6-8 or 7-8) and high schools (typically grades 9-12), the school will be considered to have the lower

of the ratings of the schools that would be combined to meet those conventions. In determining the ratings for all three levels of schools, ratings for all grades K-12 must be included, meaning that two or more schools' ratings may be combined. For example, in the case of an elementary school which serves grades K-4 and an intermediate school that serves grades 5-6, the elementary school rating will be the lower of those two schools' ratings. Also, in the case of a 9th grade center and a high school that serves grades 10-12, the high school rating will be considered the lower of those two schools' ratings. Sixth grade centers will be considered as part of the middle school rating. Development Sites subject to an Elderly Limitation is considered exempt and does not have to disclose the presence of this characteristic.

(C) Should any of the undesirable neighborhood characteristics described in subparagraph (B) of this paragraph exist, the Applicant must submit the Undesirable Neighborhood Characteristics Report that contains the information described in clauses (i) - (viii) of this subparagraph and mitigation pursuant to subparagraph (D) of this paragraph as such information might be considered to pertain to the undesirable neighborhood characteristic(s) disclosed so that staff may conduct a further Development Site and neighborhood review.

(i) A determination regarding neighborhood boundaries, which will be based on the review of a combination of natural and manmade physical features (rivers, highways, etc.), apparent changes in land use, the Primary Market Area as defined in the Market Analysis, census tract or municipal boundaries, and information obtained from any Site visits;

(ii) An assessment of general land use in the neighborhood, including comment on the prevalence of residential uses;

(iii) An assessment concerning any of the features reflected in paragraph (2) of this subsection if they are present in the neighborhood, regardless of whether they are within the specified distances referenced in paragraph (2) of this subsection;

(iv) An assessment of the number of existing affordable rental units (generally includes rental properties subject to TDHCA, HUD, or USDA restrictions) in the Primary Market Area, including comment on concentration based on the size of the Primary Market Area;

(v) An assessment of the percentage of households residing in the census tract that have household incomes equal to or greater than the median household income for the MSA or county where the Development Site is located;

(vi) An assessment of the number of market rate multifamily units in the neighborhood and their current rents and levels of occupancy;

(vii) An assessment of school performance for each of the schools in the attendance zone containing the Development that did not achieve ~~the~~ a 2017 Met Standard rating, for the previous two academic years (regardless of whether the school Met Standard in those years), that includes the TEA Accountability Rating Report, a discussion of performance indicators and what progress has been made over the prior year, and progress relating to the goals and objectives identified in the campus improvement plan or turnaround plan pursuant to 39.107 of the Texas Education Code in effect. This is not just the submission of the campus improvement plan, but an update to the plan or if such update is not available, information from a school official that speaks to the likelihood of achieving Met Standard rating by the time the Development is placed in service progress made under the plan as further indicated under subparagraph (D)(iv) of this paragraph; and

(viii) Any additional information necessary to complete an assessment of the Development Site, as requested by staff.

(D) Information regarding mitigation of undesirable neighborhood characteristics should be relevant to the undesirable characteristics that are present in the neighborhood. Mitigation must include documentation of efforts underway at the time of Application and may include, but is not limited to, the measures described in clauses (i) - (iv) of this subparagraph. In addition to those measures described herein, documentation from the local municipality may also be submitted stating the Development is consistent with their obligation to affirmatively further fair housing.

(i) Evidence that the poverty rate within the census tract has decreased over the five-year period preceding the date of Application, or that the census tract is contiguous to a census tract with a poverty rate below 20% and there are no physical barriers between them such as highways or rivers which would be reasonably considered as separating or dividing the neighborhood containing the proposed Development from the low poverty area must be submitted. Other mitigation may include, but is not limited to, evidence of ~~the availability of adult education and job training that will lead to full-time permanent employment for tenants~~ sustained job growth and employment opportunities, career training opportunities or job placement services, evidence of gentrification in the area (including an increase in property values) which may include contiguous census tracts that could conceivably be considered part of the neighborhood containing the proposed Development, and a clear and compelling reason that the Development should be located at the Site.

(ii) Evidence that crime rates are decreasing, based on violent crime data from the city's police department or county sheriff's department, for the police beat or patrol area within which the Development Site is located, based on the population of the police beat or patrol area that would yield a crime rate below the threshold indicated in this section. The instances of violent crimes within the police beat or patrol area that encompass the census tract, calculated based on the population of the census tract, may also be used. A map plotting all instances of violent crimes within a one-half mile radius of the Development Site may also be submitted, provided that it reflects that the crimes identified are not at a level that would warrant an ongoing concern. The data must include incidents reported during the entire ~~2015 and 2016~~ 2016 and 2017 calendar year. Violent crimes reported through the date of Application submission may be requested by staff as part of the assessment performed under subparagraph (C) of this paragraph. A written statement from the local police department or local law enforcement agency, including a description of efforts by such enforcement agency addressing issues of crime and the results of their efforts may be provided, and depending on the data provided by the Applicant, such written statement may be required, as determined by staff. For Rehabilitation or Reconstruction Developments, to the extent that the high level of criminal activity is concentrated at the Development Site, documentation may be submitted to indicate such issue(s) could be remedied by the proposed Development. Evidence of such remediation should go beyond what would be considered a typical scope of work and should include a security plan, partnerships with external agencies, or other efforts to be implemented that would deter criminal activity. Information on whether such security features have been successful at any of the Applicant's existing properties should also be submitted, if applicable.

(iii) Evidence of mitigation efforts to address blight or abandonment may include new construction in the area already underway that evidences public and/or private investment. Acceptable mitigation to address extensive blight should include a plan whereby it is contemplated that a responsible party will use the property in a manner that complies with local ordinances. In instances where blight exists but may only include a few properties, mitigation efforts could include partnerships with local agencies to engage in community-wide clean-up efforts, or other efforts to address the overall condition of the neighborhood.

(iv) Evidence of mitigation for all of the schools in the attendance zone that have not achieved Met Standard will include documentation from a school official with oversight of the school in question that indicates current progress towards meeting the goals and performance objectives identified in the Campus Improvement Plan. For schools that have not achieved Met Standard for two consecutive years, a letter from the superintendent, member of the school board or a member of the transformation team that has direct experience, knowledge and oversight of the specific school must also be submitted. The letter should, at a minimum and to the extent applicable, identify the efforts that have been undertaken to increase student performance, decrease mobility rate, benchmarks for re-evaluation, increased parental involvement, plans for school expansion, plans to implement early childhood education, and long-term trends that would point toward their achieving Met Standard by the time the Development is placed in service. The letter from such education professional should also speak to why they believe the staff tasked with carrying out the plan will be successful at making progress towards acceptable student performance considering that prior Campus Improvement Plans were unable to do so. Such assessment could include whether the team involved has employed similar strategies at prior schools and were successful. In addition to the aforementioned letter from the school official, information should also be provided that addresses the types of services and activities offered at the Development or external partnerships that will facilitate and augment classroom performance.

(E) In order for the Development Site to be found eligible by the Board, despite the existence of undesirable neighborhood characteristics, the Board must find that the use of Department funds at the Development Site must be consistent with achieving the goals in clauses (i) - (iii) of this subparagraph.

(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) ~~Factual~~ Determination that the undesirable characteristic(s) that has been disclosed are not of such a nature or severity that should render the Development Site ineligible based on the assessment and mitigation provided under subparagraphs (C) and (D) of this paragraph.; or

(iii) The Applicant has requested a waiver of the presence of undesirable neighborhood characteristics 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.

(7) DMA Companies



October 11, 2017

Patrick Russell
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701

Dear Patrick:

On behalf of DMA Development Company, LLC, I am submitting the following comments to the QAP and the Multifamily Rules.

Qualified Allocation Plan

Section 11.7 Tie Breaker Factors

DMA recommends several changes to this tie breaker.

First, because so many more applications will qualify this year for the urban core points (because the population minimum was reduced to 150,000), there is a strong need for a tie breaker that will definitively resolve ties between urban core deals. To that end, we suggest that the first tie breaker be modified to prioritize those deals based on the linear distance from the site to city hall, whereby the closest deals would win the tie breaker. This approach is consistent with the fifth tie breaker—closest distance to an existing tax credit development.

Second, we strongly suggest deleting two times per capital as the third tie breaker and poverty rate poverty rate as the fourth tie breaker because they create several dynamics that are negative for the program. The first is that a census tract-based number and a place-based number create scenarios where developers are finding multiple sites in the same smaller communities, often in the same census tract. This creates upward pressure on land prices and discourages city governments from issuing resolutions of support. The second is that these tie breakers disadvantage urban areas. While the urban core points are helpful in reversing the program's recent trend of favoring suburbs, these two prominent tie breakers incentivize developers to choose sites in more remote areas that either have low poverty rates or no market for tax credit properties. There are many places that score a 0 on the two times per capita calculation because there is not a sufficient market to support a tax credit development. Why reward those places?

Third, we believe that the fifth tie breaker—based on distance to existing tax credit development—should include the concept of “development serving the same population” so that a senior deal is measured from the closest senior deal, and a general deal is measured from the closest general deal. This seems like fairer way to reward applications in underserved areas.

In sum, the tie breaker would be as follows:

1. Closest distance to city hall for all applications in the Urban Core (still excluding at-risk)
2. Applications receiving 7 points on either CRP or HOA
3. Closest distance to tax credit development serving same population.

Section 11.9(d)(5) Community Support from State Representative

DMA recommends that the following sentence be changed to give 8 points to an applicant with a site in a district with a vacant state representative seat, on the basis that it is not fair to for an entire district to not receive housing in this case.

"If the office is vacant, the Application will be considered to have received a positive support ~~neutral~~ letter, provided that the application has received local government support under Section 11.9(d)(1)."

Section 11.9(e)(3) Cost of Development per Square Foot

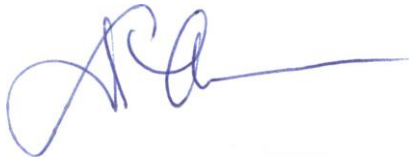
Due to the impact of Hurricane Harvey on construction pricing, DMA suggests a simple increase factor of 15% for each dollar figure cited in the scoring criteria in the 2017 QAP.

Section 11.9(e)(4) Leveraging of Private, State and Federal Resources

The impact on Hurricane Harvey on construction pricing supports our prior recommendation to increase by one percentage point each of the percentages for this scoring category. Deals structured in the current environment, which also suffer because of depressed equity pricing, are under leveraged with tax credits due to this point category. It is very important that these percentage limits be increased 1% if not 2% across the board so that the 2018 deals are not underleveraged.

We thank you for your time and consideration of these recommendations.

Sincerely,

A handwritten signature in blue ink, appearing to read 'DM', with a long horizontal line extending to the right.

Diana McIver
President

cc: Tim Irvine – TDHCA Executive Director
Marni Holloway, TDHCA- Director of MF Finance

(8) Tim Smith

From: [Patrick Russell](#)
To: [HTC Public Comment](#)
Subject: FW: 2018 Draft QAP Public Comment.
Date: Thursday, October 12, 2017 4:51:00 PM

From: Tim Smith [mailto:tsmith@hokeservices.com]
Sent: Thursday, October 12, 2017 4:49 PM
To: Patrick Russell
Subject: 2018 Draft QAP Public Comment.

Dear Patrick,

I am in agreement with comments on the 2018 QAP that were submitted by the Texas Affiliation of Affordable Housing Providers (TAAHP) dated October 5th, 2017. Please note my support of those comments.

Additionally, I am against the changes made to **§11.4(a)(4)** relating to fees paid to consultants. Consultants are integral to this very complicated application process. Staff knows how technical and complicated this process is, hence **§11.1(c)** of the QAP. This section **§11.4(a)(4)** has been in place for years and has increased the quality of applications submitted to TDHCA as well as compliance with TDHCA program requirements from construction to lease-up and stabilization. Any fees paid to a consultant are netted from the developer fee ,per Real Estate Analysis rules, thus consultant fees do not add to project costs, but do ensure quality of application and production. I request that the this section is not changed and the language from last year remains in place.

Thank you for your time.

Tim Smith
Hoke Development Services, LLC
(832)-443-0333 Cell
(713)-490-3143 Fax
tsmith@hokeservices.com

(9) Dr. David Hicks

Sherman I.S.D



Fax Transmittal Form

To: *Patrick Russell* From: *Dr. Tyson Bennett*

Name:
Organization Name/Dept:
CC:
Phone number:
Fax number:

Name:
Phone: 903-891-6421
Fax: 903-891-6422
E-mail:

512-475-1895

Urgent

Date sent: *10/12/17*
Time sent:

For Review

Number of pages including cover page: *3*

Please Comment

Please Reply

Message:

Sherman ISD
2701 Loy Lake Road
PO Box 1176
Sherman, TX 75090

Phone: 903-891-6421
Fax: 903-891-6422
E-mail:



P.O. Box 1176 Sherman, Texas 75091-1176

Phone# (903) 891-6400 FAX# (903) 891-6407

Texas Department of Housing and Community Affairs
Patrick Russell
QAP Public Comments
P.O. Box 13491
Austin, Texas 78711-3941

Dear Mr. Russell:

I write to comment on the Texas Department of Housing and Community Affairs (the "Department") proposed amendments to 10 TAC Chapter 11, §§11.1 – 11.10, and specifically the changes proposed to §11.9(e)(2)(E) of the 2018 Qualified Allocation Plan (QAP) published in the Texas Register (42 TexReg 4865, Sept. 22, 2017). Specifically, I'm commenting on the points that are awarded to applications for Adaptive Reuse and Rehabilitation (but *excluding* Reconstruction) provided they do not exceed a certain cost per square foot of Eligible Hard Costs. The proposed amendments reduce this cost by more than 50%; there are two reductions, one from \$104 to \$50 per square foot, and the other from \$135.20 to \$60 per square foot, the difference in the reductions being whether the proposed project is in an Urban area, or reflected in the number of points awarded. This proposal will effectively prevent any project requiring systems replacement and other substantial refurbishment (i.e., non-cosmetic) from being awarded points under §11.9(e)(2)(E), because it is not possible to incur Hard Costs of less than \$60 (much less \$50) per square foot.

In a project requiring the replacement of plumbing, electrical, HVAC, roofing and other structural systems and substantial refurbishment, the cost per square foot is much closer to new construction costs than cosmetic changes of painting, replacing carpeting, cabinetry, etc., and perhaps only minor systems work. We understand the Department's proposed changes were prompted by the desire to exclude acquisition costs from the Eligible Hard Cost per square foot computation. This approach, however, seriously jeopardizes public-private partnerships where acquisition cost does not factor into this computation due to the public desire to place abandoned and deteriorating buildings back into service.

We have been working with the developer Jim Sari/Sari & CO toward the adaptive reuse and rehabilitation of an unoccupied historic school building within a few blocks of the town square of Sherman. The school building was constructed 100 years ago and therefore needs all systems replaced and roof rebuilding, in addition to all work to convert it into residences. The Sherman ISD would like to pursue selling the building for the TDHCA project, but we understand that the hard cost of conversion far exceeds the higher restriction of \$60 per square foot in the proposed change (or \$50 per square foot if the project requires the higher point award to be approved). In effect, the proposed change encourages tearing down the existing historic

building and replacing it with new construction, which would go against what the TDHCA program seeks to accomplish with historically relevant structures like the old Sherman school.

Mr. Sari previously has completed similar projects (adaptive reuse of historic buildings) in Beaumont, Tyler and Waco. Costs have not declined in the time since he completed these projects.

In addition – the developer currently works in the LIHTC program in a dozen states – including VA, NC, SC, GA, MD, TN, WI, MS, AL, LA, NY & OK – all of which consider adaptive reuse on the same cost scale as new construction. It's our understanding that Texas would be the only state to differentiate in this matter in such a significant way. In fact, in some of those states, including neighboring LA, the cost parameters for historic adaptive reuse projects is actually higher than new construction.

Another benefit is that these projects qualify for federal and state historic tax credits as an additional and more substantial source of financing than the low income housing tax credit (LIHTC) sought and, therefore, reduces the LIHTC that the Department has to dedicate to this project, freeing that capacity for additionally worthy projects.

We do not believe that the Department intends this consequence, effectively making adaptive reuse of historic buildings less competitive for LIHTC financing, and therefore ask the Board not to adapt this change in the 2018 QAP. We do agree that the slight rehabilitation category should be capped but the adaptive reuse category should have the same cost parameters as new construction - as it has in every past year in Texas.

Sincerely,



Dr. David Hicks,
Sherman ISD Superintendent

(10) David Baca



12 October 2017

By FAX (512) 475-1895

Attn: Patrick Russell

Dear Mr. Russell:

I am writing to comment on the Texas Department of Housing and Community Affairs' proposed amendments to 10 TAC Chapter 11, §§11.1 – 11.10, and specifically the changes proposed to §11.9(e)(2)(E) of the 2018 Qualified Allocation Plan (QAP) published in the Texas Register (42 TexReg 4865, Sept. 22, 2017). Specifically, I am addressing the points awarded to applications for Adaptive Reuse and Rehabilitation (but *excluding* Reconstruction) provided they do not exceed a certain cost per square foot of Eligible Hard Costs. The proposed amendments reduce this cost from by more than 50%; there are two reductions, one from \$104 to \$50 per square foot, and the other from \$135.20 to \$60 per square foot, the difference in the reductions being whether the proposed project is in an Urban area, or reflected in the number of points awarded. I believe this proposal will effectively prevent any adaptive re-use project requiring systems replacement and other substantial refurbishment (i.e., non-cosmetic) from being awarded points under §11.9(e)(2)(E), because it is not possible to incur Hard Costs of less than \$60 (much less \$50) per square foot.

In my professional experience, a project requiring the replacement of plumbing, electrical, HVAC, roofing and other structural systems and substantial refurbishment (also known as adaptive reuse/gut rehab/substantial rehabilitation), the cost per square foot is much higher than the cost for simple cosmetic changes of painting, replacing carpeting, cabinetry, etc., and perhaps only minor systems work..... We understand the Department's proposed changes were prompted by the desire to exclude acquisition costs from the Eligible Hard Cost per square foot computation. This approach, however, seriously jeopardizes public-private partnerships where acquisition cost does not factor into this computation due to the public's desire to place historic and prominent abandoned and deteriorating buildings back into service.

We (myself, Sherman ISD, Grayson County, and the City of Sherman) have been working with the developer Jim Sari/Sari & CO (who has completed several adaptive re-use projects in Texas with TDHCA) toward the adaptive re-use and rehabilitation of a historic school building within three blocks of the historic courthouse square in Sherman which has been unoccupied for nearly 10 years. The school was built in 1915 and therefore needs all systems replaced, and roof reconstruction in addition to all Work required to convert into much needed senior residences. The Sherman ISD will be selling the building for this adaptive re-use project and the hard cost of conversion far exceeds the higher restriction of \$60 per square foot in the proposed change (or \$50 per square foot if the project requires the higher point award to be approved). In effect, the proposed change would strip the tangible benefits that encourage developers to take on these types of important projects, thereby encouraging demolition of the historic buildings or allowing them to slowly degrade over time. This is not what this community, or any community, wants or what makes sense.

Mr. Sari, the developer currently works in the LIHTC program in a dozen states (including Virginia, North Carolina, South Carolina, Georgia, Maryland, Tennessee, Wisconsin, Mississippi, Alabama, Louisiana, New York, and Oklahoma) all of which consider adaptive reuse on the same cost scale as new construction – every state. Texas would be the only one to differentiate in this matter in such a significant way. In fact, in some of those states, including neighboring Louisiana, the cost parameters allowed for historic adaptive reuse projects were actually higher than new construction.

Another benefit is that these projects qualify for federal and state historic tax credits as an additional and more substantial source of financing than the low income housing tax credit (LIHTC) sought and, therefore, reduces the LIHTC that the Department has to dedicate to our project, freeing that capacity for additionally worthy projects. In Texas, that benefit is



almost 40% in additional equity that is otherwise not available. Obviously, this benefit to the Department is lost with new construction.

We do not believe that the Department intends this consequence, effectively making adaptive reuse of historic buildings less competitive for LIHTC financing, and therefore ask the Board not to adapt this change in the 2018 QAP. We do agree that the slight rehabilitation category should be capped but the adaptive reuse category should have the same cost parameters as new construction - as it has in every past year in Texas.

Sincerely,

David Baca AIA, Architect + Principal



HISTORIC SHERMAN HIGH LOCATED AT TERMINUS OF MAJOR DOWNTOWN STREET



AERIAL SHOWING LOCATION WITHIN HISTORIC NEIGHBORHOOD



(11) Jim Sari

Texas Department of Housing and Community Affairs
Patrick Russell
QAP Public Comments
P.O. Box 13491
Austin, Texas 78711-3941

OR

By Facsimile (512) 475-1895
Attn: Patrick Russell

Dear Mr. Russell:

I write to comment on the Texas Department of Housing and Community Affairs' (the "Department") proposed amendments to 10 TAC Chapter 11, §§11.1 – 11.10, and specifically the changes proposed to §11.9(e)(2)(E) of the 2018 Qualified Allocation Plan (QAP) published in the Texas Register (42 TexReg 4865, Sept. 22, 2017). Specifically, I comment on the points awarded to applications for Adaptive Reuse and Rehabilitation (but *excluding* Reconstruction) provided they do not exceed a certain cost per square foot of Eligible Hard Costs. The proposed amendments reduce this cost by more than 50%; there are two reductions, one from \$104 to \$50 per square foot, and the other from \$135.20 to \$60 per square foot, the difference in the reductions being whether the proposed project is in an Urban area, or reflected in the number of points awarded. This proposal will effectively prevent any project requiring systems replacement and other substantial refurbishment (i.e., non-cosmetic) from being awarded points under §11.9(e)(2)(E), because it is not possible to incur Hard Costs of less than \$60 (much less \$50) per square foot.

In a project requiring the replacement of plumbing, electrical, HVAC, roofing and other structural systems and substantial refurbishment (also known as adaptive reuse/gut rehab/substantial rehabilitation), the cost per square foot is much closer to new construction costs than cosmetic changes of painting, replacing carpeting, cabinetry, etc., and perhaps only minor systems work. We understand the Department's proposed changes were prompted by the desire to exclude acquisition costs from the Eligible Hard Cost per square foot computation. This approach, however, seriously jeopardizes public-private partnerships where acquisition cost does not factor into this computation due to the public desire to place abandoned and deteriorating buildings back into service.

I have been working with Grayson County and the Sherman Independent School District toward the adaptive reuse and rehabilitation of an unoccupied historic school building within two blocks of the town square of Sherman. The school was built in 1915 and therefore needs all systems replaced, and roof rebuilding in addition to all work to convert into residences. The county and school district are selling the building for the project and the hard cost of conversion far exceeds the higher restriction of \$60 per square foot in the proposed change (or \$50 per square foot if the project requires the higher point award to be approved). In effect,

the proposed change encourages tearing down the existing historic building and replacing it with new construction. This is not what the community wants or what makes sense.

I have previously completed similar projects (adaptive reuse of historic buildings) in Beaumont (2009), Tyler (2006) and Waco (2010), each of which cost in excess of \$100 per square foot. Costs have not declined in the intervening time. Copies of the cost certificates for those projects have been provided to you from the developer in conjunction with this comment.

In addition, I currently work in the Low Income Housing Tax Credit (LIHTC) program in a dozen states, including Virginia, North Carolina, South Carolina, Georgia, Maryland, Tennessee, Wisconsin, Mississippi, Alabama, Louisiana, New York and Oklahoma, **all of which consider adaptive reuse on the same cost scale as new construction – every state. Texas would be the only one to differentiate in this matter in such a significant way. In fact, in some of those states, including neighboring Louisiana, the cost parameters for historic adaptive reuse projects is actually higher than new construction.**

Another benefit is that these projects qualify for federal and state historic tax credits as an additional and more substantial source of financing than the LIHTC sought and, therefore, reduces the LIHTC that the Department would dedicate to the historic Sherman school building project, freeing that capacity for additionally worthy projects. **In Texas, that benefit is almost 40% in additional equity that is otherwise not available.** Obviously, this benefit to the Department is lost with new construction.

We do not believe that the Department intends this consequence, effectively making adaptive reuse of historic buildings less competitive for LIHTC financing, and therefore ask the Board not to adapt this change in the 2018 QAP. We do agree that the cosmetic (slight) rehabilitation category should be capped but the adaptive reuse category should have the same cost parameters as new construction - **as it has in every past year in Texas.**

Thank you for your consideration.

Sincerely,

Jim Sari

EXHIBIT 9B: INDIVIDUAL BUILDING DESCRIPTION

DEVELOPMENT NAME: Moore Grocery Lofts

FILE NUMBER: 07096/08952/09035

The form has been constructed to allow information for two different building types to be presented on a single page. If the development consists of more than two building types, the worksheet may be copied to a new worksheet multiple times. Right click with the mouse on the worksheet tab. Select "Move or Copy" and check "Create a copy" at the bottom of the dialog box.

Building Type		Tax Credit	
Building Numbers			
07-09603			

Housing Tax Credit Units		
# of Units	Sq. Ft/Unit	Total Sq. Ft.
A.	2	665
B.	8	927
C.	4	1201
D.		0
E.		0
F.		0
G.		0
H.		0
I.		0
J.		0
SUBTOTAL	14	13,550

Market Rate Units		
A.		0
B.		0
C.		0
D.		0
E.		0
F.		0
G.		0
H.		0
I.		0
J.		0
SUBTOTAL	0	0

Building Total		
	14	13,550

Building Applicable Fraction	
Unit Fraction	100.00%
Square Footage Fraction	100.00%
Applicable Fraction	100.00%

Building Type		Tax Credit	
Building Numbers			
07-09604			

Housing Tax Credit Units		
# of Units	Sq. Ft/Unit	Total Sq. Ft.
A.	5	706
B.	17	949.76
C.	6	1172.5
D.		0
E.		0
F.		0
G.		0
H.		0
I.		0
J.		0
SUBTOTAL	28	26,711

Market Rate Units		
A.		0
B.		0
C.		0
D.		0
E.		0
F.		0
G.		0
H.		0
I.		0
J.		0
SUBTOTAL	0	0

Building Total		
	28	26,711

Building Applicable Fraction	
Unit Fraction	100.00%
Square Footage Fraction	100.00%
Applicable Fraction	100.00%

EXHIBIT 9A. PLACEMENT IN SERVICE

DEVELOPMENT NAME: Moore Grocery Lofts

07096/08952/09035

FILE NUMBER: 07096/08952/09035

Credit Period Election	Bldg. #	BIN #	Placed in Service Date		Net Rentable Area (NRA)	Applicable Fraction		Weighted Average	Applicable Percentage			Eligible Basis		Requested Tax Credits		Total	
			Acquisition	Rehab/New Construction		Based on Units	Based on NRA		Acquisition	Acquisition Weighted Average	Rehab/ New Constr.	Rehab/New Weighted Average	Acquisition	Rehab/ New Constr.	Acquisition		Rehab/ New Constr.
2009	1	07-09604		3/20/2009	26,711	100.00%	100.00%	30%		0.00%	9.00%	2.69%		3,190,116	-	287,110	287,110
2009	2	07-09603		1/23/2009	13,550	100.00%	100.00%	15%		0.00%	9.00%	1.36%		1,618,288	-	145,646	145,646
2009	3	07-09602		12/31/2008	8,490	100.00%	100.00%	9%		0.00%	9.00%	0.85%		1,013,968	-	91,257	91,257
2009	4	07-09601		12/31/2008	40,646	100.00%	100.00%	45%		0.00%	9.00%	4.09%		4,854,385	\$ -	\$ 436,895	\$ 436,895
	5							0%		0.00%		0.00%			-	-	-
	6							0%		0.00%		0.00%			-	-	-
	7							0%		0.00%		0.00%			-	-	-
	8							0%		0.00%		0.00%			-	-	-
	9							0%		0.00%		0.00%			-	-	-
	10							0%		0.00%		0.00%			-	-	-
	11							0%		0.00%		0.00%			-	-	-
	12							0%		0.00%		0.00%			-	-	-
	13							0%		0.00%		0.00%			-	-	-
	14							0%		0.00%		0.00%			-	-	-
	15							0%		0.00%		0.00%			-	-	-
	16							0%		0.00%		0.00%			-	-	-
	17							0%		0.00%		0.00%			-	-	-
	18							0%		0.00%		0.00%			-	-	-
	19							0%		0.00%		0.00%			-	-	-
	20							0%		0.00%		0.00%			-	-	-
	21							0%		0.00%		0.00%			-	-	-
	22							0%		0.00%		0.00%			-	-	-
	23							0%		0.00%		0.00%			-	-	-
	24							0%		0.00%		0.00%			-	-	-
	25							0%		0.00%		0.00%			-	-	-
	26							0%		0.00%		0.00%			-	-	-
	27							0%		0.00%		0.00%			-	-	-
	28							0%		0.00%		0.00%			-	-	-
	29							0%		0.00%		0.00%			-	-	-
	30							0%		0.00%		0.00%			-	-	-
	31							0%		0.00%		0.00%			-	-	-
	32							0%		0.00%		0.00%			-	-	-
	33							0%		0.00%		0.00%			-	-	-
	34							0%		0.00%		0.00%			-	-	-
	35							0%		0.00%		0.00%			-	-	-
	250							0%		0.00%		0.00%			-	-	-
					89,397			100%		0%		9%		\$10,676,757	\$ -	\$ 960,908	\$ 960,908

EXHIBIT 9B: INDIVIDUAL BUILDING DESCRIPTION

DEVELOPMENT NAME: Moore Grocery Lofts

FILE NUMBER: 07096/08952/09035

The form has been constructed to allow information for two different building types to be presented on a single page. If the development consists of more than two building types, the worksheet may be copied to a new worksheet multiple times. Right click with the mouse on the worksheet tab. Select "Move or Copy" and check "Create a copy" at the bottom of the dialog box.

Building Type	Tax Credit	
Building Numbers		
07-09601		

Housing Tax Credit Units			
	# of Units	Sq. Ft/Unit	Total Sq. Ft.
A.	14	977.21	13,681
B.	22	1096.77	24,129
C.	2	1418	2,836
D.			0
E.			0
F.			0
G.			0
H.			0
I.			0
J.			0
SUBTOTAL	38		40,646

Market Rate Units		
A.		0
B.		0
C.		0
D.		0
E.		0
F.		0
G.		0
H.		0
I.		0
J.		0
SUBTOTAL	0	0

Building Total		
	38	40,646

Building Applicable Fraction	
Unit Fraction	100.00%
Square Footage Fraction	100.00%
Applicable Fraction	100.00%

Building Type	Tax Credit	
Building Numbers		
07-09602		

Housing Tax Credit Units			
	# of Units	Sq. Ft/Unit	Total Sq. Ft.
A.	4	857.75	3,431
B.	4	1264.75	5,059
C.			0
D.			0
E.			0
F.			0
G.			0
H.			0
I.			0
J.			0
SUBTOTAL	8		8,490

Market Rate Units		
A.		0
B.		0
C.		0
D.		0
E.		0
F.		0
G.		0
H.		0
I.		0
J.		0
SUBTOTAL	0	0

Building Total		
	8	8,490

Building Applicable Fraction	
Unit Fraction	100.00%
Square Footage Fraction	100.00%
Applicable Fraction	100.00%

EXHIBIT 9E: MAXIMUM ADDITIONAL ALLOCATION

FOR 2004 AND 2005 ANNUAL ALLOCATION AND FORWARD COMMITMENTS ONLY

DEVELOPMENT NAME:

FILE NUMBER: 07096/08952/09035

This exhibit explains the Department's calculation in determining the amount of additional allocation based on a 14% increase in direct and site work costs. A list of Award Recommendations as presented to the TDHCA Board at the October 12, 2006 meeting is available on the Department's Real Estate Analysis webpage at www.tdhca.state.tx.us/rea. This exhibit also allows you to calculate the maximum increase in allocation based upon increases experienced in site work and direct construction costs. Direct construction costs are costs associated with labor and materials required for the construction or rehabilitation of the buildings of a development. Site work costs are defined as those costs associated with the site itself other than the foundation and the buildings. The maximum additional allocation allowed will be the lesser of the three calculations in (A), (B) or (C), and reflected in (D).

(A) Potential Additional 2007 or 2008 Allocation (**the amount calculated below should match the amount reflected in the list of Award Recommendations)	
Original Eligible Direct + Sitework Costs	\$ -
x 14% increase	\$ -
x original applicable fraction	0.00%
	\$ -
x original applicable percentage	0.00%
Additional allocation amount	\$ - (A)

Table (A) calculates the amount of additional credits a development would be eligible for based upon a 14% increase in the direct and sitework costs estimated by the Owner and reflected in the most recent Underwriting Report and presented to the TDHCA Board.

(B) Potential Additional 2007 or 2008 Allocation	
Original Eligible Direct + Sitework Costs	\$ -
Final Eligible Direct + Sitework Costs	\$ 6,706,802
% Increase in hard costs from UW to Cost Certification	#DIV/0!
Additional allocation amount based on prorata percentage increase	#DIV/0! (B)

Table (B) calculates the maximum amount of additional credits based upon the prorata percentage increase in direct and sitework costs.

(C) Potential Additional 2007 or 2008 Allocation	
Total Credits per Cost Certification	\$ 960,908
Original 2004 or 2005 Allocation	\$ -
Difference b/w Total Credits per Cost Certification and Original Allocation	\$ 960,908 (C)

Table (C) calculates the difference between the amount originally allocated to a development via the original Carryover Allocation Agreement (2004 or 2005) and the amount of tax credits a development is eligible for at Cost Certification as reflected in Ex. 10C.

(D) Requested Additional Credits	
Additional Allocation from Table (A)	\$ -
Additional Allocation from Table (B)	#DIV/0!
Difference in Allocation from Table (C)	\$ 960,908.13
Requested Additional Credits	#DIV/0! (D)

Table (D) takes the lesser of all three calculations (A, B and C). This is the maximum additional allocation allowed.

EXHIBIT 9E: MAXIMUM ADDITIONAL ALLOCATION
FOR 2007 AND 2008 COMPETITIVE ANNUAL ALLOCATIONS ONLY
(INCLUDING 2006 APPLICATIONS FUNDED OUT OF 2007 CREDIT CEILING)

DEVELOPMENT NAME:

FILE NUMBER: 07096/08952/09035

This exhibit explains the Department's calculation in determining the amount of additional allocation based on a 10% increase in direct and site work costs and adjustment to the applicable percentage up to the full 9%, as approved by the TDHCA Board at the November 13, 2008 meeting. A list of Award Recommendations is available on the Department's Real Estate Analysis webpage at www.tdhca.state.tx.us/rea. This exhibit also allows you to calculate the maximum increase in allocation based upon increases experienced in site work and direct construction costs. Direct construction costs are costs associated with labor and materials required for the construction or rehabilitation of the buildings of a development. Site work costs are defined as those costs associated with the site itself other than the foundation and the buildings. The maximum additional allocation allowed will be the lesser of the three calculations in (A), (B) or (C), and reflected in (D).

(A) Additional Allocation Awarded to the Development		
Original Allocation	\$	748,845
Additional Allocation Amount, as Approved During the November 13, 2008 Board Meeting	\$	26,195
Total Allocation	\$	775,040
Additional allocation amount	\$	26,195

Table (A) reflects the amount of additional credits a development was awarded based upon a 10% increase in the direct and sitework costs last approved by the TDHCA Board and an adjustment up to the 9% applicable percentage, subject to a calculation of the gap in financing sources, as approved by the TDHCA Board at the November 13, 2008 meeting.

(B) Potential Additional Allocation		
Original Eligible Direct + Sitework Costs	\$	4,706,250
Final Eligible Direct + Sitework Costs	\$	6,706,802
% Increase in hard costs from UW to Cost Certification		42.51%
Additional allocation amount based on prorata percentage increase	\$	111,351

Table (B) calculates the maximum amount of additional credits based upon the prorata percentage increase in direct and sitework costs.

(C) Potential Additional Allocation		
Total Credits per Cost Certification	\$	960,908
Total Allocation (Original + 10% Increase)	\$	775,040
Difference b/w Total Credits per Cost Certification and Total Allocation	\$	185,868

Table (C) calculates the difference between the amount originally allocated to a development via the original Carryover Allocation Agreement and the amount of tax credits a development is eligible for at Cost Certification as reflected in Ex. 10C.

(D) Requested Additional Credits		
Additional Allocation from Table (A)	\$	26,195.00
Additional Allocation from Table (B)	\$	111,350.78
Difference in Allocation from Table (C)	\$	185,868.13
Requested Additional Credits	\$	26,195.00

Table (D) takes the lesser of all three calculations (A, B, and C). This is the maximum additional allocation allowed.

EXHIBIT 10C: TOTAL DEVELOPMENT COST SCHEDULE

DEVELOPMENT NAME:

Moore Grocery Lofts

FILE NUMBER: 07096/08952/090

DEVELOPMENT COST SUMMARY		
Total Cost	Eligible Basis	
	Acquisition	New/Rehab.

Taxpayer Identification Number (TIN) and % of cost if item involves multiple payees [Texas Statutes, Title 10, Chapter 2306.184]
--

ACQUISITION

Site acquisition cost	150,000		
Existing structures acquisition cost	750,000		
Closing costs & acq. legal fees	655		
Other:			
Subtotal Acquisition Cost	\$900,655	\$0	\$0

454-84-0683
454-84-0683
Smith County Title Company

DIRECT CONSTRUCTION COSTS

Offsite Work			
Demolition			
Site Work	588,824		574,692
Residential Buildings	6,277,685		6,132,110
Accessory Buildings			
Subtotal Direct Construction Costs	\$6,866,509	\$0	\$6,706,802

56-2027384
56-2027384-99.99%

OTHER CONSTRUCTION COSTS

General requirements (<6%)	2.00%	137,369		134,072
Contractor overhead (<2%)	1%	68,685		67,037
Contractor profit (<6%)	0%			
Subtotal Other Const. Costs		\$206,054	\$0	\$201,109

56-2027384
56-2027384

INDIRECT CONSTRUCTION COSTS

Architectural - Design fees	147,221		143,688
Architectural - Supervision fees	30,000		29,280
Engineering fees	25,000		24,400
Real estate attorney/other legal fees	4,614		4,504
Accounting fees	13,000		12,688
Impact Fees			
Building permits & related costs	892		871
Appraisal	22,730		22,184
Market analysis	8,549		8,549
Environmental assessment	107,103		104,533
Soils report	5,865		5,724
Survey	10,364		10,115
Marketing			
Course of construction insurance			
Hazard & liability insurance	67,546		65,925
Real property taxes	31,705		29,592
Personal property taxes			
Tenant relocation expenses			
Other:	76,606		71,707
Subtotal Indirect Const. Cost	\$551,195	\$0	\$533,760

58-1476866 - 99%; Whitaker Design-1%
58-1476866
51-0562186
74-1164324-89%; 56-1064033-11%
56-0571159-73%; 94-3108253-27%
TX Dept of State Health Service
41-0558220-32%; Pacific Southwest-24%; CW Capital-44%
94-3108253
54-1708071-54%; 45-0485238-14%; Western Environment-32%
Apex Geoscience Inc.
Bob Matush Surveying Inc.
56-1623293
Gary B Barber
Whitaker-84%; 58-2554978-2%; other-14%

DEVELOPMENT COST SUMMARY		
Total Cost	Eligible Basis	
	Acquisition	New/Rehab.

Taxpayer Identification Number (TIN) and % of cost if item involves multiple payees [Required by Texas Statutes, Title 10, Chapter 2306.184]
--

DEVELOPER FEES

Housing consultant fees			
General & administrative	355,000		346,480
Profit or fee	849,300		828,917
Subtotal Developer's Fees (<15%)	\$1,204,300	\$0	\$1,175,397

0.145866

58-2554978-60%; 57-1152167-20%; 04-3677539-20%
 58-2554978-60%; 57-1152167-20%; 04-3677539-20%

FINANCING:

CONSTRUCTION LOAN(S)

Interest	482,876		322,548
Loan origination fees	116,622		113,823
Title & recording fees	37,952		37,041
Closing costs & legal fees	29,595		28,884
Inspection fees	8,550		8,345
Credit Report	2,956		
Discount Points			
Other:			

95-4816953-77%; 41-0558220-14%
 41-0558220-49%; 95-4816953-43%
 75-2345570 - 42%
 74-1164324-28%; 95-3669194-25%; 95-4816953-19%; 41-0558220-14%
 41-0558220-91%; 74-2610542- 9%

PERMANENT LOAN(S)

Loan origination fees	23,500		
Mortgage brokerage fee			
Title & recording fees	13,744		
Closing costs & legal	15,177		
Bond premium			
Credit report			
Discount points			
Credit enhancement fees			
Prepaid MIP			
Other:			

95-4816953
 75-2345570-99%; other-1%
 74-1164324-49%; 95-3669194-43%; 56-1064033-8%

BRIDGE LOAN(S)

Interest			
Loan origination fees			
Title & recording fees	23,997		23,420
Closing costs & legal fees	25,760		25,142
Other:			

75-2345570-99%; other-1%
 74-1164324-50%; 95-3669194-44%; 56-1064033-6%

OTHER FINANCING COSTS

Tax credit fees	42,982		
Tax credit application fee			
Payment bonds			
Performance bonds			
Cost of underwriting & issuance	58,600		57,193
Syndication organizational cost	71,167		
Tax opinion			
Other: Organization	10,543		
Subtotal Financing Cost	\$964,021	\$0	\$616,396

74-2610542
 TDHCA TIN: 74-2610542
 357-28-8762 - 52%; CBRE Melody - 43%; CW Capital - 5%
 74-6000143-14%; 56-1064033-4%; 74-1164324-78%; other - 4%

DEVELOPMENT COST SUMMARY		
Total Cost	Eligible Basis	
	Acquisition	New/Rehab.
Rent-up	30,475	
Operating	150,000	
Replacement		
Escrows		
Subtotal Reserves	\$180,475	\$0
TOTAL DEVELOPMENT COSTS	\$10,873,209	\$0
- Commercial Space Costs	238,316	
TOTAL RESIDENTIAL COSTS	\$10,634,893	

Taxpayer Identification Number (TIN)
and % of cost if item involves multiple payees
[Required by Texas Statutes, Title 10, Chapter 2306.184]

Deduct From Basis:

Fed. grant proceeds used to finance costs in eligible basis		
Fed. B.M.R. loans used to finance costs in eligible basis		
Non-qualified non-recourse financing		
Non-qualified portion of higher quality units		
Historic Credits (residential portion only)		1,020,574
Total Eligible Basis	\$0	\$8,212,890
High Cost Area Adjustment (100% or 130%)		130%
Total Adjusted Basis	\$0	\$10,676,757
Applicable Fraction		100%
Total Qualified Basis	\$10,676,757	\$10,676,757
Applicable Percentage	0.00%	9.00%
Owner's Requested Credits	\$960,908	\$960,908

EXHIBIT 11A. RENT SCHEDULE

DEVELOPMENT NAME: **Moore Grocery Lofts**

FILE NUMBER: **07096/08952/09035**

Type of Unit designation should be one or more of the following based on the unit's rent restrictions:

Tax Credit: (TC30%), (TC40%), (TC50%), (TC60%)

501(c)(3) Mortgage Revenue Bond: (MRB)

HOME: High (HH) or Low (LH)

Other: (OT) describe any "Other" restrictions on an attached sheet

Housing Trust Fund: (HTF30%), (HTF60%), (HTF65%)

For units funded under more than one program, the "Income Level Served" should be the most restrictive - for example a LH and TC50% would be "50%".

The rent and utility limits available at the time the Cost Certification Packet is submitted should be used to complete this form. Gross Rent cannot exceed the HUD maximum rent limits.

Type of Unit	Income Level Served	# of Units (A)	# of Bedrooms	# of Baths	Unit Size (Net Rentable Sq. Ft.) (B)	Total Net Rentable Sq. Ft. (A) x (B)	Gross Rent (C)	Tenant Paid Utility Allow. (D)	Tenant Paid Rent/ Unit (C) - (D) = (E)	Total Monthly Rent (A) x (E)
TC30%	30%	7	1	1.00	826	5,781	302	90	212	1,484
TC30%	30%	2	2	2.00	1,072	2,143	360	120	240	480
TC60%	60%	17	1	1.00	898	15,261	612	90	522	8,874
TC60%	60%	50	2	2.00	1,031	51,537	734	120	614	30,700
TC60%	60%	12	3	2.00	1,223	14,675	841	147	694	8,328
						0			0	-
						0			0	-
						0			0	-
						0			0	-
						0			0	-
						0			0	-
						0			0	-
						0			0	-
						0			0	-
Rent Restricted Total		88				89,397				49,866
Market Rate						0				-
Market Rate						0				-
Market Rate						0				-
Market Rate						0				-
Market Rate						0				-
Market Rate						0				-
Market Rate Total		0				0				-
Employee/Owner Occupied*						0				-
Total Units		88				89,397				49,866
+ Non Rental Income Source #1			\$ 1.30	per unit/month for:	Laundry					114
+ Non Rental Income Source #2			\$ 7.00	per unit/month for:	NSF, late fee & other tenant charges					616
+ Non Rental Income Source #3				per unit/month for:	describe source here					-
= POTENTIAL GROSS MONTHLY INCOME										50,596
- Provision for Vacancy & Collection Loss							% of Potential Gross Income:	7.50%		3,795
- Rental Concessions										
= EFFECTIVE GROSS MONTHLY INCOME										46,802
x 12 = EFFECTIVE GROSS ANNUAL INCOME										561,620

* Only enter Employee/Owner Occupied Units if not included in rent restricted or market rate units shown above.

EXHIBIT 11B. UTILITY ALLOWANCE

DEVELOPMENT NAME: **Moore Grocery Lofts**

FILE NUMBER: **07096/08952/09035**

Owner must attach this form to the Utility Allowance documentation used to calculate the net rent in Exhibit 11A. Rent Schedule. This exhibit must clearly indicate which utility costs are included in the net rent estimate.

NOTE:

If more than one entity (Sec. 8 administrator, public housing authority) is responsible for setting the utility allowance(s) in the area of the development location, then the selected utility allowance must be the one which most closely reflects the actual expenses.

If an independent utility cost evaluation is conducted it must include confirming documentation from all the relevant utility providers.

If other reductions to the tenant rent is required such as the cost of flood insurance for the tenant's contents, documentation for these reductions to gross rent should also be attached.

Utility(1)	Energy Source (2)	Source of Utility Allowance	Effective Date
<input checked="" type="checkbox"/> Heating	E	City of Tyler Housing Authority, TX	7/1/2010
<input checked="" type="checkbox"/> Cooling	E	City of Tyler Housing Authority, TX	7/1/2010
<input checked="" type="checkbox"/> Water Heater	E	City of Tyler Housing Authority, TX	7/1/2010
<input checked="" type="checkbox"/> Cooking	E	City of Tyler Housing Authority, TX	7/1/2010
<input type="checkbox"/> Water			
<input type="checkbox"/> Sewer			
<input type="checkbox"/> Trash			
<input checked="" type="checkbox"/> General Electricity		City of Tyler Housing Authority, TX	7/1/2010

Other (Describe)

(1) Check the box if the TENANT will have to pay for this utility directly or will have to pay an extra fee for the appliances listed.

(2) Indicate the type of energy source used where applicable as follows: N= Natural Gas, P= Propane, E= Electric, L= Oil, O= Other

EXHIBIT 11C. ANNUAL OPERATING EXPENSES

DEVELOPMENT NAME: Moore Grocery Lofts

FILE NUMBER: 07096/08952/09035

Advertising	\$	1,800	
Legal fees	\$	3,000	
Accounting	\$	4,850	
Leased equipment	\$		
Postage & office supplies	\$	11,200	
Telephone	\$	5,950	
Other Describe: Travel & Training Site Staff	\$	900	
Total General & Administrative Expenses:			\$ 27,700
Management Fee:	Percent of Effective Gross Income:	4.99%	\$ 28,000
Payroll, Payroll Tax & Employee Benefits			
Management	\$	43,537	
Maintenance	\$	40,475	
Other Describe:	\$		
Total Payroll, Payroll Tax & Employee Benefits:			\$ 84,012
Repairs & Maintenance			
Elevator	\$	3,350	
Exterminating	\$	2,300	
Grounds	\$	4,500	
Repairs and make-ready	\$	19,000	
Supplies	\$	12,000	
Pool	\$		
Other Describe: Fire Protection/monitoring	\$	5,370	
Total Repairs & Maintenance:			\$ 46,520
Utilities (Enter development owner expense)			
Electric	\$	31,870	
Natural gas	\$		
Garbage/trash	\$	5,670	
Water & sewer	\$	15,840	
Other: Describe:	\$		
Total Utilities:			\$ 53,380
Annual Property Insurance:	Rate per net rentable square foot:	\$ 0.20	\$ 18,180
Property Taxes:			
Annual Property Taxes:	\$	56,237	
Payments in Lieu of Taxes:	\$		
Other Taxes: Describe: Business Personal Property Tax	\$	2,285	
Total Property Taxes:			\$ 58,522
Reserve for Replacements:	Reserves per unit per year:	300	\$ 26,400
Other Expenses			
Cable TV	\$		
Supportive service contract fees	\$	2,000	
Compliance fees	\$	3,520	
Security	\$		
Other Describe: Parking Lease	\$	2,400	
Total Other Expenses:			\$ 7,920
TOTAL ANNUAL EXPENSES	Expense per unit:	\$ 3,984	\$ 350,634
NET OPERATING INCOME (before debt service)			\$ 210,986
ANNUAL DEBT SERVICE	Debt Coverage Ratio:	1.15	\$ 182,905
NET CASH FLOW			\$ 28,081

EXHIBIT 11D. 30-YEAR PROFORMA

DEVELOPMENT NAME: Moore Grocery Lofts

FILE NUMBER: J96/08952/09035

The proforma should be based on the operating income and expense information for the base year (first year of stabilized occupancy using today's best estimates of rental income and expenses), and debt service. The Department currently considers an annual growth rate of 3% for income and 4% for expenses to be reasonably conservative estimates. Written explanation for any deviations from these growth rates or for assumptions other than straight-line growth made during the proforma period should be attached to this exhibit.

INCOME	3% Annual Increase	LEASE-UP	YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5	YEAR 10	YEAR 15	YEAR 20	YEAR 25	YEAR 30
POTENTIAL GROSS ANNUAL RENTAL INCOME		\$549,324	\$598,392	\$616,344	\$634,834	\$653,879	\$673,495	\$780,766	\$905,122	\$1,049,284	\$1,216,408	\$1,410,150
Secondary Income		9,667	8,765	9,028	9,299	9,578	9,865	11,436	13,258	15,369	17,817	20,655
POTENTIAL GROSS ANNUAL INCOME		\$558,991	\$607,157	\$625,372	\$644,133	\$663,457	\$683,360	\$792,202	\$918,379	\$1,064,653	\$1,234,225	\$1,430,805
Provision for Vacancy & Collection Loss	7.50%	(82,901)	45,537	46,903	48,310	49,759	51,252	59,415	68,878	79,849	92,567	107,310
Rental Concessions												
EFFECTIVE GROSS ANNUAL INCOME		\$476,090	\$561,620	\$578,469	\$595,823	\$613,697	\$632,108	\$732,787	\$849,501	\$984,804	\$1,141,658	\$1,323,494
EXPENSES	4% Annual Increase											
General & Administrative Expenses		\$34,897	\$27,700.00	\$28,808	\$29,960	\$31,159	\$32,405	\$39,426	\$47,967	\$58,360	\$71,004	\$86,387
Management Fee		22,985	28,000	\$29,120	\$30,285	\$31,496	\$32,756	\$39,853	\$48,487	\$58,992	\$71,773	\$87,322
Payroll, Payroll Tax & Employee Benefits		68,485	84,012	\$87,372	\$90,867	\$94,502	\$98,282	\$119,575	\$145,482	\$177,001	\$215,348	\$262,004
Repairs & Maintenance		30,583	46,520	\$48,381	\$50,316	\$52,329	\$54,422	\$66,212	\$80,558	\$98,011	\$119,245	\$145,080
Electric & Gas Utilities		41,957	31,870	\$33,145	\$34,471	\$35,849	\$37,283	\$45,361	\$55,189	\$67,145	\$81,693	\$99,391
Water, Sewer & Trash Utilities		10,076	21,510	\$22,370	\$23,265	\$24,196	\$25,164	\$30,615	\$37,248	\$45,318	\$55,137	\$67,082
Annual Property Insurance Premiums		18,763	18,180	\$18,907	\$19,663	\$20,450	\$21,268	\$25,876	\$31,482	\$38,303	\$46,601	\$56,697
Property Tax		53,051	58,522	\$60,863	\$63,297	\$65,829	\$68,462	\$83,295	\$101,341	\$123,297	\$150,010	\$182,510
Reserve for Replacements		22,000	26,400	\$27,456	\$28,554	\$29,696	\$30,884	\$37,575	\$45,716	\$55,621	\$67,671	\$82,332
Other Expenses:		23,368	7,920	8,237	8,566	8,909	9,265	11,273	13,715	16,686	20,301	24,700
TOTAL ANNUAL EXPENSES		\$326,165	\$350,634	\$364,659	\$379,246	\$394,416	\$410,192	\$499,062	\$607,185	\$738,733	\$898,782	\$1,093,505
NET OPERATING INCOME		\$149,925	\$210,986	\$213,809	\$216,577	\$219,282	\$221,916	\$233,725	\$242,316	\$246,071	\$242,876	\$229,989
DEBT SERVICE												
First Deed of Trust Annual Loan Payment			\$182,905	\$182,905	\$182,905	\$182,905	\$182,905	\$182,905	\$182,905	\$182,905	\$182,905	\$182,905
Second Deed of Trust Annual Loan Payment												
Third Deed of Trust Annual Loan Payment												
Other Annual Required Payment:												
NET CASH FLOW		\$149,925	\$28,081	\$30,905	\$33,672	\$36,377	\$39,011	\$50,821	\$59,411	\$63,166	\$59,972	\$47,084
Debt Coverage Ratio		#DIV/0!	1.15	1.17	1.18	1.20	1.21	1.28	1.32	1.35	1.33	1.26

EXHIBIT 2B: DEVELOPMENT OWNER'S STATEMENT OF CERTIFICATION

DEVELOPMENT NAME: Historic Lofts of Waco High

FILE NUMBER: 07192 / 08906

To the best of my knowledge, no information contained within this *Cost Certification packet* is in any way false or incorrect, and the information contained within these pages is truly descriptive of the Development or property for which the Housing Tax Credits are being requested.

By my signature below, I also acknowledge that the total development cost, eligible basis amounts and any other information contained in the *Cost Certification packet* exhibits which may affect the amount of tax credits issued by the IRS Forms 8609 are final. As such, the amount of tax credits to be issued will be based on this documentation and will not be subject to revision.

To facilitate the issuance of the IRS Forms 8609, I will provide additional information, detailed accounting records, documents, and receipts at the request of the Department.

Historic Lofts of Waco High, LLC

Development Owner Name

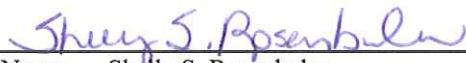
By: 
Authorized Signature

Name: Bill Scantland

Title: Vice President Landmark Asset Services, Inc.,
Managing Member

Date: October 22, 2010

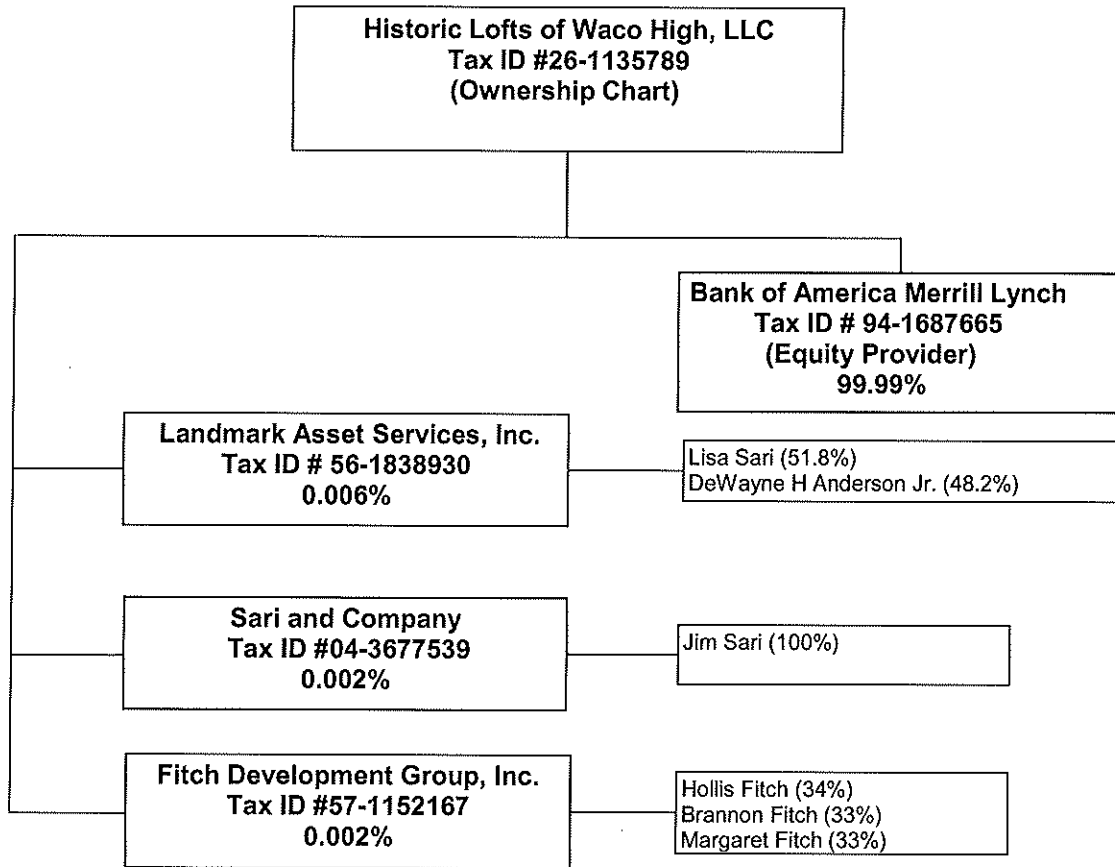
I, the undersigned, a Notary Public in and for Iredell, in NC, hereby certify that Bill Scantland, whose name is signed to the foregoing conveyance, acknowledged before me on this date, being informed of such document, s/he as officer and with full authority, executed said conveyance voluntarily on the day the same bears date. Given under my hand, official seal this 22nd day of October, 2010

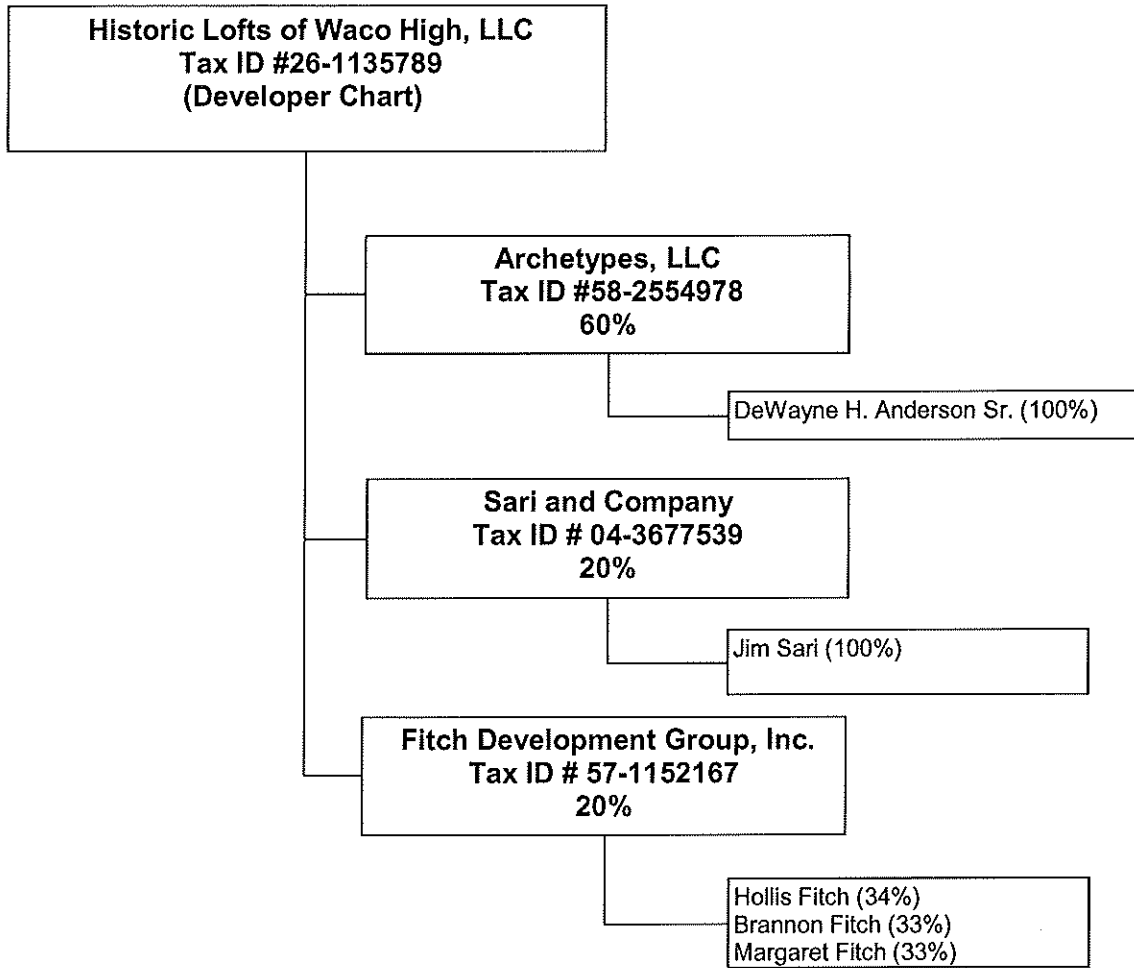

Name: Shelly S. Rosenbalm

Commission Expires: 05/22/2012



NOTE: All resubmitted exhibits must include any signature required by instructions for the exhibit as well as an original Development Owner signature and date. Resubmitted Exhibits 9A, 9B, 9C, and 10C also must be signed by the independent auditor that prepared and signed Exhibits 10A or 10B. Signature by the independent auditor indicates changes in the resubmitted exhibits do not affect the conclusions in Exhibit 10A or 10B.





ATTORNEY

Name: Locke Lord Bissell & Liddell TIN: 74-1164324
 Contact: Cynthia Bast Phone: (512) 305-4707 Fax: (512) 391-4707
 Address: 100 Congress Avenue City: Austin State: TX Zip: 78701

Is the team member a certified TX HUB? No Yes

If "Yes," attach a current HUB Certificate and identify the gender and/or ethnic background of the majority owner(s):

African American Asian American American Indian Mexican American & Other Hispanic Women

Is there a direct or indirect, financial, or other interest with Development Owner or other team members? No Yes

If "Yes," describe the relationship(s): _____

ACCOUNTANT

Name: Bernard Robinson & Company, LLP. TIN: 56-0571159
 Contact: B. Timothy Smith Phone: (336) 294-4494 Fax: (336) 547-0840
 Address: 1501 Highwoods Blvd., Suite 300 City: Greensboro State: NC Zip: 27410

Is the team member a certified TX HUB? No Yes

If "Yes," attach a current HUB Certificate and identify the gender and/or ethnic background of the majority owner(s):

African American Asian American American Indian Mexican American & Other Hispanic Women

Is there a direct or indirect, financial, or other interest with Development Owner or other team members? No Yes

If "Yes," describe the relationship(s): _____

PROPERTY MANAGER

Name: Landmark Property Management Company 04-3677532
 Contact: Blair Maas Phone: (336) 714-8939 Fax: (336) 722-3603
 Address: 406 East Fourth Street City: Winston Salem State: NC Zip: 27101

Is the team member a certified TX HUB? No Yes

If "Yes," attach a current HUB Certificate and identify the gender and/or ethnic background of the majority owner(s):

African American Asian American American Indian Mexican American & Other Hispanic Women

Is there a direct or indirect, financial, or other interest with Development Owner or other team members? No Yes

If "Yes," describe the relationship(s): Related through common ownership

ORIGINATOR OR UNDERWRITER

Name: Bank of America, N.A. TIN: 94-1687665
 Contact: Ellen Rogers Phone: (704) 386-9401 Fax: (704) 386-6662
 Address: 101 North Tryon Street, 11th Floor City: Charlotte State: NC Zip: 28255

Is the team member a certified TX HUB? No Yes

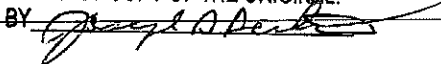

If "Yes," attach a current HUB Certificate and identify the gender and/or ethnic background of the majority owner(s):

African American Asian American American Indian Mexican American & Other Hispanic Women

Is there a direct or indirect, financial, or other interest with Development Owner or other team members? No Yes

If "Yes," describe the relationship(s): _____

OMB Approval No. 2502-0265

A. Settlement Statement		B. Type of Loan	
First American Title Company Final Statement		1-5. Loan Type Conv. Unins.	
		6. File Number 9D30452	
		7. Loan Number	
		8. Mortgage Insurance Case Number	
C. Note: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "(POC)" were paid outside this closing. They are shown here for informational purposes and are not included in the totals.			
D. Name of Borrower: Historic Lofts of Waco High, L.L.C. 426 E. Fourth Street, Winston Salem, NC 27106			
E. Name of Seller: Waco ISD 501 Franklin Suite 501 Waco, TX 76701			
F. Name of Lender: Waco ISD 501 Franklin Suite 501 Waco, TX 76701		LAW OFFICE OF JOSEPH D. DESHOTEL HEREBY CERTIFIES THIS IS A TRUE AND CORRECT COPY OF THE ORIGINAL. BY 	
G. Property Location: 815 Columbus Ave. Waco, TX 76701			
H. Settlement Agent: First American Title Company Address: 505 Orleans Street, Suite 105, Beaumont, TX 77701		L Settlement Date: 11/01/2007 Print Date: 12/01/2010, 10:42 AM Disbursement Date: 11/09/2007 Signing Date:	
Place of Settlement Address: 505 Orleans Street, Suite 105, Beaumont, TX 77701			
J. Summary of Borrower's Transaction		K. Summary of Seller's Transaction	
100. Gross Amount Due From Borrower		400. Gross Amount Due To Seller	
101. Contract Sales Price	1,250,000.00	401. Contract Sales Price	1,250,000.00
102. Personal Property		402. Personal Property	
103. Settlement charges to borrower (line 1400)	559.22	403. Total Deposits	
104.		404.	
105.		405.	
Adjustments for items paid by seller in advance		Adjustments for items paid by seller in advance	
106. City/town taxes		406. City/town taxes	
107. County taxes		407. County taxes	
108. Assessments		408. Assessments	
109.		409.	
110.		410.	
111.		411.	
112.		412.	
113.		413.	
114.		414.	
115.		415.	
120. Gross Amount Due From Borrower	1,250,559.22	420. Gross Amount Due To Seller	1,250,000.00
200. Amounts Paid By Or In Behalf of Borrower		500. Reductions In Amount Due to Seller	
201. *Deposit or earnest money	1,000.00	501. Excess deposit (see instructions)	
202. Principal amount of new loan(s)	1,250,000.00	502. Settlement charges (line 1400)	
203. Existing loan(s) taken subject		503. Existing loan(s) taken subject	
204.		504. Payoff of first mortgage loan	
205.		505. Payoff of second mortgage loan	
206.		506. New Loan to File - Waco ISD	1,250,000.00
207.		507.	
208.		508.	
209.		509.	
Adjustments for items unpaid by seller		Adjustments for items unpaid by seller	
210. City/town taxes		510. City/town taxes	
211. County taxes		511. County taxes	
212. Assessments		512. Assessments	
213.		513.	
214.		514.	
215.		515.	
216.		516.	
217.		517.	
218.		518.	
219.		519.	
220. Total Paid By/For Borrower	1,251,000.00	520. Total Reduction Amount Due Seller	1,250,000.00
300. Cash At Settlement From/To Borrower		600. Cash At Settlement To/From Seller	
301. Gross amount due from Borrower (line 120)	1,250,559.22	601. Gross amount due to Seller (line 420)	1,250,000.00
302. Less amounts paid by/for Borrower (line 220)	1,251,000.00	602. Less reductions in amounts due to Seller (line 520)	1,250,000.00
303. Cash (From) (X To) Borrower	440.78	603. Cash (To) (From) Seller	
The HUD-1 Settlement Statement which I have prepared is a true and accurate account of this transaction. I have caused or will cause the funds to be disbursed in accordance with this statement.			
Settlement Agent: 		Date: 11-1-07	

* See Supplemental Page for details.

File No. 9D30452

L. Settlement Charges		
	Paid From Borrower's Funds at Settlement	Paid From Seller's Funds at Settlement
700. Total Sales/Broker's Commission based on price \$1,250,000.00 @ 0.0000% = \$0.00		
Division of Commission (line 700) as follows		
701.		
702.		
703. Commission paid at Settlement		
704.		
800. Items Payable in Connection with Loan		
801. Loan Origination Fee		
802. Loan Discount		
803. Appraisal Fee		
804. Credit Report		
805. Lender's Inspection Fee		
806. Mortgage Insurance Application Premium		
807. Assumption Fee		
808.		
809.		
810.		
811.		
812.		
813.		
814.		
Supplemental Summary		
900. Reims Required by Lender to be Paid in Advance		
901. Interest		
902.		
903. Hazard Insurance Premium for		
904.		
905.		
Supplemental Summary		
1000. Reserves Deposited with Lender		
1001. Hazard Insurance		
1002. Mortgage Insurance		
1003. City Property Taxes		
1004. County Property Taxes		
1005. Annual assessments		
1006.		
1007.		
1008. Aggregate Accounting Adjustment		
1100. Title Charges		
1101. Settlement or closing fee		
1102. Abstract or title search		
1103. Title examination		
1104. Title Insurance Binder		
1105. Document Fee		
1106. Notary Fee		
1107. Attorney Fee		
(includes above item numbers:)		
1108. Title Insurance - See supplemental page for breakdown of individual fees and payees -		
(includes above item numbers:)		
1109. Lender's coverage \$1,250,000.00		
1110. Owner's coverage \$1,250,000.00		
1111. Escrow Fee to Law Office of Joseph D. Deshotel	330.00	
1112. Courier Fee (to Leanne Eakin) to Law Office of Joseph D. Deshotel	25.00	
1113. 2 Certified Copies of DOT and WD to Law Office of Joseph D. Deshotel	60.00	
1114. Tax Certificate to First American Title Company	30.22	
1115.		
1116.		
1117.		
1200. Government Recording and Transfer Charges		
1201. Recording fees: Deed \$35.00 Mortgage \$79.00 Release \$0.00	114.00	
1202. City/county tax/stamps:		
1203. State tax/stamps:		
1204.		
1205.		
1206.		
1300. Additional Settlement Charges		
1301. Survey to		
1302. Pest Inspection to		
1303.		
1304.		
1305.		
1306.		
1307.		
1308.		
1309.		
1310.		
1311.		
1312.		
1313.		
1314.		
Supplemental Summary		
1400. Total Settlement Charges (enter on lines 103, Section J and 502, Section K)	559.22	

LAW OFFICE OF JOSEPH D. DESHOTEL
 HEREBY CERTIFIES THIS IS A TRUE AND
 CORRECT COPY OF THE ORIGINAL,
 BY *Joseph D. Deshotel*

* See Supplemental Page for details.

Supplemental Page HUD-1 Settlement Statement	File No. 9D30452
Beaumont Title Company Final Statement	Loan No.
	Settlement Date:
Borrower Name & Address: Historic Lofts of Waco High, L.L.C. 426 E. Fourth Street, Winston Salem, NC 27106	
Seller Name & Address: Waco ISD 501 Franklin Suite 501 Waco, TX 76701	

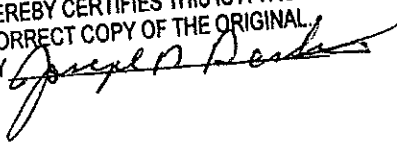
Exhibit 7
TDHCA File # 07182 / 08906

Section L. Settlement Charges continued	Paid From Borrower's Funds at Settlement	Paid From Seller's Funds at Settlement
1201. Supplemental Summary	114.00	
a) Record Deed of Trust/Mortgage	79.00	
b) Record Deed	35.00	

Section J. Summary of Borrower's Transaction continue		
100. Gross Amount Due From Borrower	Borrower Charges	Borrower Credits
200. Amounts Paid By Or In Behalf of Borrower		
201. Supplemental Summary	1,000.00	
a) PC/C#2060/EM		1,000.00

The following Section is restated from the Settlement Statement Page 1			
300. Cash At Settlement From/To Borrower		600. Cash At Settlement To/From Seller	
301. Gross amount due from Borrower (line 120)	1,250,559.22	601. Gross Amount due to Seiler (line 420)	1,250,000.00
302. Less amounts paid by/for Borrower (line 220)	1,251,000.00	601. Less reductions in amounts due to Seller (line 520)	1,250,000.00
303. Cash (From) (X To) Borrower	440.78	603. Cash (To) (From) Seller	

I have carefully reviewed the HUD-1 Settlement Statement and to the best of my knowledge and belief, it is a true and accurate statement of all receipts and distributions made on my account or by me in this transaction. I further certify that I have received a copy of the HUD-1 Settlement Statement.

LAW OFFICE OF JOSEPH D. DESHOTEL
HEREBY CERTIFIES THIS IS A TRUE AND
CORRECT COPY OF THE ORIGINAL.
BY 

REHAB BUILDERS INC.
 Project: Historic Waco Lofts
 Location: Waco Texas

Application No. 14
 Application Date 2/1/2010

Exhibit 10D
 TDHCA File # 07192 / 08906

DRAW REQUEST

A	B	C	D	E	F	G	G2	H	I
Item No.	Work Description	Value	Previous	This	Stored	Total	G/C%	Balance	Retainage
1	Gen. Conditions	375000	375000			375000	100	0	
1a	Site Demo	110000	110000			110000	100	0	
2	Grading	100000	100000			100000	100	0	
2a	Paving	120000	120000			120000	100	0	
2b	Curb and Gutter	60000	60000			60000	100	0	
2c	utilities	105000	105000			105000	100	0	
2d	Demolition	415900	415900			415900	100	0	
3	Concrete	35000	35000			35000	100	0	
4	Masonry	150000	150000			150000	100	0	
5	Metals	155000	155000			155000	100	0	
6	Framing	525000	525000			525000	100	0	
6a	Trim	350000	350000			350000	100	0	
6b	Cabinets	225000	225000			225000	100	0	
6c	Misc Carpentry	100000	100000			100000	100	0	
7	Moisture Protection	500000	500000			500000	100	0	
8a	Windows	484000	484000			484000	100	0	
8b	Hardware	175000	175000			175000	100	0	
9	Plaster/Drywall	455000	455000			455000	100	0	
	Paint	270000	270000			270000	100	0	
	Floor finishes	175000	175000			175000	100	0	
10	Specialties	500000	500000			500000	100	0	
11	Appliances	155000	155000			155000	100	0	
12	Blinds	31000	31000			31000	100	0	
13a	Plumbing	630000	630000			630000	100	0	
13c	Mechanical	525000	525000			525000	100	0	
14	Elevator	190000	190000			190000	100	0	
15	Electrical	850000	850000			850000	100	0	
16	Sprinkler	350000	350000			350000	100	0	
17	Mobilization,Permits	75000	75000			75000	100	0	
18	CO1	359100	359100			359100	100	0	
19	CO 2	325852	325852			325852	100	0	
20	CO 3	206821	206821			206821	100	0	
21	CO 4	133327	133327			133327	100	0	
22	CO 5	621381	621381			621381	100	0	
	TOTALS	9837381	9837381	0	0	9837381	100	0	

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Change Order

PROJECT (Name and address): HISTORIC LOFTS OF WACO HIGH 815 COLUMBIA AVENUE WACO, TX 76701	CHANGE ORDER NUMBER: 001 DATE: January 26, 2009	OWNER: <input type="checkbox"/> ARCHITECT: <input type="checkbox"/> CONTRACTOR: <input type="checkbox"/> FIELD: <input type="checkbox"/> OTHER: <input type="checkbox"/>
TO CONTRACTOR (Name and address): Rehab Builders, Inc. 401 E. Fourth Street Suite 200 Winston-Salem, NC 27101	ARCHITECT'S PROJECT NUMBER: CONTRACT DATE: January 15, 2008 CONTRACT FOR: General Construction	

THE CONTRACT IS CHANGED AS FOLLOWS:
 (Include, where applicable, any undisputed amount attributable to previously executed Construction Change Directives)

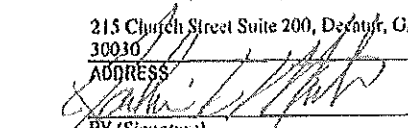
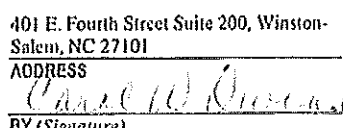
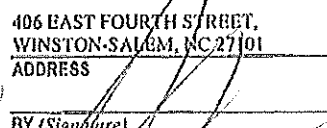

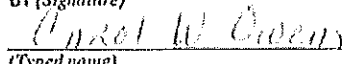
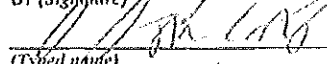
Receipt of bids made it apparent that the original budget would not be sufficient to build the structure as designed.

The original Guaranteed Maximum Price was	\$ 8,190,900.00
The net change by previously authorized Change Orders	\$ 0.00
The Guaranteed Maximum Price prior to this Change Order was	\$ 8,190,900.00
The Guaranteed Maximum Price will be increased by this Change Order in the amount of	\$ 359,100.00
The new Guaranteed Maximum Price including this Change Order will be	\$ 8,550,000.00

The Contract Time will be unchanged by Zero (0) days.
 The date of Substantial Completion as of the date of this Change Order therefore is

NOTE: This Change Order does not include changes in the Contract Sum, Contract Time or Guaranteed Maximum Price which have been authorized by Construction Change Directive until the cost and time have been agreed upon by both the Owner and Contractor, in which case a Change Order is executed to supersede the Construction Change Directive.

NOT VALID UNTIL SIGNED BY THE ARCHITECT, CONTRACTOR AND OWNER.

Martin Riley Associates - Architects, PC	Rehab Builders, Inc.	HISTORIC LOFTS OF WACO HIGH LLC
<u>ARCHITECT (Firm name)</u>	<u>CONTRACTOR (Firm name)</u>	<u>OWNER (Firm name)</u>
215 Church Street Suite 200, Decatur, GA 30030	401 E. Fourth Street Suite 200, Winston-Salem, NC 27101	406 EAST FOURTH STREET, WINSTON-SALEM, NC 27101
<u>ADDRESS</u>	<u>ADDRESS</u>	<u>ADDRESS</u>
		
<u>BY (Signature)</u>	<u>BY (Signature)</u>	<u>BY (Signature)</u>
		
<u>(Typed name)</u>	<u>(Typed name)</u>	<u>(Typed name)</u>
1-30-09	Jan 28, 2009	1-26-09
<u>DATE</u>	<u>DATE</u>	<u>DATE</u>

 **AIA** Document G701™ - 2001

Change Order

PROJECT (Name and address): HISTORIC LOFTS OF WACO HIGH 815 COLUMBIA AVENUE WACO, TX 76701	CHANGE ORDER NUMBER: 002 DATE: April 23, 2009	OWNER: <input type="checkbox"/> ARCHITECT: <input type="checkbox"/> CONTRACTOR: <input type="checkbox"/>
TO CONTRACTOR (Name and address): Rehab Builders, Inc. 401 E. Fourth Street Suite 200 Winston-Salem, NC 27101	ARCHITECT'S PROJECT NUMBER: CONTRACT DATE: January 15, 2008 CONTRACT FOR: General Construction	FIELD: <input type="checkbox"/> OTHER: <input type="checkbox"/>

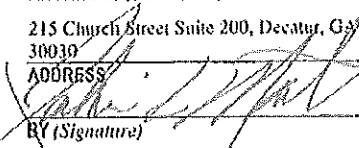
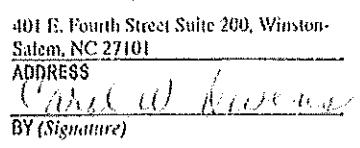
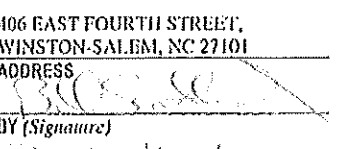
THE CONTRACT IS CHANGED AS FOLLOWS:
 (Include, where applicable, any undisputed amount attributable to previously executed Construction Change Directives)
 PLEASE SEE ATTACHED

The original Guaranteed Maximum Price was	\$ 8,190,900.00
The net change by previously authorized Change Orders	\$ 359,100.00
The Guaranteed Maximum Price prior to this Change Order was	\$ 8,550,000.00
The Guaranteed Maximum Price will be increased by this Change Order in the amount of	\$ 325,852.00
The new Guaranteed Maximum Price including this Change Order will be	\$ 8,875,852.00

The Contract Time will be unchanged by Zero (0) days.
 The date of Substantial Completion as of the date of this Change Order therefore is

NOTE: This Change Order does not include changes in the Contract Sum, Contract Time or Guaranteed Maximum Price which have been authorized by Construction Change Directive until the cost and time have been agreed upon by both the Owner and Contractor, in which case a Change Order is executed to supersede the Construction Change Directive.

NOT VALID UNTIL SIGNED BY THE ARCHITECT, CONTRACTOR AND OWNER.

Martin Riley Associates - Architects, PC	Rehab Builders, Inc.	HISTORIC LOFTS OF WACO HIGH LLC
<u>ARCHITECT (Firm name)</u>	<u>CONTRACTOR (Firm name)</u>	<u>OWNER (Firm name)</u>
215 Church Street Suite 200, Decatur, GA 30030	401 E. Fourth Street Suite 200, Winston-Salem, NC 27101	406 EAST FOURTH STREET, WINSTON-SALEM, NC 27101
<u>ADDRESS</u>	<u>ADDRESS</u>	<u>ADDRESS</u>
		
<u>BY (Signature)</u>	<u>BY (Signature)</u>	<u>BY (Signature)</u>
MARTIN L. MARION	CAROL W. OWENS	Bill Seashand
<u>(Typed name)</u>	<u>(Typed name)</u>	<u>(Typed name)</u>
4-27-09	April 24, 2009	4/24/2009
<u>DATE</u>	<u>DATE</u>	<u>DATE</u>

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Change Order

PROJECT (Name and address): HISTORIC LOFTS OF WACO HIGH 815 COLUMBIA AVENUE WACO, TX 76701	CHANGE ORDER NUMBER: 003 DATE: June 08, 2009	OWNER: <input type="checkbox"/> ARCHITECT: <input type="checkbox"/> CONTRACTOR: <input type="checkbox"/>
TO CONTRACTOR (Name and address): Rehab Builders, Inc. 401 E. Fourth Street Suite 200 Winston-Salem, NC 27101	ARCHITECT'S PROJECT NUMBER: CONTRACT DATE: January 15, 2008 CONTRACT FOR: General Construction	FIELD: <input type="checkbox"/> OTHER: <input type="checkbox"/>

THE CONTRACT IS CHANGED AS FOLLOWS:
(Include, where applicable, any undisputed amount attributable to previously executed Construction Change Directives)

Please see attached.

The original Guaranteed Maximum Price was	\$ 8,190,900.00
The net change by previously authorized Change Orders	\$ 684,952.00
The Guaranteed Maximum Price prior to this Change Order was	\$ 8,875,852.00
The Guaranteed Maximum Price will be increased by this Change Order in the amount of	\$ 206,821.00
The new Guaranteed Maximum Price including this Change Order will be	\$ 9,082,673.00

The Contract Time will be unchanged by Zero (0) days.
The date of Substantial Completion as of the date of this Change Order therefore is

NOTE: This Change Order does not include changes in the Contract Sum, Contract Time or Guaranteed Maximum Price which have been authorized by Construction Change Directive until the cost and time have been agreed upon by both the Owner and Contractor, in which case a Change Order is executed to supersede the Construction Change Directive.

NOT VALID UNTIL SIGNED BY THE ARCHITECT, CONTRACTOR AND OWNER.

Martin Riley Associates - Architects, PC

Rehab Builders, Inc.

HISTORIC LOFTS OF WACO HIGH
LLC

ARCHITECT (Firm name)

CONTRACTOR (Firm name)

OWNER (Firm name)

215 Church Street Suite 200, Decatur, GA
30030

401 E. Fourth Street Suite 200, Winston-Salem, NC 27101

406 EAST FOURTH STREET,
WINSTON-SALEM, NC 27101

ADDRESS

ADDRESS

ADDRESS

BY (Signature)

BY (Signature)

BY (Signature)

JACKIE E. MARTIN
(Typed name)

Carol W. Owens
(Typed name)

Bill S. [unclear]
(Typed name)

DATE

August 17, 2009
DATE

August 20, 2009
DATE

AIA® Document G701™ – 2001

Change Order

PROJECT (Name and address): HISTORIC LOFTS OF WACO HIGH 815 COLUMBIA AVENUE WACO, TX 76701	CHANGE ORDER NUMBER: 004 DATE: October 27, 2009	OWNER: <input type="checkbox"/> ARCHITECT: <input type="checkbox"/> CONTRACTOR: <input type="checkbox"/>
TO CONTRACTOR (Name and address): Rehab Builders, Inc. 401 E. Fourth Street Suite 200 Winston-Salem, NC 27101	ARCHITECT'S PROJECT NUMBER: CONTRACT DATE: January 15, 2008 CONTRACT FOR: General Construction	FIELD: <input type="checkbox"/> OTHER: <input type="checkbox"/>

THE CONTRACT IS CHANGED AS FOLLOWS:
 (Include, where applicable, any undisputed amount attributable to previously executed Construction Change Directives)
 Please see attached.

The original Guaranteed Maximum Price was	\$ 8,190,900.00
The net change by previously authorized Change Orders	\$ 891,773.00
The Guaranteed Maximum Price prior to this Change Order was	\$ 9,082,673.00
The Guaranteed Maximum Price will be increased by this Change Order in the amount of	\$ 133,327.00
The new Guaranteed Maximum Price including this Change Order will be	\$ 9,216,000.00

The Contract Time will be increased by Zero (0) days.
 The date of Substantial Completion as of the date of this Change Order therefore is

NOTE: This Change Order does not include changes in the Contract Sum, Contract Time or Guaranteed Maximum Price which have been authorized by Construction Change Directive until the cost and time have been agreed upon by both the Owner and Contractor, in which case a Change Order is executed to supersede the Construction Change Directive.

NOT VALID UNTIL SIGNED BY THE ARCHITECT, CONTRACTOR AND OWNER.

Martin Riley Associates - Architects, PC

Rehab Builders, Inc.

HISTORIC LOFTS OF WACO HIGH
 LLC

ARCHITECT (Firm name)

CONTRACTOR (Firm name)

OWNER (Firm name)

215 Church Street Suite 200, Decatur,
 GA 30030

401 E. Fourth Street Suite 200,
 Winston-Salem, NC 27101

406 EAST FOURTH STREET,
 WINSTON-SALEM, NC 27101

ADDRESS

ADDRESS

ADDRESS

BY (Signature)

BY (Signature)

BY (Signature)

(Typed name)

Carol W. Owens
 (Typed name)

Bill Scarborough
 (Typed name)

DATE

October 27, 2009
 DATE

11-3-09
 DATE

AIA[®] Document G701™ – 2001

Change Order

PROJECT (Name and address): HISTORIC LOFTS OF WACO HIGH 815 COLUMBIA AVENUE WACO, TX 76701	CHANGE ORDER NUMBER: 005 DATE: December 29, 2009	OWNER: <input type="checkbox"/> ARCHITECT: <input type="checkbox"/> CONTRACTOR: <input type="checkbox"/>
TO CONTRACTOR (Name and address): Rehab Builders, Inc. 401 E. Fourth Street Suite 200 Winston-Salem, NC 27101	ARCHITECT'S PROJECT NUMBER: CONTRACT DATE: January 15, 2008 CONTRACT FOR: General Construction	FIELD: <input type="checkbox"/> OTHER: <input type="checkbox"/>

THE CONTRACT IS CHANGED AS FOLLOWS:

(Include, where applicable, any undisputed amount attributable to previously executed Construction Change Directives)

The original Guaranteed Maximum Price was	\$ 8,190,900.00
The net change by previously authorized Change Orders	\$ 1,025,100.00
The Guaranteed Maximum Price prior to this Change Order was	\$ 9,216,000.00
The Guaranteed Maximum Price will be increased by this Change Order in the amount of	\$ 621,381.00
The new Guaranteed Maximum Price including this Change Order will be	\$ 9,837,381.00

The Contract Time will be increased by Zero (0) days.
 The date of Substantial Completion as of the date of this Change Order therefore is

NOTE: This Change Order does not include changes in the Contract Sum, Contract Time or Guaranteed Maximum Price which have been authorized by Construction Change Directive until the cost and time have been agreed upon by both the Owner and Contractor, in which case a Change Order is executed to supersede the Construction Change Directive.

NOT VALID UNTIL SIGNED BY THE ARCHITECT, CONTRACTOR AND OWNER.

Martin Riley Associates - Architects, PC

Rehab Builders, Inc.

HISTORIC LOFTS OF WACO HIGH LLC

ARCHITECT (Firm name)

CONTRACTOR (Firm name)

OWNER (Firm name)

215 Church Street Suite 200, Decatur, GA 30030

401 E. Fourth Street Suite 200, Winston-Salem, NC 27101

406 EAST FOURTH STREET, WINSTON-SALEM, NC 27101

ADDRESS

ADDRESS

ADDRESS

BY (Signature)

BY (Signature)

BY (Signature)

(Typed name)

(Typed name)

(Typed name)

DATE

December 29, 2009

DATE

1-5-2010

DATE

EXHIBIT 11A. RENT SCHEDULE

DEVELOPMENT NAME: Historic Lofts of Waco High

FILE NUMBER: 07192 / 08906

Type of Unit designation should be one or more of the following based on the unit's rent restrictions:

Tax Credit: (TC30%), (TC40%), (TC50%), (TC60%)

501(c)(3) Mortgage Revenue Bond: (MRB)

HOME: High (HH) or Low (LH)

Other: (OT) describe any "Other" restrictions on an attached sheet

Housing Trust Fund: (HTF30%), (HTF60%), (HTF65%)

For units funded under more than one program, the "Income Level Served" should be the most restrictive - for example a LH and TC50% would be "50%".

The rent and utility limits available at the time the Cost Certification Packet is submitted should be used to complete this form. Gross Rent cannot exceed the HUD maximum rent limits.

Type of Unit	Income Level Served	# of Units (A)	# of Bedrooms	# of Baths	Unit Size (Net Rentable Sq. Ft.) (B)	Total Net Rentable Sq. Ft. (A) x (B)	Gross Rent (C)	Tenant Paid Utility Allow. (D)	Tenant Paid Rent/ Unit (C) - (D) = (E)	Total Monthly Rent (A) x (E)
TC30%	30%	3	1	1.00	720	2,159	292	82	210	630
TC30%	30%	8	2	2.00	963	7,707	351	104	247	1,976
TC60%	60%	28	1	1.00	720	20,151	532	82	450	12,600
TC60%	60%	49	2	2.00	963	47,203	654	104	550	26,950
TC60%	60%	16	3	2.00	1,119	17,896	776	126	650	10,400
						0			0	-
						0			0	-
						0			0	-
						0			0	-
						0			0	-
						0			0	-
						0			0	-
						0			0	-
						0			0	-
Rent Restricted Total		104				95,116				52,556
Market Rate						0				-
Market Rate						0				-
Market Rate						0				-
Market Rate						0				-
Market Rate						0				-
Market Rate						0				-
Market Rate Total		0				0				-
Employee/Owner Occupied*						0				-
Total Units		104				95,116				52,556
+ Non Rental Income Source #1			\$ 20.00	per unit/month for:	laundry, vending machine, app fees, late fees					2,080
+ Non Rental Income Source #2				per unit/month for:	describe source here					-
+ Non Rental Income Source #3				per unit/month for:	describe source here					-
= POTENTIAL GROSS MONTHLY INCOME										54,636
- Provision for Vacancy & Collection Loss							% of Potential Gross Income:	7.00%		3,825
- Rental Concessions										
= EFFECTIVE GROSS MONTHLY INCOME										50,811
x 12 = EFFECTIVE GROSS ANNUAL INCOME										609,738

* Only enter Employee/Owner Occupied Units if not included in rent restricted or market rate units shown above.

HISTORIC LOFTS OF WACO HIGH, LLC
406 East Fourth Street
Winston-Salem, North Carolina 27101

December 20, 2010

Bank of America, N.A. (together with its successors and/or assigns)
730 15th Street, NW 3rd Floor
Mail Code: DC1-701-03-14
Washington, DC 20005
Attn: Loan Administration

Re: Multifamily Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (Texas) dated December 18, 2008, from Historic Lofts of Waco High, LLC, a North Carolina limited liability company, as grantor, for the benefit of Bank of America (the "Permanent Deed of Trust") securing Promissory Note (Term Only) dated December 18, 2008 in the original principal amount of \$2,300,000 (the "Permanent Note")

Ladies and Gentlemen:

You have asked us to confirm and acknowledge that the Permanent Deed of Trust, which was filed for record on December 23, 2008 as Document #2008040598 in the Public Records of El Paso County, Texas, and re-filed for record on December 31, 2008 as Document #2008041142, contained a scrivener's error and that the following correction is approved: the "Monthly Deposit to the Replacement Reserve" in Section 8(a) of Exhibit B to the Permanent Deed of Trust is corrected to reflect an amount of \$2,166.67, not \$2600. A blacklined copy of the corrected page B-3 to the Permanent Deed of Trust is attached to this letter.

Sincerely yours,

HISTORIC LOFTS OF WACO HIGH, LLC,
a North Carolina limited liability company

By: Landmark Asset Services, Inc.,
a North Carolina corporation,
its managing member

By: 
W.B. Scantland, Vice President

under this Section 7 may be commingled with any other funds held by Lender (provided that Lender shall maintain separate sub-accounts for such Imposition Deposits) and shall not operate to reduce the Indebtedness, unless applied by Lender for that purpose under Section 7(e).

(c) If Lender receives a bill or invoice for an Imposition, Lender shall pay the Imposition from the Imposition Deposits held by Lender. Lender shall have no obligation to pay any Imposition to the extent it exceeds Imposition Deposits then held by Lender and Borrower shall be solely responsible for payment of any such deficiency. Lender may pay an Imposition according to any bill, statement or estimate from the appropriate public office or insurance company without inquiring into the accuracy of the bill, statement or estimate or into the validity of the Imposition.

(d) If at any time the amount of the Imposition Deposits held by Lender for payment of a specific Imposition exceeds the amount reasonably deemed necessary by Lender, the excess shall be credited against future installments of Imposition Deposits. If at any time the amount of the Imposition Deposits held by Lender for payment of a specific Imposition is less than the amount reasonably estimated by Lender to be necessary, Borrower shall pay to Lender the amount of the deficiency within 15 days after notice from Lender, but in any event, not less than three (3) business days prior to the next installment of the applicable Imposition is due.

(e) If an Event of Default has occurred and is continuing, Lender may apply any Imposition Deposits, in any amounts and in any order as Lender determines, in Lender's discretion, to pay any Impositions or as a credit against the Indebtedness. Upon payment in full of the Indebtedness, Lender shall refund to Borrower any Imposition Deposits held by Lender.

8. REPLACEMENT RESERVE.

(a) On the date hereof, Borrower shall deposit with Lender an amount determined by Lender in its reasonable discretion (the "Initial Deposit to the Replacement Reserve") in an account or sub-account maintained by Lender with an Eligible Institution (which may be Lender, if Lender is such an institution) (the "Replacement Reserve"). On each Scheduled Payment Date thereafter, Borrower shall make deposits to the Replacement Reserve in an amount equal to \$2,166.67 (as such amount may be adjusted in accordance herewith, the "Monthly Deposit to the Replacement Reserve"). The Initial Deposit to the Replacement Reserve, the Monthly Deposits to the Replacement Reserve and all other funds in the Replacement Reserve are referred to collectively as the "Replacement Reserve Funds." Lender or a designated representative of Lender shall have the sole right to make withdrawals from such Replacement Reserve. All investment earnings on funds in the Replacement Reserve shall be calculated by Lender and added to and become part of the Replacement Reserve Funds. If applicable law requires and provided that no default or Event of Default exists under any of the Loan Documents, Lender shall pay to Borrower the interest earned on the Replacement Reserve once each year. Borrower assigns to Lender all of Borrower's interest in the Replacement Reserve as additional security for all of the Borrower's obligations under the Loan Documents. Any amounts deposited with Lender under this Section 8 may be commingled with any other funds held by Lender (provided that Lender shall maintain separate sub-accounts for such Replacement Reserve Funds) and shall not operate to reduce the Indebtedness, unless applied by Lender for that purpose under Section 8(l).

(b) No earlier than the 6th month and no later than the 9th month of the year which commences on the 10th anniversary of the date hereof and each subsequent 10th anniversary date thereafter, a physical needs assessment shall be performed on the Mortgaged Property by an engineer approved by Lender at the expense of Borrower, which expense may be paid of out of the Replacement

EXHIBIT 13A: SOURCES OF FUNDS SUMMARY

DEVELOPMENT NAME: Historic Lofts of Waco High

FILE NUMBER: 07192 / 08906

PERMANENT FINANCING

Source: Bank of America, NA Contact: Derrick Perkins
 Address: 730 15th Street, NW Phone: 202 442-7595 Fax: 202 442-7542
 City: Washington State: DC Zip: 20005
 Current Balance: \$ Closing Date: Est. 11/17/10
 Original Principle: \$2,300,000 Interest Rate: 7.25% Fixed? Yes No
 Annual Payment: \$188,280.60 Amortization: 18 yrs Term: 30 yrs Lien Priority: 1st

PERMANENT FINANCING

Source: Bank of America/Merrill Lynch – Historic Equity Contact: Sharon Strange
 Address: 225 Franklin Street, MAI-225-02-02 Phone: 817 346-5865 Fax: 404 965-7952
 City: Boston State: MA Zip: 02110
 Current Balance: \$ N/A Closing Date: N/A
 Original Principle: \$2,370,655 Interest Rate: N/A Fixed? Yes No
 Annual Payment: \$ N/A Amortization: N/A yrs Term: N/A yrs Lien Priority: N/A

GRANT

Source: City of Waco, Tax Increment Financing Contact: Jeff Wall
 Address: P.O. Box 2570 Phone: 254 750-5652 Fax: 254 750-5604
 City: Waco State: TX Zip: 76702
 Amount: \$300,000 Conditions: _____

LIHTC SYNDICATION

Net Proceeds: \$9,709,845 Net Syndication Rate (per \$1.00 of 10-yr LIHTC) 77¢

OWNER'S CONTRIBUTION

Amount: \$375,031 Source: Deferred Developer Fee

TOTAL SOURCES OF FUNDS: \$15,055,531

FINANCING NARRATIVE
HISTORIC LOFTS OF WACO HIGH, LLC

Bank of America, N.A. has closed syndication to acquire 99.99% of the \$1,031,581 of original LIHTC and additional LIHTC of \$229,564 (total LIHTC \$1,261,145) and also acquire 99.99% of the \$2,577,057 Historic Tax Credits. Please refer to the Limited Partnership Agreement located behind Tab 14.

Completion of Construction	December 30, 2009
Permanent Loan Closing	December 20, 2010

The Permanent Loan provided by Bank of America, N.A. is \$2,300,000 and bears interest at a rate of 7.25%. The term is 18 years with a 30-year amortization.

Total Sources of Permanent Proceeds:

Permanent Loan	\$ 2,300,000
Equity Syndication-LIHTC	9,709,845
Equity Syndication-Historic TC	2,370,655
TIF Funds-City of Waco	300,000
Deferred Developers Fee	<u>375,031</u>
Total Sources of Funds	\$15,055,531
Total Development Costs, Exhibit 10C: Total Development Cost Schedule	\$15,055,531



February 15, 2011
Tax Credit Equity Investments
Asset Management

Rosalio Banuelos
Senior Cost Certification Specialist
Texas Department of Housing and Community Affairs

Re: Investor Certification
Historic Lofts at Waco High, LLC
Historic Lofts at Waco High (the "Development")

This letter is to confirm that Bank of America (the "Investor") has purchased a 99.99% limited partner interest in the above captioned Partnership.

Per the independent Cost Certification, the aggregate federal credits generated by the Partnership are \$1,261,145 (\$1,261,019 to the Investor). Per the Amended and Restated Agreement of Limited Partnership (the "Agreement"), the gross proceeds are \$9,709,845 subject to the adjustment provisions of the Agreement. Net syndication proceeds are equal to the specified gross proceeds, as syndication expenses were not charged.

Anticipated Gross Proceeds:	\$9,709,845
Acquisition Fees	-0-
Organizational Expenses	-0-
Total Syndication Costs	-0-
Anticipated Net Proceeds	\$9,709,845

The net proceeds are equivalent to approximately \$0.77 for each \$1.00 of total credit awarded to the project and allocated to the investment partner. As there are no investor fees, there will be no fees included in eligible basis. The pay-in is approximately 8% at closing, 11.99% upon 25% Completion, 79.30% upon Conversion and .70% at receipt of the 8609's, at which time the final total equity contribution will be adjusted in accordance with the actual credit allocation.

Per the independent Cost Certification, the aggregate Historic Credits generated by the Partnership are \$2,577,057 (\$2,576,799 to the Investor). The gross proceeds are \$2,370,655 calculated at .92 per \$1.00 of Historic Tax Credits.

Please feel free to contact me should you have any questions. My telephone number is (617) 346-5865, or email Sharon.strange@baml.com.

Sharon Strange
Senior Vice President
Bank of America

Independent Auditor's Report

DEVELOPMENT NAME: Beaumont Downtown Lofts

FILE NUMBER: 060202

We have audited the costs included in the accompanying Texas Department of Housing and Community Affairs ("TDHCA") Cost Certification of Beaumont Downtown Lofts ("Development"), owned by Beaumont Downtown Lofts, Ltd. Partnership, as of June 26, 2009. The Cost Certification is the responsibility of the Development Owner. Our responsibility is to express an opinion on the Cost Certification based on our audit.

We conducted our audit in accordance with generally accepted auditing standards. Those standards require that we plan and perform the audit to obtain reasonable assurance that the Cost Certification is free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the Cost Certification. An audit also includes assessing the accounting principles used and significant estimates made by the Development Owner, as well as evaluating the overall Cost Certification presentation. We believe that our audit provides a reasonable basis for our opinion.

The accompanying Cost Certification was prepared in conformity with the accounting practices prescribed by the Internal Revenue Service, under the accrual method of accounting, and in conformity with the format and qualified allocation plan rules set by TDHCA, which is a comprehensive basis of accounting other than generally accepted accounting principles.

In our opinion and on the basis of the accounting described above and information presented in *Exhibit 10C: Total Development Cost Schedule*, the Cost Certification presents fairly, in all material respects:

Total Development Cost:	<u>\$5,659,038</u>	As of:	<u>June 26, 2009</u>
Eligible Basis:	<u>\$4,059,462</u>	As of:	<u>June 26, 2009</u>

This report is intended solely for the information and use of the Development Owner and TDHCA.

We have no financial interest in the Development other than in the practice of our profession.

Bernard Robinson & Company, LLP

Greensboro, North Carolina
June 26, 2009

By: *B. Timothy Smith*
Authorized Signature

Name: B. Timothy Smith

Title: Partner

Date: June 26, 2009

Contact Information

Contact: B. Timothy Smith

Address: 1501 Highwoods Blvd., Suite 300
Greensboro, North Carolina 27410

Phone: 336.294.4494

Email: tsmith@brccpa.com

EXHIBIT 9A: PLACEMENT-IN-SERVICE

DEVELOPMENT NAME: Beaumont Downtown Lofts

060202

FILE NUMBER: 060202

Credit Period Election	Bldg. #	BIN #	Placed in Service Date		Not Rentable Area (NRA)	Applicable Fraction			Applicable Percentage				Eligible Basis		Requested Tax Credits				
			Acquisition	Rehab/New Construction		Based on Units	Based on NRA	Weighted Average	Acquisition	Acquisition Weighted Average	Rehab/ New Constr.	Rehab/New Weighted Average	Acquisition	Rehab/ New Constr.	Acquisition	Rehab/ New Constr.	Total		
2008	1	06-20201		10/9/2008	29,515	100.00%	100.00%	79%		0.00%	9.00%	7.10%							
2009	2	06-20202		12/22/2008	7,889	100.00%	100.00%	21%		0.00%	9.00%	1.90%	4,144,109		\$ -	\$ 372,970	\$ 372,970		
	3							0%		0.00%		0.00%	1,101,599		-	99,144	99,144		
	4							0%		0.00%		0.00%			-	-	-		
	5							0%		0.00%		0.00%			-	-	-		
	6							0%		0.00%		0.00%			-	-	-		
	7							0%		0.00%		0.00%			-	-	-		
	8							0%		0.00%		0.00%			-	-	-		
	9							0%		0.00%		0.00%			-	-	-		
	10							0%		0.00%		0.00%			-	-	-		
	11							0%		0.00%		0.00%			-	-	-		
	12							0%		0.00%		0.00%			-	-	-		
	13							0%		0.00%		0.00%			-	-	-		
	14							0%		0.00%		0.00%			-	-	-		
	15							0%		0.00%		0.00%			-	-	-		
	16							0%		0.00%		0.00%			-	-	-		
	17							0%		0.00%		0.00%			-	-	-		
	18							0%		0.00%		0.00%			-	-	-		
	19							0%		0.00%		0.00%			-	-	-		
	20							0%		0.00%		0.00%			-	-	-		
	21							0%		0.00%		0.00%			-	-	-		
	22							0%		0.00%		0.00%			-	-	-		
	23							0%		0.00%		0.00%			-	-	-		
	24							0%		0.00%		0.00%			-	-	-		
	25							0%		0.00%		0.00%			-	-	-		
	26							0%		0.00%		0.00%			-	-	-		
	27							0%		0.00%		0.00%			-	-	-		
	28							0%		0.00%		0.00%			-	-	-		
	29							0%		0.00%		0.00%			-	-	-		
	30							0%		0.00%		0.00%			-	-	-		
	31							0%		0.00%		0.00%			-	-	-		
	32							0%		0.00%		0.00%			-	-	-		
	33							0%		0.00%		0.00%			-	-	-		
	34							0%		0.00%		0.00%			-	-	-		
	35							0%		0.00%		0.00%			-	-	-		
	250							0%		0.00%		0.00%			-	-	-		
			TOTAL		37,404			100%		0%		9%	\$5,245,708	\$ -	\$ 472,114	\$ 472,114			

Beaumont Downtown Lofts

BIN	Unit #	Unit Address	Current Tenant	Unit Accom	# of Bedrooms	# of Baths	Sq. Ft. in Unit	Income Set-Aside
-----	--------	--------------	----------------	------------	---------------	------------	-----------------	------------------

Neches

TX-06-20201	102	620 Pearl Street	Barbara Loere	HC	1	1	773	30
TX-06-20201	103	620 Pearl Street	Gary Douglas		1	1	942	60
TX-06-20201	105	620 Pearl Street	Vacant		1	1	938	60
TX-06-20201	106	620 Pearl Street	Jessica Petry		1	1	782	30
TX-06-20201	107	620 Pearl Street	Craig Johnson		1	1	929	60
TX-06-20201	109	620 Pearl Street	Stacia Dionne		1	1	981	60
TX-06-20201	203	620 Pearl Street	Constrance Gregory	AV	1	1	970	60
TX-06-20201	205	620 Pearl Street	Eboni Richardson		1	1	899	30
TX-06-20201	207	620 Pearl Street	Brigitte Marie Duplechai		1	1	899	60
TX-06-20201	209	620 Pearl Street	Misty A Johns		1	1	899	60
TX-06-20201	101	620 Pearl Street	Wanda Turner		2	2	1202	60
TX-06-20201	104	620 Pearl Street	Elizabeth Simon		2	2	1027	60
TX-06-20201	108	620 Pearl Street	Sarah E Kain	HC	2	2	880	60
TX-06-20201	201	620 Pearl Street	Shandrica M Coleman		2	2	1103	60
TX-06-20201	202	620 Pearl Street	Lakista Davis		2	2	1064	60
TX-06-20201	204	620 Pearl Street	Toria Rubit		2	2	1363	60
TX-06-20201	206	620 Pearl Street	Katisha Barnes	HC	2	2	1304	60
TX-06-20201	208	620 Pearl Street	Latasha N Arceneaux		2	2	1101	60
TX-06-20201	210	620 Pearl Street	Melanie Edmond		2	2	975	60
TX-06-20201	301	620 Pearl Street	Valori Totten		2	2	1093	60
TX-06-20201	302	620 Pearl Street	Travern Busby		2	2	1082	60
TX-06-20201	303	620 Pearl Street	Belinda Banks		2	2	954	60
TX-06-20201	304	620 Pearl Street	Brenda J Schexnayder	HC	2	2	1335	60
TX-06-20201	305	620 Pearl Street	Claudette Alexander		2	2	1395	60
TX-06-20201	306	620 Pearl Street	Justin Revia		2	2	1182	60
TX-06-20201	307	620 Pearl Street	Tim Tobola	AV	2	2	1395	60
TX-06-20201	308	620 Pearl Street	Audrey St Andrew		2	2	1074	60
TX-06-20201	309	620 Pearl Street	Ashley Selman		2	2	974	60

901.2 average 1 bedroom unit

Antioch

TX-06-20202	203	527 Forsythe Street	Joy Thomas		1	1	796	30
TX-06-20202	302	527 Forsythe Street	Isaac Rubit		1	1	875	60
TX-06-20202	202	527 Forsythe Street	Etha C Eglin		2	1.5	1097	60
TX-06-20202	101	527 Forsythe Street	Lillian Taylor	HC	2	2	972	60
TX-06-20202	102	527 Forsythe Street	Se'ahn L Lamb		2	2	908	60
TX-06-20202	103	527 Forsythe Street	Latoya N Hurst		2	2	947	60
TX-06-20202	201	527 Forsythe Street	Michael Pena		2	2	1025	60
TX-06-20202	301	527 Forsythe Street	Rashonda R Davis		2	2	1269	60

1139.056 average 2 bedroom unit

835.5 average 1 Br, 1BA unit
1097 average 2 BA, 1.5 BA unit

1024.2 average 2 BR, 2 BA unit

7,889
37,404

4 @ 30% - 1 BR units /1 BA	
8 @ 60% - 1 BR units /1 BA	
23 @ 60% - 2 BR units /2 BA	
1 @ 60% - 2 BR units /1.5 BA	
<u>36</u>	

Averages	
3,250	812.50
7,433	929.13
25,624	1,114.09
<u>1,097</u>	<u>1,097.00</u>

37,404

Fyh. QB 06-0202

EXHIBIT 9B: INDIVIDUAL BUILDING DESCRIPTION

DEVELOPMENT NAME: **Beaumont Downtown Lofts**

FILE NUMBER: **060202**

The form has been constructed to allow information for two different building types to be presented on a single page. If the development consists of more than two building types, the worksheet may be copied to a new worksheet multiple times. Right click with the mouse on the worksheet tab. Select "Move or Copy" and check "Create a copy" at the bottom of the dialog box.

Building Type	Tax Credit
Building Numbers	
06-20201	

Tax Credit	Tax Credit
Building Numbers	
06-20202	

Housing Tax Credit Units			
	# of Units	Sq. Ft/Unit	Total Sq. Ft.
A.	10	901.2	9,012
B.	18	1139.06	20,503
C.			0
D.			0
E.			0
F.			0
G.			0
H.			0
I.			0
J.			0
SUBTOTAL	28		29,515

Housing Tax Credit Units			
	# of Units	Sq. Ft/Unit	Total Sq. Ft.
A.	2	835.5	1,671
B.	5	1024.7	5,124
C.	1	1097	1,094
D.			0
E.			0
F.			0
G.			0
H.			0
I.			0
J.			0
SUBTOTAL	8		7,889

Market Rate Units			
	# of Units	Sq. Ft/Unit	Total Sq. Ft.
A.			0
B.			0
C.			0
D.			0
E.			0
F.			0
G.			0
H.			0
I.			0
J.			0
SUBTOTAL	0		0

Market Rate Units			
	# of Units	Sq. Ft/Unit	Total Sq. Ft.
A.			0
B.			0
C.			0
D.			0
E.			0
F.			0
G.			0
H.			0
I.			0
J.			0
SUBTOTAL	0		0

Building Total		
28		29,515

Building Total		
8		7,889

Building Applicable Fraction	
Unit Fraction	100.00%
Square Footage Fraction	100.00%
Applicable Fraction	100.00%

Building Applicable Fraction	
Unit Fraction	100.00%
Square Footage Fraction	100.00%
Applicable Fraction	100.00%

EXHIBIT 10C: TOTAL DEVELOPMENT COST SCHEDULE

DEVELOPMENT NAME:

Beaumont Downtown Lofts

FILE NUMBER: 060202

DEVELOPMENT COST SUMMARY		
Total Cost	Eligible Basis	
	Acquisition	New/Rehab.

Taxpayer Identification Number (TIN)
and % of cost if item involves multiple payees
[Texas Statutes, Title 10, Chapter 2306.184]

ACQUISITION

Site acquisition cost
Existing structures acquisition cost
Closing costs & acq. legal fees
Other:

122,989		
97,441		
3,482		
\$223,912	\$0	\$0

Subtotal Acquisition Cost

DIRECT CONSTRUCTION COSTS

Offsite Work
Demolition
Site Work
Residential Buildings
Accessory Buildings

145,011		141,494
3,307,498		3,278,598
\$3,452,509	\$0	\$3,420,092

Subtotal Direct Construction Costs

OTHER CONSTRUCTION COSTS

General requirements (<6%)
Contractor overhead (<2%)
Contractor profit (<6%)

5.28%	185,150		180,660
0%			
0%			
	\$185,150	\$0	\$180,660

Subtotal Other Const. Costs

INDIRECT CONSTRUCTION COSTS

Architectural - Design fees
Architectural - Supervision fees
Engineering fees
Real estate attorney/other legal fees
Accounting fees
Impact Fees
Building permits & related costs
Appraisal
Market analysis
Environmental assessment
Soils report
Survey
Marketing
Course of construction insurance
Hazard & liability insurance
Real property taxes
Personal property taxes
Tenant relocation expenses
Other:

120,000		117,090
20,000		19,515
26,250		25,613
19,686		19,209
13,415		10,090
3,240		3,161
13,800		13,465
8,500		8,294
1,948		1,901
9,286		9,061
20,166		16,578
10,348		7,559
107,375		76,396
\$374,014	\$0	\$327,932

Subtotal Indirect Const. Cost

56-2027384
56-2027384
58-1476866
58-1476866
51-0562186
74-1164324
66-0571159 - 56%; 94-3108253 - 22%; 20-5315140 - 22%
74-6000278
452-31-8850
94-3108253
66-0483317
76-0649040 - 49%; 74-2145278 - 51%
56-1623293
74-6000291
57-1162167-23%; 76-0318412-28%; Whitaker-34%; other-15%

DEVELOPMENT COST SUMMARY		
Total Cost	Eligible Basis	
	Acquisition	New/Rehab.

Taxpayer Identification Number (TIN)
and % of cost if item involves multiple payees
[Required by Texas Statutes, Title 10, Chapter 2306.184]

DEVELOPER FEES

Housing consultant fees
General & administrative
Profit or fee

Subtotal Developer's Fees (<15%)

0.147343

150,000		146,362
510,700		498,315
\$660,700	\$0	\$644,677

58-2554978-60%; 57-1152167-20%; 04-3677539-20%
58-2554978-60%; 57-1152167-20%; 04-3677539-20%

FINANCING:

CONSTRUCTION LOAN(S)

Interest
Loan origination fees
Title & recording fees
Closing costs & legal fees
Inspection fees
Credit Report
Discount Points
Other:

320,907		186,165
110,865		108,176
55,146		53,809
46,664		44,617
5,250		5,123

41-0558220-36%; 95-4816953-84%
41-0558220-61%; 58-2399541-22%; 95-4816953-27%
75-2345570-64%; 30%-Beaumont Title, other-6%
74-1164324
95-4816953-86%; 74-2610542-14%

PERMANENT LOAN(S)

Loan origination fees
Mortgage brokerage fee
Title & recording fees
Closing costs & legal
Bond premium
Credit report
Discount points
Credit enhancement fees
Prepaid MIP
Other:

7,600		

95-4816953

BRIDGE LOAN(S)

Interest
Loan origination fees
Title & recording fees
Closing costs & legal fees
Other:

OTHER FINANCING COSTS

Tax credit fees
Tax credit application fee
Payment bonds
Performance bonds
Cost of underwriting & issuance
Syndication organizational cost
Tax opinion
Other; Organization
Subtotal Financing Cost

28,083		
50,000		48,788
26,349		
3,500		
11,389		
\$665,753	\$0	\$446,678

74-2610542
TDHCA TIN: 74-2610542
357-28-8762-50%; CBRE/Melody-50%
74-1164324-93%; 56-1064033-7%
74-1164324
74-1164324-55%; 56-1064033-25%; Tx SOS-16%, NC SOS-2%

DEVELOPMENT COST SUMMARY		
Total Cost	Eligible Basis	
	Acquisition	New/Rehab.

Taxpayer Identification Number (TIN)
 and % of cost if item involves multiple payees
 [Required by Texas Statutes, Title 10, Chapter 2306.184]

RESERVES

Rent-up
 Operating
 Replacement
 Escrows

25,000		
72,000		
\$97,000	\$0	\$0
\$5,659,038	\$0	\$5,020,039
- Commercial Space Costs 77,642		
\$5,581,396		

Subtotal Reserves
TOTAL DEVELOPMENT COSTS
 - Commercial Space Costs
TOTAL RESIDENTIAL COSTS

Deduct From Basis:

Fed. grant proceeds used to finance costs in eligible basis
 Fed. B.M.R. loans used to finance costs in eligible basis
 Non-qualified non-recourse financing
 Non-qualified portion of higher quality units
 Historic Credits (residential portion only)

		960,577
Total Eligible Basis	\$0	\$4,059,462
High Cost Area Adjustment (100% or 130%)		130%
Total Adjusted Basis	\$0	\$5,277,301
Applicable Fraction		100%
Total Qualified Basis	\$5,277,301	\$0
Applicable Percentage	0.00%	9.00%
Owner's Requested Credits	\$474,957	\$0

Part II Energy Credit (For Tax Years Beginning Before October 4, 2008), Qualifying Advanced Coal Project Credit, Qualifying Gasification Project Credit, and Qualifying Advanced Energy Project Credit (continued)

6 Qualifying advanced coal project credit (see instructions):			
a	Basis of qualified investment in integrated gasification combined cycle property placed in service during the tax year for projects described in section 48A(d)(3)(B)(i) \$ x 20% (.20)	6a	
b	Basis of qualified investment in advanced coal-based generation technology property placed in service during the tax year for projects described in section 48A(d)(3)(B)(ii) \$ x 15% (.15)	6b	
c	Basis of qualified investment in advanced coal-based generation technology property placed in service during the tax year for projects described in section 48A(d)(3)(B)(iii) \$ x 30% (.30)	6c	
d	Total. Add lines 6a, 6b, and 6c	6d	
7 Qualifying gasification project credit (see instructions):			
a	Basis of qualified investment in qualified gasification property placed in service during the tax year for which credits were allocated or reallocated after October 3, 2008, and that include equipment that separates and sequesters at least 75% of the project's carbon dioxide emissions \$ x 30% (.30)	7a	
b	Basis of qualified investment in property other than in a above placed in service during the tax year \$ x 20% (.20)	7b	
c	Total. Add lines 7a and 7b	7c	
8a Qualifying advanced energy project credit (see instructions):			
	Basis of qualified investment in advanced energy project property placed in service after February 17, 2009 \$ x 30% (.30)	8a	
8b	Credit from cooperatives. Enter the unused investment credit from cooperatives	8b	
9	Add lines 5t, 6d, 7c, 8a, and 8b. Report this amount on Form 3800, line 1a	9	

Part III Rehabilitation Credit (For Tax Years Beginning in 2008) and Energy Credit (For Tax Years Beginning After October 3, 2008)

10 Rehabilitation credit (see instructions for requirements that must be met):			
a	Check this box if you are electing under section 47(d)(5) to take your qualified rehabilitation expenditures into account for the tax year in which paid (or, for self-rehabilitated property, when capitalized). See instructions. Note. This election applies to the current tax year and to all later tax years. You may not revoke this election without IRS consent <input type="checkbox"/>		
b	Enter the date on which the 24- or 60-month measuring period begins and ends		
c	Enter the adjusted basis of the building as of the beginning date above (or the first day of your holding period, if later) \$		
d	Enter the amount of the qualified rehabilitation expenditures incurred, or treated as incurred, during the period on line 10b above \$		
Enter the amount of qualified rehabilitation expenditures and multiply by the percentage shown:			
e	Pre-1936 buildings located in the Gulf Opportunity Zone \$ x 13% (.13)	10e	
f	Pre-1936 buildings affected by a Midwestern disaster \$ x 13% (.13)	10f	
g	Other pre-1936 buildings \$ x 10% (.10)	10g	
h	Certified historic structures located in the Gulf Opportunity Zone \$ x 26% (.26)	10h	
i	Certified historic structures affected by a Midwestern disaster See attached supplemental statements \$ x 26% (.26)	10i	
j	Other certified historic structures \$ 4,802,886 x 20% (.20)	10j	960,577
For properties identified on lines 10h, 10i, or 10j, complete lines 10k and 10l			
k	Enter the assigned NPS project number or the pass-through entity's employer identification number (see instructions) 19408 & 19409		
l	Enter the date that the NPS approved the Request for Certification of Completed Work (see instructions) 6/18/2009 & 4/22/2009		
m	Rehabilitation credit from an electing large partnership (Schedule K-1 (Form 1065-B), box 9)	10m	

EXHIBIT 10C: TOTAL DEVELOPMENT COST SCHEDULE

DEVELOPMENT NAME:

Beaumont Downtown Lofts

FILE NUMBER: 060202

DEVELOPMENT COST SUMMARY		
Total Cost	Eligible Basis	
	Acquisition	New/Rehab.

Historic Eligible Basis

Taxpayer Identification Number (TIN) and % of cost if item involves multiple payees
(Texas Statutes, Title 10, Chapter 2306.184)

ACQUISITION

Site acquisition cost	122,989		
Existing structures acquisition cost	97,441		
Closing costs & acq. legal fees	3,482		
Other:			
Subtotal Acquisition Cost	\$223,912	\$0	\$0

DIRECT CONSTRUCTION COSTS

Offsite Work			
Demolition			
Site Work	145,011		141,494
Residential Buildings	3,307,498		3,278,598
Accessory Buildings			
Subtotal Direct Construction Costs	\$3,452,509	\$0	\$3,420,092

3,200,245

58-2027384
58-2027384

OTHER CONSTRUCTION COSTS

General requirements (<6%)	5.28%	185,150		180,660	185,150	58-2027384
Contractor overhead (<2%)	0%					
Contractor profit (<6%)	0%					
Subtotal Other Const. Costs		\$185,150	\$0	\$180,660	\$185,150	

INDIRECT CONSTRUCTION COSTS

Architectural - Design fees	120,000		117,090	120,000	58-1476866
Architectural - Supervision fees	20,000		19,515	20,000	58-1476866
Engineering fees	26,250		25,613	26,250	51-0562186
Real estate attorney/other legal fees	19,686		19,209	19,686	74-1164324
Accounting fees	13,415		10,090	10,415	88-0571159 - 56%; 94-3103253 - 22%; 20-5315140 - 22%
Impact Fees					
Building permits & related costs	3,240		3,161	3,240	74-6000278
Appraisal	13,800		13,465	13,800	41-0558220
Market analysis	8,500		8,294	8,500	94-3108253
Environmental assessment	1,948		1,901	1,948	86-0483317
Soils report					
Survey	9,286		9,061	9,286	78-0649040 - 49%; 74-2145278 - 51%
Marketing					
Course of construction insurance					
Hazard & liability insurance	20,166		16,578	17,067	58-1623293
Real property taxes	10,348		7,559	7,810	74-6000291
Personal property taxes					
Tenant relocation expenses					
Other:	107,375		76,396	40,362	57-1152167-23%; 76-0318412-28%; Whitaker-34%; other-15%
Subtotal Indirect Const. Cost	\$374,014	\$0	\$327,932	\$298,364	

Taxpayer Identification Number (TIN)
and % of cost if item involves multiple payees
 [Required by Texas Statutes, Title 10, Chapter 2306.184]

DEVELOPMENT COST SUMMARY		
Total Cost	Eligible Basis	
	Acquisition	New/Rehab.

DEVELOPER FEES

Housing consultant fees
 General & administrative
 Profit or fee
Subtotal Developer's Fees (<15%)

0.14734

150,000		146,362	150,000
510,700		498,315	510,700
\$660,700	\$0	\$644,677	\$660,700

58-2554978-60%; 57-1152167-20%; 04-3677539-20%
 58-2554978-60%; 57-1152167-20%; 04-3677539-20%

**FINANCING:
CONSTRUCTION LOAN(S)**

Interest
 Loan origination fees
 Title & recording fees
 Closing costs & legal fees
 Inspection fees
 Credit Report
 Discount Points
 Other:

320,907		186,165
110,865		108,176
55,146		53,809
46,664		44,617
5,250		5,123

191,419 41-0558220-36%; 95-4816953-64%
 110,865 41-0558220-51%; 58-2399541-22%; 95-4816953-27%
 55,146 75-2345570-64%; 30%-Beaumont Title; other-6%
 45,748 74-1164324
 5,250 95-4816953-86%; 74-2610542-14%

PERMANENT LOAN(S)

Loan origination fees
 Mortgage brokerage fee
 Title & recording fees
 Closing costs & legal
 Bond premium
 Credit report
 Discount points
 Credit enhancement fees
 Prepaid MIP
 Other:

7,600		

95-4816953

BRIDGE LOAN(S)

Interest
 Loan origination fees
 Title & recording fees
 Closing costs & legal fees
 Other:

OTHER FINANCING COSTS

Tax credit fees
 Tax credit application fee
 Payment bonds
 Performance bonds
 Cost of underwriting & issuance
 Syndication organizational cost
 Tax opinion
 Other: Organization
Subtotal Financing Cost

28,083			
50,000		48,788	
26,349			
3,500			
11,389			
\$665,753	\$0	\$446,678	\$458,428

74-2610542
 TDHCA TIN: 74-2610542
 50,000 357-28-8762-50%; CBRE/Melody-50%
 74-1164324-93%; 58-1064033-7%
 74-1164324
 74-1164324-55%; 56-1064033-25%; Tx SOS-18%, NC SOS-2%

DEVELOPMENT COST SUMMARY			
Total Cost	Eligible Basis		
	Acquisition	New/Rehab.	
Rent-up	25,000		
Operating	72,000		
Replacement			
Escrows			
Subtotal Reserves	\$97,000	\$0	\$0
TOTAL DEVELOPMENT COSTS	\$5,659,038	\$0	\$5,020,039
- Commercial Space Costs	77,642		
TOTAL RESIDENTIAL COSTS	\$5,581,396		

Taxpayer Identification Number (TIN) and % of cost if item involves multiple payees [Required by Texas Statutes, Title 10, Chapter 2306.184]

RESERVES

Rent-up
 Operating
 Replacement
 Escrows

Subtotal Reserves

TOTAL DEVELOPMENT COSTS

- Commercial Space Costs

TOTAL RESIDENTIAL COSTS

Deduct From Basis:

Fed. grant proceeds used to finance costs in eligible basis

Fed. B.M.R. loans used to finance costs in eligible basis

Non-qualified non-recourse financing

Non-qualified portion of higher quality units

Historic Credits (residential portion only)

Total Eligible Basis

High Cost Area Adjustment (100% or 130%)

Total Adjusted Basis

Applicable Fraction

Total Qualified Basis

Applicable Percentage

Owner's Requested Credits

		960,577
	\$0	\$4,059,462
		130%
	\$0	\$5,277,301
		100%
\$5,277,301	\$0	\$5,277,301
	0.00%	9.00%
\$474,957	\$0	\$474,957

\$960,577 Note: Historic Credit = 20% of the total historic cost of \$4,802,887

EXHIBIT 11A. RENT SCHEDULE

DEVELOPMENT NAME: **Beaumont Downtown Lofts**

FILE NUMBER: **060202**

Type of Unit designation should be one or more of the following based on the unit's rent restrictions:

Tax Credit: (TC30%), (TC40%), (TC50%), (TC60%)

501(c)(3) Mortgage Revenue Bond: (MRB)

HOME: High (HH) or Low (LH)

Other: (OT) describe any "Other" restrictions on an attached sheet

Housing Trust Fund: (HTF30%), (HTF60%), (HTF65%)

For units funded under more than one program, the "Income Level Served" should be the most restrictive - for example a LH and TC50% would be "50%".

The rent and utility limits available at the time the Cost Certification Packet is submitted should be used to complete this form. Gross Rent cannot exceed the HUD maximum rent limits.

Type of Unit	Income Level Served	# of Units (A)	# of Bedrooms	# of Baths	Unit Size (Net Rentable Sq. Ft.) (B)	Total Net Rentable Sq. Ft. (A) x (B)	Gross Rent (C)	Tenant Paid Utility Allow. (D)	Tenant Paid Rent/ Unit (C) - (D) = (E)	Total Monthly Rent (A) x (E)
TC30%	30%	4	1	1.00	814	3,256	303	89	214	856
TC60%	60%	8	1	1.00	929	7,432	589	89	500	4,000
TC60%	60%	23	2	2.00	1,114	25,622	694	119	575	13,225
TC60%	60%	1	2	1.50	1,094	1,094	694	119	575	575
						0			0	-
						0			0	-
						0			0	-
						0			0	-
						0			0	-
						0			0	-
						0			0	-
						0			0	-
						0			0	-
						0			0	-
Rent Restricted Total		36				37,404				18,656
Market Rate						0				-
Market Rate						0				-
Market Rate						0				-
Market Rate						0				-
Market Rate						0				-
Market Rate						0				-
Market Rate Total		0				0				-
Employee/Owner Occupied*						0				-
Total Units		36				37,404				18,656
+ Non Rental Income Source #1			\$ 5.00	per unit/month for:	Laundry					180
+ Non Rental Income Source #2			\$ 7.00	per unit/month for:	NSF, late fee & other tenant charges					252
+ Non Rental Income Source #3			\$ 8.33	per unit/month for:	2 commercial spaces - \$150 each					300
= POTENTIAL GROSS MONTHLY INCOME										19,388
- Provision for Vacancy & Collection Loss							% of Potential Gross Income:	7.50%		1,454
- Rental Concessions										
= EFFECTIVE GROSS MONTHLY INCOME										17,934
x 12 = EFFECTIVE GROSS ANNUAL INCOME										215,205

* Only enter Employee/Owner Occupied Units if not included in rent restricted or market rate units shown above.

EXHIBIT 11B: UTILITY ALLOWANCE

DEVELOPMENT NAME: **Beaumont Downtown Loft**

FILE NUMBER: **060202**

Owner must attach this form to the Utility Allowance documentation used to calculate the net rent in Exhibit 11A. Rent Schedule. This exhibit must clearly indicate which utility costs are included in the net rent estimate.

NOTE:

If more than one entity (Sec. 8 administrator, public housing authority) is responsible for setting the utility allowance(s) in the area of the development location, then the selected utility allowance must be the one which most closely reflects the actual expenses.

If an independent utility cost evaluation is conducted it must include confirming documentation from all the relevant utility providers.

If other reductions to the tenant rent is required such as the cost of flood insurance for the tenant's contents, documentation for these reductions to gross rent should also be attached.

Utility(1)	Energy Source (2)	Source of Utility Allowance	Effective Date
<input checked="" type="checkbox"/> Heating	E	Beaumont Housing Authority	2008
<input checked="" type="checkbox"/> Cooling	E	Beaumont Housing Authority	2008
<input checked="" type="checkbox"/> Water Heater	E	Beaumont Housing Authority	2008
<input checked="" type="checkbox"/> Cooking	E	Beaumont Housing Authority	2008
<input type="checkbox"/> Water			
<input type="checkbox"/> Sewer			
<input type="checkbox"/> Trash			
<input checked="" type="checkbox"/> General Electricity			

Other (Describe)

2008 Utility Allowance Chart from Beaumont Housing Authority	

(1) Check the box if the TENANT will have to pay for this utility directly or will have to pay an extra fee for the appliances listed.

(2) Indicate the type of energy source used where applicable as follows: N= Natural Gas, P= Propane, E= Electric, L= Oil, O= Other

Monthly Utility Allowance Worksheet

(using estimated consumption data)

Locality: **BEAUMONT, TEXAS**
 Dwelling Type: **APARTMENT**

Utility/Service	Type	Est. Consumption			Factors					Actual Family Allowance
		Used	Unit	Cost	0 BR	1 BR	2 BR	3 BR	4 BR	
Heating	Nat Gas	14	CCF	\$23	\$9	\$14	\$18	\$23	\$28	
	Bottle Gas									
	Oil/Elect	195	KWH	\$24	\$9	\$14	\$19	\$24	\$28	
	Coal/Other				\$0	\$0	\$0	\$0	\$0	
Cooking	Nat Gas	9	CCF	\$15	\$6	\$9	\$12	\$15	\$18	
	Bottle Gas									
	Oil/Elect	120	KWH	\$15	\$6	\$9	\$12	\$15	\$17	
	Other									
Other Electric		210	KWH	\$31	\$12	\$19	\$25	\$31	\$37	
Elec. Customer Charge					\$4	\$4	\$4	\$4	\$4	
Air Conditioning		369	KWH	\$45	\$18	\$27	\$36	\$45	\$54	
Water Heating	Electric	280	KWH	\$33	\$13	\$20	\$27	\$33	\$40	
	Nat gas	17	CCF	\$28	\$11	\$17	\$22	\$28	\$34	
	Nat gas Min \$			\$12	\$12	\$12	\$12	\$12	\$12	
Water, in 1,000 gals	Domestic	9	K Gals	\$26	\$10	\$16	\$21	\$26	\$31	
Sewer	Fixed Cost				\$10	\$10	\$10	\$10	\$10	
Trash Collection	Fixed Cost			\$14	\$14	\$14	\$14	\$14	\$14	
Range/Microwave	Tenant Owned				\$6	\$6	\$6	\$6	\$6	
Refrigerator/lights	Tenant Owned				\$10	\$10	\$10	\$10	\$10	
Other:										
					89	119	Total Family Allowance:			\$0

Utility Rates	
Electric, per KWH:	\$0.119355
Gas, per 100 cubic ft	\$1.62402
Water, per 1K Gals	\$2.85
Bottle Gas, per gal	\$0.00

RESIDENT'S INFORMATION
NAME:
ADDRESS:
FAMILY COMPOSITION:
NUMBER OF BEDROOMS:

For PHA Use	
Contract Rent	\$0
Utility Allowance	\$0
Gross Rent	\$0

Utility Allowance for 2008

Exh. 11 B
 06-0202

EXHIBIT 11C ANNUAL OPERATING EXPENSES

DEVELOPMENT NAME: **Beaumont Downtown Lofts**

FILE NUMBER: **060202**

Advertising	\$	600	
Legal fees	\$	600	
Accounting	\$	7,700	
Leased equipment	\$		
Postage & office supplies	\$	2,400	
Telephone	\$	5,400	
Other	Describe: training & travel-site staff	\$	650
Total General & Administrative Expenses:			\$ 17,350
Management Fee:		Percent of Effective Gross Income: 4.95%	\$ 10,647
Payroll, Payroll Tax & Employee Benefits			
Management	\$	14,560	
Maintenance	\$	10,400	
Other	Describe: Payroll Tax & benefits	\$	3,400
Total Payroll, Payroll Tax & Employee Benefits:			\$ 28,360
Repairs & Maintenance			
Elevator	\$	2,400	
Exterminating	\$	1,293	
Grounds	\$	300	
Repairs and make-ready	\$	6,500	
Supplies	\$	3,800	
Pool	\$		
Other	Describe: Fire Protection	\$	1,840
Total Repairs & Maintenance:			\$ 16,133
Utilities (Enter development owner expense)			
Electric	\$	13,524	
Natural gas	\$		
Garbage/trash	\$	3,650	
Water & sewer	\$	7,560	
Other:	Describe:	\$	
Total Utilities:			\$ 24,734
Annual Property Insurance:		Rate per net rentable square foot: \$ 0.29	\$ 11,016
Property Taxes:			
Annual Property Taxes:	\$	19,632	
Payments in Lieu of Taxes:	\$		
Other Taxes:	Describe: Business Personal Property	\$	632
Total Property Taxes:			\$ 20,264
Reserve for Replacements:		Reserves per unit per year: 300	\$ 10,800
Other Expenses			
Cable TV	\$		
Supportive service contract fees	\$		
Compliance fees	\$	1,440	
Security	\$		
Other	Describe:	\$	
Total Other Expenses:			\$ 1,440
TOTAL ANNUAL EXPENSES		Expense per unit: \$ 3,910	\$ 140,744
NET OPERATING INCOME (before debt service)			\$ 74,461
ANNUAL DEBT SERVICE		Debt Coverage Ratio: 1.26	\$ 59,152
NET CASH FLOW			\$ 15,309

EXHIBIT 11D. 30-YEAR PROFORMA

DEVELOPMENT NAME: **Beaumont Downtown Lofts**

FILE NUMBER: **060202**

The proforma should be based on the operating income and expense information for the base year (first year of stabilized occupancy using today's best estimates of rental income and expenses), and debt service. The Department currently considers an annual growth rate of 3% for income and 4% for expenses to be reasonably conservative estimates. Written explanation for any deviations from these growth rates or for assumptions other than straight-line growth made during the proforma period should be attached to this exhibit.

INCOME	3%	Annual Increase	LEASE-UP	YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5	YEAR 10	YEAR 15	YEAR 20	YEAR 25	YEAR 30
POTENTIAL GROSS ANNUAL RENTAL INCOME			\$34,460	\$223,872	\$230,588	\$237,506	\$244,631	\$251,970	\$292,102	\$338,626	\$392,561	\$455,086	\$527,569
Secondary income			1,538	8,783	9,046	9,317	9,597	9,885	11,459	13,284	15,400	17,853	20,897
POTENTIAL GROSS ANNUAL INCOME			\$35,998	\$232,655	\$239,634	\$246,823	\$254,228	\$261,855	\$303,561	\$351,911	\$407,961	\$472,939	\$548,266
Provision for Vacancy & Collection Loss		7.50%	3,323	17,449	17,973	18,512	19,067	19,639	22,767	26,393	30,597	35,470	41,120
Rental Concessions													
EFFECTIVE GROSS ANNUAL INCOME			\$39,321	\$215,205	\$221,662	\$228,311	\$235,161	\$242,216	\$280,794	\$325,518	\$377,364	\$437,468	\$507,146
EXPENSES	4%	Annual Increase											
General & Administrative Expenses			\$8,950	\$17,350.00	\$18,044	\$18,766	\$19,516	\$20,297	\$24,694	\$30,045	\$36,554	\$44,473	\$54,109
Management Fee			1,268	10,647	\$11,073	\$11,516	\$11,976	\$12,455	\$15,154	\$18,437	\$22,432	\$27,291	\$33,204
Payroll, Payroll Tax & Employee Benefits			8,761	28,360	\$29,494	\$30,674	\$31,901	\$33,177	\$40,365	\$49,110	\$59,750	\$72,695	\$88,445
Repairs & Maintenance			10,047	16,133	\$16,778	\$17,449	\$18,147	\$18,873	\$22,962	\$27,937	\$33,990	\$41,354	\$50,313
Electric & Gas Utilities				13,524	\$14,065	\$14,628	\$15,213	\$15,821	\$19,249	\$23,419	\$28,493	\$34,666	\$42,177
Water, Sewer & Trash Utilities			975	11,210	\$11,658	\$12,125	\$12,610	\$13,114	\$15,955	\$19,412	\$23,618	\$28,735	\$34,960
Annual Property Insurance Premiums			3,769	11,016	\$11,457	\$11,915	\$12,392	\$12,887	\$15,679	\$19,076	\$23,209	\$28,237	\$34,355
Property Tax			895	20,264	\$21,075	\$21,918	\$22,794	\$23,706	\$28,842	\$35,091	\$42,693	\$51,943	\$63,196
Reserve for Replacements				10,800	\$11,232	\$11,681	\$12,149	\$12,634	\$15,372	\$18,702	\$22,754	\$27,684	\$33,681
Other Expenses:				1,440	1,498	1,558	1,620	1,685	2,050	2,494	3,034	3,691	4,491
TOTAL ANNUAL EXPENSES			\$34,665	\$140,744	\$146,374	\$152,229	\$158,318	\$164,651	\$200,323	\$243,723	\$296,526	\$360,770	\$438,931
NET OPERATING INCOME			\$4,656	\$74,461	\$75,288	\$76,083	\$76,843	\$77,565	\$80,472	\$81,795	\$80,838	\$76,699	\$68,214
DEBT SERVICE													
First Deed of Trust Annual Loan Payment				\$59,152	\$59,152	\$59,152	\$59,152	\$59,152	\$59,152	\$59,152	\$59,152	\$59,152	\$59,152
Second Deed of Trust Annual Loan Payment													
Third Deed of Trust Annual Loan Payment													
Other Annual Required Payment:													
NET CASH FLOW			\$4,656	\$15,309	\$16,136	\$16,931	\$17,691	\$18,413	\$21,320	\$22,642	\$21,686	\$17,547	\$9,062
Debt Coverage Ratio			#DIV/0!	1.26	1.27	1.29	1.30	1.31	1.36	1.38	1.37	1.30	1.15

(12) Charles Holcomb

From: [Patrick Russell](#)
To: [HTC Public Comment](#)
Subject: FW: 2018 Draft OAP, Public Comment
Date: Tuesday, October 10, 2017 5:08:04 PM

From: Charles Holcomb [mailto:crhjah@cebridge.net]
Sent: Friday, October 06, 2017 2:08 PM
To: Patrick Russell
Subject: FW: 2018 Draft OAP, Public Comment

From: Charles Holcomb [<mailto:crhjah@cebridge.net>]

Subject: 2018 Draft OAP, Public Comment

Patrick,

We respectfully request that you affirmatively consider the following changes to the final 2018 QAP.

1. (5) Underserved Area:

There are many census tract areas that have received either a "General " or "Elderly " development award in the last 30 or 15 years but not the other.

Therefore please add "targeting the same population " after the words " does not have a Development "in paragraphs (C), (D) and (E).

2. (3) Cost of Development per Square Foot. (E) Applications proposing Reuse or Rehabilitation.....

The 900 SF per unit threshold is discriminatory against USDA and Elderly rehabilitation applications because:

A. USDA developments are exempt from the threshold unit sizes. See (1) Size and Quality of Units.

B. Elderly developments are limited to 40 % two (2) BR units. They are prohibited from including 3 or 4 BR units in a development.!!

Therefore the maximum average size of an Elderly development is limited to 730 SF as follows:

60 1 BR units @ 650 SF (threshold) per Unit = 39,000 SF	
40 2 BR units @ 850 SF (threshold) per Unit = <u>34,000 SF</u>	
100 units	TOTAL 73,000 SF
73,000 SF/ 100 Units=	730 SF average.

Elderly developments are therefore penalized \$3.40/SF (900-730=170/50= 3.4)

initially because of the current language.

Therefore please add “or 730 SF for USDA or Elderly applications” after “900” in paragraphs (i), (ii) and (iii)

Additionally please clarify whether one should use the fractional cent per SF that will result from using this calculation or round up or down to the closet even dollar.

Thank you for the opportunity to comment on these issues.

Charles Holcomb, President
Community Retirement Centre, Inc.

(13) Rural Rental Housing Association

From: [Seth B. Sullivan](#)
To: [HTC Public Comment](#); [Patrick Russell](#)
Cc: [office@rrhatx.com](#); [PABarbolla@aol.com](#); [mundayha@hotmail.com](#); [dpbaker@lcjcompanies.com](#); [DennisHoover@hamiltonvalley.com](#)
Subject: RRHA Public Comment to Staff Draft of 2018 QAP
Date: Thursday, October 12, 2017 12:15:42 PM
Attachments: [RRHA Comment to 2018 Draft QAP.pdf](#)
[Meeting Agenda & Support Letter 9-18.pdf](#)

Good afternoon Patrick,

On behalf of the Rural Rental Housing Association of Texas, we urge staff to re-consider the drastic reduction in the construction cost per square foot scoring item on page 41 of 44, (e) criteria. . . , (2) (E) Applications proposing Adaptive Reuse or Rehabilitation. We request that staff will revert back to the language used in the 2017 QAP for this year, allowing for a year's worth of consideration and research into where the line should be drawn for rehabilitating these properties. If staff's focus is to lower the allowed cost this year, then we respectfully request an increase to a minimum of \$90 per square foot. I have attached our comments and support figures previously provided to staff. We make this request for the following reasons:

This substantial reduction in construction cost allowance, essentially cutting the funding in half, will drastically impact the ability of the developer to perform a full rehabilitation at viable properties. The number that our membership is supporting, allows for full rehab of the properties that are most in need, without over-enriching the deal or funding deals that are at a point rehabilitation does not make economic sense. Developers in the private sector target areas that are most in need, with high demand, and many of the deals that would be affected by the published reduction currently have waiting lists. If it is in an area staff does not see as in need of the housing, it is most likely our rural membership has the same view. Currently, many of the properties serving many Texans are able to be rehabilitated, but there will be a time rehabilitation will not make economic sense and the reduction as published would substantially reduce the properties able to be rehabilitated immediately.

The properties rehabilitated by our members must meet the requirements of TDHCA and also pass inspection by USDA-Rural Development. When the cost per square foot is lowered, this will cause developers to pick and choose between properties based on what can actually be rehabilitated in compliance with all applicable regulations. This does not service the population based on need or demand for housing in a particular region, this merely reverts to an arbitrary systematic approach of where the housing will be made available. From a practical standpoint, we believe a more efficient approach, that makes economical sense and would further the mission of providing housing to the target population, can be accomplished by continuing to develop a system based on actual need over the next year.

When we first began discussing this number, it was stated the cost per square foot number was a placeholder and there was no substantial basis for using this number. We also discussed the policy reasons behind a reduction and understand some of the justifications for a reduction. However, staff also acknowledged that some of the solutions we discussed made sense, such as a graduated cost scale or percentage of basis, but at this point it is our understanding you cannot make a substantial wording change. This being the case we believe the best alternative is consider the cost per square foot we are requesting or revert to the old language and save the revision for the 2019 QAP.

The RRHA would support a different approach/standard and requests that this reduction is not made in the manner published for the 2018 QAP, as it is drastic and will have a detrimental impact on the rural housing offered to many Texans. This issue would be better addressed in a different manner by more thorough discourse and research on where the viability line should be drawn, as we firmly believe it is not best served at \$50 per square foot.

Our suggested revision to the language from our formal "Comment," prior to the submission of the "Draft" to the Board:

(e) Criteria promoting the efficient use page 41 of 44.

(E) Applications proposing Adaptive Reuse or Rehabilitation (excluding Reconstruction) will be eligible for points if one of the following condition is met:

(i) Twelve (12) points for Applications which include voluntary Eligible Hard Costs that are less than ~~\$50~~ **\$80** per square foot, plus or minus \$1 per square foot for every 50 square feet above or below a ~~900~~ **700** square feet unit.

(ii) Twelve (12) points for Applications which include voluntary Eligible Hard Costs that are less than ~~\$50~~ **\$90** per square foot, plus or minus \$1 per square foot for every 50 square feet above or below a ~~900~~ **700** square feet unit, located in an Urban Area.

(iii) Eleven (12) points for Applications which include voluntary Eligible Hard Costs that are less than ~~\$50~~ **\$90** per square foot, plus or minus \$1 per square foot for every 50 square feet above or below a ~~900~~ **700** square feet unit.

We respectfully request that you consider our requests as reasonable. We serve communities and residents across rural Texas, and like the agency, we want to ensure the very best housing we are able to provide is made available to our residents. Please consider our request for revision to the construction costs based on the many practical discussions and information we have provided staff over the last few weeks.

Thank you very much for your service to our great state!

Seth

Seth B. Sullivan

Attorney-at-Law PLLC

Policy Consultant, Rural Rental Housing Association of Texas

Westgate Building

1122 Colorado, Suite 320

Austin, Texas 78701

P: [903.576.4034](tel:903.576.4034)

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Sent via electronic-mail

Marni Holloway
Multifamily Finance Director
Texas Department of Housing and Community Affairs
221 E. 11th Street | Austin, Texas 78701

September 18, 2017

Re: Construction Costs in 2018 QAP

Good evening Marni,

I submit this letter to you on behalf of the Rural Rental Housing Association to note our agenda for tomorrow's meeting and provide the explanation behind our support for certain language. We appreciate your consideration of the practical concerns discussed below.

Agenda Items:

1) Construction Costs

See Draft QAP, page 41 of 44, (e) Criteria promoting the efficient use of limited resources & Applicant accountability, (3) Cost of Development per Square Foot. (E) Applications proposing Adaptive Reuse or Rehabilitation.

2) The "Donut-Hole" Problem

See Draft QAP page 23 of 44, (b) Criteria promoting development of high quality housing. (4) Opportunity Index (A)(ii).

3) Visitability "Waiver" Meeting, early-mid October.

Our membership respectfully requests that the construction costs under § (e) (3) (E) "Adaptive Reuse or Rehabilitation," are re-evaluated based on some of the information provided here and in our meeting tomorrow. The current numbers are too low to support the average cost for rehab of the 515 portfolio, which we seek to preserve. Below are actual construction costs for four developments in the last two funding cycles given by one of our members:

\$56,562/32 units	Hughes Springs
\$58,994/24 units	Pleasanton
\$61,136/96 units	Pecanwood I, II, III
\$67,446/24 units	Orange Grove

Hughes Springs \$1,810,000 (hard + builder fee + contingency)/22,100 sq. ft. = \$81.90 sq ft
Pleasanton Seniors \$1,415,860/17,588 = \$80.50 sq ft
Orange Grove \$1,618,715/17,708 = \$90.85 sq ft
Pecanwood \$5,868,635/78,184 = \$75.06 sq ft

Other members have had similar averages, but if these costs seem to over-enrich a property, we support using the third-party CNA to make a determination on what improvements are immediately necessary based on health & safety concerns. One significant problem our group foresees with the current per square foot funding is

developer's cutting out certain improvements because there is not enough funding in the deal to perform all necessary rehab. The property and its residents suffer when this occurs and the developer runs the risk of failing inspection with USDA-Rural Development. We do acknowledge some cost correlation with age of the property. Consequently, we believe an effective solution fair to our portfolio could be adopting a "graduated scale" for issuance of points per square foot cost. For example, we believe awarding points in the following manner could be supported:

< 25 years old = \$65 per square foot
25-35 years old = \$80 per square foot
> 35 years old = \$95 per square foot

We do understand there are groups who try to take advantage and you have the tedious task of ensuring against over-enrichment of deals. We do not have the practical understanding of all the deals presented before you and appreciate your explanations provided in previous meetings. We assure you that we seek to continue to work with the Agency to continue to provide housing across Texas in a fair and efficient manner.

Please consider dates for a meeting between your staff and our architects/engineers to discuss the development of a "Waiver Procedure," for the Visitability rule. We still believe this to be important under the rule as there were properties across the state granted waivers developed post-March 1991. We discussed this issue in past meetings and did not set-up a date for this meeting. We look forward to scheduling a date.

If you would like any additional information, please contact me at the email address or phone listed below.

Respectfully,

Seth B. Sullivan
Policy Consultant
Rural Rental Housing Association
1150 Lakeway Dr. Ste. 221
Austin, Texas 78734
P: (903) 576-4034
E: sully078@aol.com



RURAL RENTAL HOUSING ASSOCIATION OF TEXAS, INC.

August 23, 2017

Mr. Patrick Russell
Multifamily Policy Research Specialist
Program Specialists – Housing Tax Credits & Bonds
Texas Department of Housing & Community Affairs
221 E. 11th Street
Austin, Texas 78701-2410

Re: RRHA of Texas Comments for 2018 QAP

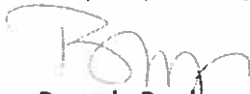
Dear Mr. Russell:

Please find the Rural Rental Housing Association's comment to the 2018 Qualified Application Plan "Draft," attached to this letter. In addition to our suggested revisions listed below, we would like you to take consideration of the following in making your decisions regarding this application process.

First, the majority of this organization's members are involved with relatively small portfolios in comparison to national groups competing in the urban areas requesting changes on purely self-fulfilling motives. This group presents a unified practical observation of what allows the businesses to continue operating and preserving an aging portfolio. Second, the cost for rehabilitation of rural properties is less, requiring the issuance of less credits, thus allowing the credits to be spread wider and not enrich a mere few. We list all concerns on the basis that it is good for our industry to promote preservation of this portfolio housing residents in rural Texas.

Please find that some of our listed concerns contain questions as to items we would like addressed. If these questions are resolved or answered, please notify us of the response or posted guidance. If you need any additional information or clarification, please feel free to contact Dennis Hoover, Development Chair, at 512-756-6809, ext. 212, or via email at dennishoover@hamiltonvalley.com. Thank you for your consideration of our concerns.

Very respectfully,


Beverly Banks
President

Suggested revisions to language, including the draft language, and practical policy concerns behind the suggestions:

1. Draft language on Accessibility

§11.9 Competitive HTC Selection Criteria, (c) Criteria to serve and support Texans most in need, (4) Opportunity Index, (B)(i)(I) - “The Development Site is located on an accessible route that is less than ½ mile from the entrance to a public park with an accessible playground. The route and the playground both must meet 2010 ADA standards.” and for rural applications

§11.9 Competitive HTC Selection Criteria, (c) Criteria to serve and support Texans most in need, (4) Opportunity Index, (B)(ii)(VI) - “The Development Site is located on an accessible route that is less than 1 mile from a public park with an accessible playground. The route and the playground both must meet 2010 ADA standards.”

Suggested revision:

The Development Site is located ~~on an accessible route that is less than ½ mile (or one mile in the rural area requirement) from the entrance to a public park with an accessible playground. The route and the playground both must meet 2010 ADA standards.~~

Practical Concerns:

Off-site routes and playground equipment are constructed and maintained by a third party such as a City and maintaining continued accessibility of the route or equipment is not the responsibility or even within the rights of the applicant to accomplish. Accessibility can change from application date to award date and beyond if the municipality doesn't maintain playground equipment, resurfaces a street, or for many other reasons beyond the applicant's control. Additionally, it is extremely difficult to accurately determine if a route on City sidewalks and/or across City streets meets 2010 ADA standards. The term “entrance” should either be further defined or eliminated from these requirements.

2. Concerted Revitalization Plan

§11.9 Competitive HTC Selection Criteria, (d) Criteria promoting community support and engagement, (7) Concerted Revitalization Plan, (B) For Developments located in a Rural Area, (i) – “The occupancy percentage will not include units that cannot be occupied due to needed repairs.”

Suggested revision:

Add the following language to define when unit cannot be occupied due to repairs: “The definition for inability to “be occupied due to needed repairs” is as identified by the CNA provider.

There is no standard defined here which can lead to what appears as an arbitrary decision and extensive appeal.

3. Construction Costs & Average Unit Size

Draft Language & Suggested **Revisions in Red**:

(e) Criteria promoting the efficient use page 41 of 44.

(E) Applications proposing Adaptive Reuse or Rehabilitation (excluding Reconstruction) will be eligible for points if one of the following condition is met:

(i) Twelve (12) points for Applications which include voluntary Eligible Hard Costs that are less than ~~\$50~~ **\$80** per square foot, plus or minus \$1 per square foot for every 50 square feet above or below a ~~900~~ **700** square feet unit.

(ii) Twelve (12) points for Applications which include voluntary Eligible Hard Costs that are less than ~~\$50~~ **\$90** per square foot, plus or minus \$1 per square foot for every 50 square feet above or below a ~~900~~ **700** square feet unit, located in an Urban Area.

(iii) Eleven (12) points for Applications which include voluntary Eligible Hard Costs that are less than ~~\$50~~ **\$90** per square foot, plus or minus \$1 per square foot for every 50 square feet above or below a ~~900~~ **700** square feet unit.

Figures/Estimates on Construction Costs & Unit Size:

General Estimate from the group of Per Unit Cost= **\$60,000**

Our estimates of average unit size are well below the 900 sq ft figure:

Member Example:

1 bedroom: **633 rsf**

2 bedrooms: **793 rsf**

3 bedrooms: **957 rsf**

Total Average = **794 rsf**

Member 2 Estimate:

1 bedroom: 625 sq ft

2 bedrooms: 800 sq ft

Total Average = 712.5 sq ft

Member 3 Estimate:

Seniors: 679 sq ft

Family: 715 sq ft

Total Average = 697 sq ft

Comment:

We believe we should do a full rehab, not a partial, as it's a more efficient use of all the other fixed costs; the architect, the lawyer (our attorney fees are not fixed), the CNA, the appraisal, etc. To do a complete rehab on a 40-year old property, we collectively believe the need is about \$60,000 per unit "Total Construction Contract". Rehab already spreads the credits around as compared to new construction. USDA writes up what we don't have money to address during their inspections.

Our estimates indicate the feasible construction costs at a price per unit much higher than what is stated in the draft. One member has had one or two jobs out of 15 we've done since 2010 that had \$60,000 per unit and those projects were the only ones that had enough money to do all of what we wanted to do; replace all major systems, build a community room and new playground. At least one other developer/owner reported square footage being under the 900 square foot figure and a general consensus of the RRHA was that 1/2br units will fall under that figure.

4. §11.7. Tie Breaker Factors. [p17-18]

(1) Applications having achieved a score on Proximity to the Urban Core. This item does not apply to the At-Risk Set-Aside.

(2) Applications scoring higher on the Opportunity Index under §11.9(c)(4) or Concerted Revitalization Plan under §11.9(d)(7) of this chapter (relating to Competitive HTC Selection Criteria) as compared to another Application with the same score.

(3) Applications proposed to be located in a census tract with the lowest poverty rate as compared to another Application with the same score.

~~(4) Applications proposed to be located in the most underserved area as compared to another Application with the same score. For the purposes of this paragraph, “underserved area” is determined according to the same methodology as §11.3(b), “Twice the State Average Per Capita,” of this Chapter. The proposed Development located in a municipality, or if located completely outside a municipality, a county, that has the fewest HTC units per capita is located in the most underserved area. The HTCs per capita measure is located in the 2018 HTC Site Demographic Characteristics Report that has been submitted to the Board.~~

(5) Applications proposed to be located the greatest linear distance from the nearest Housing Tax Credit assisted Development. 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. The linear measurement will be performed from closest boundary to closest boundary.

Suggested Revisions to (3) & (4):

Do not place an emphasis on poverty in (3), rather actual need for rehab of the property and completely remove the language in (4). Alternatively, include the language from (1) in (4) stating “This tie-breaker does not apply to rural.”

Practical Reasons:

The twice per capita is harmful to Rehabs, as if there are areas of **higher demand** then there should be an emphasis placed on getting the deals rehabbed to ensure the demand is met. It is impractical to put emphasis elsewhere where demand is lower? The emphasis on poverty should be replaced with the emphasis to preserve a property already serving residents as there will be a greater need if the property cannot continue to operate. As an alternative, do not apply this tie break to At-Risk and USDA applications.

5. Market Studies

It would be helpful to have the market studies published when the applications are published. This would assist in verifying realistic numbers and estimates of the market. It should be noted, the market study is usable for only a short amount of time and becomes antiquated quickly.

6. Criteria promoting development of high quality housing.

Draft Language & Suggested **Revisions in red**:

(b) Criteria promoting development of high quality housing.

(4) Opportunity Index (A)(ii) [p 23 of 44].

(ii) The Development Site is located ~~in~~ **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 **or fourth** quartile within the region.

Suggested Revision:

Use the 2015 Language: allow scoring on the basis of Opportunity Criteria.

Practical Reasons:

Opportunity points need to be awarded by the presence of listed opportunity facilities and amenities in (B) and not disqualified because of the rural town “donut hole” problem. Alternately, this could go back to the 2015 QAP language that scored on the basis of opportunity criteria. It is our understanding you can’t score under (A) (i) and (ii) even if you have all the criteria in (B). Alternatively, applications in Rural areas could score points in the 4th quartile.

7. Local Funding Provision (d) Criteria promoting community support and engagement.

Draft Language under (B) [p 32 of 44]:

(2) Commitment of Development Funding by Local Political Subdivision.
(§2306.6725(a)(5)) An Application may receive one (1) point for a commitment of Development funding from the city (if located in a city) or county in which the Development Site is located. The commitment of development funding must be reflected in the Application as a financial benefit to the Development, i.e. reported as a source of funds on the Sources and Uses Form and/or reflected in a lower cost in the Development Cost Schedule, such as notation of a reduction in building permits and related costs. Documentation must include a letter from an official of the municipality, county, or other instrumentality with jurisdiction over the proposed Development stating they will provide a loan, grant, reduced fees or contribution of other value that ~~equals \$1,000 or more for the benefit of the Development~~ **equals \$100 or more for the benefit of the Development**. The letter must describe 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.

Suggested revision:

For the part struck through, insert “equals \$100 or more for the benefit of the Development.” Noted in red above.

Comment:

For small rural municipalities \$1,000 coming from a general account is major endeavor in comparison to Austin or Denton. Also, the legislative guidance by statute reads that it “may be a de minimis amount.” Alternatively, \$1000 for Urban and \$100 for Rural.

8. Rural v. Urban Designation

(2) USDA Set-Aside, On page 10 of 44.

If we choose to file in the Regional Set-aside, as a USDA development, and are located in an Urban area, do we still file in the Rural Set-Aside? This does not give clear guidance.

[END of COMMENT]

(14) Marlon Sullivan

From: [Marlon Sullivan](#)
To: [Patrick Russell](#)
Cc: ["sully078@aol.com"](mailto:sully078@aol.com)
Subject: QAP comments
Date: Thursday, October 12, 2017 3:28:07 PM

I would respectfully submit to TDHCA in regard to the 2018 draft QAP;

Unit Cost:

Unit cost per square foot at 50.00 or below is simply impossible to accomplish. Furthermore cost vary drastically from region to region in the state. Cost per square foot in Northeast and East Texas would be lower than cost in the panhandle, south plains, far west, and big bend country due to availability of goods and services. It would certainly be more realistic for the cost per square foot be in the 80.00 to 90.00 per square foot range depending on unit size.

With properties located in Northeast Texas, East Texas, the panhandle and south plains I know firsthand about cost for rehab and reconstruction, as we deal with these issues on a daily basis. An example would cost for removing, providing, and installing a water heater in Northeast/East Texas averages 800.00. In the panhandle water heater replacement averages 1,200.00. Hvac replacement will run 3,100.0 in East Texas. In the South plains Hvac replacement will cost 4,400.00 per unit for same size unit.

As the example show above, these cost differences are significant and add up quickly when talking about the rehabilitation of an entire unit.

Marlon Sullivan
C.O.O. MJS Management, Inc.
Linden, Texas

(15) Devin Baker

From: [Devin Baker](#)
To: [HTC Public Comment](#); [Patrick Russell](#)
Subject: 2018 Draft QAP Public Comment
Date: Thursday, October 12, 2017 4:58:55 PM
Attachments: [image001.png](#)

Patrick,

I apologize for my 11th Hour response to the QAP Public Comment period. I would like to start by saying this drafting period has been a pleasure (relatively speaking). Although my tenure is short, I have seen dramatic changes in the involvement and processes of Staff working with the development community. We appreciate your hard work.

My only major concern, in regards to the QAP, this year involves the proposed reduction in construction cost per square foot for applications proposing Rehabilitation and/or Adaptive Reuse. I would suggest raising the proposed voluntary Eligible Hard Cost amount back to 2017 QAP levels. I commend Staff and the underwriting team for realizing that including acquisition costs was not beneficial. Across the board, there was/is no way to expect what the assumed USDA 515 loan amounts would be; some varying by more than 70% from property to property of the same age. I believe I speak on behalf of the entire development community when I say we would like to see these cost levels raised to account for known and unknown economic and environmental factors. Our organization (RRHA), has provided figures that evidence a current need of \$90/sf. Taking in to account future increases in costs due to labor and materials shortages, I think that this number is not only representative of the true costs, but also on the lower side moving forward. Understanding the need for spreading the allocation of credits, I would suggest that, at a minimum, Staff revert back to the language used in the 2017 QAP for this year. Next year, we can come to terms with the Department so that the residents of our communities are getting the best product at the lowest possible rental rate.

We want the rules to allow developers to provide the best possible housing for that community. Lowering the cost per square foot requirement will inherently cause developers to pick and choose between properties based on what can actually be rehabilitated at that cost, rather than based on need. We request that you consider this request in the next 2018 QAP revision. If you would like a copy of any of the information we have provided Staff over the last few weeks, please let me know.

Thanks for all that you and the rest of the staff do!

Have a good evening,

Devin P. Baker
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LCJ Development

Dedicated Property Specialists

(16) Dennis Hoover

From: [Dennis Hoover](#)
To: [Patrick Russell](#)
Cc: [Benjamin Farmer](#); [Dan Allgeier](#); [Dennis Hoover](#); [Don Sowell](#); [Ginger McGuire](#); [Jess G. Parker](#); [Mike Sowell \(mjs35@aol.com\)](#); [Murray Calhoun \(murraycalhoun@mac-rellc.com\)](#); [R. J. Collins](#); [Winston Sullivan](#)
Subject: comment on 2018 QAP
Date: Thursday, October 12, 2017 3:01:43 PM

Patrick,

Thanks for the taking our comments.

In regard to **§11.9.Competitive HTC Selection Criteria**. In order to do a good rehabilitation and not leave things undone either:

1. raise the per sq. ft. costs as below in the 2018, or
2. revert back to 2017 rules (which had some flexibility) as revised below.

I realize that the numbers that we, the RRHA committee, suggested were higher than this but the numbers below in the 2018 are some middle ground that would allow us to rehab without having to make so many choices about what to leave undone.

If using the 2018: §11.9.Competitive HTC Selection Criteria.

(e) Criteria promoting the efficient use page 41 of 44.

(E) Applications proposing Adaptive Reuse or Rehabilitation (excluding Reconstruction) will be eligible for points if one of the following condition is met:

(i) Twelve (12) points for Applications which include voluntary Eligible Hard Costs that are less than ~~\$50~~ **\$65** per square foot, plus or minus \$1 per square foot for every 50 square feet above or below a ~~900~~ **700** square feet unit.

(ii) Twelve (12) points for Applications which include voluntary Eligible Hard Costs that are less than ~~\$50~~ **\$75** per square foot, plus or minus \$1 per square foot for every 50 square feet above or below a ~~900~~ **700** square feet unit, located in an Urban Area.

(iii) Eleven (12) points for Applications which include voluntary Eligible Hard Costs that are less than ~~\$50~~ **\$75** per square foot, plus or minus \$1 per square foot for every 50 square feet above or below a ~~900~~ **700** square feet unit.

If using the 2017 language:

(E) Applications proposing Adaptive Reuse or Rehabilitation (excluding Reconstruction) will be eligible for points if one of the following conditions is met:

(i) Twelve (12) points for Applications which include voluntary Eligible Hard Costs plus acquisition costs included in Eligible Basis that are less than ~~\$104~~ **\$125** per square foot;

Dennis Hoover
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(17) Lucas & Associates

LUCAS & ASSOCIATES, L.P.

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October 12, 2017

Texas Department of Housing and Community Affairs
P.O Box 13941
Austin, Texas 78711-3941

Attn: Ms. Sharon Gamble

Subject: 2018 QAP Comments

Dear Ms. Gamble:

Lucas & Associates (LAI) would like to support the draft 2018 Qualified Allocation Plan (QAP) and the new proposed rule at 10 TAC Chapter 11; however I do have two comments to the TDHCA draft QAP.

First Comment

Specifically, a late revision related to Chapter 11.9(e)(3)(E) regarding rehabilitation and adaptive reuse cost per square foot. Under Subchapter B 10.101 (b)(3)(C) the minimum rehabilitation cost for an eligible application is \$30,000 per unit. The current draft QAP has \$50 per square foot for (i), \$60 per square foot for (ii), and \$60 per square foot per (iii). Based upon the 900 average square feet this represents a maximum per square feet for applicable points of either \$45,000 or \$54,000 per unit. This is insufficient.

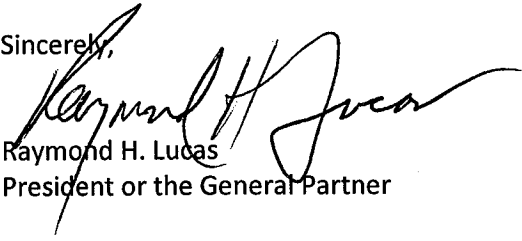
We recommend that these per square feet amounts be increased to what was in the 2017 QAP plus ten percent. We believe that each adaptive reuse and renovation project is unique to itself. Some will cost less and some will cost more depending upon the individual condition and coupled with historical or site value of the project. We do believe that pressure on costs (material and labor shortage) due to Hurricane Harvey and other natural disasters (ie; wild fires in California) and the need for more renovations due to damage created by Hurricane Harvey result in higher project costs. In addition, costs in the QAP have not increased in the past three years.

Second Comment

With regard to Chapter 11.7 Tie Breaker Factors as set out in the most current draft QAP we are in agreement with the rules as set out. We have seen some suggested changes and do not agree that any further changes should be made in the current draft QAP. Any further changes should be deferred for consideration next year.

If you have any questions or would like to contact me, please do.

Sincerely,

A handwritten signature in black ink, appearing to read "Raymond H. Lucas". The signature is fluid and cursive, with a large initial "R" and "L".

Raymond H. Lucas
President or the General Partner

(18) National Church Residences



October 5, 2017

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

Mr. Russell

Thank you for the opportunity to present recommendations to the 2018 Multi-Family Rules. Please consider the below recommendations by National Church Residences.

1. Undesirable Neighborhood Characteristics

We strongly oppose all Undesirable Neighborhood characteristics and request removal of this entire section. These characteristics essentially eliminate the ability to serve many low-income neighborhoods along with entire communities from receiving safe, respectable and affordable housing. Furthermore, these characteristics are heavily penalizing highly urban locations of cities, discouraging development where gentrification is often happening at the most rapid pace.

TDHCA has never terminated an application based on Undesirable Neighborhood Characteristics. As owners, we have a vested, long-term interest in the real estate and have chosen a location based on community needs along with sites that we believe will have long-term success. You have heard from many entities about the high cost in both dollars and hours from the applicant and the department staff which are required to mitigate these items. This barrier is a disservice for numerous neighborhoods and communities throughout the state.

2. Visitability

Despite Fair Housing and Accessibility requirements that were supposed to be implemented beginning March 13, 1991, it has been our experience, that many properties built around this time (and even up to 1999) were not built compliant. As a result, it is either physically impossible or cost prohibitive to implement the proposed Visitability language should an Acquisition Rehabilitation property not already include many of these features.

Should this language move forward, there needs to be a path to a waiver for Acquisition Rehabilitation properties that fall into the category described above.

We appreciate the opportunity to provide comments, and would be happy to provide any additional information.

Sincerely,

Tracey Fine

Senior Project Leader
773.860.5747

tfine@nationalchurchresidences.org



National Church Residences
EXCELLENCE THAT TRANSFORMS LIVES

October 5, 2017

Mr. Patrick Russell
Texas Department of Housing and Community Affairs

Mr. Russell

Thank you for the opportunity to present recommendations to the Staff Draft 2018 Qualified Allocation Plan (QAP). Please consider the below recommendations by National Church Residences.

1. Financial Feasibility - \$/SF for Rehabilitations

The proposed \$/SF restrictions under Rehabilitations are NOT feasible and we STRONGLY request that this calculation remain the same as in 2017. Below is an example of 2 examples, Plateau Ridge awarded in 2017 and Balcones Haus in 2016, both small HUD 202s. As you can see, if this limitation was implemented, hard cost per unit would drop from over \$52k to \$20k- such a low figure that it would not be adequate for syndicators and lenders that typically require a minimum of \$40k in hard costs per unit for rehabs. Furthermore, this figure is insufficient to cover repairs identified in the PCNA or meet the minimum rehab requirements of TDHCA.

Construction costs and labor cost continue to rise and only expected an extreme increase post Harvey, Irma and Maria. We should be looking at increasing \$/SF, not decreasing it. Please see attached article from Tax Credit Advisor for more details on rising costs.

We typically never include acquisition costs in eligible basis. Since our properties have small units, including acquisition costs decreases hard costs so significantly that we would no longer have a robust renovation nor be able to meet the repairs identified in the PCNA. Removing “acquisition costs” does not offset this enormous decrease in allowed rehab costs.

This type of calculation is not appropriate for rehabs:

- Reduction in eligible hard cost are double counted for small units – the allowed costs is multiplied by NRSF so small units are already penalized, then penalized again with the (-) \$1 per 50 SF.
 - Regardless of SF sizes, the most expensive cost to a unit renovation is the kitchen and bathroom. Regardless of unit size, this cost remains constant;
- Reduces eligible hard costs down by 60%+ on a NRSF basis
- HUD properties are historically very small (below, Plateau Ridge studios 413 SF and 1br at 526 SF) are significantly hurt by this calculation;
- Rehab budget would be too low to meet TDHCA required minimum rehab;
- Rehab budget would be too low to meet investor/lender requirements;
- Total Development Costs would decrease, decreasing tax credit sizing creating sizable gaps as fixed transactional costs would remain the same with fewer credits;
- Cannot meet with required PCNA needs at such a low rehab budget;
- Construction materials and labor costs continue to escalate and the \$104 figure should be increased accordingly, not decreased**;
- It is confusing to calculate.

**See Article: *The Cost of Construction*, from July 2017 Tax Credit Advisor.

Example Plateau Ridge – HUD 202, 49 units

	2017 QAP \$104/NRSF	2017 QAP \$104/NRSF Voluntary Eligible Hard Costs	2017 Per Unit	2018 QAP \$50/NRSF Voluntary Eligible Hard Costs	2018 Draft QAP Per Unit
Plateau Ridge SF	24,621 - NRSF	\$2,560,446*	\$52,254	\$1,027,450*	\$20,968

*Excludes Acquisition Costs

Units	Unit Count	Unit SF	Total NRSF	\$50 (-\$1) per 50 SF below 900	Eligible Costs – Staff QAP
Studio	12	413	4,956	\$40	\$198,240
1 br	36	526	18,936	\$42	\$795,312
2 br	1	729	729	\$46.50	\$33,898
TOTAL NRSF			24,621		\$1,027,450

Balcones Example – HUD 202, 39 units

	2017 QAP \$104/NRSF	2017 QAP \$104/NRSF Voluntary Eligible Hard Costs	2017 Per Unit	2018 QAP \$50/NRSF Voluntary Eligible Hard Costs	2018 Draft QAP Per Unit
Balcones Haus SF	19,972 - NRSF	\$2,077,088*	\$53,259	\$781,673*	\$20,043

*Excludes Acquisition Costs

Units	Unit Count	Unit SF	Total NRSF	\$50 (-\$1) per 50 SF below 900	Eligible Costs – Staff QAP
Studio	9	409, 447-HC	3,719	\$40	\$48,760
1 br	29	535	15,489	\$45	\$697,005
2 br	1	764	764	\$47	\$35,908
TOTAL NRSF			24,621		\$781,673

**Please see attached pictures of pre and post renovations of some of our TDHCA.

2. Tie Breaker

With fewer scoring areas, I anticipate scoring will be even flatter than in years past, especially in At-Risk where Urban Core and extra Underserved points are unavailable. We request you remove the tie-breaker for Poverty Rate in its entirety. As currently structured, this will encourage development in far suburbs that has no relation to where affordable housing construction and/or preservation are most desperately needed.

In locations such as Austin and San Antonio, the “place per capita” will all be the same resulting in the poverty rate tie breaker. Again, we request TDHCA remove this tie-breaker and rely on the remaining several tie breakers already in the draft.

3. Opportunity Index

- Accessible: we request the word accessible be removed from routes and public playgrounds. In order to prove “accessible” would require a large additional cost of an ADA consultant on top of an already, extremely expensive application.

Nearby public parks and transit stops are some of the most valuable amenities, yet TDHCA is encouraging applicants to choose other sites that have amenities that are much easier and free to prove and defend than an “accessible” route. I fear that this requirement will lead to fewer sites near public transit and parks as opposed to more.

- Meals on Wheels – we have lunch delivered by local non-profits at most of our properties, however, these meals are served in the community room instead of in individuals homes. Not only does this service provide hot meals to our residents, but encourages socialization among our senior residents, a factor in promoting healthy living for aging seniors. We request the language be changed to served “on-site” instead of “individuals in their homes”.

Recommend applicant has an MOU with this service provider for the application.

4. Sponsor Characteristics

I appreciate the change to focusing on long-term on-site services. We request that this scoring category be moved to 3 points so that applicants are encouraged to do both. (2) points be given for (A) and (1) point be given for (B) to encourage better long-term services at the Development.

5. Underserved Area

The proposed language in Underserved Areas does not support TDHCA’s intention. Census tracts vary greatly in size and do not reflect the monumental population growth that many areas throughout Texas have experienced. At the very least, we recommend adding “**does not have a tax credit development serving the same Target Population**” to (C), (D) and (E). For low-income frail seniors, a general population apartment building are not appropriate for their needs to allow for Aging In Place. These properties typically do not have elevators, have limited accessibility and are not paired with appropriate services that a frail senior will likely need to remain living independently. On the opposite spectrum, a census tract with an Elderly development cannot serve a young household with children.

6. Community Revitalization Plans – Urban

We request that item (V), requiring the “plan continue for a minimum of 3 years thereafter” be removed along with the required City resolution to adopt the plan. The CRP language is so restrictive and prescribed that it is at risk of missing true revitalization and gentrification areas.

7. Input from Community Organizations

We request the new language requiring supporting tax exempt entities from providing “evidence it remains in good standing”. This requirement is subjective and is unclear and continues to make support from the Community Support more difficult, a hurdle that typically no other commercial real estate is required to do.

8. Community Support from State Representative

We request that if a State Representative Office is vacant, that this letter is not counted as “neutral”, which would result in 0 out of 8 points, killing the competitiveness of an application for the sole reason that a political office is vacant. If the office is vacant and the City has provided a resolution of support, this category should be scored as a “supportive” letter for 8 points.

9. Readiness to Proceed

We request the Readiness to Proceed be eliminated in its entirety due to reasons explicitly discussed at the QAP and TDHCA board meeting in September.

10. Factors Affecting Eligibility in the 2019 Application Round

We request that this new language be deleted from the 2018 QAP that would either make a 2019 application ineligible or get a point deduction should a carryover or 10% test require an extension. There are a variety of factors that can impact these dates that are beyond an applicant’s control and applicants should not have to rely on TDHCA’s judgment on if their delay will receive an extreme consequence. Regardless, all federal tax credit dates will be met and units will be delivered in an appropriate time frame or an applicant is facing an extreme consequence of losing credits. Any penalty as proposed should be tied to something much more egregious than a reasonably necessary extension.

We appreciate the opportunity to provide comments, and would be happy to provide any additional information.

Sincerely,



Tracey Fine
Senior Project Leader
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tfine@nationalchurchresidences.org

The Costs of Construction

Can we get them under control?

By Bendix Anderson



"Construction costs are going up and the sources of funding going down," declares Tim Leonhard, international director for JLL Capital Markets.

As construction costs continue their relentless upward track, affordable housing developers find themselves continually revising estimates and scrambling in search of additional sources of funding.

"We see it on every deal – we are getting upward adjustments in price," says Jeff Lawrence, senior vice president of real estate finance for Walker and Dunlop.

Developers have struggled for years with a shortage of construction workers to build their projects, causing costly delays and overtime expenses. At times, the high cost of labor was compensated for by the high prices of the Low Income Housing Tax Credits (LIHTCs) they received. But with LIHTC prices lower and construction material prices higher, the equation is seriously out of balance.

"Development costs keep rising and incomes and the capital sources keep shrinking," says Caleb Roope, CEO of the Pacific Companies.

The problem may get even worse this year as developers struggle with the impact of proposed cuts to federal funding programs they depend on and U.S. trade policies push the price of materials even higher.

"Every year, fewer and fewer projects work, and over time fewer and fewer units get produced," says Roope. Higher costs mean "each unit is going to use more LIHTCs."

Higher costs may also limit the kinds of projects that developers can produce.

"It puts pressure on every area of the capital stack,

more pressure on what you can pay for land, more pressure on what you can charge for rents," says Leonhard.

Material costs on the rise

The rise in construction costs does not seem to be peaking. Prices for materials have risen sharply so far this year and are likely to rise more. Contractors have not even passed many of these increases on to developers yet, according to the Bureau of Labor Statistics (BLS). "Contractors have been rightly cautious about telling developers it's going to cost more," says Ken Simonson, chief economist for the Associated General Contractors of America.

The Producer Price Index for materials for multifamily buildings rose 3.4 percent in May compared to the same month last year, according to the BLS. That same index fell 1.1 percent in 2015.

Developers in high-cost markets have been subjected to even larger cost increases. In the busier cities, hard construction costs have increased five to ten percent in the six months between the time a project received a tax credit award and the closing for financing.

"The surprise was how fast the costs moved and changed," said Adam Oates, president of SunTrust Community Capital.

Federal policy is one of the factors driving up the cost. Trade officials are increasingly intolerant of foreign companies that dump products onto the U.S. market at prices lower than the cost of producing them.

"This Administration says they will get tough on foreign producers," says Simonson.

The U.S. has recently added heavy anti-dumping duties to steel, which priced 13.8 percent higher in the past year. Copper and brass materials rose a similar amount.

"Drywall prices are also going up," says USA Property Fund's President and CEO Geoff Brown. The index for gypsum products (which includes wallboard) has risen 7.4 percent.

Lumber and plywood have risen 7.7 percent. The cost of wood may keep rising for years, as a trade war begins to heat up between the U.S. and Canada over lumber. (See *Taken to the Woodshed*, p. 19).

Even materials that had been relatively inexpensive are making the leap. Diesel fuel, used in many construction vehicles, fell 43.1 percent in 2014 and 26.9 percent in 2015, according to BLS data. In 2016, the price started rising. And in May of this year, the price jumped 23.3 percent compared to 12 months before.

Developers are fighting back by trying to lock in prices as soon as they can with their contractors and subcontractors.

"Some developers have considered warehousing materials," says Walker and Dunlop's Lawrence. However, finding warehouse space to store materials can also be expensive.

The labor shortage only gets worse

In markets like San Diego, the labor shortage is now so intense that contractors compete to hire workers.

"They are driving down the street and stealing employees, offering to pay more," says Carol Galante, faculty director of the Turner Center for Housing Innovation at the University of California, Berkeley.

Two-thirds of contractors say they have difficulty finding workers, according to a survey by the Associated General Contractors of America (AGC). Every kind of construction job has been difficult to fill – especially carpenters, drywall hangers and framers.

The workforce of the construction industry never recovered from the Great Recession.

"In 2008 and 2009, a lot of contractors went out of business," says Geoff Brown. With just 2.7 million workers, the workforce is over 20 percent smaller than it was in 2005 when it had 3.5 million workers, according to AGC.

Two years ago, the rising cost of labor and construction delays began to affect affordable developments. "We started going through our contingency budgets [to pay for labor]," says Brown.

The industry is likely to need 700,000 additional workers over the next ten years, according to the National Association of Home Builders. And it's far from clear

where those workers will come from.

Unlike the cost of materials, the expenses resulting from the labor shortage don't necessarily show up as price inflation on the BLS data sheets. That's because many of the highest-paid construction workers have reached retirement age. That forces many contractors to rely on younger, less experienced workers who earn less and are less productive, which means development takes longer and is more expensive, even though the average wage earned by a construction worker isn't rising much.

Affordable housing developers have had to build extra time into their construction schedules to account for the less experienced workforce, and in construction, time is one of the most expensive commodities of all. But sometimes a subcontractor can't provide enough workers or cancels altogether, and the delay upsets the complicated choreography of construction, forcing other contractors to reschedule – if indeed they are available.

To help avoid such surprises, many developers try to cultivate strong relationships with their work teams. "If you have good, long-term relationships with subcontractors, that helps," says Brown.

The shortage of workers is exacerbated by the intense debate surrounding immigration. About a quarter of the people working in the construction trades were born outside the U.S. As immigration into the U.S. becomes more difficult, fewer individuals are entering the construction business.

In addition, fewer young people are entering the construction trades. "Older construction workers are retiring and we are not replacing them," says Galante. "Construction is not considered a desirable job by people coming up."

Finding funding

A reservation of LIHTCs may not be worth as much as it once was if President Donald Trump and the Republican-controlled Congress fulfill their desire to lower the overall tax rate on businesses, reducing the attractiveness of the credits.

The proposed federal budget would also eliminate other government funding programs, like HOME Funds and Community Development Block Grants.

Some affordable housing developers are trying to build protection against rising costs and disappearing funding programs by combining usage of a variety of tax credits on their projects, hoping a mix of LIHTCs and Historic Rehabilitation Tax Credits will provide extra subsidy as construction costs rise.

Costs of Construction, continued on page 17

Costs of Construction, continued from page 15



"We are able to generate that much more resources," says Ross Freeman, president of the Pioneer Group, which often combines State and Federal Housing Tax Credits with Historic Tax Credits to finance its developments.

Many of Pioneer's projects are located in places that, under LIHTC rules, allow the developments to generate more LIHTCs. "We get the 'basis boost' for developing in 'qualified census tracts,'" he explains.

Other developers mix affordable housing with market-rate apartments to benefit from the strong demand for rental housing.

USA Property Fund develops mixed-income projects financed with tax-exempt bonds in which 80 percent of the apartments rent at market rates and 20 percent are affordable to low-income households. However, even these properties struggle with a higher cost of land, labor and materials.

"It's still a challenge to make the pro-forma estimates work for a new construction bond deal," comments Brown.

Some local and state governments offer soft financing to help make up for rising construction costs. For example, Florida has replenished its Housing Trust Fund so that state officials can provide soft financing through its State Apartment Incentive Loan Program, known as "SAIL."

Developers also often include a large construction contingency budget for their projects. LIHTC syndicators now often require ten percent, adding to funding pressures.

The high cost of housing policy

Ironically (and unfortunately) the programs that help pay to build affordable housing also often add millions to the cost of construction.

In many states, developers now must promise to include a long list of expensive features in their affordable

housing projects to win a reservation of LIHTCs.

"All those policy objectives cost money," says Roope. For example, Maryland officials offer an extra point in the competition for LIHTCs to developments with coat closets. In Maryland's intense competition, that one-point incentive is effectively a requirement.

But not every apartment can easily accommodate a coat closet. Enterprise Homes is currently renovating a community of townhouses that are only 20 feet wide and 26 feet deep.

Other state requirements can add more unnecessary costs. For example, a public housing property may have a proven history of staying fully-occupied. However, a developer who renovates the property with LIHTCs will still have to provide a complete market study.

"Why do we have to spend \$6,000, \$8,000 on a market study if we have a waiting list?" said Chickie Grayson, president and CEO of Enterprise Homes, Inc.

Energy efficiency is now often a threshold criteria to be considered for funding. Developing affordable housing that meets green building standards for energy efficiency and air quality is simply more expensive than meeting the minimum standards required by local building codes, often adding two-and-a-half to five percent to the cost of construction.

"An ever-increasing sentiment towards energy-efficient buildings, which is not cheap to do, is the most costly change that we have seen in our industry in the last five years – maybe ten," adds Leonhard.

However, some affordable housing developers turn these expensive requirements to their advantage. A growing number of lenders are willing to make larger loans to developments that include features like higher-quality windows or improved insulation that will lead to lower utility bills.

"Energy efficiency can be cheaper," says Chris Estes, president and CEO of the National Housing Conference. Local building codes and zoning rules also add to the cost of development. "The biggest one is parking requirements," says Galante. Many local governments require two parking spaces per apartment, even though the development may be near mass transit.

"We can't afford to pay \$40,000 to \$50,000 per parking stalls. We are housing people, not cars," she says.

Value engineering

Affordable housing developers are on a perpetual search to find new ideas that may help them cut the cost of construction.

Costs of Construction, continued on page 18

Costs of Construction, continued from page 17

Some developers attempt to save money by value engineering their projects. That often includes reusing the architectural drawing from development to development. These communities can look so much alike that Inland Development used photographs of its completed Copper Peak Apartments property in Longmont, CO, as a rendering to show what its Copper Valley development, now under construction in Puyallup, WA, will look like.

Yet it's getting harder to reuse architectural plans as development becomes more common on infill sites, which are often oddly shaped, thus requiring a new plan for each building.

"This is the time when you cannot think of your business as usual," says Galante.

For example, tall wood buildings made from laminated lumber projects may help developers avoid the rising cost of steel.

Buying and renovating existing buildings is looking more attractive to many developers. Single-family rental

houses may provide an opportunity for scattered-site portfolios of renovated affordable rental units.

Other developers are investing in modular construction, largely built in factories and trucked to construction sites and 30 to 50 percent faster than conventional construction, according to Full Stack Modular, based in Brooklyn, NY.

Pioneer is considering trying modular construction for a series of potential affordable housing developments in Dallas, all on publicly-owned sites, such as parking lots in densely-developed areas.

Modular construction may also help solve the shortage of labor as more workers might be willing to work in a factory than outside on a construction site. Work in a factory is also more regular and does not require as much heavy physical labor.

"It may open up the workforce," says Galante. "I visited a factory where 40 percent of the workforce was women."

With a federal government more focused on matters that many say are counterproductive to affordable housing and state housing agencies stretching for criteria to differentiate among submitted projects, developers are going to have to look for more new ways to veer from what has been accepted as business as usual. Going forward, it is likely the unusual that will become usual. **TCA**

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Parkview Apartments, Huntsville, TX (LIHTC renovation)

Community Room



Parkview Apartments, Huntsville, TX (LIHTC renovation)



Prairie Village, El Campo, TX (LIHTC Renovation)



Prairie Village, El Campo, TX (LIHTC Renovation)



Community Room



Management office converted to library at Parkview, Huntsville



(19) Marilyn Hartman

From: [Marilyn Hartman](#)
To: [HTC Public Comment](#)
Subject: Rule Comments on Proposed Amendments to Uniform Multifamily Rules
Date: Wednesday, October 11, 2017 6:17:48 PM

To the attention of Patrick Russell and Teresa Morales:

As an active advocate for people with serious mental illnesses, I am greatly concerned about certain Proposed Amendments to Uniform Multifamily Rules at 10 Texas Administrative Code ("TAC") Chapter 10, Subchapter C, now open for public comment through 5:00PM on October 12, 2017.

Specifically, I find that striking all of (16) on page 32 regarding Section 811 Project Rental Assistance Program means that project applicants are no longer required to provide a certain number or percentage of units under this program, which directly hurts people with disabilities, including those with serious mental illness. There is a great shortage of housing with support services for such individuals; this will likely exacerbate the problem. It is my understanding that there is already a substantial waiting list for 811 units under current rules. Eliminating this 811 requirement of applicants is a set-back to a program that works well for those who are extremely low income and cannot live independently in the community without adequate supports.

I am trying to understand the rationale of this proposed rule change, given the dearth of options for these citizens. Please advise, consider the negative impact, and reverse this proposed rule change.

With thanks and best regards,

Marilyn Hartman
Advocate, NAMI Austin (National Alliance on Mental Illness, Austin affiliate)
512-470-7840

(20) Disability Rights Texas

From: [Jean Langendorf](#)
To: [HTC Public Comment](#)
Subject: Public Comment - 10 TAC Chapter 11, concerning the Qualified Allocation Plan ("QAP").
Date: Monday, October 09, 2017 12:11:23 PM

Please accept the following as public comment on behalf of Disability Rights Texas regarding 10 TAC Chapter 10, Subchapter C concerning the removal of the Section 811 Project Rental Assistance Program from the required documentation for application submission:

We are extremely disappointed to see the staff recommended changes to the QAP eliminating the 'threshold' item for the Section 811 Project Rental Assistance Program. The disability community supported the addition of the program as a threshold item and believed the department had made great strides in increasing the number of units available for this important program that supports the housing of low-income individuals with disabilities to live in the community. The department's previous action supported the state in its response to federal Olmstead decision and addressed the needs identified in the Analysis of Impediments. Removing this program from the threshold is a step backward in the state's efforts to move individuals with disabilities into the community. Eliminating this requirement for housing tax credits, direct loan and tax exempt bond supported housing is a setback to the program that has struggled in recent years to provide the necessary units to meet the growing waiting list.

This change came as a big surprise to the disability community and was never presented to the TDHCA Disability Advisory Committee for discussion. The proposed elimination of this program from the rules is a substantial change that could have benefited from input from the disability community. The Section 811 Program has over 327 individuals waiting for units – this action of eliminating the program from the requirements for the state's multifamily housing funding will make the wait even longer.

Please do not remove the Section 811 Project Rental Assistance Program from the required documentation for application submission and keep §10.204 (16) in 10 TAC Chapter 10, Subchapter C

Please accept the following as public comment on behalf of Disability Rights Texas regarding 10 TAC Chapter 11 concerning the Qualified Allocation Plan (QAP):

The Section 811 Project Rental Assistance Program needs to be returned to 10 TAC Chapter 10, Subchapter C instead of being a 2 point item as described in Tenant Populations with Special Housing Needs. It is also concerning that the option available to those applicants who cannot select participating in the Section 811 program that they commit to 5% of the units for individuals with disabilities when the design standards already require 5% wheelchair accessible units and 2% sensory accessible – UNLESS the 5% is for additional units set-aside that are not at all connected to the design standards units.

Thank you in advance for your consideration of our comments. Please let me know if you have any questions.

Jean Langendorf

Policy Specialist

Disability Rights Texas | 2222 W. Braker Ln. | Austin, TX 78758

512.407.2714 *direct* | 512.217.0143 *mobile* | 512.323.0902 *fax* | 512.454.4816 *main* | 800.252.9108 *toll free*

JeanL@drtx.org | www.disabilityrightstx.org

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(21) Leslie Buck

From: bucksix@aol.com
To: [HTC Public Comment](#)
Subject: 811 vouchers
Date: Monday, October 09, 2017 9:47:52 PM

Dear Mr. Russell,

Please maintain the 811 pha vouchers for housing for disabled Texas citizens, so they can live a life as independently as possible. We need more housing for people with disabilities not less. Texas needs to be a leader in helping the citizens with disabilities in America.

Sincerely,

Leslie Buck
10 Snow Pond Place
The Woodlands, TX 77382
Sent from my iPad

(22) Meredith Blackburn

From: [Meredith Blackburn](#)
To: [HTC Public Comment](#)
Subject: Section 811 Project Rental Assistance Program-NAMI Advocacy Committee member
Date: Thursday, October 05, 2017 1:12:32 PM
Attachments: [Thesis Final-Meredith Blackburn.docx](#)

To whomever it may concern:

The proposed rule changes to section 811 that would eliminate the effort to increase the number of housing units would have disastrous effects on the severely mentally ill. The need to invest and expand programs like this is critical because when programs like this get eliminated or down sized, not only do the mentally ill suffer, but so do taxpayers. The 811 PRA program allows mentally ill individuals to be more independent by coordinating services and provides a choice of subsidized, integrated rental housing options.

In 2015, I wrote my senior thesis on the negative consequences of budget cuts for mental health services in Texas. Community-based resources, like this program, are the cheapest and most effective avenue in offering mental health care and services to the mentally ill. So eliminating parts of this program and initiative to increase the housing units would end up costing more in the long run. People would be forced to seek care in more expensive places like emergency rooms and hospitals, as well as, homeless shelters; and others would probably end up in jail. There seems to be a lack of understanding that cutting resources does not save money. The mentally ill will not all of a sudden become better with the absence of the programs. They will get much worse and need more expensive care. Below are some excerpts from my thesis, and I've attached the whole thing to this email.

“The public mental health system is best described as a series of safety nets, with community-based mental health services serving as the first and most critical layer of the safety net.

Community-based mental health services, the level of care that offers sustainable results, are the most critical element in ensuring that a person suffering from a mental illness stays out of crisis.

Community-based mental health services are, in effect, the single most important investment in terms of recovery for the mentally ill. In many cases, adequate care at this level allows individuals to recover and regain their independence and ability to live a productive life and contribute to society (“Impact of Proposed Budget Cuts” 6).

When community-based services or mental hospitals are not available because of budget cuts, the responsibility falls on local resources such as prisons and law enforcement officials, emergency rooms, and homeless shelters, which comprise the third level of the mental health safety net. In 2011, NAMI stated:

“Communities pay a high price for cuts of this magnitude. Rather than saving states and communities money, these cuts to services simply shift financial responsibility to emergency rooms, community hospitals, law enforcement agencies, correctional facilities and homeless shelters” (“State Mental Health Cuts: A National Crisis” 1).

Budget cuts have transformed jails and prisons into warehouses for the mentally ill, with historically high numbers of mentally ill inmates. “As the prison population has skyrocketed and the funding for psychiatric facilities has dwindled — the criminal justice system is now inextricably intertwined with issues of mental health” (Culp-Ressler).

As shown, underfunding has serious, costly implications as the effects of inadequate mental health services reverberate from state to local governments, to the professionals trained to provide care, and finally, to the ultimate victims, people living with mental illness. For them, budget cuts have eliminated programs and services that act as a lifeline that keeps them off the streets and allows many to live full, functional, productive lives.

I hope you consider my comments.

Best,

Meredith Blackburn
281-989-2537

(23) Susan Raffle

From: [Susan Raffle](#)
To: [HTC Public Comment](#)
Subject: To Patrick Russell re: Section 811 Project Rental Assistance Program
Date: Friday, October 06, 2017 4:34:12 PM

Please do not eliminate the Section 811 Project Rental Assistance Program from the required documentation for application submission and keep §10.204 (16) in 10 TAC Chapter 10, Subchapter C.

(24) Methodist Healthcare Ministries



October 12, 2017

Texas Department of Housing and Community Affairs
Attn: Patrick Russell
P.O. Box 13941
Austin, Texas 78711-3941

Re: Section 811 Project Rental Assistance in the Uniform Multifamily Rules (10 TAC Chapter 10 Subchapter C) and the Housing Tax Credit Program Qualified Allocation Plan (10 TAC Chapter 11)

Dear Mr. Russell:

On behalf of Methodist Healthcare Ministries of South Texas, Inc., I am writing to express our opposition to the changes proposed by the Board of the Texas Department of Housing and Community Affairs on September 27, 2017, relating to the Section 811 Project Rental Assistance in the Uniform Multifamily Rules (10 TAC Chapter 10 Subchapter C) and the Housing Tax Credit Program Qualified Allocation Plan (10 TAC Chapter 11). As proposed, the changes would give housing developers the option of submitting a Section 811 Project Rental Assistance application with their submission of a housing tax credit application, direct loan application or tax-exempt bond application. Lowering this requirement would most certainly result in a reduction in the number of future development projects participating in Section 811 PRA and the number of units available for some of our most vulnerable citizens. We ask that the TDHCA maintain the current requirements – that housing developments applying for housing tax credits, direct loans or tax-exempt bonds be required to apply for Section 811 PRA – in order to meet the current backlog of more than 259 low income individuals with disabilities and mental illness, and our youths exiting the state's foster care system.

Background:

As you know, the Section 811 Project Rental Assistance (PRA) provides rental assistance to low-income persons with disabilities whom currently receive services through an HHSC agency and wish to live out in the community (namely, individuals with disabilities living in institutions, individuals with mental illness, or youths with disabilities exiting foster care). The program allows a person with disabilities to live, as independently as possible, in subsidized housing.

The State of Texas was allocated funding for 650 units through the Section 811 PRA program; however there are currently only 172 units available. To date, only 16 individuals have been housed across the state and 259 individuals remain on the waitlist. The changes being proposed would further exacerbate this problem and increase the waiting period for housing, especially for those in the San Antonio area where more than 100 applicants remain on the waitlist.

In November of 2016 the TDHCA Board adopted policies that required all housing developments submitting a Housing Tax Credits application, Direct Loan application and Tax-exempt Bond Development application to also submit an application for Section 811 PRA. By mandating that all developers apply for Section 811 PRA, the application process encouraged fairness and increased participation. As a result of this change, we experienced an increase in participation by 50 percent.

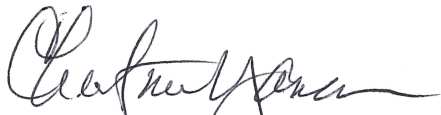
The proposed change by the TDHAC Governing Board on September 7, 2017, is not in line with the legislative changes and funding passed by the 85th Session leadership. More than \$7 Billion in funding has been appropriated to address the mental health needs of Texans for FY 2018-2019. The proposed changes do not align with the goals and strategies of the Texas Statewide Behavioral Health Strategic Plan, especially with the following Gaps in Services identified and strongly recommended for providers to address in mental health grant proposals for Senate Bill 292 and House Bill 13:

- Access to Housing
- Coordination Across State Agencies
- Services for Special Populations, including youth transitioning out of foster care, juvenile justice and mental health systems

Recommendation

Methodist Healthcare Ministries of South Texas respectfully urges the TDHCA Board **not to adopt** the proposed policies changes to the Uniform Multifamily Rules and the Housing Tax Credit Program Qualified Allocation Plan that relate to Section 811 PRA and retain the current language. Reduction in the number of units available for Section 811 PRA housing would only increase the state's waitlist for units for individuals who desperately need housing and decrease the fairness in the housing tax credit, direct loan and tax-exempt bond application process for smaller and newer housing developments.

Respectfully submitted,



Christine Yanas
Director, Governmental Affairs
Methodist Healthcare Ministries of South Texas

(25) Apolonio Flores

From: [Apolonio Flores](#)
To: [HTC Public Comment](#)
Subject: RE: Proposed Amendments to 10 TAC Chapter 11 Housing Tax Credit Program 2018 Draft QAP
Date: Sunday, October 08, 2017 4:46:16 PM

11.9(b)(2)(A)and (B) SPONSOR CHARACTERISTICS: **Reducing the combination of ownership interest in the General Partner of the Applicant, cash flow from operations, and developer fee when taken together from 80 to 50 percent is not justified.** The HUB or Nonprofit Organization must materially participate in the operation of the Development throughout the Compliance Period. Also, the HUB or Nonprofit Organization must be involved with the Development team or in the provision of in-site tenant services during the Development's compliance and extended use periods. **Accordingly, the combination should remain at a minimum equal to at least 80 percent.**

TDHCA needs to [consider](#) the IRS definition of material participation that requires a high number of hours during a year to meet the material participation requirements.

Apolonio (Nono) Flores

Flores Residential, LC
222 Persimmon Pond
San Antonio, TX 78231
(210) 494-7944 | (210) 289-5952 (cell)

(26) Five Woods, LLC

From: [Laolu Davies-Yemitan](#)
To: [HTC Public Comment](#)
Cc: ["laolu@5woods.net"](mailto:laolu@5woods.net)
Subject: Comments on Draft 2018 QAP
Date: Thursday, October 05, 2017 12:36:29 PM

Hello there,

I am offering the comments below on behalf of Five Woods, LLC (a certified HUB firm) in reference to the following sections:

Section 11.9(b)2 - Sponsor Characteristics

[A] The suggested reduction from 80% to 50% undermines the tremendous progress that bona fide HUB entities have made as active participants within the program. The baseline percentage of 80 percent from General Partner Interest, Cash Flow, and Developer, has been a critical factor in helping firms like ours build capacity, increase participation, and gain in-depth experience on 9% LIHTC deals. Furthermore, the minimal 5 percent threshold in each of the categories, has compelled majority developers to have to have their HUB partners have meaningful participation in different aspects of the project from inception to lease up and fulfillment of Section....

Material Participation - The addition of this clarifying definition is a positive step in the right direction.

[B] The segregation of point categories making the distinction based on level of participation is a positive step.

Best Regards,

Laolu Davies-Yemitan, CCIM
Five Woods Realty

Office: (832) 202-2233
Cell: (281) 948-9154
Laolu@5woods.net
LaoluD.blogspot.com

Real Estate Broker | Development | Government Relations

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Texas law requires all license holders to provide the Information About Brokerage Services to all prospective clients.

<http://members.har.com/mhf/terms/dispBrokerInfo.cfm?sitetype=aws&cid=481022>

(27) Foundation Communities



3036 South First Street
Austin, TX 78704

tel: 512-447-2026

fax: 512-447-0288

www.foundcom.org

visit us on facebook

follow us on twitter

October 12, 2017

Patrick Russell
Texas Department of Housing and Community Affairs
P.O. Box 13941
Austin, TX 78711-3941
Email: htc.public-comment@tdhca.state.tx.us

Dear Patrick,

Please find below our comments on the 2018 draft of proposed amendments to the Uniform Multifamily Rules and Qualified Application Plan. Thank you for your hard work, dedication, and collaboration on the 2018 Rules and QAP planning process.

Sincerely,

Walter Moreau
Executive Director
Foundation Communities



a Partner Agency of



United Way for Greater Austin



UNIFORM MULTIFAMILY RULES

Subchapter A - 10.3. Definitions

We appreciate TDHCA's work to firm up a Supportive Housing definition that will target the type of true supportive housing that we'd like to see the tax credit program support. However, a few revisions are needed to ensure that this program works for developers that have a long track record and proven model of delivering this type of housing.

- The appropriate goal for many supportive housing residents isn't necessarily moving on to other housing – the tax credit program supports permanent supportive housing. Therefore, we suggest revising to remove reference to support services post residency.
- 24-7 on-site support services is cost prohibitive and atypical of many successful SRO and Supportive Housing developments. Many SROs and Supportive Housing developments effectively serve individuals with said substance abuse or psychiatric disorders without 24-7 support.
- These projects are not financially feasible without additional sources of funding. While the project economics typically do not support amortizing permanent debt, "soft" cash flow loans are an essential tool to have available. Federal funds is just one of many potential sources.

Please see our suggested language.

(122) Supportive Housing—A residential rental Development that is:

(A) intended for occupancy by households in need of specialized and specific non-medical services in order to maintain independent living;

(B) the provision of services is provided primarily on-site by the Applicant, an Affiliate of the Applicant or a third party provider. The service provider must be able to demonstrate an established and compliant track record of providing such services in residential settings for at least three years prior to the application date;

(C) the services offered must include case management and tenant services that either aid tenants in addressing debilitating conditions or assist tenants in securing the skills, assets, and connections needed for independent living. Resident populations primarily include the homeless and those at-risk of homelessness; and

(D) the Applicant, General Partner, or Guarantor must meet the following criteria:

(i) demonstrate that it, alone or in partnership with a third party provider, has at least three years experience in developing and operating housing similar to the proposed housing;

(ii) set aside at least 20% of the Units in the Development for households that meet the definition of "homeless" as defined by the McKinney-Vento Homeless Assistance Act, as amended by the Homeless Emergency Assistance and Rapid Transition to Housing (HEARTH) Act, 42 USC 11302 and 42 USC 11360; and

(iii) provide evidence of a history of fundraising activities sufficient to fill unanticipated operating losses;

(E) is not financed by any third-party permanent foreclosable must-pay debt, unless the source of the debt is (i) federal funding, or (ii) a performance-based forgivable loan or grant to an affiliate of the Applicant which is re-loaned to the Applicant to recharacterize the grant as a loan consistent with the IRS Audit Techniques Guide. Any amendment to an Application or LURA resulting in the addition of debt prohibited under this definition will result in the revocation of IRS Form(s) 8609.

Subchapter B - 10.101(b)(6)(B) Unit and Development Construction Features.

Unit and Development construction feature amenity points can become quite costly in some developments, or have unintended negative impacts on unit layout, etc., due to the limited number of options currently available. We suggest adding a few additional options to the available menu, providing developers more flexibility to provide amenities that make the most sense given project and population specifics. One option is to include solar here, which may be part of a LEED or Enterprise Green Communities project, but isn't a mandatory requirement.

We also recommend a change to the LED lighting option. Expanding LED lighting to the entire unit offers the resident more benefit than just providing recessed or track LED lighting in the kitchen and living areas. Recessed and track lighting alone don't offer any additional benefit unless they're LED, and are more costly than traditional surface-mounted lighting fixtures.

Please see our suggested changes

- (i) Covered entries (0.5 point);
- (ii) Nine foot ceilings in living room and all bedrooms (at minimum) (0.5 point);
- (iii) Microwave ovens (0.5 point);
- (iv) Self-cleaning or continuous cleaning ovens (0.5 point);
- (v) Refrigerator with icemaker (0.5 point);
- (vi) Storage room or closet, of approximately 9 square feet or greater, separate from and in addition to bedroom, entryway or linen closets and which does not need to be in the Unit but must be on the property site (0.5 point);
- (vii) Energy-Star qualified laundry equipment (washers and dryers) for each individual Unit; must be front loading washer and dryer in required accessible Units (2 points);
- (viii) Covered patios or covered balconies (0.5 point);
- (ix) Covered parking (may be garages or carports, attached or freestanding) and include at least one covered space per Unit (1.5 points);
- (x) 14 SEER HVAC (or greater) or for Rehabilitation (excluding Reconstruction) where such systems are not being replaced as part of the scope of work, a radiant barrier in the attic is provided (1.5 points);
- (xi) High Speed Internet service to all Units (can be wired or wireless; required equipment for either must be provided) (1 point);
- (xii) Built-in (recessed into the wall) shelving unit (0.5 point);
- (xiii) ~~Recessed or track~~ LED lighting in ~~kitchen and living areas~~ all areas of unit (1 point);
- (xiv) Thirty (30) year (0.5 point);
- (xv) Greater than 30 percent stucco or masonry (includes stone, cultured stone, and brick but excludes cementitious and metal siding) on all building exteriors; the percentage calculation may exclude exterior glass entirely (2 points);
- (xvi) Breakfast Bar (a space, generally between the kitchen and dining area, that includes an area for seating although actual seating such as bar stools does not have to be provided) (0.5 points); and
- (xvii) Walk-in closet in master bedroom (0.5 points).

(xviii) Electric Vehicle Charging Station (0.5 points)

(xx) Ceiling Fans in all Bedrooms (0.5 points)

(xxi) Kitchen Pantries (0.5 points)

(xxii) Photovoltaic/Solar Hot Water Ready, consistent with Enterprise Green Communities scoring criteria (2 points)

QUALIFIED ALLOCATION PLAN

11.9(d)(7) Concerted Revitalization Plan

We recommend a handful of minor changes to the Concerted Revitalization Plan (CRP) language for clarification and to help eliminate what we currently see as some gray areas.

- Section 11.9(d)(7)(B)(ii) For Developments in Rural Areas states that “Applications may receive (2) points in addition to those under clause (i) of this subparagraph if the Development is explicitly identified in a resolution by the municipality (or county if the Development Site is completely outside of a city).” This language is very clear and helps to clarify that a county may not identify a top deal within city limits. However, this language is missing from 11.9(d)(7)(A)(ii)(II) For Developments in Urban Areas. We suggest adding the language to both sections for clarity.
- Section 11.9(d)(7)(A)(ii)(II) states that “A municipality or county may only identify one single Development 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.” We advise that TDHCA add more clarity to this language as we interpret this in one of two ways. (1) the rules allow multiple projects to receive points within distinct areas of a single large scale master plan and/or (2) the rules allow multiple projects to receive points if there are several separate and distinct CRP plans within a municipality or county. We do not have a strong opinion either way, but urge TDHCA to provide more clarity.
- Section 11.9(d)(7)(A)(i)(IV) states that “problems within the plan will have been sufficiently mitigated and addressed prior to the Development being placed into service.” However, the following paragraph goes on to state that the plan at the time of application must officially continue for a minimum of three years thereafter. These two statements seem to be contradictory, as a plan that is sufficiently realized is likely to have completed, or nearly completed, its intended planning timeframe. We recommend removing the three-year reference.

Please see our suggested changes

(A) For Developments located in an Urban Area:

(i) An Application may qualify to receive points if the Development Site is located in a distinct area that was once vital and has lapsed into a situation requiring concerted revitalization, and where a concerted revitalization plan has been developed and executed. The area targeted for revitalization must be larger than the assisted housing footprint and should be a neighborhood or small group of contiguous neighborhoods with common attributes and problems. The Application must include a copy of the plan or a link to the online plan and a description of where specific information required below can be found in the plan. The concerted revitalization plan, which may be a Tax Increment Reinvestment Zone (“TIRZ”) or Tax Increment Finance (“TIF”) or similar plan, must meet the criteria described in subclauses (I) - (IV) of this clause:

(I) The concerted revitalization plan must have been adopted by the municipality or county in which the Development Site is located. The resolution adopting the plan, or if development of the plan and budget were delegated the resolution of delegation and other evidence in the form of certifications by authorized persons confirming the adoption of the plan and budget, must be submitted with the application.

(II) The problems in the revitalization area must be identified through a process in which affected local residents had an opportunity to express their views on problems facing the area,

and how those problems should be addressed and prioritized. These problems may include the following:

(-a-) long-term disinvestment, such as significant presence of residential and/or commercial blight, streets infrastructure neglect such as inadequate drainage, and/or sidewalks in significant disrepair;

(-b-) declining quality of life for area residents, such as high levels of violent crime, property crime, gang activity, or other significant criminal matters such as the manufacture or distribution of illegal substances or overt illegal activities;

(III) Staff will review the target area for presence of the problems identified in the plan and for targeted efforts within the plan to address those problems. In addition, but not in lieu of, such a plan may be augmented with targeted efforts to promote a more vital local economy and a more desirable neighborhood, including but not limited to:

(-a-) creation of needed affordable housing by improvement of existing affordable housing that is in need of replacement or major renovation;

(-b-) attracting private sector development of housing and/or business;

(-c-) developing health care facilities;

(-d-) providing public transportation;

(-e-) developing significant recreational facilities; and/or

(-f-) improving under-performing schools.

(IV) The adopted plan must have sufficient, documented and committed funding to accomplish its purposes on its established timetable. This funding must have been flowing in accordance with the plan, such that the problems identified within the plan will have been sufficiently mitigated and addressed prior to the Development being placed into service.

~~(V) The plan must be current at the time of Application and must officially continue for a minimum of three years thereafter.~~

(ii) Up to seven (7) points will be awarded based on:

(I) Applications will receive four (4) points for a letter from the appropriate local official providing documentation of measurable improvements within the revitalization area based on the target efforts outlined in the plan. The letter must also discuss how the improvements will lead to an appropriate area for the placement of housing; and

(II) Applications may receive (2) points in addition to those under subclause (I) of this clause if the Development is explicitly identified in a resolution by the municipality ~~or county~~ (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). A municipality or county may only identify one single Development 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, none of the Applications shall be eligible for the additional points, unless the resolutions address the respective and distinct areas described in the plan; and

(III) Applications will receive (1) point in addition to those under subclause (I) and (II) if the development is in a location that would score at least 4 points under Opportunity Index, §11.9(c)(4)(B), except for the criteria found in §11.9(c)(4)(A) and subparagraphs §11.9(c)(4)(A)(i) and §11.9(c)(4)(A)(ii).

11.9 (e)(2) Cost of Development per Square Foot

We are concerned that SRO deals are at a significant disadvantage when calculating eligible hard costs per SF. As you know, the NRA in SROs are much lower than family developments, which is why the QAP allows for common area to be counted toward the SF total. However, we have found that 50 SF of common space per unit is still insufficient to allow SRO deals, with comparable unit count to family deals, to achieve the same cost per SF. As such we suggest reinstating the following language that has been in past QAPs, but removed in 2014.

Please see our suggested changes

(2) Cost of Development per Square Foot. (§2306.6710(b)(1)(F); §42(m)(1)(C)(iii)) An Application may qualify to receive up to twelve (12) points based on either the Eligible Building Cost or the Eligible Hard Costs per square foot of the proposed Development voluntarily included in eligible basis as originally submitted in the Application. For purposes of this scoring item, Eligible Building Costs will be defined as Building Costs includable in Eligible Basis for the purposes of determining a Housing Credit Allocation. Eligible Building Costs will exclude structured parking or commercial space that is not included in Eligible Basis, and Eligible Hard Costs will include general contractor overhead, profit, and general requirements. Structured parking or commercial space costs must be supported by a cost estimate from a Third Party General Contractor or subcontractor with experience in structured parking or commercial construction, as applicable. The square footage used will be the Net Rentable Area (NRA). The calculations will be based on the cost listed in the Development Cost Schedule and NRA shown in the Rent Schedule. If the proposed Development is a Supportive Housing Development, the NRA will include common area up to 50 square feet per Unit. If proposed Development is also Single Room Occupancy, the NRA will also include interior corridors.

(28) NEW HOPE



New Hope Housing

October 12, 2017

Ms. Teresa Morales & Mr. Patrick Russell
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701
Delivered via email

Dear Teresa and Patrick,

This letter brings with it our appreciation to you and your staff for the extensive work you all do throughout the development cycle. As you know, New Hope Housing has a mission to develop and operate housing for the most vulnerable citizens in our communities, and we have an obligation to work diligently to ensure that resources are directed, whenever possible, to that cause. The items we pointed out in our letter dated August 23rd regarding refinement of the 2018 QAP and MF Rules do not appear in the draft QAP and Rules. For that reason, some of the items below are reiterations of the importance of these issues and have been restated in the hope that staff will engage with us/the development community on these matters and make positive changes.

Qualified Allocation Plan

Tie Breaker Factors §11.7

Many of the proposed tie breaker factors in the draft 2018 QAP, with the exception of Proximity to Urban Core, are likely to have the effect of directing developments into outlying areas, and areas where demand for affordable housing may not exist. Additionally, efforts within tie breakers to achieve dispersion of housing should consider differences in the population proposed to be served. In order to better achieve a goal of providing affordable housing in those areas where demand is greatest, and considering that demand relative to the population served, we request the following modifications:

(1) Applications proposed to be located the smallest linear distance from the municipal government administration building having achieved a score on Proximity to the Urban Core. This item does not apply to the At-Risk Set-Aside.

(5) Applications proposed to be located the greatest linear distance from the nearest Housing Tax Credit assisted Development serving the same Target Population. 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. The linear measurement will be performed from closest boundary to closest boundary.

Concerted Revitalization Plan §11.9(d)(7)

Once again, we ask the Department staff to revise the existing Concerted Revitalization Plan language and reduce the barriers for local municipalities to implement and determine the best process for their own

jurisdictions. In particular, Houston is managing the aftermath of the worst natural disaster in our country's history. The priority of local officials is helping citizens through this catastrophe, and we believe strongly that the Department's CRP rules should make that process easier and more effective. In addition, the IRS has provided no stated guidance as to what benchmarks a CRP must meet, other than it should likely contain a QCT.

We request that in lieu of a plan adopted by the municipality, an appropriate local official (such as the Housing Director) may write a letter stating that the plan includes a public input process, funding, and a stated objective for revitalization of a once thriving area.

Please modify §11.9(d)(7)(A) as follows:

(i) An Application may qualify to receive points if the Development Site is located in a distinct area that was once vital and has lapsed into a situation requiring concerted revitalization, and where either the criteria described in subclause (I) or (II) is met:

(I) Concerted revitalization areas have been developed as confirmed by a letter from the appropriate local official. Such letter states:

(-a-) that the areas were 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;

(-b-) objectives for the revitalization of the once thriving area; and

(-c-) funding to achieve revitalization exists within the areas.

(II) a concerted revitalization plan has been developed and executed...

~~(-e-) The plan must be current at the time of Application and must officially continue for a minimum of three years thereafter.~~

Multifamily Rules

Supportive Housing Definition §10.3(a)(122)

As the State's leading provider of Supportive Housing, we propose the following Supportive Housing Definition:

(122) Supportive Housing—A residential rental Development that is:

(A) intended for occupancy by households in need of specialized and specific non-medical services in order to maintain independent living;

(B) the provision of services is provided primarily on-site by the Applicant, an Affiliate of the Applicant or a third party provider. The service provider must be able to demonstrate an established and compliant track record of providing such services in residential settings for at least three years prior to the application date;

(C) the services offered must include case management and tenant services that either aid tenants in addressing debilitating conditions or assist tenants in securing the skills, assets, and connections needed for independent living. Resident populations primarily include the homeless and those at-risk of homelessness; and

(D) the Applicant, General Partner, or Guarantor must meet the following criteria:

(i) demonstrate that it, alone or in partnership with a third party provider, has at least three years experience in developing and operating housing similar to the proposed housing;

(ii) set aside at least 20% of the Units in the Development for households that meet the definition of “homeless” as defined by the McKinney-Vento Homeless Assistance Act, as amended by the Homeless Emergency Assistance and Rapid Transition to Housing (HEARTH) Act, 42 USC 11302 and 42 USC 11360; and

(iii) provide evidence of a history of fundraising activities sufficient to fill unanticipated operating losses;

(E) is not financed by any permanent foreclosable must-pay debt, unless the source of the debt is (i) federal funding, or (ii) a performance-based forgivable loan or grant to an affiliate of the Applicant which is re-loaned to the Applicant to recharacterize the grant as a loan consistent with the IRS Audit Techniques Guide. Any amendment to an Application or LURA resulting in the addition of debt prohibited under this definition will result in the revocation of IRS Form(s) 8609.

Undesirable Neighborhood Characteristics §10.101(a)(3) & Undesirable Site Features §10.101(a)(2)

New Hope Housing agrees with and supports the comments provided by TAAHP on these two sections of the Multifamily Rules. Furthermore, New Hope Housing respectfully requests the exemption of SRO developments from the school performance threshold, alongside Elderly Limitation.

As always, I appreciate your time and attention. Please feel free to reach out to me directly if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Joy Horak-Brown". The signature is fluid and cursive, with the first name "Joy" being the most prominent.

Joy Horak-Brown
President and CEO

CC: Leo Vasquez, Tim Irvine, Marni Holloway

From: [Patrick Russell](#)
To: [HTC Public Comment](#)
Subject: FW: Amendment to Supportive Housing definition in New Hope's ltr dtd Oct 12 (forwarded on Oct 11)
Date: Thursday, October 12, 2017 3:04:33 PM
Attachments: [image001.png](#)
[image002.png](#)

From: Joy Horak-Brown [mailto:Joy@newhopehousing.com]
Sent: Thursday, October 12, 2017 3:02 PM
To: Teresa Morales; Patrick Russell
Cc: Leo Vasquez; Tim Irvine; Marni Holloway; Brent Stewart
Subject: Amendment to Supportive Housing definition in New Hope's ltr dtd Oct 12 (forwarded on Oct 11)

All –

Yesterday, October 11, I forwarded via email New Hope Housing's public comment in the form of a letter dated October 12.

After late evening conversations with several, I am writing to amend my public comment *only as to provision (E) of the Supportive Housing Definition.*

For clarity, I have repeated the definition here and **written in bold and underlined the two word addition** I wish to make to the Supportive Housing definition forwarded prior.

Supportive Housing Definition §10.3(a)(122)

As the State's leading provider of Supportive Housing, we propose the following Supportive Housing Definition:

(122) Supportive Housing—A residential rental Development that is:

- (A) intended for occupancy by households in need of specialized and specific non-medical services in order to maintain independent living;
- (B) the provision of services is provided primarily on-site by the Applicant, an Affiliate of the Applicant or a third party provider. The service provider must be able to demonstrate an established and compliant track record of providing such services in residential settings for at least three years prior to the application date;
- (C) the services offered must include case management and tenant services that either aid tenants in addressing debilitating conditions or assist tenants in securing the skills, assets, and connections needed for independent living. Resident populations primarily include the homeless and those at-risk of homelessness; and
- (D) the Applicant, General Partner, or Guarantor must meet the following criteria:
 - (i) demonstrate that it, alone or in partnership with a third party provider, has at least three years

experience in developing and operating housing similar to the proposed housing;

(ii) set aside at least 20% of the Units in the Development for households that meet the definition of “homeless” as defined by the McKinney-Vento Homeless Assistance Act, as amended by the Homeless Emergency Assistance and Rapid Transition to Housing (HEARTH) Act, 42 USC 11302 and 42 USC 11360; and

(iii) provide evidence of a history of fundraising activities sufficient to fill unanticipated operating losses;

(E) is not financed by any **third-party** permanent foreclosable must-pay debt, unless the source of the debt is (i) federal funding, or (ii) a performance-based forgivable loan or grant to an affiliate of the Applicant which is re-loaned to the Applicant to recharacterize the grant as a loan consistent with the IRS Audit Techniques Guide. Any amendment to an Application or LURA resulting in the addition of debt prohibited under this definition will result in the revocation of IRS Form(s) 8609.

I believe the two-word addition further strengthens this important definition.

My appreciation to you in advance,

Joy

Joy Horak-Brown

President and CEO

New Hope Housing, Inc.

Houston Area CDC

1117 Texas Avenue

Houston, Texas 77002

713.222.0290 voice

713.628.9113 cell

713.222.7770 fax

www.newhopehousing.com

Building Communities, Restoring Lives™

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(29) True Casa Consulting

True Casa Consulting, LLC

October 11, 2017

Ms. Teresa Morales & Mr. Patrick Russell
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701
Delivered via email

Dear Teresa and Patrick,

We want to sincerely thank the TDHCA staff for the thoughtful year-long planning process that occurred with this year's Qualified Allocation Plan and Multifamily Rules draft. We are hopeful the process will result in a QAP and Rules that has more consensus and fewer "surprises" to help housing providers better serve low-income Texans. True Casa Consulting, LLC was formed this year by Jennifer Hicks and Kate Moore. We are combining Jennifer's affordable and supportive housing development and financing experience with Kate's supportive service and program development experience to create a firm focused on mission-based and high-impact affordable housing projects.

We are especially interested in how the HTC program can help create more affordable housing to serve extremely low-income households and vulnerable populations in Texas. One important way the LIHTC can be leveraged to serve lower income households is by providing the capacity of local developers and nonprofits to get more supportive housing units on the ground. In this light, the majority of our comments focus on important changes that need to be made to the Multifamily Rules and QAP focuses regarding supportive housing. In addition, however, we want to thank TDHCA for its past and current efforts to create and incentivize additional programming that provide integrated models to complement the LIHTC program, such as the Section 811 PRA program that serves extremely low-income people with disabilities. We also support the long-standing incentives for the creation of 30% AMGI units that provides integrated opportunities for extremely low-income households to be located in LIHTC throughout the state. However, we want to encourage TDHCA to do more, and to continue to think creatively, with the knowledge of best practices throughout the country, to find ways to use this powerful funding source to serve those most in need.

Multifamily Rules

Supportive Housing Definition §10.3(a)(122) – We appreciate the changes proposed to the Supportive Housing Definition in the 2018 Draft. We think most of the changes are a huge improvement in reflecting the mission-focused nature of these projects as well as requiring the specific financial structure that enables the Supportive Housing to have deeper income targeting and serve higher need populations.

True Casa has extensive experience in the financial structuring, development and operation of Supportive Housing, please accept the definition below which includes some key edits that enable a tax credit execution while preserving the mission-focus of these Developments.

- 1) Changes to the debt section are critical. Without these edits, Supportive Housing Developments by mission-focused Developers are not possible. As you know, Supportive Housing requires a substantial

True Casa Consulting, LLC

amount of gap funding in the form of grants and loans from cities and foundations. Our edits ensure all these sources are aptly referenced. This gap funding is passed-through from the non-profit to the tax credit partnership as must-pay, foreclosable loans; however, the original source of those funds are a grant or are forgivable. We know TDHCA chooses to require their soft debt to be made directly to the partnership and therefore reduces basis; however, this is not possible for all the soft money that flows into a Supportive Housing Development or that Development would have a basis deficit. The changes below add the controlled flexibility that allows for such complicated transactions.

- 2) From experience, many residents in a Supportive Housing Development will have enabling issues such as substance abuse or psychiatric disorders that will require targeted services. However, requiring for these services to be staffed and available on a 24/7 basis is unintentionally restrictive and might not fit all models of Supportive Housing. What is most important and critical is that appropriate services are available to these residents.
- 3) We are supportive of adding a threshold homeless requirement to Supportive Housing Developments to ensure that supportive housing developers are committed to serving vulnerable populations. However, we also encourage TDHCA to consider how to increase incentives for affordable housing for other special needs populations in the QAP, such as farmworkers, veterans, and people with disabilities, who may not fit under the HEARTH Act definition.

(122) Supportive Housing—A residential rental Development that is:

(A) intended for occupancy by households in need of specialized and specific non-medical services in order to maintain independent living;

(B) the provision of services is provided primarily on-site by the Applicant, an Affiliate of the Applicant or a third party provider. The service provider must be able to demonstrate an established and compliant track record of providing such services in residential settings for at least three years prior to the application date;

(C) the services offered must include case management and tenant services that either aid tenants in addressing debilitating conditions or assist tenants in securing the skills, assets, and connections needed for independent living. Resident populations primarily include the homeless and those at-risk of homelessness; and

(D) the Applicant, General Partner, or Guarantor must meet the following criteria:

(i) demonstrate that it, alone or in partnership with a third party provider, has at least three years experience in developing and operating housing similar to the proposed housing;

(ii) set aside at least 20% of the Units in the Development for households that meet the definition of “homeless” as defined by the McKinney-Vento Homeless Assistance Act, as amended by the Homeless Emergency Assistance and Rapid Transition to Housing (HEARTH) Act, 42 USC 11302 and 42 USC 11360; and

(iii) provide evidence of a history of fundraising activities sufficient to fill unanticipated operating losses;

(E) is not financed by any third-party permanent foreclosable must-pay debt, unless the source of the debt is (i) federal funding, or (ii) a performance-based forgivable loan or grant to an affiliate of the Applicant which is re-loaned to the Applicant to recharacterize the grant as a loan consistent with the IRS Audit Techniques Guide. Any amendment to an Application or LURA resulting in the addition of debt prohibited under this definition will result in the revocation of IRS Form(s) 8609.

True Casa Consulting, LLC

Qualified Allocation Plan

Cost of Development per Square Foot - §11.9 (e)(2) – From our experience, Supportive Housing Developments that are Single Room Occupancy are at a significant disadvantage in calculating eligible hard costs per square foot. The high costs of plumbing and electrical are the same as a family unit configuration without the additional square footage to spread out those costs. The QAP already allows for 50 sf of common space per unit; however this is more to offset the large amounts of common area space in Supportive Housing Developments and insufficient in bridging the unit square footage/cost gap. We suggest reinstating interior corridors that has been in past QAP's, but perhaps inadvertently removed in 2014.

*(2) Cost of Development per Square Foot. (§2306.6710(b)(1)(F); §42(m)(1)(C)(iii)) An Application may qualify to receive up to twelve (12) points based on either the Eligible Building Cost or the Eligible Hard Costs per square foot of the proposed Development voluntarily included in eligible basis as originally submitted in the Application. For purposes of this scoring item, Eligible Building Costs will be defined as Building Costs includable in Eligible Basis for the purposes of determining a Housing Credit Allocation. Eligible Building Costs will exclude structured parking or commercial space that is not included in Eligible Basis, and Eligible Hard Costs will include general contractor overhead, profit, and general requirements. Structured parking or commercial space costs must be supported by a cost estimate from a Third Party General Contractor or subcontractor with experience in structured parking or commercial construction, as applicable. The square footage used will be the Net Rentable Area (NRA). The calculations will be based on the cost listed in the Development Cost Schedule and NRA shown in the Rent Schedule. If the proposed Development is a Supportive Housing Development, the NRA will include common area up to 50 square feet per Unit. **If proposed Development is also Single Room Occupancy, the NRA will also include interior corridors.***

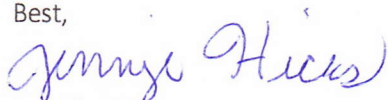
Underserved - §11.9 (c)(5) -

We believe §11.9 (c)(5)(C), (D) and (E) require additional clarification as follows:

- 1) The definition of "Development" includes projects that "has applied for Department funds." The Underserved sections (C), (D) and (E) then reference the term "Development" which could technically include projects that have applied for TDHCA funding, but not awarded funding. Just wanted to point out this technicality.
- 2) Are the 30-year and 15-year date from the date of board approval or year of credits awarded? These dates are different on some projects.

Thank you again for your thoughtful attention to the QAP and Rules this year and allowing for such a public process. Please do reach out with any questions.

Best,



Jennifer Hicks,
Co-Founder

October 12, 2017

Patrick Russell
Multifamily Policy Research Specialist
Texas Department of Housing and Community Affairs
21 E 11th Street
Austin, Texas 78701

Via Email: Patrick.Russell@tdhca.state.tx.us

Re: 2018 Qualified Allocation Plan and Visitability Rule

Patrick,

Following are my comments to the Draft of the 2018 Qualified Allocation Plan and Visitability Rule published on the TDHCA website on September 22, 2017.

§11.7 Tie Breaker Factors

No change suggested.

§11.7 Comment: Developers have already made real estate decisions based on the tie breaker factors as presented in the Draft QAP. The order and content of this section should remain as written.

§11.9(c)(4)(B) Opportunity Index

(B) An application that meets the foregoing criteria may qualify for additional points ~~(for a maximum of seven (7) points)~~ for any one or more of the following factors. ~~Each facility or 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~~ 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. Any costs or membership fees associated with making use of a recreational amenity cannot exceed \$50 per person per month (assume cost is for a single admittance per month and membership fee is for annual membership paid on a monthly basis):

§11.9(c)(4)(B) Comment: Multiple amenities housed in the same building or located on the same site should be treated as separate scoring items as they benefit tenants as much and maybe more than the same amenities in separate locations.

§11.9(c)(4)(B)(i)(I) and (II) Opportunity Index

(I) The Development Site is located ~~less than 1/2 mile on an accessible route that is less than 1/2 mile~~ from the entrance to a public park with an accessible playground. ~~The route and the playground both of which must meet that meets~~ 2010 ADA standards. (1 point)

(II) The Development Site is located ~~less than ½ mile on an accessible route that is less than ½ mile~~ from ~~the entrance of a Ppublic Ttransportation stop or station~~ with a route schedule that provides regular service to employment and basic services. ~~The route and the public transportation stop must meet 2010 ADA standards.~~ For purposes of this scoring item, regular is defined as scheduled service beyond 8 a.m. to 5 p.m., plus weekend service ~~(both Saturday and Sunday)~~. (1 point)

§11.9(c)(4)(B)(i)(I) and (II) Comment: Offsite routes are constructed and maintained by a third party such as a City and, therefore, maintaining continued accessibility of the route is not the responsibility or even within the rights of the applicant to accomplish. Accessibility can change from application date to award date and beyond. It has proven to be extremely difficult to accurately determine if a route on City sidewalks and/or across City streets meets 2010 ADA standards.

§11.9(c)(4)(B)(i)(VII) Opportunity Index

(VII) The development ~~s~~Site is located within 1 mile of a public library ~~that has indoor meeting space, physical books that can be checked out and that are of a general and wide-ranging subject matter, computers and internet access, and that is open during normal operating hours at least one weekday evening, Saturday or Sunday at least 6 days a week. The library must not be age or subject-restricted and must be at least partially funded with government funding~~ (1 point)

§11.9(c)(4)(B)(i)(VII) Comment: The Texas Library Association (TLA) Public Library Standards are voluntary, but there is a link to the document from the Texas State Library and Archives Commission website (<https://www.tsl.texas.gov/planning-audits-reports#general>). Service Standards indicate, “Libraries will have day time and either evening or weekend hours.” Whether or not a public library is considered a neighborhood amenity should not be based on the number of days it is open.

The standards also indicate the total number of hours a library should be open based on the population in its service region. For example, a library serving less than 5,000 people should be open at least 35 hours per week, while a library serving over 500,000 should be open at least 72 hours per week. However, these standards do not appear to be widely implemented. Austin Public Library’s Central Library will be open only 66 hours per week even though it serves a population well over 500,000.

§11.9(c)(4)(B)(i)(VIII) Opportunity Index

(VIII) The Development Site is located within 5 miles of ~~an accredited Uuniversity or Ccommunity Ccollege campus, as confirmed by the US Department of Education (https://www.ed.gov/accreditation) 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 Ccommunity Ccolleges. The Uuniversities and/or Ccommunity Ccolleges must have the authority to confer associate’s and/or bachelor’s degrees and have a physical locationcampus, 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)

§11.9(c)(4)(B)(i)(VIII) Comment: Accreditation by the Texas Higher Education Coordination Board alone is too narrow a criterion for this amenity. If the purpose is to provide tenants with the opportunity to attend a university or community college in close proximity to their home, accreditation of the institution

by any organization recognized by the US Department of Education should be allowed as long as the institution can confer a bachelor's or associate's degree.

§11.9(c)(4)(B)(ii)(V) Opportunity Index

(V) The ~~d~~Development ~~s~~Site is located within 4 miles of a public library that has indoor meeting space, physical books that can be checked out and that are of a general and wide-ranging subject matter, computers and internet access, and that is open at least one weekday evening, Saturday or Sunday during normal operating hours at least 5 days a week. The library must not be age or subject-restricted and must be at least partially funded with government funding. (1 point)

§11.9(c)(4)(B)(ii)(V) Comment: The Texas Library Association (TLA) Public Library Standards are voluntary, but there is a link to the document from the Texas State Library and Archives Commission website (<https://www.tsl.texas.gov/planning-audits-reports#general>). Service Standards indicate, “Libraries will have day time and either evening or weekend hours.” Whether or not a public library is considered a neighborhood amenity should not be based on the number of days it is open.

The standards also indicate the total number of hours a library should be open based on the population in its service region. For example, a library serving less than 5,000 people should be open at least 35 hours per week, while a library serving over 500,000 should be open at least 72 hours per week. However, these standards do not appear to be widely implemented. Austin Public Library’s Central Library will be open only 66 hours per week even though it serves a population well over 500,000.

§11.9(c)(4)(B)(ii)(VI) Opportunity Index

(VI) ~~The development site is located within 4 miles of a public park (1 point)~~The development site is located within 4 miles of a public park (1 point) The Development Site is located on an accessible route that is less than 1 mile from a public park with an accessible playground. The route and the playground both must meet 2010 ADA standards. (1 point)

§11.9(c)(4)(B)(ii)(VI) Comment: Revert to 2017 language. A public playground may not be available in many rural communities; however, most LIHTC developments provide this amenity onsite to tenants. Offsite routes are constructed and maintained by a third party such as a City and, therefore, maintaining continued accessibility of the route is not the responsibility or even within the rights of the applicant to accomplish. Accessibility can change from application date to award date and beyond. It has proven to be extremely difficult to accurately determine if a route on City sidewalks and/or across City streets meets 2010 ADA standards.

§11.9(c)(4)(B)(ii)(VII) Opportunity Index

(VII) The Development Site is located within 15 miles of an ~~accredited U~~university or ~~C~~community ~~C~~college ~~campus~~, ~~as confirmed by the US Department of Education (<https://www.ed.gov/accreditation>), 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. The university or community college must have the authority to confer associate’s and/or bachelor’s degrees and 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)~~

§11.9(c)(4)(B)(ii)(VII) Comment: Accreditation by the Texas Higher Education Coordination Board alone is too narrow a criterion for this amenity. If the purpose is to provide tenants with the opportunity to attend a university or community college in close proximity to their home, accreditation of the institution by any organization recognized by the US Department of Education should be allowed as long as the institution can confer a bachelor’s or associate’s degree.

§11.9(e)(2)(E) Cost of Development per Square Foot

(Option 1)

(E) Applications proposing Adaptive Reuse or Rehabilitation (excluding Reconstruction) will be eligible for points if one of the following conditions is met:

- (i) Twelve (12) points for Applications which include voluntary Eligible Hard Costs plus acquisition costs included in Eligible Basis that are less than \$104 per square foot;
- (ii) Twelve (12) points for Applications which include voluntary Eligible Hard Costs plus acquisition costs included in Eligible Basis that are less than \$135.20 per square foot, located in an Urban Area, and that qualify for 5 or 7 points under subsection (c)(4) of this section, related to Opportunity Index; or
- (iii) Eleven (11) points for Applications which include voluntary Eligible Hard Costs plus acquisition costs included in Eligible Basis that are less than \$135.20 per square foot.

(Option 2)

(E) Applications proposing Adaptive Reuse or Rehabilitation (excluding Reconstruction) will be eligible for points if one of the following conditions is met:

- (i) Twelve (12) points for Applications which include voluntary Eligible Hard Costs ~~plus acquisition costs included in Eligible Basis~~ that are less than ~~\$104 per square foot~~ ~~5080 per square foot, plus or minus \$1 per square foot for every 50 square feet above or below a 900700 square feet unit~~;
- (ii) Twelve (12) points for Applications which include voluntary Eligible Hard Costs ~~plus acquisition costs included in Eligible Basis~~ that are less than ~~\$135.20 per square foot~~ ~~6090 per square foot, plus or minus \$1 per square foot for every 50 square feet above or below a 900700 square feet unit~~, located in an Urban Area, and that qualify for 5 or 7 points under subsection (c)(4) of this section, related to Opportunity Index; or
- (iii) Eleven (11) points for Applications which include voluntary Eligible Hard Costs ~~plus acquisition costs included in Eligible Basis~~ that are less than ~~\$135.20 per square foot~~ ~~6090 per square foot, plus or minus \$1 per square foot for every 50 square feet above or below a 900700 square feet unit~~.

§11.9(e)(2)(E) Comment: (Option 1) Revert to 2017 language. It is better to keep things simple with a flat dollar figure rather than one that has to be calculated. (Option 2) If the language is changed in the final 2018 QAP, the base dollar amount and base unit square footage should be supported by actual data. The suggested cost per square foot is \$80 and \$90, and the suggested base square footage is 700 square feet. These suggested figures mirror the RRHATX public comment on this section.

§11.9(e)(3)(E) Pre-application Participation

(E) The Application final score (inclusive of only scoring items reflected on the self score form) does not vary by more than ~~six four (64)~~ six (6) points from what was reflected in the pre-application self score;

§11.9(e)(3)(E) Comment: Revert to 2017 language; a four-point spread is not wide enough to take into consideration many of the scoring items that are out of the Applicants’ control; for example, Representative support letters as currently scored.

§10.101(b)(8)(B) Development Accessibility Requirements

~~(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.~~

~~(i) All common use facilities must be in compliance with the Fair Housing Design Act Manual;~~

~~(ii) There must be an accessible or exempt route, as provided for in the Fair Housing Design Act Manual, from common use facilities to the affected units;~~

~~(iii) Each affected unit must include the features in subclauses (a) – (e) of this clause.~~

~~(a) at least one zero-step, accessible entrance;~~

~~(b) at least one visitable 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;~~

~~(c) 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;~~

~~(d) 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~~

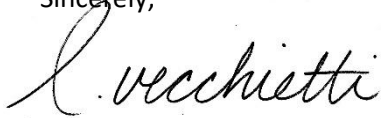
~~(e) light switches, electrical outlets, and thermostats on the entry level must be at accessible heights. New Construction—~~excluding New Construction of~~~~

§10.101(b)(8)(B) Comment: According to the Fair Housing Act Design Manual, “REQUIREMENT 7 Usable Kitchens and Bathrooms: Dwelling units must contain usable kitchens and bathrooms such that an

individual who uses a wheelchair can maneuver about the space.” While a half bath (powder room) is exempt, any bathroom with a toilet, sink and tub/shower will have to be wheelchair accessible. This seems to go beyond the intent of the Department’s visitability rule as described at roundtables and board meetings.

Please let me know if you have any questions. I am available via email at lisa@betcohousinglab.com or (512) 627-8062.

Sincerely,

A handwritten signature in black ink that reads "L. Vecchietti". The signature is written in a cursive style with a large, looping initial "L".

Lisa Vecchietti

(31) BETCO Consulting



October 12, 2017

Patrick Russell
Multifamily Policy Research Specialist
Texas Department of Housing and Community Affairs
21 E 11th Street
Austin, Texas 78701

Via Email: Patrick.Russell@tdhca.state.tx.us

Re: 2018 Qualified Allocation Plan and Other TDHCA Rules

Patrick,

Following are our comments to the Draft of the 2018 Qualified Allocation Plan and other rules published on the TDHCA website on September 22, 2017.

§11.7 Tie Breaker Factors

Although we have no suggested changes at this time, we would like to stress how this category is still a concerning issue. Including units per capita and poverty rate as tiebreakers not only will continue the flocking of developers to specific areas to fight over land and drive up prices, but pushes development location to areas where populations and amenities are limited. While a site may score and be competitive with these tiebreakers in play, later in the process during the underwriting review, these very factors may be what deem these sites infeasible from an underwriting perspective. This past cycle, one of the tiebreakers was the number of amenities in excess to the seven (7) under Opportunity Index. An amenity rich site benefits the residents that will live in the development. Using this tiebreaker criterion resulted in some of the best sites that we have found for development and we would like to see this tiebreaker developed further in the future to replace poverty rate and units per capita.

§11.7 Comment: Developers have already made real estate decisions based on the tie breaker factors as presented in the Draft QAP. The order and content of this section should remain as written for the 2018 QAP.



§11.9(c)(4)(B) Opportunity Index

(B) An application that meets the foregoing criteria may qualify for additional points ~~(for a maximum of seven (7) points)~~ for any one or more of the following factors. ~~Each facility or 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~~ 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. Any costs or membership fees associated with making use of a recreational amenity cannot exceed \$50 per person per month (assume cost is for a single admittance per month and membership fee is for annual membership paid on a monthly basis):

§11.9(c)(4)(B) Comment: Multiple amenities housed in the same building or located on the same site should be treated as separate scoring items as they benefit tenants as much and maybe more than the same amenities in separate locations.

§11.9(c)(4)(B)(i)(I) and (II) Opportunity Index

(I) The Development Site is located ~~less than 1/2 mile on an accessible route that is less than 1/2 mile~~ from ~~the entrance to~~ a public park with an accessible playground. ~~The route and the playground both of which must meet that meets~~ 2010 ADA standards. (1 point)

(II) The Development Site is located ~~less than 1/2 mile on an accessible route that is less than 1/2 mile~~ from ~~the entrance of a~~ public ~~T~~transportation ~~stop or station~~ with a route schedule that provides regular service to employment and basic services. ~~The route and the public transportation stop must meet 2010 ADA standards.~~ For purposes of this scoring item, regular is defined as scheduled service beyond 8 a.m. to 5 p.m., plus weekend service ~~(both Saturday and Sunday)~~. (1 point)

§11.9(c)(4)(B)(i)(I) and (II) Comment: Offsite routes are constructed and maintained by a third party such as a City and, therefore, maintaining continued accessibility of the route is not the responsibility or even within the rights of the applicant to accomplish. Accessibility can change from application date to award date and beyond. It has proven to be extremely difficult to accurately determine if a route on City sidewalks and/or across City streets meets 2010 ADA standards.



§11.9(c)(4)(B)(i)(VII) Opportunity Index

(VII) The development site is located within 1 mile of a public library that has indoor meeting space, physical books that can be checked out and that are of a general and wide-ranging subject matter, computers and internet access, and that is open during normal operating hours at least one weekday evening, Saturday or Sunday at least 6 days a week. The library must not be age or subject-restricted and must be at least partially funded with government funding (1 point)

§11.9(c)(4)(B)(i)(VII) Comment: The Texas Library Association (TLA) Public Library Standards are voluntary, but there is a link to the document from the Texas State Library and Archives Commission website (<https://www.tsl.texas.gov/planning-audits-reports#general>). Service Standards indicate, “Libraries will have day time and either evening or weekend hours.” Whether or not a public library is considered a neighborhood amenity should not be based on the number of days it is open.

The standards also indicate the total number of hours a library should be open based on the population in its service region. For example, a library serving less than 5,000 people should be open at least 35 hours per week, while a library serving over 500,000 should be open at least 72 hours per week. However, these standards do not appear to be widely implemented. Austin Public Library’s Central Library will be open only 66 hours per week even though it serves a population well over 500,000.

§11.9(c)(4)(B)(i)(VIII) Opportunity Index

(VIII) The Development Site is located within 5 miles of an accredited University or Community College campus, as confirmed by the US Department of Education (<https://www.ed.gov/accreditation>) by the Texas Higher Education Coordination Board (“THECB”) or an accredited vocational program as confirmed by the Accrediting Commission of Career Schools and Colleges (<http://www.accsc.org/Directory/index.aspx>). 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. The University, ies and or Community Colleges must have the authority to confer associate’s and/or bachelor’s degrees. The university, community college, or vocational school must have a physical location 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)

§11.9(c)(4)(B)(i)(VIII) Comment: Accreditation by the Texas Higher Education Coordination Board alone is too narrow a criterion for this amenity. If the purpose is to provide tenants with the opportunity to attend a university or community college in close proximity to their home, accreditation of the institution by any organization recognized by the US Department of Education should be allowed as long as the institution can confer a bachelor’s or associate’s degree. We would also like to see the addition of vocational schools. These are also viable paths to success via employment and small business ownership opportunities.

§11.9(c)(4)(B)(ii)(V) Opportunity Index



(V) The ~~d~~Development ~~s~~Site is located within 4 miles of a public library that has indoor meeting space, physical books that can be checked out and that are of a general and wide-ranging subject matter, computers and internet access, and that is open at least one weekday evening, Saturday or Sunday during normal operating hours at least 5 days a week. The library must not be age or subject-restricted and must be at least partially funded with government funding. (1 point)

§11.9(c)(4)(B)(ii)(V) Comment: The Texas Library Association (TLA) Public Library Standards are voluntary, but there is a link to the document from the Texas State Library and Archives Commission website (<https://www.tsl.texas.gov/planning-audits-reports#general>). Service Standards indicate, “Libraries will have day time and either evening or weekend hours.” Whether or not a public library is considered a neighborhood amenity should not be based on the number of days it is open.

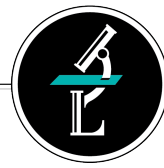
The standards also indicate the total number of hours a library should be open based on the population in its service region. For example, a library serving less than 5,000 people should be open at least 35 hours per week, while a library serving over 500,000 should be open at least 72 hours per week. However, these standards do not appear to be widely implemented. Austin Public Library’s Central Library will be open only 66 hours per week even though it serves a population well over 500,000.

§11.9(c)(4)(B)(ii)(VI) Opportunity Index

(VI) ~~The development site is located within 4 miles of a public park. (1 point)~~The development site is located within 4 miles of a public park (1 point) The Development Site is located on an accessible route that is less than 1 mile from a public park with an accessible playground. The route and the playground both must meet 2010 ADA standards. (1 point)

§11.9(c)(4)(B)(ii)(VI) Comment: Revert to 2017 language. A public playground may not be available in many rural communities; however, most LIHTC developments provide this amenity onsite to tenants. Offsite routes are constructed and maintained by a third party such as a City and, therefore, maintaining continued accessibility of the route is not the responsibility or even within the rights of the applicant to accomplish. Accessibility can change from application date to award date and beyond. It has proven to be extremely difficult to accurately determine if a route on City sidewalks and/or across City streets meets 2010 ADA standards.

§11.9(c)(4)(B)(ii)(VII) Opportunity Index



(VII) The Development Site is located within 15 miles of an accredited University or Community College campus, as confirmed by the US Department of Education (<https://www.ed.gov/accreditation>) or an accredited vocational program as confirmed by the Accrediting Commission of Career Schools and Colleges (<http://www.accsc.org/Directory/index.aspx>). 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. The university or community college must have the authority to confer associate's and/or bachelor's degrees. The university, community college, or vocational school 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)

§11.9(c)(4)(B)(ii)(VII) Comment: Accreditation by the Texas Higher Education Coordination Board alone is too narrow a criterion for this amenity. If the purpose is to provide tenants with the opportunity to attend a university or community college in close proximity to their home, accreditation of the institution by any organization recognized by the US Department of Education should be allowed as long as the institution can confer a bachelor's or associate's degree. We would also like to see the addition of vocational schools. These are also viable paths to success via employment and small business ownership opportunities.

§11.9(c)(6)(A) Tenant Populations with Special Housing Needs

(A) An Applicant or Affiliate that Owns or Controls an Existing Development that is eligible to participate in the Department's Section 811 Project Rental Assistance Program ("Section 811 PRA Program") will do so in order to receive two (2) points. In order to qualify for points, the Existing Development must commit to the Section 811 PRA Program at minimum 10 Section 811 PRA Program Units, unless the Integrated Housing Rule, 10 TAC §1.15, or the 811 Program Rental Assistance Rule ("811 Rule"), 10 TAC Chapter 8, limits the Development to fewer than 10 Section 811 PRA Program Units. The same Section 811 PRA Program Units cannot be used to qualify for points in more than one HTC Application. The Applicant or Affiliate will comply with the requirements of 10 TAC Chapter 8. A HUB or nonprofit entity's portfolio of Existing Developments is exempt from the requirements of this subparagraph (A) unless the HUB or nonprofit entity is the proposed Managing General Partner of the Applicant requesting points under this paragraph (6).

§11.9(c)(6) Comment: Additional language is necessary to explicitly exclude Existing Developments of non-affiliated developers from being required to participate in the 811 program for scoring purposes when the only link between the Application and an Existing Development is the participation of a HUB or nonprofit. This past cycle, there were Developers that did not participate in the HTC cycle, yet their HUB partners did with other developers. When this occurred, the non-participating developer's units linked with the HUB were included in the screening process for Section 811 eligibility. In most of these cases, the HUB partner that linked these units were not the controlling interest in the ownership structure. The HUBs were not the Managing General Partner.

§11.9(e)(2)(B) through (D) Cost of Development per Square Foot



(B) Applications proposing New Construction or Reconstruction will be eligible for twelve (12) points if one of the following conditions is met:

- (i) The voluntary Eligible Building Cost per square foot is less than ~~\$91.00~~~~\$72.80~~ per square foot;
- (ii) The voluntary Eligible Building Cost per square foot is less than ~~\$97.50~~~~\$78~~ per square foot, and the Development meets the definition of a high cost development;
- (iii) The voluntary Eligible Hard Cost per square foot is less than ~~\$117.00~~~~\$93.60~~ per square foot; or
- (iv) The voluntary Eligible Hard Cost per square foot is less than ~~\$130.00~~~~\$104~~ per square foot, and the Development meets the definition of high cost development.

(C) Applications proposing New Construction or Reconstruction will be eligible for eleven (11) points if one of the following conditions is met:

- (i) The voluntary Eligible Building Cost per square foot is less than ~~\$97.50~~~~\$78~~ per square foot;
- (ii) The voluntary Eligible Building Cost per square foot is less than ~~\$104.00~~~~\$83.20~~ per square foot, and the Development meets the definition of a high cost development;
- (iii) The voluntary Eligible Hard Cost per square foot is less than ~~\$123.50~~~~\$98.80~~ per square foot; or
- (iv) The voluntary Eligible Hard Cost per square foot is less than ~~\$136.50~~~~\$109.20~~ per square foot, and the Development meets the definition of high cost development.

(D) Applications proposing New Construction or Reconstruction will be eligible for ten (10) points if one of the following conditions is met:

- (i) The voluntary Eligible Building Cost is less than ~~\$117.00~~~~\$93.60~~ per square foot; or
- (ii) The voluntary Eligible Hard Cost is less than ~~\$143.00~~~~\$114.40~~ per square foot.

§11.9(e)(2)(B) through (D) Comment: Due to the impact of Hurricane Harvey on construction pricing, a 25% increase across the board on cost of development per square foot should be implemented in the 2018 QAP. This increase will allow applicants to present real world numbers rather than costs artificially adjusted to meet scoring criteria. The impact of the scoring criteria still remains as applicants will not be able to inflate costs without losing these points.

§11.9(e)(2)(E) Cost of Development per Square Foot
(Option 1)



(E) Applications proposing Adaptive Reuse or Rehabilitation (excluding Reconstruction) will be eligible for points if one of the following conditions is met:

(i) Twelve (12) points for Applications which include voluntary Eligible Hard Costs plus acquisition costs included in Eligible Basis that are less than ~~\$104~~\$130.00 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 ~~\$135.20~~\$169.00 per square foot, located in an Urban Area, and that qualify for 5 or 7 points under subsection (c)(4) of this section, related to Opportunity Index; or

(iii) Eleven (11) points for Applications which include voluntary Eligible Hard Costs plus acquisition costs included in Eligible Basis that are less than ~~\$135.20~~\$169.00 per square foot.



(Option 2)

(E) Applications proposing Adaptive Reuse or Rehabilitation (excluding Reconstruction) will be eligible for points if one of the following conditions is met:

(i) Twelve (12) points for Applications which include voluntary Eligible Hard Costs ~~plus acquisition costs included in Eligible Basis~~ that are less than ~~\$104 per square foot~~ ~~5080 per square foot, plus or minus \$1 per square foot for every 50 square feet above or below a 900700 square feet unit;~~

(ii) Twelve (12) points for Applications which include voluntary Eligible Hard Costs ~~plus acquisition costs included in Eligible Basis~~ that are less than ~~\$135.20 per square foot~~ ~~6090 per square foot, plus or minus \$1 per square foot for every 50 square feet above or below a 900700 square feet unit~~, located in an Urban Area, and that qualify for 5 or 7 points under subsection (c)(4) of this section, related to Opportunity Index; or

(iii) Eleven (11) points for Applications which include voluntary Eligible Hard Costs ~~plus acquisition costs included in Eligible Basis~~ that are less than ~~\$135.20 per square foot~~ ~~6090 per square foot, plus or minus \$1 per square foot for every 50 square feet above or below a 900700 square feet unit.~~

§11.9(e)(2)(E) Comment: (Option 1) Revert to 2017 language. It is better to keep things simple with a flat dollar figure rather than one that has to be calculated. Also, due to the impact of Hurricane Harvey on construction pricing, a 25% increase across the board on cost of development per square foot should be implemented in the 2018 QAP. This increase will allow applicants to present real world numbers rather than costs artificially adjusted to meet scoring criteria. The impact of the scoring criteria still remains as applicants will not be able to inflate costs without losing these points. (Option 2) If the language is changed in the final 2018 QAP, the base dollar amount and base unit square footage should be supported by actual data. The suggested cost per square foot is \$80 and \$90, and the suggested base square footage is 700 square feet.

§11.9(e)(3)(E) Pre-application Participation

(E) The Application final score (inclusive of only scoring items reflected on the self score form) does not vary by more than ~~six four (64)~~ ~~six (6)~~ points from what was reflected in the pre-application self score;

§11.9(e)(3)(E) Comment: Revert to 2017 language; a four-point spread is not wide enough to take into consideration many of the scoring items that are out of the Applicants' control; for example, Representative support letters as currently scored.

§11.9(e)(4)(A)(ii) through (iv) Leveraging of Private, State, and Federal Resources



(ii) If the Housing Tax Credit funding request is less than ~~nine (9) eight (8)~~ percent of the Total Housing Development Cost (3 points); or

(iii) If the Housing Tax Credit funding request is less than ~~ten (10) nine (9)~~ percent of the Total Housing Development Cost (2 points); or

(iv) If the Housing Tax Credit funding request is less than ~~eleven (11) ten (10)~~ percent of the Total Housing Development Cost (1 point).

§11.9(e)(4)(A)(ii) through (iv) Comment: The impact of Hurricane Harvey on construction pricing supports a need to increase by one percentage point each of the percentages for this scoring category. Deals structured in the current environment, which also suffer because of depressed equity pricing, are under leveraged with tax credits due to this point category.

§10.101(b)(8)(B) Development Accessibility Requirements

~~(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.~~

~~(i) All common use facilities must be in compliance with the Fair Housing Design Act Manual;~~

~~(ii) There must be an accessible or exempt route, as provided for in the Fair Housing Design Act Manual, from common use facilities to the affected units;~~

~~(iii) Each affected unit must include the features in subclauses (a) – (e) of this clause.~~

~~(a) at least one zero-step, accessible entrance;~~

~~(b) at least one visitable 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;~~

~~(c) 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;~~

~~(d) 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~~

~~(e) light switches, electrical outlets, and thermostats on the entry level must be at accessible heights. New Construction (excluding New Construction of~~

§10.101(b)(8)(B) Comment: According to the Fair Housing Act Design Manual, “REQUIREMENT 7 Usable Kitchens and Bathrooms: Dwelling units must contain usable kitchens and bathrooms such that an individual who uses a wheelchair can maneuver about the space.” While a half bath (powder room) is exempt, any bathroom with a toilet, sink and tub/shower will have to be wheelchair accessible. This seems to go beyond the intent of the Department’s visitability rule as described at roundtables and board meetings.



If you have any questions or would like to discuss these items further, please do not hesitate to contact me directly at (512) 785-3710 or via email at lora@betcohousinglab.com any time.

Sincerely,

Lora Myrick, Principal
BETCO Consulting, LLC

(32) Texas Coalition of Affordable Developers

TX-CAD 2018 QAP and Multifamily Rules Comments

The Texas Coalition of Affordable Developers (TX-CAD) is pleased to submit our comments for the 2018 QAP and Multifamily Rules. TX-CAD is a coalition of Developers and consultants who have come together for the purpose of focusing on the improvement of affordable housing policy in Texas. The members of this group represent over 250 years of affordable housing development/policy and approximately 35,000 units of affordable housing in Texas.

QAP

Section 11.2 Program Calendar for Competitive Housing Tax Credits

We request that the due date for Third Party Request for Administrative Deficiencies be moved to June 1, 2018.

We understand that there were complications in the 2017 round that caused a significant number of RFADs to be submitted, that in turn caused delays in final determination of the award list. However, we believe that clarification of definitions and expectations from the Department regarding acceptable proof for items in the Application will limit those types of problems in the 2018 round. A deadline that is before the Applications have actually been reviewed by staff will result in Applicant's having to submit RFADS for more Applications that they would normally do to ensure that staff does not miss anything. With scoring notices scheduled to be ready by Mid May, it makes sense to have the RFADs due after that date.

Section 11.4(a) Tax Credit Request and Award Limits

We request that language regarding the \$3M cap and the requirement that an Applicant withdraw/terminate any deal that would put them over the cap by June 29th be removed. There is no evidence that this has been a problem in the past, and believe that an Applicant has paid for the right to have all of the Applications that they have submitted to stay in contention throughout the process.

Unless the first choice deals have received their final score and their final Underwriting report, they should not be required to make irrevocable decisions without the full facts regarding the number of credits they are going to receive, or any other conditions that might be placed on the award. Additionally, it is possible that the Applicant may not be able to meet zoning or other conditions and should be able to keep back up applications active.

We suggest that instead an Applicant with a \$3M cap issue be required to notify staff of their preference by the June 29 date, but that their other applications remain active.

Section 11.4(a)(4) Credit Amount

Because of the removal of the 10% language associated with the Consultant or advisor fee, we request that the limiting figure be raised from \$150,000 to \$250,000.

The fee limitation was implemented for the first time in the 2004 QAP and has not been raised since that time. Prior to that, there was no specific fee limitation placed on Consultants or advisors. *(A three percent increase per year from that time would result in a fee of approximately \$226,000 and a four percent increase per year would result in a fee of approximately \$260,000.)*

Section 11.7 Tie Breaker Factor

The tie break factors continue to be problematic and not responsive to the need to disburse the credits in individual communities and throughout regions. Specifically, tie breaker three (tax credit units per capita) and four (lowest poverty rate), will cause clustering of applications in very limited areas, encourage developers to go to areas that do not have a market, and further drive up the cost of land as the development community fights over limited winning tracts.

We encourage staff to prioritize finding tie break items for the 2019 QAP that are not census tract or city specific, but rather focus on items that will result in driving developers to areas with solid real estate fundamentals, but with clear objective criteria to avoid the problems of the 2017 Application round.

Section 11.9(c)(4)(B)(i) (I) and (II) Opportunity Index

We appreciate staff's commitment to the needs of persons with disabilities and issues related to accessibility, however we believe that the language regarding accessible routes should be removed. The issues faced in the 2017 Tax Credit Round showed that there is substantial subjectivity with regard to certifying accessible routes. We do not believe it is in the best interests of the program to promote a scoring item that is both costly and as problematic as this.

Section 11.9(c)(4)(B)(i)(IV) Opportunity Index

We recommend that Physician offices and physician specialty offices be considered for this category. These types of services are much more useful for a tenant on a regular basis than the other health facility types currently contained within the draft QAP. Additionally, close proximity to a General Practitioner can result in less need to use more costly services through emergency rooms or other urgent care facilities.

Section 11.9(c)(4)(B)(i)(VIII) Opportunity Index

We recommend the addition of other types of vocational or trade schools to this scoring item. We do not believe that College degrees are the sole way for individuals to access higher paying, stable employment.

Section 11.9(c)(5) (C)(D) and (E) Underserved areas

Please identify the date by which the age of the property should be in place. (i.e. application acceptance period, application submission, etc). Also, will the age of the property be from when it placed in service or when it was awarded?

Section 11.9(c)(6) Tenant Populations with Special Housing Needs

The 2017 QAP included language that allowed for an Applicant to provide a letter from their lender or syndicator in the event that they would not allow the 811 units to be placed in a property that had already placed in service and did not originally contemplate the use of the vouchers in their operations. We request that this language be added back:

[An Applicant may be exempt from having to provide 811 units in an Existing Development if approval from either their lender or investor cannot be obtained and documentation to that effect is submitted in the Application, but they would be required to provide such Units through subparagraph \(B\) of this paragraph if they have eligible Units.](#)

Section 11.9(d)(3) Cost of Development per Square Foot

New Construction

The costs relative to this scoring item have received only modest increases in current years, which have been insufficient to accurately account for construction cost increases experienced without the impact of the type of major natural disaster experienced in Texas in 2017. With increased costs already hitting the market due to Hurricane Harvey and Irma in Florida, we believe a 25% increase to each of the cost per foot items will be necessary to meet the realities of the current construction/materials markets.

Rehabilitation and Adaptive Reuse

The figures in the draft QAP seem VERY low. We suggest that these figures be re-reviewed by Underwriting and reflect recent tax credit application/developments and also take into account increased costs associated with Hurricane Harvey and Irma.

Section 11.9(d)(6) Input from Community Organizations

Please clarify what will be accepted as proof of evidence of “good standing” for the Community Organization.

Section 11.9(d)(7)(A)(V) Concerted Revitalization Plan

Please clarify what will be accepted as proof of the current status of the Revitalization Plan – will a letter from the City suffice?

Remove the requirement that the Plan to officially continue for a minimum of three years thereafter. We believe that it is an unreasonable to ask a municipality to go on record affirming something that far in the future.

Section 11.9(e)(4) Leveraging of Private, State, and Federal Resources

We are concerned that with in increased costs associated with Hurricane Harvey and Irma that the current percentages will result in deals that will be under leveraged with tax credits and ultimately be less financially feasible. We recommend that each category be raised by one or two percentages.

Multifamily Rules

Section 10.101(a)(2) Undesirable Site Features

- 1) We recommend that the proximity to railroad tracks be reduced to 100 feet (from the proposed 500 feet). Issues regarding sound and safety can be mitigated at that distance. Additionally, the 500 foot distance is requirement seems to contradict urban core priorities, as many of the most desirable areas within the urban core area will be within 500 feet of railroad tracks.
- 2) We recommend reverting to 2016 language regarding high voltage overhead transmission lines that requires that buildings simply be located outside the easement of the transmission lines. Additionally, we believe that rehabilitation properties should be exempt from this requirement entirely.
- 3) We recommend a deletion of newly proposed language within 10.101(a)(2)(F) related to heavy industry. New language classifying facilities that produce dust or fumes or generate traffic is overly broad and could prohibit location of sites near job producing facilities such as a retail distribution centers, etc. Additionally, we believe “Rail” issues have been is addressed elsewhere

in the QAP/MF rules, the “Trucks” language broadens heavy industry to something as benign as a National Guard caravan driving down the road five miles away. The overly broad language is the type of subjectivity will encourage enormous number of RFADS.

~~(F) Development Sites located within 500 feet of heavy industrial (i.e. facilities that require extensive capital investment in use of land and machinery, are not easily relocated and produce high levels of external noise, dust or fumes such as manufacturing plants, fuel storage facilities (excluding gas stations) etc. or that in the course of normal business there is a high volume of rail or truck traffic to deliver materials or transport goods);~~

10.101(a)(2)(B) Undesirable Neighborhood Characteristics

We recommend that this entire section be removed. With the dismissal of the ICP litigation, we do not believe that TDHCA should continue to operate under the remediation plan.

In the event that this is not removed, we support the revised language submitted by TAAHP.

Section 10.101(b)(5) Common Amenities

We believe that the Department should continue to encourage the use of Green Building Features within the common amenities and ask that the language that was removed be added back.

General Comment

We believe that the definition of Development Site and its use throughout the QAP and MF rules with regard to distances to either site amenities or undesirable site features, or its proximity within a census tract need to be consistent. All measurements or census tract determinations should include ingress/egress or other easements that are required for the development. Additionally, inconsistencies between Site Control and Development Site should be addressed between Pre and Full Application, so that they are the same at full application submission.

(33) Frazier Revitalization



September 29, 2017

Texas Department of Housing and Community Affairs
Attn: Patrick Russell
P.O. Box 13941
Austin, Texas 78711 – 3941

Dear Patrick

Our nonprofit, Frazier Revitalization is an important catalyst for the redevelopment of the Fair Park / Frazier area located in South Dallas. Our innovative partnerships with leading regional institutions are delivering high quality healthcare, educational and other opportunities to this underserved community. Specific examples include our completion and opening of a primary care clinic in partnership with Parkland Health & Hospital System, Dallas' county hospital serving over 90,000 patient visits annually; our partnership with Baylor Scott & White Health & Wellness Center here in Frazier, working together addressing chronic illnesses; and our unique partnership with Dallas ISD and the alignment of Social and Emotional Learning in the elementary school along with similar curriculum in multiple out of school time providers. A key component of our vision for the community is the development of high-quality affordable housing in an urban in-fill location that is integrated with our other initiatives as well as DART's local / regional public transportation network. We expect to make a 2018 tax credit application.

Qualified, experienced consultants play critical roles in our efforts to develop affordable housing, and there are a limited number of professionals with the specialized expertise required to help us navigate the TDHCA tax credit application process. We are concerned about the potential consequences of TDHCA's proposed changes to the provisions restricting the compensation of consultants or a consultant receiving more than \$150,000 would face the \$3 million tax credit cap similar to Applicants, Developers, or Guarantors.

The proposed restrictions are likely to reduce the availability of these professionals, since they would be incentivized to focus on fewer, larger projects. As a result, many deserving projects would be placed at a competitive disadvantage in the tax credit allocation process.

We believe TDHCA's current provisions, which limit consultant fees to the greater of \$150,000 or 20% of the Developer Fee for nonprofit developments are appropriate, and we respectfully request that they be maintained. We realize that some applicants may attempt to circumvent these limits. However, we are also confident that TDHCA can address this issue in a more targeted way through its existing application review and approval processes.

Thank you for your consideration.

Best regards,

A handwritten signature in blue ink that reads 'Dorothy Hopkins'.

Dorothy Hopkins
CEO

(34) Purple Martin Real Estate

PURPLE MARTIN REAL ESTATE

October 12, 2017

Texas Department of Housing and Community Affairs
Attn: Ms. Teresa Morales and Mr. Patrick Russell
221 East 11th Street
Austin, TX 78701
Via Email: Teresa.morales@tdhca.state.tx.us; Patrick.russell@tdhca.state.tx.us

Re: Public Comment – Draft 2018 Qualified Allocation Plan and Draft 2018 Uniform Multifamily Rules

Dear Ms. Morales and Mr. Russell,

Thank you to the staff of the Texas Department of Housing and Community Affairs (TDHCA) for your efforts in developing the Draft 2018 Qualified Allocation Plan (QAP) and Uniform Multifamily Rules (the Rules). Please accept the following comments related to the published drafts.

Draft 2018 Qualified Allocation Plan (QAP)

§11.2 Program Calendar for Competitive Housing Tax Credits, Third Party Request for Administrative Deficiency (RFAD)

The earlier deadline proposed in the Draft QAP provides insufficient time for staff reviews of applications to occur prior to submission of RFADs. In the absence of information related to staff's review it is likely that many more RFADs will be received with an earlier deadline than would be received using the June 1 deadline, which was originally selected to allow time for issuance of scoring notices prior to the deadline. I request that the deadline revert to June 1.

§11.4(a) Tax Credit Request and Award Limits

No application that meets threshold requirements should be prematurely terminated at any point. The award list moves after the July board meeting, and awards of credits are not final until Carryover Allocation Agreements are executed at the end of the year. As such all non-awarded applications should be allowed to stay on the waiting list until all opportunities for potential awards are exhausted. The new language proposed in the Draft QAP should be deleted as it unfairly takes applications off the waiting list prior to the finalization of awards:

- (a) ... ~~The non-priority Application(s) will be terminated when the Department awards \$3 million to other Applications. Any Application terminated for this reason is subject to reinstatement if necessary to meet a required set-aside.~~

Section 11.4(a)(4) Credit Amount

It is unclear why TDHCA has reduced the fees that application consultants can charge after years of using consistent language related to that limit. If this change has been made due to abuse of the \$3M limit, it is appropriate for TDHCA to address that problem directly by the strict enforcement of the \$3M limit, rather than to punish consultants that are not abusing the rules. Additionally, the same limit has been in place since 2004 without adjustment; an increase in fee limitations to account for inflation since 2004 is more appropriate than a decrease to the limitation. I request that the language revert to 2017 language:

- (4) receives fees as a Development Consultant or Developer that do not exceed 10 percent of the Developer Fee (or 20 percent for Qualified Nonprofit Developments and other Developments in which an entity that is exempt from federal income taxes owns at least 50% of the General Partner) to be paid or \$150,000, whichever is greater.

§11.9(c)(4) Opportunity Index

The principle behind the Opportunity Index amenities is that an abundance of amenities is indicative of the presence of opportunities within an area. There are several modifications that can be made within this scoring item to better evaluate the extent to which opportunities exist based on the existence of amenities, and evaluate the usefulness of some amenities to potential residents of housing tax credit developments.

The new language limiting the evaluation of recreational facilities to only those whose fees are below a certain limit ignore the principle that the presence of high quality amenities indicates a high opportunities in an area. For this reason, I request that the following language be deleted:

- (B) ... ~~Any costs or membership fees associated with making use of a recreational amenity cannot exceed \$50 per person per month (assume cost is for a single admittance per month and membership fee is for annual membership paid on a monthly basis):~~

Related to amenities on an accessible route, I agree with TAAHP's position that the accessible route concept should be removed from this scoring item. Developers have an obligation to create accessible environments within our development sites. Having parks and transportation within close proximity to our development sites should not be discounted based on the presence or absence of accessible routes. The requirement to assess and argue the accessibility of off-site amenities, often with the need to hire licensed civil engineers, is costly and simply untenable and does not promote the housing policy goal of enhancing accessibility within our housing developments. Therefore, I request the following revisions:

- (B)(i)(I) The Development Site is located ~~less than 1/2 mile on an accessible route that is less than 1/2 mile from the entrance to a public park with an accessible playground. The route and the playground both of which must meet 2010 ADA standards.~~ (1 point)
- (B)(i)(II) The Development Site is located ~~less than 1/2 mile on an accessible route that is less than 1/2 mile from the entrance of a public transportation stop or station with a route schedule that provides regular service to employment and basic services. The route and the public transportation stop must meet 2010 ADA standards.~~ For purposes of this scoring item, regular is defined as scheduled service beyond 8 a.m. to 5 p.m., plus weekend service (both Saturday and Sunday). (1 point)

Among the most important health facilities are those of general practitioners / primary care physicians / family doctors that provide routine health care and preventative care. Being in proximity to the offices of

these practitioners is highly desirable and should be included within the QAP. Suggested revisions are provided for the urban category, with the same revisions requested for rural:

(B)(i)(IV) The Development Site is located within 3 miles of a health-related facility, such a primary care physician office, 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)

New proposed language related to libraries may unintentionally rule out legitimate libraries based on technicalities. The following revisions are suggested to allow for the availability of e-readers and operating hours that may not strictly adhere to 8am-5pm hours:

(B)(i)(VII) The Development Site is located within 1 mile of a public library that has indoor meeting space, physical books that can be checked out and that are of a general and wide-ranging subject matter, computers and internet access, and that is open during normal operating hours at least 65 days a week. The library must not be age or subject-restricted and must be at least partially funded with government funding (1 point)

§11.9(c)(5)(C)-(E) Underserved Area

The dates used to evaluate qualification for each scoring category should be defined. I suggest that the age of award should be evaluated relative to the full application due date, March 1, 2018, and that for existing developments the board award date shown in the TDHCA Property Inventory should be used. Also, if an existing development received an additional award of tax credits not associated with rehabilitation, such as supplemental awards to 2004 and 2005 developments out of the 2007 and 2008 credit ceilings, only the initial award of credits should be considered.

§11.9(c)(6) Tenant Populations with Special Housing Needs

I appreciate the move of Section 811 from threshold to scoring. The proposed QAP language is missing the important and necessary consideration of investor and lender consent. The following language from the 2017 Uniform Multifamily Rules is therefore requested to be added:

(A) ... An Applicant may be exempt from having to provide 811 units in an Existing Development if approval from either their lender or investor cannot be obtained and documentation to that effect is submitted in the Application, but they would be required to provide such Units through subparagraph (B) of this paragraph.

§11.9(d)(7) Concerted Revitalization Plan

In light of the impact of Hurricane Harvey in recent months, it is appropriate for TDHCA to revise the existing Concerted Revitalization Plan (CRP) language as outlined below in order to reduce the barriers for local jurisdictions. Affected jurisdictions like the City of Houston are working to help citizens through this catastrophe, not to develop planning documents that adhere to the TDHCA's onerous Concerted Revitalization Plan (CRP) requirements. The IRS has provided no stated guidance as to what benchmarks a CRP must include, and therefore TDHCA can modify its requirements to remove barriers for local jurisdictions in their pursuit of local revitalization goals and efforts.

Specifically, I request that either a plan adopted by the jurisdiction's governing body or a letter from a local official describing planning efforts, stating that the plan includes a public input process, funding, and a stated objective for revitalization of a once thriving area may qualify for points under §11.9(d)(7).

Additionally, the requirement that the plan continue for a minimum of three years should be deleted. It is sufficient to demonstrate that current planning efforts exist, and the imposition by TDHCA of a three-year time period on a local jurisdiction is an overreach.

- (i) An Application may qualify to receive points if the Development Site is located in a distinct area that was once vital and has lapsed into a situation requiring concerted revitalization, and where either the criteria described in subclause (I) or (II) is met:

- (I) Concerted revitalization areas have been developed as confirmed by a letter from the appropriate local official. Such letter states:

- (-a-) that the areas were 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;

- (-b-) objectives for the revitalization of the once thriving area; and

- (-c-) funding to achieve revitalization exists within the areas.

- (II) a concerted revitalization plan has been developed and executed...

- (V-e-) The plan must be current at the time of Application ~~and must officially continue for a minimum of three years thereafter.~~

§11.9(e)(2) Cost of Development per Square Foot

I support TAAHP's recommendations related to increasing each dollar figure within this scoring item. Industry consensus is that cost levels within the QAP were too low before Hurricane Harvey hit, and now with the huge increase in demand for construction labor and materials, this problem will be exacerbated. Additionally, dollar figures related to rehabilitation and adaptive reuse developments should be sufficient to achieve a meaningful level of rehabilitation and to meet TDHCA's minimum threshold for rehabilitation per unit.

§11.9(e)(4) Leveraging of Private, State and Federal Resources

As with Cost of Development per Square Foot, the figures within the Leveraging scoring item have been too low for years, and have had the effect of jeopardizing financial feasibility of developments by forcing applicants to artificially limit credit requests below what the development's costs support. In the wake of Hurricane Harvey it is essential that leveraging percentages increase by at least 1% at every scoring level in order to ensure strong, financially feasible affordable housing is delivered.

Uniform Multifamily Rules, Subchapter B – Site and Development Requirements and Restrictions

§10.101(a)(2) Undesirable Site Features

I agree with TAAHP's recommendations related to Undesirable Site Features. Regarding proximity to railroad tracks, TAAHP recommends a 100-foot distance instead of the proposed 500-foot distance. 100 feet is more reasonable, given that HUD does not have a minimum distance to railroads but rather a decibel level requirement of less than 65 decibels which can be reached by the use of construction materials and/or architectural features. TDHCA's 500-foot distance completely disregards an important aspect of this analysis, which is mitigation through the use of even the most standard construction materials.

Regarding proximity to overhead transmission lines, TAAHP requests that this language reverts to the 2016 language which only requires that buildings be located outside the easement of overhead transmission lines. The new requirement that the buildings be more than 100-foot from transmission lines is too restrictive.

Additionally, I recommend a deletion of newly proposed language within 10.101(a)(2)(F) related to heavy industry. New language classifying facilities that produce dust or fumes or generate traffic is overly broad and could prohibit location of sites near job producing facilities such as a retail distribution centers, etc.

Finally, Undesirable Site Features should not apply to rehabilitation developments with ongoing federal assistance from HUD, USDA, or Veterans Affairs. Subjecting existing developments already receiving federal funding to Undesirable Site Features ignores the fact that these developments met applicable requirements at the time they were originally developed and prevents existing affordable housing from receiving needed rehabilitation.

See language revisions attached as Exhibit A.

§10.101(a)(3) Undesirable Neighborhood Characteristics

I agree with TAAHP's recommendation that this entire section be deleted. This section is a remnant of the remediation plan and should be removed from the rules in the wake of the dismissal of the ICP litigation. It is an anti-urban provision that works to eliminate large swaths of urban areas from the competition. Furthermore, because that data sources like neighborhoodscout.com and school performance data are inherently faulty and produce inconsistent results, such measures are of questionable value in determining the worth of certain neighborhoods.

In the event that TDHCA does not support an entire removal of this section, I recommend the revisions attached as Exhibit A.

§10.101(b)(5) Common Amenities

I request that Limited Green Amenities be added back to the list of Green Building Features. I agree that green amenity items should not be mandatory as in past years, but these Limited Green Amenities should be included in the rules as options since they provide value to a development.

Thank you for the opportunity to make these comments. Please contact me at audrey@purplemartinre.com or (512) 658-6386 with questions.

Sincerely,



Audrey Martin
Principal

Exhibit A – Language Redlines – Draft 2018 QAP and Multifamily Rules

(2) Undesirable Site Features. Development Sites within the applicable distance of any of the undesirable features identified in subparagraphs (A) - (K) of this paragraph ~~may will~~ be considered ineligible unless it is as determined by the Board, unless the Applicant provides that information regarding mitigation of the applicable undesirable site feature(s) is sufficient and supports Site eligibility. Rehabilitation (excluding Reconstruction) Developments with ongoing and existing federal assistance from HUD, USDA, or Veterans Affairs (“VA”) ~~are exempt from this section may be granted an exemption by the Board; however, depending on the undesirable site feature(s) staff may recommend mitigation still be provided as appropriate.~~ Such an exemption must be requested at the time of or prior to the filing of an Application. Historic Developments that would otherwise qualify under §11.9(e)(6) of this title (relating to the Qualified Allocation Plan) may be granted an exemption by the Board, and such exemption must be requested at the time of or prior to the filing of an Application. The distances are to be measured from the nearest boundary of the Development Site to the nearest boundary of the property or easement containing the undesirable feature, unless otherwise noted below. Where there is a local ordinance that regulates the proximity of such undesirable feature to a multifamily development that has smaller distances than the minimum distances noted below, then such smaller distances may be used and documentation such as a copy of the local ordinance identifying such distances relative to the Development Site must be included in the Application. ~~If a state or federal cognizant agency would require a new facility under its jurisdiction to have a minimum separation from housing, the Department will defer to that agency and require the same separation for a new housing facility near an existing regulated or registered facility.~~ In addition to these limitations, a Development Owner must ensure that the proposed Development Site and all construction thereon comply with all applicable state and federal requirements regarding separation for safety purposes. If Department staff identifies what it believes would constitute an undesirable site feature not listed in this paragraph or covered under subparagraph (K) of this paragraph, staff may request a determination from the Board as to whether such feature is acceptable or not. If the Board determines such feature is not acceptable and that, accordingly, the Site is ineligible, the Application shall be terminated and such determination of Site ineligibility and termination of the Application cannot be appealed.

- (D) Development Sites in which the buildings are located within ~~100 feet~~ the easement 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 ~~500-100~~ feet of active railroad tracks, measured from the closest rail to the boundary of the Development Site, unless the Applicant provides evidence that the city/community has adopted a Railroad Quiet Zone or the railroad in question is commuter or light rail;
- (F) Development Sites located within 500 feet of heavy industrial (i.e. facilities that require extensive capital investment in use of land and machinery, are not easily relocated and produce high levels of external noise, dust or fumes such as manufacturing plants, fuel storage facilities (excluding gas stations) etc. ~~or that in the course of normal business there is a high volume of rail or truck traffic to deliver materials or transport goods~~);

(3) Undesirable Neighborhood Characteristics.

- (A) If the Development Site has any of the characteristics described in subparagraph (B) of this paragraph, the Applicant must disclose the presence of such characteristics in the Application submitted to the Department. ~~For Competitive HTC Applications, an Applicant must disclose at~~

~~pre-application as required by 11.8(b) of this title (relating to Pre-Application Requirements). For all other Applications,~~ An Applicant may choose to disclose the presence of such characteristics at the time the pre-application (if applicable) is submitted to the Department. Requests for pre-determinations of Site eligibility prior to preapplication or Application submission will not be binding on full Applications submitted at a later date. For Tax-Exempt Bond Developments where the Department is the Issuer, the Applicant may submit the documentation described under subparagraphs (C) and (D) of this paragraph at pre-application or for Tax-Exempt Bond Developments utilizing a local issuer such documentation may be submitted with the request for a pre-determination and staff may perform an assessment of the Development Site to determine Site eligibility. The Applicant understands that any determination made by staff or the Board at that point in time regarding Site eligibility based on the documentation presented, is preliminary in nature. Should additional information related to any of the undesirable neighborhood characteristics become available while the full Application is under review, or the information by which the original determination was made changes in a way that could affect eligibility, then such information will be re-evaluated and presented to the Board. Should staff determine that the Development Site has any of the characteristics described in subparagraph (B) of this paragraph and such characteristics were not disclosed, the Application may be subject to termination. ~~Termination due to non-disclosure may be appealed pursuant to §10.902 of this chapter (relating to Appeals Process (§2306.0321; §2306.6715)).~~ An Applicant's own non-disclosure is not appealable as such appeal is in direct conflict with certifications made in the Application and within the control of the Applicant. The presence of any characteristics listed in subparagraph (B) of this paragraph will prompt staff to perform an assessment of the Development Site and neighborhood, which may include a site visit, and include, where applicable, a review as described in subparagraph (C) of this paragraph. The assessment of the Development Site and neighborhood will be presented to the Board with a recommendation with respect to the eligibility of the Development Site. Factors to be considered by the Board, despite the existence of the undesirable neighborhood characteristics are identified in subparagraph (E) of this paragraph. Preservation of affordable units alone does not present a compelling reason to support a conclusion of eligibility. Should the Board make a determination that a Development Site is ineligible, the termination of the Application resulting from such Board action is not subject to appeal.

- (B) The undesirable neighborhood characteristics include those noted in clauses (i) – (iv) of this subparagraph and additional information as applicable to the undesirable neighborhood characteristic(s) disclosed as provided in subparagraphs (C) and (D) of this paragraph must be submitted in the Application. If an Application for a Development Site involves three or more undesirable neighborhood characteristics, in order to be found eligible it will be expected that, in addition to demonstrating satisfactory mitigation for each characteristic disclosed, the Development Site must be located within an area in which there is a concerted plan of revitalization already in place or that private sector economic forces, such as those referred to as gentrification are already underway and indicate a strong likelihood of a reasonably rapid transformation of the area to a more economically vibrant area. In order to be considered as an eligible Site despite the presence of such undesirable neighborhood characteristic, an Applicant must demonstrate actions being taken that would lead a reader to conclude that there is a high probability and reasonable expectation the undesirable characteristic will be sufficiently mitigated or significantly improved within a reasonable time, typically prior to placement in service, and that the undesirable characteristic demonstrates a positive trend and continued improvement. Conclusions for such reasonable expectation may need to be affirmed by an

industry professional, as appropriate, and may be dependent upon the severity of the undesirable neighborhood characteristic disclosed.

- (i) The Development Site is located within a census tract that has a poverty rate above 40 percent for individuals (or 55 percent for Developments in regions 11 and 13).
- (ii) The Development Site is located in a census tract or within 1,000 feet of any census tract in an Urban Area and the rate of Part I violent crime is greater than 18 per 1,000 persons (annually) as reported on neighborhoodscout.com. Should neighborhoodscout.com indicate Part I violent crime greater than 18 per 1,000 persons, the Applicant may present violent crime statistics from the city's police department or county sheriff's department for the police beat or patrol area within which the Development Site is located, indicating that based on the population of the police beat or patrol area that violent crime is not greater than 18 per 1,000 persons. Such local law enforcement statistics will supersede the rating of neighborhoodscout.com and the Development Site will be deemed not to have an undesirable neighborhood characteristic related to violent crime.
- (iii) The Development Site is located within 1,000 feet (measured from nearest boundary of the Site to the nearest boundary of blighted structure) of multiple vacant structures that have fallen into such significant disrepair, overgrowth, and/or vandalism that they would commonly be regarded as blighted or abandoned.
- (iv) The Development Site is located within the attendance zones of an elementary school, a middle school or a high school that does not have a Met Standard rating by the Texas Education Agency. Any school in the attendance zone that has not achieved Met Standard for three consecutive years and has failed by at least one point in the most recent year, unless there is a clear trend indicating imminent compliance, shall be unable to mitigate due to the potential for school closure as an administrative remedy pursuant to Chapter 39 of the Texas Education Code. In districts with district-wide enrollment or choice districts an Applicant shall use the rating of the closest elementary, middle and high school, respectively, which may possibly be attended by the tenants in determining whether or not disclosure is required. Schools with an application process for admittance, limited enrollment or other requirements that may prevent a child from attending will not be considered as the closest school or the school which attendance zone contains the site. The applicable school rating will be the ~~2017~~²⁰¹⁶ accountability rating assigned by the Texas Education Agency. School ratings will be determined by the school number, so that in the case where a new school is formed or named or consolidated with another school but is considered to have the same number that rating will be used. A school that has never been rated by the Texas Education Agency will use the district rating. If a school is configured to serve grades that do not align with the Texas Education Agency's conventions for defining elementary schools (typically grades K-5 or K-6), middle schools (typically grades 6-8 or 7-8) and high schools (typically grades 9-12), the school will be considered to have the lower of the ratings of the schools that would be combined to meet those conventions. In determining the ratings for all three levels of schools, ratings for all grades K-12 must be included, meaning that two or more schools' ratings may be combined. For example, in the case of an elementary school which serves grades K-4 and an intermediate school that serves grades 5-6, the elementary school rating will be the lower of those two schools' ratings. Also, in the case of a 9th grade center and a high school that serves grades 10-12, the high school rating will be considered the lower of those two schools' ratings. Sixth grade centers will be considered as part of the middle school rating. Development Sites subject to an Elderly Limitation or providing Single Room Occupancy units are ~~is~~ considered exempt and ~~es~~ does not have to disclose the presence of this characteristic.

- (C) Should any of the undesirable neighborhood characteristics described in subparagraph (B) of this paragraph exist, the Applicant must submit the Undesirable Neighborhood Characteristics Report that contains the information described in clauses (i) - (viii) of this subparagraph and mitigation pursuant to subparagraph (D) of this paragraph as such information might be considered to pertain to the undesirable neighborhood characteristic(s) disclosed so that staff may conduct a further Development Site and neighborhood review.
- (i) A determination regarding neighborhood boundaries, which will be based on the review of a combination of natural and manmade physical features (rivers, highways, etc.), apparent changes in land use, the Primary Market Area as defined in the Market Analysis, census tract or municipal boundaries, and information obtained from any Site visits;
 - (ii) An assessment of general land use in the neighborhood, including comment on the prevalence of residential uses;
 - (iii) An assessment concerning any of the features reflected in paragraph (2) of this subsection if they are present in the neighborhood, regardless of whether they are within the specified distances referenced in paragraph (2) of this subsection;
 - (iv) An assessment of the number of existing affordable rental units (generally includes rental properties subject to TDHCA, HUD, or USDA restrictions) in the Primary Market Area, including comment on concentration based on the size of the Primary Market Area;
 - (v) An assessment of the percentage of households residing in the census tract that have household incomes equal to or greater than the median household income for the MSA or county where the Development Site is located;
 - (vi) An assessment of the number of market rate multifamily units in the neighborhood and their current rents and levels of occupancy;
 - (vii) An assessment of school performance for each of the schools in the attendance zone containing the Development that did not achieve ~~the a 2017~~ Met Standard rating, for the previous two academic years (regardless of whether the school Met Standard in those years), that includes the TEA Accountability Rating Report, a discussion of performance indicators and what progress has been made over the prior year, and progress relating to the goals and objectives identified in the campus improvement plan or turnaround plan pursuant to 39.107 of the Texas Education Code in effect. This is not just the submission of the campus improvement plan, but an update to the plan or if such update is not available, information from a school official that speaks to the likelihood of achieving Met Standard rating by the time the Development is placed in service-progress made under the plan as further indicated under subparagraph (D)(iv) of this paragraph; and
 - (viii) Any additional information necessary to complete an assessment of the Development Site, as requested by staff.
- (D) Information regarding mitigation of undesirable neighborhood characteristics should be relevant to the undesirable characteristics that are present in the neighborhood. Mitigation must include documentation of efforts underway at the time of Application and may include, but is not limited to, the measures described in clauses (i) - (iv) of this subparagraph. In addition to those measures described herein, documentation from the local municipality may also be submitted stating the Development is consistent with their obligation to affirmatively further fair housing.
- (i) Evidence that the poverty rate within the census tract has decreased over the five-year period preceding the date of Application, or that the census tract is contiguous to a census tract with a poverty rate below 20% and there are no physical barriers between them such as highways or rivers which would be reasonably considered as separating or dividing the neighborhood containing the proposed Development from the low poverty area must be submitted. Other mitigation may include, but is not limited to, evidence of ~~the availability of adult education~~

and job training that will lead to full-time permanent employment for tenants sustained job growth and employment opportunities, career training opportunities or job placement services, , evidence of gentrification in the area (including an increase in property values) which may include contiguous census tracts that could conceivably be considered part of the neighborhood containing the proposed Development, and a clear and compelling reason that the Development should be located at the Site.

- (ii) Evidence that crime rates are decreasing, based on violent crime data from the city's police department or county sheriff's department, for the police beat or patrol area within which the Development Site is located, based on the population of the police beat or patrol area that would yield a crime rate below the threshold indicated in this section. The instances of violent crimes within the police beat or patrol area that encompass the census tract, calculated based on the population of the census tract, may also be used. A map plotting all instances of violent crimes within a one-half mile radius of the Development Site may also be submitted, provided that it reflects that the crimes identified are not at a level that would warrant an ongoing concern. The data must include incidents reported during the entire ~~2015 and 2016~~ 2016 and 2017 calendar year. Violent crimes reported through the date of Application submission may be requested by staff as part of the assessment performed under subparagraph (C) of this paragraph. A written statement from the local police department or local law enforcement agency, including a description of efforts by such enforcement agency addressing issues of crime and the results of their efforts may be provided, and depending on the data provided by the Applicant, such written statement may be required, as determined by staff. For Rehabilitation or Reconstruction Developments, to the extent that the high level of criminal activity is concentrated at the Development Site, documentation may be submitted to indicate such issue(s) could be remedied by the proposed Development. Evidence of such remediation should go beyond what would be considered a typical scope of work and should include a security plan, partnerships with external agencies, or other efforts to be implemented that would deter criminal activity. Information on whether such security features have been successful at any of the Applicant's existing properties should also be submitted, if applicable.
- (iii) Evidence of mitigation efforts to address blight or abandonment may include new construction in the area already underway that evidences public and/or private investment. Acceptable mitigation to address extensive blight should include a plan whereby it is contemplated that a responsible party will use the property in a manner that complies with local ordinances. In instances where blight exists but may only include a few properties, mitigation efforts could include partnerships with local agencies to engage in community-wide clean-up efforts, or other efforts to address the overall condition of the neighborhood.
- (iv) Evidence of mitigation for all of the schools in the attendance zone that have not achieved Met Standard will include documentation from a school official with oversight of the school in question that indicates current progress towards meeting the goals and performance objectives identified in the Campus Improvement Plan. For schools that have not achieved Met Standard for two consecutive years, a letter from the superintendent, member of the school board or a member of the transformation team that has direct experience, knowledge and oversight of the specific school must also be submitted. The letter should, at a minimum and to the extent applicable, identify the efforts that have been undertaken to increase student performance, decrease mobility rate, benchmarks for re-evaluation, increased parental involvement, plans for school expansion, plans to implement early childhood education, and long-term trends that would point toward their achieving Met Standard by the time the Development is placed in service. The letter from such education professional should

also speak to why they believe the staff tasked with carrying out the plan will be successful at making progress towards acceptable student performance considering that prior Campus Improvement Plans were unable to do so. Such assessment could include whether the team involved has employed similar strategies at prior schools and were successful. In addition to the aforementioned letter from the school official, information should also be provided that addresses the types of services and activities offered at the Development or external partnerships that will facilitate and augment classroom performance.

(E) In order for the Development Site to be found eligible by the Board, despite the existence of undesirable neighborhood characteristics, the Board must find that the use of Department funds at the Development Site must be consistent with achieving the goals in clauses (i) - (iii) of this subparagraph.

(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~~ or

(ii) ~~Factual~~ Determination that the undesirable characteristic(s) that has been disclosed are not of such a nature or severity that should render the Development Site ineligible based on the assessment and mitigation provided under subparagraphs (C) and (D) of this paragraph; ~~;~~ or

(iii) The Applicant has requested a waiver of the presence of undesirable neighborhood characteristics 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.

(35) Structure Development



October 12, 2017

Mr. Patrick Russell
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, TX 78701

Re: Comments to the 2018 Draft QAP

Dear Mr. Russell:

Thank you so much for the opportunity to comment on the 2018 Draft QAP. This letter is organized by general comments and then items that require clarification. In general, the comments are suggestions for changes to the QAP, while the clarification items may or may not warrant editing of the QAP as written. They do, however, require clarification in order for applicants to follow the QAP as precisely as required.

Requested Changes

1. Section 11.4(a)(4) Credit Amount: Because of the removal of the 10% language associated with the Consultant or advisor fee, we request that the limiting figure be raised from \$150,000 to \$250,000. The fee limitation was implemented for the first time in the 2004 QAP and has not been raised since that time. Prior to that, there was no specific fee limitation placed on Consultants or advisors. (A three percent increase per year from that time would result in a fee of approximately \$226,000 and a four percent increase per year would result in a fee of approximately \$260,000.)
2. Section 11.7 Tie Breaker: Utilize consistent language that the final Site Demographics report be used in determining the linear distance to the nearest Housing Tax Credit assisted Development for the last tie breaker item. This language is used in HTC per capita Tie Breaker 3 and for determining Underserved census tracts in 11.9(c)(5).
3. 11.9(e)(3)(E) The current cost per square foot used to evaluate an adaptive reuse for historic projects is in conflicts with both the Internal Revenue Code and the Texas Government Code. Chapter 42 Section (m)(1)(C)(x) of the Internal Revenue Code requires that the historic nature of the project be one of the criteria used for selection. Texas Government Code Section 2306.6725 (a)(6) requires that the rehabilitation or adaptive reuse of a certified historic structure be one of the criteria used to score a LIHTC project. The low cost per square foot of building construction as currently drafted eliminates the possibility of any historic projects, because it is too low. The bulk of the costs for a historic project are in the construction dollars adapting the previous space.

Acquisition costs are minimal. To maintain compliance with the IRC and TGC, we respectfully request staff to revise the QAP to last year's cost per square foot numbers for historic projects.

Clarifications

The following is a list of questions that require clarification from TDHCA. We respectfully request clarification at time of QAP adoption from the Board in November. This will facilitate better site selection, better applications, and less RFADs.

1. Can an application take one point for a grocery store AND one point for a pharmacy? Can an application take two points for a facility that has both a grocery store and pharmacy in the same building?
2. Can an application take two points for a university and a public university library on the same campus? Can an application take two points for a university and a public university library in the same building?
3. If the development site and all access easements to reach the site are used for distance measurements, is this same comprehensive site area used for determining all characteristics for the application? For example if a site and its access easements are in 2 census tracts, will both census tracts be used in evaluating the application? Does the least favorable characteristic apply for items such as crime, poverty, and educational attainment?
4. Meals on Wheels- is the alternative service have to be free? Or does the service need to be delivered in a person's home? Or both?
5. There are a handful of census tracts that are eligible for the 5 points underserved, but they straddle two eligible cities (fully within two different incorporated jurisdictions). Are these tracts get 5 underserved points?
6. Revitalization - can 2 deals qualify for the "deal that most contributes to revitalization" points in one municipality? Can the city award CRP points for sites that most contribute in two separate CRPs, or can they only award points for two separate areas WITHIN the same CRP?

Thank you so much for reviewing this long list of items. We are looking forward to working with you for a successful 2018 LIHTC round. Feel free to email me if you have any questions.

Sincerely,



Sarah Andre
sarah@structuretexas.com

(36) Miller - Valentine Group

From: [Gregory, Justin P.](#)
To: [HTC Public Comment](#)
Subject: TDHCA Public Comments 10 TAC Chapter 11
Date: Thursday, October 12, 2017 3:57:16 PM
Attachments: [image001.png](#)
[image002.png](#)
Importance: High

Hello,

Miller-Valentine Group have the following comments on sections of 10 TAC Chapter 11 that have been amended:

Section 11.4(a) Tax Credit Request and Award Limits

We ask that the language regarding the \$3 million cap and the requirement that an Applicant withdraw/terminate any deal that would put them over the cap by June 29th be removed. This provision would require that the Applicant make a decision before the final scoring is completed by TDHCA.

We suggest that instead an Applicant with a \$3 million issue be required to notify staff of their preference by the June 29 date, but that their other applications remain active.

Section 11.9(c)(4)(B)(i)(IV) Opportunity Index

We recommend that Physician offices and physician specialty offices be considered for this category.

These services are useful for a tenant on a regular basis than the other health facility types currently contained within the draft QAP. Additionally, close proximity to a General Practitioner can result in less need to use more costly services through emergency rooms or other urgent care facilities.

Thank you,

Justin Gregory

Financial Analyst
MV Residential Development

Miller-Valentine Group

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(37) MGROUP Holdings



October 12, 2017

Ms. Marni Holloway

Texas Department of Housing & Community Affairs

P.O. Box 13941

Austin, Texas 78711

via email: marni.holloway@tdhca.state.tx.us

Re: Public Comment- 10 TAC Chapter 11; 2018 QAP

Dear Marni:

Please accept the following as public comment to the current draft of the 2018 QAP.

§11.7 Tie Breaker Factors

We are concerned that the added concept to prioritize tie breakers based upon the fewest HTC units per capita is going to re-introduce controversy regarding Census Designated Places and the inconsistencies of the data and boundary limits of such CDP's, as well as other challenges related to inaccurate population data sets of the ACS and the resulting methodology that will determine the outcome of the award process. This particular tie breaker will be the deciding factor on the vast majority of the applications throughout the state similar to the opportunity index tie breaker from last year so unless it is removed or further clarified, we believe there will be significant challenges to this tie breaker item.

There are many issues with this tie breaker criteria that are actually subjective even though the intent of a per capita based metric would seem to be straight forward. As an example, the math used in the calculations will be decided based on decimal places out to ten thousand and even in some cases out to a hundred thousand place so any population error will affect the true outcome. This is particularly troublesome when the ACS even publishes disclaimers such as "Estimate" and "Margin of Error". We know of several municipalities that have more exacting and credible population data that if used would change the per capita figures and should therefore be allowed to be used when ACS is outdated and subject to error.

Not only is the ACS subject to inconsistency, the QAP as written also sets forth the number of HTC units to be used based upon the 2018 site demographic report. However, we know of several situations where the report is not updated to reflect developments that have either left the program or even been foreclosed upon therefore the true number of HTC per Place may not be accurate. In this case what data is used- the incorrect report or can an applicant prove otherwise that the number of units on the report is flawed?

Finally, by reintroducing the concept of Place under the tie breakers, areas that are Census Designated Places would be eligible for Place under the definition. CDP's are entirely subjective due to the definitions and the boundaries of such CDP's that are all based on the 2010 census mapping now 8 years old. Annexations and boundaries of CDP's along with the determination of which HTC units are located within such jurisdictional boundaries will only lead to challenges and controversy.

Page 2

October 12, 2017

Re: Public Comment- 10 TAC Chapter 11; 2018 QAP

We would therefore suggest that this item be completely removed from the priority of tie breakers. Alternatively, we believe the QAP should allow more up to date and accurate population data sets when a Place can show ACS is outdated and inaccurate. By way of example, we know of a Place that has a population almost 17,000 higher as of October 1 of this year as compared to the 2011-2015 ACS population. *The 17,000 higher population materially changes the per capita calculation* considering the number of decimal places we pointed out above. We also suggest that the definition of Place be further clarified so that a CDP will only include the units contained within the boundary of a CDP that is wholly outside the limits of an incorporated City.

Sincerely,

MGROUP HOLDINGS, INC.



Mark D. Musemeche

/MDM

(38) Brad Forslund

From: [Patrick Russell](#)
To: [HTC Public Comment](#)
Subject: FW: 2018 QAP
Date: Tuesday, October 10, 2017 5:09:17 PM

From: Brad Forslund [mailto:bforsslund@cri.bz]
Sent: Monday, September 25, 2017 4:51 PM
To: Patrick Russell
Cc: Tony Sisk; Becky Villanueva
Subject: FW: 2018 QAP

Patrick,

I would like to submit the below e-mail as part of the public comment process.

Thanks

Brad

From: Brad Forslund
Sent: Monday, August 14, 2017 1:27 PM
To: 'Patrick Russell' <patrick.russell@tdhca.state.tx.us>
Cc: Tony Sisk <tsisk@cri.bz>; Becky Villanueva <bvillanueva@cri.bz>
Subject: RE: 2018 QAP

Patrick,

Based upon the results of the QAP for 2017 for Region 3 urban and the proposed changes to the 2018 QAP we would like to make the following comments:

The following Regions 3 urban deals were awarded tax credits in 2017:

TDHCA #17028 – CRP and **urban core** (family) - **Fort Worth**
TDHCA #17259 – **urban core**, high opportunity (family) - **Fort Worth**
TDHCA #17281 – CRP, **urban core** and 5 points for underserved (elderly) - **Arlington**
TDHCA #17012 – high opportunity, 5 points for underserved (elderly) - **Arlington**
TDHCA #17363 – high opportunity (family) -Rowlett
TDHCA #17315 – high opportunity (family) -Hurst
TDHCA #17080 - high opportunity (family) - **Fort Worth**
TDHCA #17037 - high opportunity (elderly) - Mansfield

Comments:

1. **Urban Core** - With the removal of educational excellence from the scoring criteria we feel the urban core points are no longer necessary to give these developments preferential scoring opportunities. If this is unacceptable we would ask that TDHCA not decrease the population to a smaller population which would result in even more urban core deals and a very unbalanced QAP. As you can see from the above that there were 3 urban core deals or 37.5% of the awards done in 2017.

There are 1754 cities represented on the TDHCA worksheet and only 13 that are over 200K representing only .007 and only 44% of the population. The 2017 QAP already had a slight preference for larger cities (see above results). With the urban core changes proposed for 2018 these below cities will receive the vast majority, if not all, of the awards.

Place Name	Population	Metro Statistical Area	Rural/Urban	Region	CDP
Houston	2167988	Houston-The Woodlands-Sugar Land, TX	Urban	6	
San Antonio	1385438	San Antonio-New Braunfels, TX	Urban	9	
Dallas	1240985	Dallas-Fort Worth-Arlington, TX	Urban	3	
Austin	864218	Austin-Round Rock, TX	Urban	7	
Fort Worth	778573	Fort Worth-Arlington, TX	Urban	3	
El Paso	669771	El Paso, TX	Urban	13	
Arlington	375305	Fort Worth-Arlington, TX	Urban	3	
Corpus Christi	312680	Corpus Christi, TX	Urban	10	
Plano	271166	Dallas-Fort Worth-Arlington, TX	Urban	3	
Laredo	245048	Laredo, TX	Urban	11	
Lubbock	236868	Lubbock, TX	Urban	1	
Garland	232305	Dallas-Fort Worth-Arlington, TX	Urban	3	
Irving	224859	Dallas-Fort Worth-Arlington, TX	Urban	3	
Amarillo	194930	Amarillo, TX	Urban	1	
Grand Prairie	181135	Dallas-Fort Worth-Arlington, TX	Urban	3	
Brownsville	179834	Brownsville-Harlingen, TX	Urban	11	
Pasadena	152171	Houston-The Woodlands-Sugar Land, TX	Urban	6	

2. **Tie Breaker**- remove Urban Core from the first tie breaker for the reasons stated in Item 1.

3. **Underserved Area** – remove the 5 point preference for cities with a population over 150,000. This along with urban core has and would result in a disproportionately higher percentage of deals going to cities with large populations (see cities outlined above). Removing this point preference doesn't put these larger cities at a disadvantage but instead puts them on equal footing with all other cities regardless of population. As another option allow the 5 point preference for all cities regardless of population.

Thanks for your consideration.

Brad

Brad Forslund
Partner
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Irving, Texas 75038
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October 11, 2017

Patrick Russell
Multifamily Policy Research Specialist
Texas Department Housing and Community Affairs
21 E 11th Street
Austin, Texas 78701

Via Email: Patrick.Russell@tdhca.state.tx.us

Re: 2018 Draft Qualified Allocation Plan & Multifamily Program Rules

Dear Patrick,

We would like to start off by thanking you and the rest of Staff for the many hours you put in each year developing the QAP and Multifamily Program Rules. We also appreciate the monthly roundtables, which allow for a dialog between Staff and the development community. The roundtables have been a welcomed addition to the QAP development process and we hope staff will continue this in the coming years. The following are our comments on the latest Draft of the 2018 QAP and Multifamily Program Rules.

§10.101(a)(3) Undesirable Neighborhood Characteristics

We would like to take the opportunity to echo the sentiment of many others who feel this section is a remnant of the remediation plan and should be removed from the Multifamily Program Rules. In many of the largest urban centers in the state the undesirable neighborhood characteristics directly conflict with the city's revitalization efforts.

§11.7 Tie-Breaker Factors

We support the current draft's Tie-Breaker Factors as presently outlined in the Draft 2018 QAP. We understand that the Tie-Breaker Factors are one of the ways in which TDHCA can provide guidance to the development community on those areas of importance to TDHCA, and that they are always being refined. To provide stability in the development communities search for property, we request that Staff make no further change to the Tie-Breaker Factors.

§11.9(c)(4) Opportunity Index

We believe the accessible route component of §11.9(c)(4)(B)(i)(I) & (II), and §11.9(c)(4)(B)(ii)(VI) should be removed from the QAP. It is overly burdensome to the developer and to Staff to determine if a route meets 2010 ADA standards. In most cases an ADA consultant will be required to certify accessibility, which will be an additional cost burden.

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§11.9(e)(2) Cost of Development per Square Foot

We Appreciate Staff recognizing the continual increase in construction costs that developers face in Texas, by providing an increase to the cost per square foot in the 2017 QAP. As construction continues to boom and relief efforts are undertaken along the Texas Coast we request that TDHCA continue to address the issue of rising construction costs. We request that staff include a 2%-3% increase in per square foot costs in the 2018 QAP.

Thank you again for you time and thoughtful consideration of our comments and recommendation.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim Markel". The signature is fluid and cursive, with a large initial "J" and "M".

Jim Markel

(40) The NuRock Companies

October 9, 2017

Patrick Russell
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, TX 78701

Dear Patrick:

On behalf of The NuRock Companies, below are written comments on the drafts of the 2018 Qualified Allocation Plan and the Multifamily Rules that were published in the Texas Register on September 22, 2017.

Comments to the 2018 Qualified Allocation Plan posted in Texas Register

1. Section 11.4(a) Credit Amount.....The non-priority Application(s) will be terminated when the Department awards \$3 million to other Applications. Any Application terminated for this reason is subject to reinstatement if necessary to meet a required aside.
 - a. **Comment:** We're not sure why the application needs to be terminated. Please remove this language.
2. Section 11.9(b)(4)(B) Opportunity Index.....Each Amenity may be used only once for scoring purposes, unless allowed within the scoring item.
 - a. **Comment:** It might be clearer if you remove "unless allowed within the scoring item" language and split item (4)(B)(III) into a category for a full-service grocery store and pharmacy and allow the grocery store and pharmacy to be in the same building.
3. Section 11.9(b)(4)(B)(i) &(ii), (I)&(II) Opportunity Index.....(I)The Development site is located on an accessible route that is less than ½ mile from the entrance to a public park with an accessible playground. The route and the playground both must meet 2010 ADA standards. (II) ...on an accessible route that is less than ½ mile from the entrance of a Public Transportation stop or station...
 - a. **Comment:** We request that you remove the accessible route language in both Sections (I) and (II). Accessibility is very important but in this section the accessibility component is outside the developers control and can change from day to day. The developer will need to hire a licensed civil engineer to prove up accessibility in these areas and this can be costly. In addition, the vast majority of municipalities allow credits toward parkland requirement due to the inclusion of playground, pools, walking trails and other community amenities which are generally required within each LIHTC development and which are required to be ADA accessible; in other words, to some degree, these types of amenities will be

- readily available if the development complies with the existing requirements and scoring criteria
4. Section 11.9(b)(4)(B)(VII) Opportunity Index.....The development Site is located within 1 mile of a public library that has indoor meeting space.
 - a. **Comment:** Not all public libraries have meeting spaces but are still fully operational libraries. We would like this language removed.
 5. Section 11.9(b)(5)(C),(D), & (E) Underserved Area.....Site Demographic Characteristics Report.
 - a. **Comment:** Please add “2018” in front of the language above to further clarify the above cited paragraphs in the Underserved Area Section.
 6. Section 11.9(d)(5)(A) Input from community organizations.....The community or civic organization must provide evidence of its exempt status (e.g., a copy of its tax-exempt determination letter or its listing on federal or state government website) and evidence it remains in good standing.
 - a. **Comment:** Please remove the following language “evidence it remains in good standing”. This information may be too difficult to get from the community organizations in a timely manner.
 7. Section 11.9(e)(3) Cost of Development per Square Foot
 - a. **General Comment:** With the impact of Hurricane Harvey, it is prudent for TDHCA to increase the per square foot cost factor by 15-25% for each dollar figure cited in the 2018 QAP and the concept of Net Rentable Area should be replaced by Gross Square Footage.
 8. Section 11.9(e)(4)(A)(i)-(iv) Leveraging of Private, State and Federal Resources
 - a. **General Comment:** Due to the impact of Hurricane Harvey and rising construction prices, we would like to recommend that you increase the percentage limits by 1-2% so that the 2018 deals are not under leveraged.
 9. Section 11.9(e)(4)(E) Pre-application Participation
 - a. **General Comment:** Revert to 2017 language.

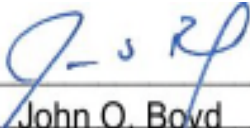
Comments to the 2018 Multifamily Rules Subchapter B-Site and Development Requirements and Restrictions posted in Texas Register

1. Section 10.101(a)(2)(D) Undesirable Site Features... Development sites in which the buildings are 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.
 - a. **Comment:** Revert to 2017 language. 2018 language is too restrictive.
2. Section 10.101(a)(2)(E) Undesirable Site Features...Development sites located within 500 feet of active railroad tracks, measured from the closest rail to the boundary of the Development site, unless the Applicant provides evidence that the city/community has adopted a Railroad Quiet Zone or the railroad in the question is commuter or light rail.

- a. **Comment:** Five Hundred feet is too restrictive. HUD has a decibel level requirement of less than 65 decibels which can be reached through structure mitigation. One Hundred feet would be more reasonable if TDHCA is unable to use the decibel requirement.
3. Section 10.3(a) Definitions Item 138- Unstabilized Development- A development with Comparable Units that has been approved for funding by the Department's Board of Directors or is currently under construction or has not maintained a 90 percent occupancy level for at least twelve (12) consecutive months following construction completion.
 - a. **Comment:** We would like to request that the following language be deleted from this definition "for at least twelve (12) consecutive months following construction completion". This language is too restrictive and the deletion of this language will open up more markets for much needed affordable housing.

Thank you for letting us submit comments to the posted 2018 QAP and MF Rules. If you have any questions, please do not hesitate to contact us.

Sincerely,
The NuRock Companies



John O. Boyd
Senior Vice President

(41) Texas Low Income Housing Information Service



October 12, 2017

Texas Department of Housing and Community Affairs
221 E. 11th St
Austin, Texas 78701

TDHCA Staff & Board,

Texas Low Income Housing Information Service (TxLIHIS) applauds the efforts which the staff of the Texas Department of Housing and Community Affairs (TDHCA) have expended in working with stakeholders to craft the Draft 2018 Qualified Allocation Plan (QAP) and Draft Uniform Multifamily Rules. Overall, we believe that many of the rules and changes contained in these documents will advance this state's obligation to affirmatively further fair housing and to provide quality housing choices to low-income Texans who are dependent on affordable housing programs. However, there are several changes, as well as strong sentiments among stakeholders, which stand to impede this same obligation and are a regression from the 2017 QAP.

We submit the follow comments and recommendations on the Draft 2018 Qualified Allocation Plan and Draft Uniform Multifamily Rules. Recommendations are underlined.

§10.101(a)(2): Undesirable Site Features (USF)

There is an important question to ask when considering changes which would place developments even closer to these feature: *would you want to live next to this?* Those of us who have likely had many housing choices available would answer a resounding 'no'. There is no reason to think the desires of a low-income household would be any different. The TDHCA should stand resolute on this principle and not choose to defer to weaker regulations from other governments that would undermine the Department's efforts to protect tenants of TDHCA-subsidized housing.

The proposed changes in subsection (a)(2) are positive in that they seek to cover any other facilities not listed under (A)-(K) which may have a spatially-based state or federal site regulation with respect to residential land uses. However, TDHCA should not defer in whole to state and federal minimum separation regulations in cases where they are less than that of a distance specified under this subsection.

We recommend that: 1) TDHCA not act upon any recommendations to reduce distances specified under subsection (a)(2) and keep them at those currently specified in the 2018 Draft Uniform Multifamily Rules; and 2) TDHCA change the amended language to state that "...the Department will defer to that agency...only if that agency's minimum separation requirement is greater than that required by the Department."



§10.101(a)(3): Undesirable Neighborhood Characteristics (UNC)

These criteria and those under USF are the only controls that staff has on what the locational priorities are in awarding non-competitive tax credits and other multifamily programs. Calls to loosen restrictions or remove these entirely disregard the well-documented effects that concentrated poverty, lack of quality education, high crime, and structural blight have on the levels of opportunity afforded to neighborhood residents, as well as their general quality of life.

To the criticisms of using proprietary data from Neighborhood Scout for crime: it is unfortunate that there is not a publicly-available crime data source at the census tract level, but this is the best data available for this purpose and is only one among numerous criteria in the LIHTC program. To not consider crime rates under this section would be a crime in and of itself and there is no good reason to remove its consideration over unproven allegations of inaccuracy or unreliability.

We recommend no changes to this section from its current form in the 2018 Draft except as recommended below regarding school quality.

The passage of HB3574 during the 85th legislative session undermines significant progress the Department has made in promoting higher opportunity housing choices for tenants who rely on TDHCA-subsidized housing. Most of the existing TDHCA multifamily housing inventory is both occupied by a tenant population, and located in neighborhoods, that are predominately non-white. These same areas too often have only low-performing schools available to the children residing in these developments. Including school quality as scoring criteria is not possible in this QAP, however the Department may continue to consider it as a threshold criterion. Recognizing the benefits of school quality consideration in this program, the Department should make this threshold criteria sufficiently demanding so as to not render this threshold requirement meaningless.

Existing threshold criteria under §10.101(a)(3)(B)(iv) requires that the elementary, middle, and high school zoned to the development site simply have a “Met Standard” rating. According to 2017 Texas Education Agency Accountability Ratings data, 87 percent of all Texas public schools have this threshold rating. Among these schools are widely varying Index 1 scores—the criteria formerly employed in scoring by the Department—that call into question the sufficiency of simply requiring a “Met Standard” rating. Prior to the 2018 Draft QAP, the Department used an Index 1 threshold of 77 in awarding points for educational quality, presumably based on the average Index 1 score for all Texas public schools. Among all schools receiving the threshold “Met Standard” rating in 2017 are over 500 schools that have received an Index 1 score of 60 or less, and some with scores as low as the 40s and even one school with a score of 18. This is an enormous drop in educational quality standards in the QAP that is simply not acceptable.

We recommend that the Department include an Index 1 threshold based on the average score by Uniform Service Region in conjunction with the “Met Standard” rating to ensure that children residing in LIHTC developments continue to benefit from access to high quality education. Additionally, we recommend that school-related mitigation requirements under (C) and (D) require improvements to meet this Index 1 threshold.



§11.7: Tie Breaker Factors

There are some tie breaker criteria best practices that would be worthy of consideration by the Department as it drafts these criteria. Effective tiebreaker criteria: 1) promotes the best application; 2) is based on variable amounts--such as an average or standard deviation--that greatly increases the chances of tie breaking as opposed to one based on a binary criterion (e.g. yes/no, score/didn't score, etc); and 3) is "blinded" from applicants to avoid situations of development site clustering (i.e. is difficult to predict what will win a tiebreaker).

We disagree with having Urban Core points as the first tiebreaker. There are other criteria more important to residents of LIHTC housing such as those found in the Opportunity Index or poverty rate, than how close they are to City Hall. This criterion fails all three of the aforementioned tiebreaker best practices, and should be de-prioritized among all tiebreakers.

We recommend moving the Urban Core tie breaker to third or lower in this list.

The Opportunity Index (OI) is a good tiebreaker in that it is more likely to promote the best applications. However, based on the 2017 cycle that first utilized the new OI, it is not the most effective tiebreaker as most applicants were successful in receiving the maximum seven points. Tiebreaker (3) of the 2017 QAP has been struck from the 2018 Draft QAP, and we believe this should be reconsidered. Incentivizing applicants to seek the most amenities from the list under §11.9(c)(4) rather than just the minimum to reach the 7-point cap helps both to promote better developments and more effectively break ties. For this reason, and given improved language under §11.9(c)(4) that was problematic during the 2017 LIHTC cycle, the Department should consider modifying this tiebreaker and prioritizing it higher.

Additionally, the consideration of Concerted Revitalization Plans (CRP) as a tiebreaker is problematic. As has been demonstrated each Cycle, tiebreakers drive the behavior of applicants. Urban history has shown that CRPs are a difficult thing for local governments to successfully execute, and they require a great deal of effort from the Department to evaluate for acceptability. In conjunction with the removal of Educational Quality from scoring criteria, there is the potential for applicants to further shift their focus to sites in lower opportunity areas that may be covered by a CRP, which could pose fair housing issues. Also, the passage of legislation during the 84th Legislature requiring that an application successfully claiming CRP points in Regions 3, 6, and 9 receive an award has already prioritized CRPs to a potentially problematic extent, as it works on an assumption that governments within these Regions can consistently execute a successful CRP every year.

We recommend making the Opportunity Index the first tiebreaker on the list, removing consideration of Concerted Revitalization Plans in a tiebreaker, and modifying it to state the following: "(1) Applications Scoring higher on the Opportunity Index under §11.9(c)(4) of this chapter. For applications with the same score that have achieved the maximum Opportunity Index Score, the application with the highest number of points on the Opportunity Index amenities menu that they were unable to claim due to the 7 point cap on that item.

Tiebreaker (3) as amended in the 2018 Draft QAP is a good concept for breaking ties and has the potential to meet all 3 tiebreaker best practices, however this tiebreaker as drafted doesn't yet meet the mark. First, simply considering the HTC units per capita isn't necessarily the best metric of



“underserved-ness,” or better put: need. If there are fewer HTC units in a Place or county, that could be indicative of a slow market with already low rents, which means that an LIHTC award is simply subsidizing new construction instead of providing significant relief from cost burden. There’s a benefit to bringing new units to an area where the stock might be older, but this is not the priority of the program. This criterion should not award an applicant to simply subsidize new construction, but rather award the applicant providing housing where the greatest affordability needs exist.

We recommend utilizing data such as the most recent Comprehensive Housing Affordability Strategy (CHAS) data that would better inform affordability issues in a Place or county. A potential methodology could be to calculate the percentage of renter households earning less than 50% AMHI that are cost burdened in a Place or county. For example: in Austin that would be 32%. In Killeen it would be 24%.

§11.9(c)(4): Opportunity Index (OI)

The amenities list under this section has been improved from the 2017 language, however the distance thresholds on some of these amenities remain excessive and render them as ineffective criteria, as they are very easy to get and simply increase the reliance on tiebreakers to decide awards. These amenities should be difficult to get and a maximum score of 7 should be achieved less commonly than it is currently.

(B)(i)(IV): At 3 miles, nearly the entirety of many large cities is covered. We recommend reducing this distance threshold to 2 miles in order to decrease the chances of tied OI scores.

(B)(i)(VIII): At 5 miles, nearly the entirety of many larger cities is covered. We recommend reducing this distance threshold to 3 miles in order to decrease the chances of tied OI scores.

§11.9(d)(5): Community Support from State Representative

This section as amended has become more confusing and open to interpretation. The existing language requiring a clear statement of support or opposition to the specific Development was easy to understand and not left open to interpretation, likely resulting in having to work out these difference in front of the TDHCA board.

We recommend that the existing 2017 language requiring a clear statement of support or opposition to a specific Development from a State Representative be preserved.

Thank you for your consideration of our comments and recommendations.

Best Regards,

Charlie Duncan
Research Director
TxLIHIS
(512) 477-8910

(42) The Meals on Wheels Association of Texas

From: [Andrea Torres](#)
To: [HTC Public Comment](#)
Cc: [Greg Pittman](#); sam@woollardnichols.com; jhamm@thekitchenwf.org; [Kiya Moghaddam](#); lily@woollardnichols.com
Subject: Public Comment on the 2018 Draft Qualified Allocation Plan
Date: Thursday, October 05, 2017 8:32:07 AM

Mr. Russell,

The Meals on Wheels Association of Texas (MOWAT) appreciates the opportunity to publicly comment on the 2018 Draft Qualified Allocation Plan. After discussing the proposed language with the MOWAT board, MOWAT offers the following for public comment:

The Meals on Wheels Association of Texas (MOWAT) thanks the Texas Department of Housing and Community Affairs for including Meals on Wheels and similar nonprofits as a menu item on the Opportunity Index for multi-family housing tax credits. The Association has no recommendations for changes to the proposed language.

Please let me know if you have any questions or need additional information.

Best,

Andrea Torres

Woollard Nichols and Associates

on behalf of the Meals on Wheels Association of Texas

512-925-7120

5b

BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION
NOVEMBER 9, 2017

Presentation, discussion, and possible action on adoption of amendments to 10 TAC Chapter 10 Subchapter A, concerning General Information and Definitions, Subchapter B, concerning Site and Development Requirements and Restrictions, Subchapter C, concerning Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules, and Subchapter G, concerning Fee Schedule, Appeals and Other Provisions, and directing their publication in the *Texas Register*

RECOMMENDED ACTION

WHEREAS, the Uniform Multifamily Rules contain eligibility, threshold, and procedural requirements relating to applications requesting multifamily funding;

WHEREAS, changes have been proposed that improve the efficiency of the funding sources involved; and

WHEREAS, the proposed amendments to Chapter 10 were published in the September 22, 2017, issue of the *Texas Register* for public comment;

NOW, therefore, it is hereby

RESOLVED, that the final order adopting the amendments to 10 TAC Chapter 10 Subchapter A, General Information and Definitions, Subchapter B, Site and Development Requirements and Restrictions, Subchapter C Application Submission Requirements, Ineligibility Criteria, Board Decisions, and Waiver of Rules, and Subchapter G Fee Schedule, Appeals and Other Provisions, together with the preambles presented to this meeting, are approved for publication in the *Texas Register*, and

FURTHER RESOLVED, that the Executive Director and his designees be and each of them hereby are authorized, empowered, and directed, for and on behalf of the Department, to cause the amendments to the Uniform Multifamily Rules, together with the preambles in the form presented to this meeting, to be published in the *Texas Register* and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing.

BACKGROUND

The Board approved the proposed amendments to Chapter 10 regarding the Uniform Multifamily Rules at the Board meeting of September 7, 2017, to be published in the *Texas Register* for public comment. In keeping with the requirements of the Administrative Procedures Act, staff has reviewed all comments received and provided a reasoned response to each comment.

Preamble, Reasoned Response, and New Rule

The Texas Department of Housing and Community Affairs (the “Department”) adopts the amendments to 10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter A, §§10.1 – 10.4 concerning General Information and Definitions. Section 10.3 is adopted with changes to the text as published in the September 22, 2017, issue of the *Texas Register*. Sections 10.1, 10.2 and 10.4 are adopted without changes and will not be republished.

REASONED JUSTIFICATION. The Department finds that the adoption of the sections will result in a more consistent approach to governing multifamily activity and to the awarding of funding or assistance through the Department and to minimize repetition. The comments and responses include both administrative clarifications and corrections to the Uniform Multifamily Rule based on the comments received. After each comment title numbers are shown in parentheses. These numbers refer to the person or entity that made the comment as reflected at the end of the reasoned response. If comment resulted in recommended language changes to the proposed Uniform Multifamily Rule as presented to the Board in September, such changes are indicated.

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS.

Public comments were accepted through October 12, 2017, with comments received from (4) Brownstone Affordable Housing, Leslie Holleman & Associates, Evolie Housing Partners, and Mears Development and Construction, Inc., (27) Foundation Communities, (28) New Hope Housing, (29) True Casa Consulting, (32) Texas Coalition of Affordable Developers, and (40) The NuRock Companies

1. §10.2(c) – Subchapter A – General – Data (4)

COMMENT SUMMARY: Commenter (4) stated that the proposed changes relating to data sources used, specifically NeighborhoodScout, creates subjectivity in terms of which point in time such data source will be considered acceptable to the Department. Commenter (4) explained that an applicant could check the crime rate and make a decision to move forward with the site, only to have a competitor submit a Request for Administrative Deficiency indicating a higher crime rate after the point in time in which the applicant originally checked. Accordingly, commenter (4) recommended the following revision to this section:

“(c) **Data.** Where this chapter requires the use of American Community Survey data, the Department shall use the most current data available as of October 1, 2017, 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~~ at the time of site selection ~~but before the Application Acceptance Period,~~ will be permissible, provided Applicant’s retain evidence of the applicable data on that date. The NeighborhoodScout ~~report~~ data submitted in the Application must include the ~~report~~ date on which the report was printed.”

STAFF RESPONSE: In response to Commenter (4), staff does not find the proposed language for §11.1(e) ambiguous. For NeighborhoodScout crime rate data (and any data other than American Community Survey data), any data secured between October 1 and Pre-Application Final Delivery Date is permissible. Replacing this time frame with commenter (4)'s proposed phrase of "at the time of site selection" is ambiguous as it does not set a limit to when that site was selected, and staff has no way of confirming this date. The nature of the Department's Housing Tax Credit (HTC) rules is to judge sites according to point-in-time data, which require time parameters. The proposed rule states that the Applicant should include the NeighborhoodScout report in the Application as evidence of the data used by the Applicant, and the date on which that data was attained. If the data is updated after the Application is submitted, it would not impact the Application and will be disregarded

Staff recommends no changes based on this comment.

2. §10.2(d) – Subchapter A – General – Public Information Requests (4)

COMMENT SUMMARY: Commenter (4) suggested that the added language in this section could be used to limit transparency. Specifically, commenter (4) expressed concerns with the idea that an applicant can consider parts of an application confidential since applications and all associated third-party reports have always been public information.

STAFF RESPONSE: Staff generally agrees with Commenter. As proposed below, the changes to the rule as originally proposed may limit the availability of information publically available. However, the need for this language change is motivated by recent changes in Texas law and the need to merge information protections with the policy embodied in Tex. Gov't Code §2306.6717(a)(2), that the entire Tax Credit Application and supporting documents and exhibits must be posted on TDHCA's website. To best accommodate these policies, Staff proposes to make use of the option available in the Texas Uniform Trade Secret Act ("TUTSA") for information owners to grant express or implied consent to disclose a trade secret. Accordingly, Staff proposes changes to the language as proposed, to require written certification from the Applicant that it has obtained consent from the authors of the reports containing any protected information, to publish those reports on the TDHCA website and to use the information for authorized purposes.

“(d) 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, ~~and as a waiver of any of the applicable provisions of Tex. Gov't Code, Chapter 552, with the exception of any such provisions, if any, as are considered by law as confidential and have been identified as such by the Applicant. The fact that an Applicant identifies any particular materials as confidential does not mean that they will, if made the subject of a request under the Texas Open Records Act, be withheld from production, that being a matter to be determined by the Office of the Attorney General. To the extent that an Applicant provides materials from a third party it is the responsibility of the Applicant to confirm with the third party whether any assertion of confidentiality is applicable. The Department will proceed on~~

~~the basis of those assertions in or in connection with the Application having been reviewed by the Applicant with such persons as it deemed necessary, and no third party may assert the confidentiality of any such materials that were not, at the time of submission, identified as confidential. 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.”~~

3. §10.3 – Subchapter A – General – Definition of Development Site and Use Throughout Rules (32)

COMMENT SUMMARY: Commenter (32) asserted that the definition of Development Site and its use throughout the Department’s rules with regard to distances to either site amenities or undesirable site features, or its proximity within a census tract need to be consistent. Specifically, commenter (32) stated that all measurements or census tract determinations should include ingress/egress or other easements that are requirements for the development and that any inconsistencies between site control and development site should be addressed between pre-application and full application so that they are consistent at full application.

STAFF RESPONSE: The suggestion proposed by the commenter would require a thorough re-evaluation of all subchapters under Chapter 10 in order to determine what specific changes would need to be made to the definition of Development Site and the implication of those changes throughout the rule. Staff believes that such re-evaluation would be substantive and likely to garner additional public comment that is not able to be considered at this point in the rule-making timeline. This is something that could benefit from ongoing discussion throughout the upcoming program year.

Staff recommends no changes based on this comment.

4. §10.3(122) – Subchapter A – Definitions – Supportive Housing (27), (28), (29)

COMMENT SUMMARY: Commenters (27), (28), (29) expressed support for the Department’s work on the revisions to this definition to be reflective of true supportive housing but indicated that further modifications are necessary to ensure that the program works for developers that have a long track record and proven model of delivering this type of housing. Commenter (27) stated that the appropriate goal of many supportive housing residents isn’t necessarily to move on to other housing and that the tax credit program supports permanent supportive housing and further suggested the reference to support services post residency be removed. Moreover, commenters (27), (29) indicated that 24-7 support services is cost prohibitive and atypical of many of these kinds of developments and that many can effectively serve such individuals without 24-7 support. Lastly, commenters (27), (29) stated that supportive housing developments are not financially feasible without additional sources of funding and that while project economics typically do not support amortizing permanent debt, “soft” cash flow loans are an essential tool to have available. In line with these suggestions, commenter (27), along with commenters (28), (29) recommended the following modifications to the definition:

“(122) Supportive Housing—A residential rental Development that is:

- (A) intended for occupancy by households in need of specialized and specific non-medical services in order to maintain independent living;
- (B) the provision of services are provided primarily on-site by the Applicant, an Affiliate of the Applicant or a third party provider. ~~and that~~ The service provider must be able to ~~has demonstrated~~ an established and compliant track record of providing such services in residential settings for at least three years prior to the application date;
- (C) the services offered ~~generally~~ must include case management and tenant services that either aid tenants in addressing debilitating conditions or assist tenants in securing the skills, assets, and connections needed for independent living. ~~post residency and, if the population is anticipated to have issues such as substance abuse or psychiatric disorders, an on-site person able to coordinate responses to a wide variety of situations reasonably anticipated to arise in the population served (such on-site position to be staffed and available on a 24/7 basis).~~ Resident populations primarily include the homeless and those at-risk of homelessness; and
- (D) the Applicant, General Partner, or Guarantor must meet the following criteria:
- (i) demonstrate that it, alone or in partnership with a third party provider, has at least three years experience in developing and operating housing similar to the proposed housing;
- (ii) set aside at least 20% of the Units in the Development for households that meet the definition of "homeless" as defined by the McKinney-Vento Homeless Assistance Act, as amended by the Homeless Emergency Assistance and Rapid Transition to Housing (HEARTH) Act, 42 USC 11302 and 42 USC 11360; ~~demonstrate that it has secured sufficient funds necessary to maintain the Development's operations through the Affordability Period; and~~
- (iii) provide evidence of a history of fundraising activities sufficient to fill unanticipated operating losses; and
- (E) is not financed by any unaffiliated third-party ~~, except for construction financing, with any debt containing foreclosure provisions or debt that contains must-pay repayment provisions (including cash-flow debt).~~ ~~P~~ permanent foreclosable, must-pay debt, unless the source of the debt is (i) federal funding, or (ii) a performance-based forgivable loan or grant to an affiliate of the Applicant which is re-loaned to the Applicant to re-characterize the grant as a loan consistent with the IRS Audit Technique Guide. ~~is permissible if sourced by federal funds but the Development will not be exempted from Subchapter D of this chapter (relating to Underwriting and Loan Policy).~~ Any amendment to an Application or LURA resulting in the addition of debt prohibited under this definition will

result in the ~~pertaining to debt will result in the issuance of~~ revocation of IRS Form(s) 8609.”

STAFF RESPONSE: In response to the commenters, there is no established standard for what constitutes an established and compliant track record as it relates to services provided on-site. Staff proposes the following modification to subparagraph (B) of the definition:

“(B) the provision of services are provided primarily on-site by the Applicant, an Affiliate of the Applicant or a third party provider and ~~that~~the service provider must be able to ~~has~~ demonstrated ~~an established and compliant~~ ~~track~~-record of providing substantive ~~such~~ services similar to those proposed in the subject Application in residential settings for at least three years prior to the Application Acceptance Period;”

In response to those suggestions proposed by the commenters for subparagraph (C), staff agrees and has made the change accordingly. For those suggestions pertaining to (D)(ii), staff does not believe it is appropriate to effectively create a set-aside within a set-aside and believes the inclusion of such requirement is a new concept that would likely solicit additional public comment that would need to be considered. Staff believes the language under subparagraph (C) that speaks to resident populations primarily including those homeless or at-risk of homelessness generally addresses the comment raised.

As to the comments that pertain to subparagraph (E), staff is trying to prohibit putting any hard debt in a transaction and using an affiliate to do so. The language proposed by staff addresses this concern and the concern raised by the commenter. Staff does not believe the other changes proposed by the commenter are necessary and believes the definition as originally proposed captures how staff will evaluate the funding sources represented in the application. Moreover, staff has added the clarifying language proposed by the commenter regarding the issuance of 8609s if additional debt is provided that violates the provisions in this definition.

“(E) is not financed, except for construction financing, with any debt containing foreclosure provisions or debt that contains must-pay repayment provisions (including cash-flow debt). Permanent foreclosable, must-pay debt is permissible if sourced by federal funds, but the Development will not be exempted from Subchapter D of this chapter (relating to Underwriting and Loan Policy). Debt meeting this criteria may be provided by an Affiliate. Any amendment to an Application or LURA resulting in the addition of debt prohibited under this definition will result in the revocation ~~pertaining to debt will result in the issuance~~ of IRS Form(s) 8609.”

5. §10.3(98) – Subchapter A – Definitions – Unstabilized Development (40)

COMMENT SUMMARY: Commenter (40) recommended the following modification to the definition on the basis that it is too restrictive and removing the language will open up more markets for much needed affordable housing.

“(141) Unstabilized Development--A development with Comparable Units that has been approved for funding by the Department's Board of Directors or is currently under construction or has not maintained a 90 percent

occupancy level. ~~for at least twelve (12) consecutive months 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.”

STAFF RESPONSE: Staff believes that some indication of stabilized occupancy is necessary and achieving 90% occupancy should not be a one-time reflection. In response to the commenter staff has adjusted this definition to reflect 90% occupancy for at least 90 days and believes that the modification will still open up more markets.

STATUTORY AUTHORITY. The new sections are adopted pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules. Additionally, the new sections are adopted pursuant to Texas Government Code, §2306.67022, which specifically authorizes the Department to adopt a qualified allocation plan.

Preamble, Reasoned Response, and New Rule

The Texas Department of Housing and Community Affairs (the “Department”) adopts the amendments to 10 TAC, Chapter 10 Uniform Multifamily Rules, Subchapter B, §10.101 concerning Site and Development Restrictions and Requirements, with changes to the proposed text as published in the September 22, 2017, issue of the *Texas Register*.

REASONED JUSTIFICATION. The Department finds that the adoption of the section will result in a more consistent approach to governing multifamily activity and to the awarding of funding or assistance through the Department and to minimize repetition. The comments and responses include both administrative clarifications and corrections to the Uniform Multifamily Rule based on the comments received. After each comment title, numbers are shown in parentheses. These numbers refer to the person or entity that made the comment as reflected at the end of the reasoned response. If comment resulted in recommended language changes to the Uniform Multifamily Rule as presented to the Board in September, such changes are indicated.

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS.

Public comments were accepted through October 12, 2017, with comments received from (2) State Representative Garnet Coleman, (4) Brownstone Affordable Housing, Leslie Holleman & Associates, Evolie Housing Partners, and Mears Development and Construction, Inc., (5) Alyssa Carpenter, (6) Texas Affiliation of Affordable Housing Providers, (8) Tim Smith, (18) National Church Residences, (27) Foundation Communities, (28) New Hope Housing, (30) Lisa Vecchietti, (31) BETCO, (32) Texas Coalition of Affordable Developers, (34) Purple Martin Real Estate, (39) JES Dev. Co, (40) The NuRock Companies, and (41) Texas Low Income Housing Information Service.

6. §10.101(a)(2) – Subchapter B – Undesirable Site Features (4), (5), (6), (8), (28), (32), (34), (40), (41)

COMMENT SUMMARY: Commenter (4) requested there be a pre-determination process for unusual features that may or may not be deemed ineligible by the Board. Commenter (4) further suggested such pre-determinations be heard by the Board in January 2018 as reflected in the following:

“(2) **Undesirable Site Features.** Development Sites within the applicable distance of any of the undesirable features identified in subparagraphs (A) - (K) of this paragraph will be considered ineligible unless it is determined by the Board that information regarding mitigation of the applicable undesirable site feature(s) is sufficient and supports Site eligibility. [Requests for pre-determinations on eligibility can be submitted beginning December 1, 2017, and will be heard by the Board in January 2018.](#)”

Commenters (4), (6), (8), (28), (32), (34), (40) recommended the undesirable site feature relating to high voltage transmission lines revert to 2016 language that referenced buildings within the easement of any such lines would be ineligible. Commenter (32) further suggested that Rehabilitation developments should be exempt from this requirement.

Commenter (4), (32) believed the 500 feet distance to an active railroad track is too large of a distance, particularly in urban core settings and recommended the distance be reduced to

100 feet since there can be effective mitigation for noise and safety concerns at that distance. Commenters (6), (8), (28), (32), (34), (40) similarly suggested a 100 foot distance and further indicated that HUD does not have a minimum distance but rather a decibel level requirement of less than 65 decibels which can be mitigated with the use of construction materials and/or architectural features.

Commenters (4) and (32) believed the added language to the heavy industry site feature relating to dust or fumes should be removed because it is overly broad and will create frivolous Requests for Administrative Deficiencies.

Commenter (5) indicated the added language relating to the high volume of rail or truck traffic to describe the heavy industry site feature is subjective particularly because it could describe a warehouse/distribution center or post office. Commenter (5) requested this site feature be clarified with a reference to local zoning because commercial areas and light industrial could also be construed to fall under this definition. Similarly, commenters (4), (6), (8), (28), (32), (34) expressed concern over the additional language on the basis that it is overly broad and seems to prohibit location of sites near job producing facilities such as retail distribution centers and suggested the language be removed.

Commenters (6), (8), (28) and (34) requested the language proposed to be added by staff as noted below, be removed.

“(2) Undesirable Site Features. Development Sites within the applicable distance of any of the undesirable features identified in subparagraphs (A) - (K) of this paragraph will be considered ineligible unless it is determined by the Board that information regarding mitigation of the applicable undesirable site feature(s) is sufficient and supports Site eligibility. Rehabilitation (excluding Reconstruction) Developments with ongoing and existing federal assistance from HUD, USDA, or Veterans Affairs (“VA”) may be granted an exemption by the Board; ~~however, depending on the undesirable site feature(s) staff may recommend mitigation still be provided as appropriate.~~ Such an exemption must be requested at the time of or prior to the filing of an Application. Historic Developments that would otherwise qualify under §11.9(e)(6) of this title (relating to the Qualified Allocation Plan) may be granted an exemption by the Board, and such exemption must be requested at the time of or prior to the filing of an Application. The distances are to be measured from the nearest boundary of the Development Site to the nearest boundary of the property or easement containing the undesirable feature, unless otherwise noted below. Where there is a local ordinance that regulates the proximity of such undesirable feature to a multifamily development that has smaller distances than the minimum distances noted below, then such smaller distances may be used and documentation such as a copy of the local ordinance identifying such distances relative to the Development Site must be included in the Application. ~~If a state or federal cognizant agency would require a new facility under its jurisdiction to have a minimum separation from housing, the Department will defer to that agency and require the same separation for a new housing facility near an existing regulated or registered facility.~~ In addition to these limitations, a Development Owner must ensure that the proposed Development Site and all construction thereon comply

with all applicable state and federal requirements regarding separation for safety purposes...”

Commenter (5) stated the prohibition against developments located within 2 miles of oil refineries could affect the rebuilding of the Texas coast after Hurricane Harvey and specifically indicated the distance seems arbitrary and not based on safety and further recommended the distance be reduced or deleted.

Commenter (34) asserted that undesirable site features should not apply to rehabilitation developments with ongoing federal assistance and that subjecting existing developments to such features ignores the fact that such developments met applicable requirements at the time they were originally development and further prevents existing housing from receiving the rehabilitation it needs.

Commenter (41) expressed support for some of the proposed changes in this section but recommended the added language whereby the Department defers minimum separation distances to state or federal agencies who regulate proximity of the undesirable feature to residential development. Commenter (41) requested the language be modified to state that the Department only defer to such agency if that agency’s minimum separation requirement is greater than that required by the Department.

STAFF RESPONSE: In response to commenter (4), the rule as drafted allows for an applicant to request a pre-determination regarding an undesirable site feature. As such requests are submitted to the Department, staff will review and present its recommendation to the Board at the next possible Board meeting. Staff does not believe binding such determinations to a specific Board meeting in the rule is necessary.

In response to commenters (4), (6), (8), (28), (32), (34), (40) regarding the high voltage transmission lines, staff believes the current language is appropriate since the 2016 language they requested is ineffective. The language would render development sites with buildings within the easement of such lines ineligible. Staff does not understand how there would ever be an instance where buildings are in the easement and believes the 100 feet distance from the residential building to the actual line to be most appropriate. In response to commenters (32), (3) who suggested that Rehabilitation developments should be exempt from this requirement, the rule currently allows for rehabilitation developments with ongoing and existing federal assistance to be granted an exemption by the Board. This provision has worked well over the several years that it has been in the rule and staff does not believe there is a sound, policy reason by which it should be modified. Regarding commenters who suggested the language whereby staff could still recommend mitigation, as appropriate, for such rehabilitation developments, staff believes that with certain undesirable site features, this could be appropriate and considered on a case-by-case basis. For example, a property that receives ongoing federal assistance and could otherwise be granted an exemption, but that has a highly volatile pipeline on the development site, the requirement that the site conform to the Pipelines and Informed Planning Alliance could still be warranted.

In response to those commenters who believed the 500 feet distance to an active railroad track to be too large of a distance and recommended the distance be reduced to 100 feet, staff believes the 100 feet recommendation to be arbitrary and staff notes that this section includes an option for mitigation to be provided should the distance be less than 500 feet.

In response to commenters (4), (32) that requested the language to the heavy industry site feature relating to dust or fumes should be removed and for those commenters who believed the added language relating to the high volume of rail or truck traffic to describe the heavy industry site feature is subjective and should be clarified with a reference to local zoning, staff notes that the language in the rule that defers to federal or state agencies that regulate development in proximity to potential undesirable facilities, staff believes the added language relating to dust/fumes and high volume of rail or truck traffic can be removed and has modified this undesirable site feature description accordingly.

In response to commenter (5) who indicated the prohibition against developments located within 2 miles of oil refineries could affect the rebuilding of the Texas coast after Hurricane Harvey, staff does not believe it is appropriate to remove this undesirable feature completely from the rule in response to recent events, but that such developments be considered on a case-by-case basis by staff and the Board.

Staff appreciates the support expressed by commenter (41). Regarding the comments made by (41) and others, on the minimum separation distances by state or federal agencies who regulate proximity of the undesirable feature to residential development referenced in the rule, staff believes this to be appropriate in the absence of other evidence to indicate more appropriate separation distances.

7. §10.101(a)(3) – Subchapter B – Undesirable Neighborhood Characteristics (2), (4), (5), (6), (8), (18), (28), (32), (34), (39), (41)

COMMENT SUMMARY: Commenters (4), (6), (8), (28), (32), (34), (39) recommended this section be removed in its entirety on the basis that the dismissal of the ICP litigation the Department should not continue to operate under the court-ordered Remedial Plan. Should the section not be removed in its entirety, then commenters (4), (6), (8), (28), (32), (34) recommended the following modifications be made:

“(3) Undesirable Neighborhood Characteristics.

(A) If the Development Site has any of the characteristics described in subparagraph (B) of this paragraph, the Applicant must disclose the presence of such characteristics in the Application submitted to the Department. ~~For Competitive HTC Applications, an Applicant must disclose at pre-application as required by 11.8(b) of this title (relating to Pre-Application Requirements). For all other Applications, an~~ 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...”

“(ii) The Development Site is located in a census tract or within 1,000 feet of any census tract in an Urban Area and the rate of Part I violent crime is greater than 18 per 1,000 persons (annually) as reported on neighborhoodscout.com. Should neighborhoodscout.com indicate part I violent crime greater than 18 per 1,000 persons, the Applicant may present violent crime statistics from the city’s police department or county sheriff’s department for the police beat or patrol area within which the Development site is located, indicating that based on the population of the police beat or

patrol area that violent crime is not greater than 18 per 1,000 persons. Such local law enforcement statistics will supersede the rating of neighborhoodscout.com and the Development Site will be not to have an undesirable neighborhood characteristic related to violent crime...”

“(vii) An assessment of school performance for each of the schools in the attendance zone containing the Development that did not achieve a 2017 Met Standard rating, for the previous two academic years (regardless of whether the school Met Standard in those years), that includes the TEA Accountability Rating Report, a discussion of performance indicators and what progress has been made over the prior year, and progress relating to the goals and objectives identified in the campus improvement plan or turnaround plan pursuant to 39.107 of the Texas Education Code in effect. This is not just the submission of the campus improvement plan, but an update to the plan or if such update is not available, information from a school official that speaks to the likelihood of achieving Met Standard rating by the time the Development is placed in service~~progress made under the plan as further indicated under subparagraph (D)(iv) of this paragraph~~; and..”

Commenter (5) asserted there are serious discrepancies between NeighborhoodScout data and actual police data and suggested that applicants should not be required to spend hundreds of dollars a month on a third-party commercial website that has inaccurate data and further requested that all references and requirements to NeighborhoodScout be removed from the Department’s rules.

Commenter (18) requested that all undesirable neighborhood characteristics be removed from the rule on the basis that they eliminate the ability to serve many low-income neighborhoods and communities. Commenter (18) further suggested that the increased cost and number of hours in staff and applicant time associated with compiling and reviewing the mitigation necessary is a barrier and disservice for such communities throughout the state.

Commenter (2) suggested educational quality as an eligibility item should be more flexible and further recommended an application not be considered ineligible if the following alternatives are applicable:

- the school district certifies that the school will achieve a D or better rating within three years of the date of the application;
- the overall academic environment for the school is to be enhanced by a Turnaround Plan;
- the district will institute a shift to a K-8 structure to serve that same attendance zone within three years of the date of the application;
- the district will implement extended day pre-K to serve that same attendance zone within three years of the date of the application; or
- residents have the option of attending an elementary, middle, or high school of their choice within the same district that has a D or better rating.

Commenter (2) indicated that because the rating system used by which to evaluate schools is constantly changing, it would be fair to allow schools to meet threshold within three years

because of the time it takes to adjust to education plans and standards. The shift to a K-8 structure, according to commenter (2) has been proven to improve educational quality because it creates a more coherent learning environment. Commenter (2) further asserted that if school choices exist to attend qualifying schools then such schools should be allowed to be used for purposes of eligibility.

Commenters (28), (34) requested that single room occupancy developments be exempt from the school requirement of meeting standards (for purposes of eligibility) similar to that of Elderly Limitation developments.

Commenter (41) expressed support for the undesirable neighborhood characteristics as a means of determining a site's eligibility. Commenter (41) stated that such characteristics are the only controls that staff has on what the locational priorities are in awarding non-competitive tax credits and other multifamily programs. Commenter (41) recommended the school quality characteristic be modified to include an Index 1 threshold based on the average score by Uniform Service Region in conjunction with the Met Standard rating to ensure access to high quality education and further suggested the mitigation reflected in this section be required in order to meet this Index 1 threshold. Commenter (41) believed that in making these changes it would add meaning to the eligibility item.

STAFF RESPONSE: Staff disagrees with the recommendation of several commenters that the undesirable neighborhood characteristics be removed in their entirety. Staff believes the safety, well-being of tenants and the decency of affordable housing should be of utmost importance and; therefore, recommends the section not be removed. The presence of undesirable neighborhood characteristics does not automatically indicate a development site is ineligible. There are benchmarks and/or thresholds that simply indicate a more detailed assessment of the site and neighborhood needs to occur. Staff believes it is important for applicants to perform an initial evaluation of their sites with respect to all of the undesirable neighborhood characteristics and this rule encourages that evaluation.

To those commenters who expressed concern over the assessment tool used (i.e. NeighborhoodScout) to trigger the need for disclosure, staff notes that recognizing that how local police departments report crime differs from city to city, NeighborhoodScout is the common benchmark by which such evaluation can be performed. The rule indicates that local police data can be submitted as mitigation and has worked well in those instances where the actual data does not rise to the level reported by NeighborhoodScout and; therefore, staff recommends no changes.

In response to the suggestions by commenter (2), staff does not believe it has the ability to evaluate the suggested alternatives on the basis of whether they would be effective in overcoming school performance. Regarding the modification proposed by commenter (2) that would allow a school to achieve the Met Standard rating within 3 years of the award, staff believes such consideration is currently contemplated in the rule. Should the school quality undesirable characteristic be triggered, the mitigation in the rule allows for a school official to make a representation that, based on their assessment of the school's performance, they believe the school will achieve the desired rating by the time the proposed development would be placed into service. Staff agrees with the suggestion by some commenters to include progress made under the turnaround plan as mitigation and has modified the section accordingly.

Staff appreciates the support expressed by commenter (41). Regarding their recommendation to introduce an Index 1 score as a means of determining eligibility, staff believes that such change would likely solicit additional public comment and introduces a new concept not contemplated under the proposed amendment. Staff believes that such substantive change is something that could be addressed in a future rule making cycle with more stakeholder input.

In response to commenters (28), (34) requesting Single Room Occupancy developments be exempt from school quality, staff has concerns regarding this because generally staff does not believe an adult with a child could lawfully be refused occupancy at a Single Room Occupancy development, unless a federal funding source has a specific exemption.

8. §10.101(b)(4) – Subchapter B – Mandatory Development Amenities (4)

COMMENT SUMMARY: Commenter (4) requested clarification regarding the proposed changes to the requirement that all areas of the units having heating and air-conditioning; specifically whether exterior storage space on the patio/balcony needs to be air-conditioned.

STAFF RESPONSE: It was not staff's intent that exterior storage space on the patio/balcony be temperature-controlled; however, for clarification purposes staff recommends adding the phrase “excluding exterior storage space on an outdoor patio/balcony” to the item.

9. §10.101(b)(5) – Subchapter B – Common Amenities (4), (6), (8), (32), (34), (43)

COMMENT SUMMARY: Commenters (4), (32), (34) requested the Limited Green Amenities be re-instated because it incentivizes using healthy finishing products and other things that make a property more efficient to operate. Similarly, commenters (6), (8) believed they should be reinstated because they contribute to the quality and long-term maintenance of developments. Commenter (34) suggested that such Limited Green Amenities should not be mandatory but should remain as options since they provide value to a development.

Commenter (43) expressed that there are opportunities to create further incentives for builders and recommended that the Passive Haus Standard be added to the list of Green Building Features for a development that incorporates the associated standards for such certification. Commenter (43) further suggested that a new section be added that includes Disaster Resilient Building Features that could reduce the magnitude of damages following a disaster.

STAFF RESPONSE: In response to commenters (4), (6), (8), (32), (34) suggesting the Limited Green Amenities be re-instated staff notes that there is not a prohibition against incorporating such features in the design of the development. The requirement in prior years was to include only a handful of such features, many of which had become industry standard. The inclusion of such amenities in a rule for developments that will be placed into service two years later becomes outdated quickly and requires extensive staff resources to maintain and continuously modify the list. Staff believes the current list of common amenities are sufficient for applicants to utilize based on the size of their development without the inclusion of the Limited Green Amenities, and that green building is still an option, for points, that can be selected.

In response to commenter (43) the suggested changes are substantive in nature that would necessitate additional public comment.

Staff recommends no changes based on these comments.

10. §10.101(b)(1)(6)(B) – Subchapter B – Unit Requirements (27)

COMMENT SUMMARY: Commenter (27) suggested modifications to the list that would provide more flexibility to provide amenities that make the most sense based on the particular development. Commenter (27) added that their proposed change to the LED lighting option offers the resident more benefit than just providing such lighting in kitchen and living areas and further stated that recessed and track lighting alone does not offer any additional benefit unless they're LED and are more costly than traditional surface-mounted lighting fixtures.

- “(i) Covered entries (0.5 point);
- (ii) Nine foot ceilings in living room and all bedrooms (at minimum) (0.5 point);
- (iii) Microwave ovens (0.5 point);
- (iv) Self-cleaning or continuous cleaning ovens (0.5 point);
- (v) Refrigerator with icemaker (0.5 point);
- (vi) Storage room or closet, of approximately 9 square feet or greater, separate from and in addition to bedroom, entryway or linen closets and which does not need to be in the Unit but must be on the property site (0.5 point);
- (vii) Energy-Star qualified laundry equipment (washers and dryers) for each individual Unit; must be front loading washer and dryer in required accessible Units (2 points);
- (viii) Covered patios or covered balconies (0.5 point);
- (ix) Covered parking (may be garages or carports, attached or freestanding) and include at least one covered space per Unit (1.5 points);
- (x) 14 SEER HVAC (or greater) or for Rehabilitation (excluding Reconstruction) where such systems are not being replaced as part of the scope of work, a radiant barrier in the attic is provided (1.5 points);
- (xi) High Speed Internet service to all Units (can be wired or wireless; required equipment for either must be provided) (1 point);
- (xii) Built-in (recessed into the wall) shelving unit (0.5 point);
- (xiii) ~~Recessed or track~~-LED lighting in all areas of the Unit~~kitchen and living areas~~ (1 point);
- (xiv) Thirty (30) year roof (0.5 point);
- (xv) Greater than 30 percent stucco or masonry (includes stone, cultured stone, and brick but excludes cementitious and metal siding) on all building exteriors; the percentage calculation may exclude exterior glass entirely (2 points);
- (xvi) Breakfast Bar (a space, generally between the kitchen and dining area, that includes an area for seating although actual seating such as bar stools does not have to be provided) (0.5 points);~~and~~
- (xvii) Walk-in closet in master bedroom (0.5 points);
- (xviii) Electric Vehicle Charging Station (0.5 points);

(xix) Ceiling fans in all bedrooms (0.5 points);
(xx) Kitchen pantries (0.5 points); and
(xxi) Photovoltaic/Solar Hot Water Ready, consistent with Enterprise Green Communities scoring criteria (2 points).”

STAFF RESPONSE: Staff disagrees with the suggestion regarding the LED lighting since it is already a mandatory amenity that there be Energy-Star rated lighting in all Units which may include compact fluorescent or LED light bulbs. Absent any other comment to remove or modify this option, staff does not recommend any changes. Staff agrees with including the electric vehicle charging station as an option for developments. Since having at least one Energy-Star rated ceiling fan in the unit is already a mandatory amenity, should an applicant decide to include a ceiling fan in all bedrooms, staff sees the value in associating points with such amenity and has included this on the list. Staff believes that the majority, if not all, units should automatically include a kitchen pantry and does not believe there should be points associated with such item. As it relates to the photovoltaic/solar hot water ready option staff is reluctant to include something that requires familiarity with Enterprise Green standards without further evaluating how staff would monitor for such amenity or what the long-term cost-savings or other benefits to the tenant would be.

11. §10.101(b)(8) – Subchapter B – Development Accessibility Requirements (18), (30), (31)

COMMENT SUMMARY: Commenter (18) asserted that while Fair Housing and Accessibility requirements were supposed to be implemented in 1991 it has been their experience that many of these properties were not built compliantly and, therefore, it is either physically impossible or cost prohibitive to implement the proposed visitability language in this section. Commenter (18) recommended that if the language remains, such applications should be allowed to request a waiver.

Commenter (30), (31) indicated that according to the Fair Housing Act Design Manual relating to usable kitchens and bathrooms, it states that dwelling units must contain usable kitchens and bathrooms such that an individual who uses a wheelchair can maneuver about the space. Commenter (30), (31) further asserted that while a half bath (powder room) is exempt, any bathroom with a toilet, sink and tub/shower will have to be wheelchair accessible which seems to go beyond the intent of the Department’s visitability rule as described at roundtable discussions and Board meetings. Commenters (30) and (31) recommended the following modifications to this section:

“(8) Development Accessibility Requirements. All Developments must meet all specifications and accessibility requirements as identified in subparagraphs (A) - (C) of this paragraph and any other applicable state or federal rules and requirements. The accessibility requirements are further identified in the Certification of Development Owner as provided in the Application.

“(A) The Development shall comply with the accessibility requirements under Federal law and as further defined in Chapter 1, Subchapter B of this title (relating to Accessibility Requirements). (§§2306.6722; 2306.6730)

(B) Regardless of building type, all Units accessed by the ground floor or by elevator (“affected units”) must comply with the visitability requirements in clauses (i) – (iii) of this subparagraph. ~~Design specifications for each item must comply with the standards of the Fair Housing Act Design Manual.~~ Buildings occupied for residential use on or before March 13, 1991 are exempt from this requirement.

(i) All common use facilities must be in compliance with the Fair Housing Design Act Manual;

(ii) There must be an accessible or exempt route, as provided for in the Fair Housing Design Act Manual, from common use facilities to the affected units;

(iii) Each affected unit must include the features in subclauses (a) – (e) of this clause.

(a) at least one zero-step, accessible entrance;

(b) at least one visitable 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;~~

(c) 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;

(d) 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

(e) light switches, electrical outlets, and thermostats on the entry level must be at accessible heights.”

STAFF RESPONSE: In response to commenter (18), staff encourages any applicant proposing a development that is unable to comply to review 10 TAC §10.207 regarding the waiver process and engage staff early in such discussions. In response to the other comments received, staff notes that the proposed language does not change any Fair Housing requirements relating to the accessible routes in a development. The common amenities and external routes to units are already governed by the Fair Housing Act Design Manual and are not a part of the development’s accessibility requirements noted in this section. Staff has proposed removal of the word “visitable” under paragraph (B)(iii)(b) since such term is not defined in the rules. In response to comments to remove references to the adherence of bathroom or half-baths on the entry level to the Fair Housing Act Design Manual, the language does not change the specifications relating to bathrooms or half-baths under 2010 ADA standards. Under the proposed rule, the bathrooms/powder rooms on the entry level are not required to have the turning radius for individuals in a wheelchair, but rather they must be on an accessible route, have 32-inch nominal clear width doorways and have switches, outlets, and controls in accessible locations. The Fair Housing Act Design Manual goes into greater detail regarding three possible dimensions for clear floor space that would make the bathroom usable (i.e. visitable) by someone in a wheelchair; however, none of the three options require the turning radius that is covered under 2010 ADA. While the Fair Housing Act Design Manual would not require clear space if it is the only bathroom on

the entry level, it is the Department's position that the bathroom should be made usable should someone in a wheelchair need to be accommodated.

STATUTORY AUTHORITY. The new section is adopted pursuant to Texas Government Code §2306.053, which authorizes the Department to adopt rules. Additionally, the amendments are adopted pursuant to Tex. Gov't Code §2306.67022, which specifically authorizes the Department to adopt a qualified allocation plan.

Preamble, Reasoned Response, and New Rule

The Texas Department of Housing and Community Affairs (the “Department”) adopts new 10 TAC, Chapter 10 Uniform Multifamily Rules, Subchapter C, concerning Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules for Applications. Sections 10.201 – 10.207 are adopted without changes to the text as published in the September 22, 2017, issue of the *Texas Register* and will not be republished.

REASONED JUSTIFICATION. The Department finds that the adoption of the rule will result in a more consistent approach to governing multifamily activity and to the awarding of funding or assistance through the Department and to minimize repetition. The comments and responses include both administrative clarifications and corrections to the Uniform Multifamily Rule based on the comments received. After each comment title, numbers are shown in parentheses. These numbers refer to the person or entity that made the comment as reflected at the end of the reasoned response. If comment resulted in recommended language changes to the Draft Uniform Multifamily Rule as presented to the Board in September, such changes are indicated.

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS.

Public comments were accepted through October 12, 2017, with comments received from (19) Marilyn Hartman, (20) Disability Rights Texas, (21) Leslie Buck, (22) Meredith Blackburn, (23) Susan Raffle, and (24) Methodist Healthcare Ministries

12. §10.204(16) – Subchapter C – Section 811 Project Rental Assistance Program (19), (20), (21), (22), (23), (24)

COMMENT SUMMARY: Commenter (19) indicated that removing the Section 811 program from threshold will directly hurt people with disabilities, including those with serious mental illness and further stated that there is a great shortage of housing with support services for such individuals. Commenter (19), (20) recommended that participation in the Section 811 program be reinstated. According to commenter (20) removing the program as a threshold item is a step backward in the state’s efforts to move individuals with disabilities into the community and will result in a growing waiting list for such units. Similarly, commenters (21), (23) also requested participation in the program be reinstated as a threshold item. Commenter (22) indicated that eliminating the effort to increase the number of housing units would have disastrous effects on the severely mentally ill and asserted that there are negative consequences associated with cutting community-based resources such as the Section 811 program that will only cost taxpayers more and hinder much needed housing and services to the mentally ill. Commenter (24) suggested that applicants should be required to participate in the Section 811 program and that reducing the number of units available for Section 811 housing would only increase the state’s waiting list for individuals who desperately need housing.

STAFF RESPONSE: In response to the concerns of the commenters, it is important to note that the Department is not closing the Section 811 PRA Program. Including the 811 as a threshold item resulted in federal regulatory consequences for Applicants and therefore has been removed from threshold requirements. Instead, staff has proposed moving the participation in the Section 811 PRA Program from Chapter 10 (“threshold”) to the QAP and the Direct Loan Program (“scoring”). Given the competitive nature of the 9% HTC program and the Direct Loan program, staff believes that there is ample incentive for

Applicants to participate in the program as Applicants that do not request the points may face a disadvantage in scoring. Staff expects the number of participating Applicants to continue at the same level as in previous years.

Staff recommends no changes based on these comments.

STATUTORY AUTHORITY. The new sections are adopted pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules. Additionally, the amendments are adopted pursuant to Texas Government Code, §2306.67022, which specifically authorizes the Department to adopt a qualified allocation plan.

Preamble, Reasoned Response, and New Rule

The Texas Department of Housing and Community Affairs (the “Department”) adopts new 10 TAC, Chapter 10 Uniform Multifamily Rules, Subchapter G, §§10.901 – 10.904 concerning Fee Schedule, Appeals and Other Provisions. Sections 10.901 – 10.904 are adopted without changes to text as published in the September 22, 2017, issue of the *Texas Register* and will not be republished.

REASONED JUSTIFICATION. The Department finds that the adoption of the sections will result in a more consistent approach to governing multifamily activity and to the awarding of funding or assistance through the Department and to minimize repetition. The comments and responses include both administrative clarifications and corrections to the Uniform Multifamily Rule based on the comments received. After each comment title numbers are shown in parentheses. These numbers refer to the person or entity that made the comment as reflected at the end of the reasoned response. If comment resulted in recommended language changes to the proposed Uniform Multifamily Rule as presented to the Board in September, such changes are indicated.

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS.

Public comments were accepted through October 12, 2017, with comments received from (4) Brownstone Affordable Housing, Leslie Holleman & Associates, Evolie Housing Partners, and Mears Development and Construction, Inc.

13. §10.901(5) – Subchapter G – Third Party Deficiency Fee (4)

COMMENT SUMMARY: Commenter (4) recommended this fee be reduced to \$100 on the basis that an earlier deadline to file Requests for Administrative Deficiencies (“RFAD”) will result in more RFAD’s being submitted because staff reviews may not have been completed or published by such deadline. With an increase in RFADs filed, commenter (4) believed the fee should be reduced.

STAFF RESPONSE: Regardless of whether there is an increase in RFADs filed as a result of the earlier deadline the workload of staff as it relates to processing, reviewing, corresponding, and presenting the RFADs to the Board remains the same. Staff does not believe the fee should be reduced on the basis that applicants may have to submit more RFADs if staff review of the RFADs will not change. Staff believes the \$500 fee is still warranted.

Staff recommends no changes based on this comment.

STATUTORY AUTHORITY. The amendments are adopted pursuant to Texas Government Code §2306.053, which authorizes the Department to adopt rules. Additionally, the amendments are adopted pursuant to Texas Government Code, §2306.67022, which specifically authorizes the Department to adopt a qualified allocation plan, and Texas Government Code, §2306.144, §2306.147, and §2306.6716.

Index of all Commenters on Subchapters A, B, C and G

2	State Representative Garnet Coleman
4	Brownstone Affordable Housing, Leslie Holleman & Associates, Evolie Housing Partners, and Mears Development and Construction
5	Alyssa Carpenter
6	Texas Affiliation of Affordable Housing Providers
8	Tim Smith
18	National Church Residences
19	Marilyn Hartman
20	Disability Rights Texas
21	Leslie Buck
22	Meredith Blackburn
23	Susan Raffle
24	Methodist Healthcare Ministries
27	Foundation Communities
28	New Hope Housing
29	True Casa Consulting
30	Lisa Vecchietti
31	BETCO Consulting
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34	Purple Martin Real Estate
39	JES Dev Co
40	The NuRock Companies
41	Texas Low Income Housing Information Service
43	Texas Aggregates & Concrete Association

Uniform Multifamily Rules

Subchapter A – General Information and Definitions

§10.1.Purpose. This chapter applies to an award of multifamily development funding or other assistance including the award of Housing Tax Credits by the Texas Department of Housing and Community Affairs (the "Department") and establishes the general requirements associated in making such awards. Applicants pursuing such assistance from the Department are required to certify, among other things, that they have familiarized themselves with the rules that govern that specific program including, but not limited to, Chapter 1 this title (relating to Administration), Chapter 8 of this title (relating to 811 Project Rental Assistance Program Rule), Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan), Chapter 12 of this title (relating to Multifamily Housing Revenue Bond Rules), Chapter 13 (relating to Multifamily Direct Loan Rule), and other Department rules. This chapter does not apply to any project-based rental assistance or operating assistance programs or funds unless incorporated by reference in whole or in part in a Notice of Funding Availability ("NOFA") or rules for such a program except to the extent that Developments receiving such assistance and otherwise subject to this chapter remain subject to this chapter.

§10.2.General.

(a) Due Diligence and Applicant Responsibility. Department staff may, from time to time, make available for use by Applicants information and informal guidance in the form of reports, frequently asked questions, rent and income limits, 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 multifamily rules 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 multifamily rules to each specific situation as it is presented in the submitted 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 independently perform the necessary due diligence to research, confirm, and verify any data, opinions, interpretations or other information upon which Applicant bases an Application. The provisions of the rules, including the Qualified Allocation Plan, are controlling and supersede any and all staff guidance. If there is a disagreement as to how a provision of a rule ought to be applied, it is the province of the Board, not staff, to make a final determination as to its interpretation of its rules.

(b) Board Standards for Review. Some issues may require or benefit from board review. The Board is not constrained to a particular standard, and while its actions on one matter are not binding as to how it will address another matter, the Board does seek to promote consistency with its policies, including the policies set forth in this chapter.

(c) Data. Where this chapter requires the use of American Community Survey data, the Department shall use the most current data available as of October 1, 2017, 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 the Application Acceptance Period, will be permissible. The NeighborhoodScout report submitted in the Application must include the report date.

(d) 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, ~~and as a waiver of any of the applicable provisions of Tex. Gov't Code, Chapter 552, with the exception of any such provisions, if any, as are considered by law as confidential and have been identified as such by the Applicant. The fact that an Applicant identifies any particular materials as confidential does not mean that they will, if made the subject of a request under the Texas Open Records Act, be withheld from production, that being a matter to be determined by the Office of the Attorney General. To the extent that an Applicant provides materials from a third party it is the responsibility of the Applicant to confirm with the third party whether any assertion of confidentiality is applicable. The Department will proceed on the basis of those assertions in or in connection with the Application having been reviewed by the Applicant with such persons as it deemed necessary, and no third party may assert the confidentiality of any such materials that were not, at the time of submission, identified as confidential. 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.~~

(e) Responsibilities of Municipalities and Counties. In providing resolutions regarding housing de-concentration issues, threshold requirements, or scoring criteria, municipalities and counties should consult their own staff and legal counsel as to whether such resolution(s) will be consistent 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.

(f) Deadlines. Where a specific date or deadline is identified in this chapter, the information or documentation subject to the deadline must be submitted 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 otherwise required in statute deadlines are based on calendar days.

§10.3.Definitions.

(a) Terms defined in this chapter apply to the Housing Tax Credit Program, Multifamily Housing Revenue Bond Program, Direct Loan Program and any other programs for the development of affordable rental property administered by the Department and as may be defined in this title. Any capitalized terms not specifically mentioned in this section or any section referenced in this document shall have the meaning as defined in Tex. Gov't Code Chapter 2306, Internal Revenue Code (the "Code") §42, the HOME Final Rule, and other Department rules, as applicable.

(1) Adaptive Reuse--The change-in-use of an existing building not, at the time of Application, being used, in whole or in part, for residential purposes (e.g., school, warehouse, office, hospital, hotel, etc.), into a building which will be used, in whole or in part, for residential purposes. Adaptive reuse requires that the exterior walls of the existing building remain in place. All units must be contained within the original exterior walls of the existing building. Porches and patios may protrude beyond the exterior walls. Ancillary non-residential buildings, such as a clubhouse, leasing office and/or amenity center may be newly constructed outside the walls of the existing building or as detached buildings on the Development Site. Adaptive Reuse Developments will be considered as New Construction.

(2) Administrative Deficiencies--Information requested by Department staff that staff requires to clarify or explain one or more inconsistencies; to provide non-material missing information in the original Application; or to assist staff in evaluating the Application that, in the Department staff's reasonable judgment, may be cured by supplemental information or explanation which will not necessitate a substantial reassessment or re-evaluation of the Application. Administrative Deficiencies may be issued at any time while the Application or Contract is under consideration by the Department, including at any time while reviewing performance under a Contract, processing documentation for a Commitment of Funds, closing of a loan, processing of a disbursement request, close-out of a Contract, or resolution of any issues related to compliance. A matter may begin as an Administrative Deficiency but later be determined to have constituted a Material Deficiency. Any missing item(s) relating to a scoring item will be deemed by staff to have constituted a Material Deficiency that supports the non-award of the points. By way of example, if an Applicant checks a box for three points for a particular scoring item but provides supporting documentation that would support two points, staff would treat this as an inconsistency and issue an Administrative Deficiency which might ultimately lead to a correction of the checked boxes to align with the provided supporting documentation and support an award of two points. However, if the supporting documentation was missing altogether, this could not be remedied and the point item would be assigned no points.

(3) Affiliate--An individual, corporation, partnership, joint venture, limited liability company, trust, estate, association, cooperative or other organization or entity of any nature whatsoever that directly, or indirectly through one or more intermediaries, has

Control of, is Controlled by, or is under common Control with any other Person. All entities that share a Principal are Affiliates.

(4) Affordability Period--The Affordability Period commences as specified in the Land Use Restriction Agreement (LURA) or federal regulation, or commences on the first day of the Compliance Period as defined by the Code §42(i)(1), and continues through the appropriate program's affordability requirements or termination of the LURA, whichever is earlier. The term of the Affordability Period shall be imposed by the LURA or other deed restriction and may be terminated upon foreclosure or deed in lieu of foreclosure. The Department reserves the right to extend the Affordability Period for Direct Loan Developments that fail to meet program requirements. During the Affordability Period, the Department shall monitor to ensure compliance with programmatic rules as applicable, regulations, and Application representations.

(5) Applicable Percentage--The percentage used to determine the amount of the Housing Tax Credit for any Development, as defined more fully in the Code §42(b).

(A) for purposes of the Application, the Applicable Percentage will be projected at:

(i) nine percent for 70 percent present value credits, pursuant to the Code, §42(b);
or

(ii) fifteen basis points over the current applicable percentage for 30 percent present value credits, unless fixed by Congress, pursuant to §42(b) of the Code for the month in which the Application is submitted to the Department.

(B) For purposes of making a credit recommendation at any other time, the Applicable Percentage will be based on:

(i) the percentage indicated in the Agreement and Election Statement, if executed;
or

(ii) the percentage as calculated in subparagraph (A) of this paragraph if the Agreement and Election Statement has not been executed and no buildings have been placed in service.

(6) Applicant--Means any individual or a group of individuals and any Affiliates who file an Application for funding or tax credits subject to the requirements of this chapter or 10 TAC Chapters 11, 12, or 13 and who have undertaken or may contemplate the later formation of one or more business entities, such as a limited partnership, that is to be engaged in the ownership of a Development. In administering the application process the Department staff will assume that the applicant will be able to form any such entities 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 11, 12 and 13, as applicable.

(7) Application Acceptance Period--That period of time during which Applications may be submitted to the Department. For Tax-Exempt Bond Developments it is the date the Application is submitted to the Department.

(8) Award Letter and Loan Term Sheet--A document that may be issued to an awardee of a Direct Loan before the issuance of a Commitment and/or Contract which preliminarily sets forth the terms and conditions under which the Direct Loan will be made available. An Award Letter and Loan Term Sheet will typically be contingent on the awardee satisfying certain requirements prior to executing a Commitment and/or Contract.

(9) Bank Trustee--A federally insured bank with the ability to exercise trust powers in the State of Texas.

(10) Bedroom--A portion of a Unit which is no less than 100 square feet; has no width or length less than 8 feet; is self contained with a door (or the Unit contains a second level sleeping area of 100 square feet or more); has at least one window that provides exterior access; and has at least one closet that is not less than 2 feet deep and 3 feet wide and high enough to accommodate 5 feet of hanging space. A den, study or other similar space that could reasonably function as a bedroom and meets this definition is considered a bedroom.

(11) Breakeven Occupancy--The occupancy level at which rental income plus secondary income is equal to all operating expenses, including replacement reserves and taxes, and mandatory debt service requirements for a Development.

(12) Building Costs--Cost of the materials and labor for the vertical construction or rehabilitation of buildings and amenity structures.

(13) Carryover Allocation--An allocation of current year tax credit authority by the Department pursuant to the provisions of the Code, §42(h)(1)(C) and U.S. Treasury Regulations, §1.42-6.

(14) Carryover Allocation Agreement--A document issued by the Department, and executed by the Development Owner, pursuant to §10.402(f) of this chapter (relating to Housing Tax Credit and Tax Exempt Bond Developments).

(15) Cash Flow--The funds available from operations after all expenses and debt service required to be paid have been considered.

(16) Certificate of Reservation--The notice given by the Texas Bond Review Board ("TBRB") to an issuer reserving a specific amount of the state ceiling for a specific issue of bonds.

(17) Code--The Internal Revenue Code of 1986, as amended from time to time, together with any applicable regulations, rules, rulings, revenue procedures, information statements or other official pronouncements issued thereunder by the U.S. Department of the Treasury or the Internal Revenue Service ("IRS").

(18) Code of Federal Regulations (“CFR”)--The codification of the general and permanent rules and regulations of the federal government as adopted and published in the Federal Register.

(19) Commitment (also referred to as Contract)--A legally binding written contract, setting forth the terms and conditions under which housing tax credits, loans, grants or other sources of funds or financial assistance from the Department will be made available.

(20) Commitment of Funds--Occurs after the Development is approved by the Board and once a Commitment or Award Letter and Loan Term Sheet is executed between the Department and Development Owner. For Direct Loan Programs, this process is distinct from “Committing to a specific local project” as defined in 24 CFR Part 92, which may occur when the activity is set up in the disbursement and information system established by HUD; known as the Integrated Disbursement and Information System (IDIS). The Department's commitment of funds may not align with commitments made by other financing parties.

(21) Committee--See *Executive Award and Review Advisory Committee*.

(22) Comparable Unit--A Unit, when compared to the subject Unit, is similar in net rentable square footage, number of bedrooms, number of bathrooms, overall condition, location (with respect to the subject Property based on proximity to employment centers, amenities, services and travel patterns), age, unit amenities, utility structure, and common amenities.

(23) Competitive Housing Tax Credits (“HTC”)--Tax credits available from the State Housing Credit Ceiling.

(24) Compliance Period--With respect to a building financed by Housing Tax Credits, the period of fifteen (15) taxable years, beginning with the first taxable year of the credit period pursuant to §42(i)(1) of the Code.

(25) Continuously Occupied--The same household has resided in the Unit for at least twelve (12) months.

(26) Contract--See *Commitment*.

(27) Contract Rent--Net rent based upon current and executed rental assistance contract(s), typically with a federal, state or local governmental agency.

(28) Contractor--See *General Contractor*.

(29) Control (including the terms "Controlling," "Controlled by," and/or "under common Control with")--The power, ability, or authority, acting alone or in concert with others, directly or indirectly, to manage, direct, superintend, restrict, regulate, govern, administer, or oversee. As used herein “acting in concert” involves more than merely serving as a single

member of a multi-member body. For example a single director on a five person board is not automatically deemed to be acting in concert with the other members of the board because they retain independence of judgment. However, by way of illustration, if that director is one of three directors on a five person board who all represent a single shareholder, they clearly represent a single interest and are presumptively acting in concert. Similarly, a single shareholder owning only a five percent interest might not exercise control under ordinary circumstances, but if they were in a voting trust under which a majority block of shares were voted as a group, they would be acting in concert with others and in a control position. However, even if a member of a multi-member body is not acting in concert and therefore does not exercise control in that role, they may have other roles, such as executive officer positions, which involve actual or apparent authority to exercise control. Controlling entities of a partnership include the general partners, may include special limited partners when applicable, but not investor limited partners or special limited partners who do not possess other factors or attributes that give them Control. Controlling entities of a limited liability company include but are not limited to the managers, managing members, any members with 10 percent or more ownership of the limited liability company, and any members with authority similar to that of a general partner in a limited partnership, but not investor members who do not possess other factors or attributes that give them Control. Controlling individuals or entities of a corporation, including non-profit corporations where such powers have been specifically delegated to one or more members, include voting members of the corporation's board, whether or not any one member did not participate in a particular decision due to recusal or absence. Multiple Persons may be deemed to have Control simultaneously.

(30) Debt Coverage Ratio ("DCR")--Sometimes referred to as the "Debt Coverage" or "Debt Service Coverage." Calculated as Net Operating Income for any period divided by scheduled debt service required to be paid during the same period.

(31) Deferred Developer Fee--The portion of the Developer Fee used as a source of funds to finance the development and construction of the Property.

(32) Deobligated Funds--The funds released by the Development Owner or recovered by the Department canceling a Contract or award involving some or all of a contractual financial obligation between the Department and a Development Owner or Applicant.

(33) Determination Notice--A notice issued by the Department to the Development Owner of a Tax-Exempt Bond Development which specifies the Department's preliminary determination as to the amount of tax credits that the Development may be eligible to claim pursuant to the Code, §42(m)(1)(D).

(34) Developer--Any Person entering into a contractual relationship with the Owner to provide Developer Services with respect to the Development and receiving a fee for such services and any other Person receiving any portion of a Developer Fee, whether by subcontract or otherwise, except if the Person is acting as a consultant with no Control . The Developer may or may not be a Related Party or Principal of the Owner.

(35) Developer Fee--Compensation in amounts defined in §10.302(e)(7) of this chapter (relating to Underwriting Rules and Guidelines) paid by the Owner to the Developer for Developer Services inclusive of compensation to a Development Consultant(s), Development Team member or any subcontractor that performs Developer Services or provides guaranties on behalf of the Owner will be characterized as Developer Fee.

(36) Developer Services--A scope of work relating to the duties, activities and responsibilities for pre-development, development, design coordination, and construction oversight of the Property generally including but not limited to:

- (A) site selection and purchase or lease contract negotiation;
- (B) identifying and negotiating sources of construction and permanent financing, including financing provided by the Department;
- (C) coordination and administration of activities, including the filing of applications to secure such financing;
- (D) coordination and administration of governmental permits, and approvals required for construction and operation;
- (E) selection and coordination of development consultants including architect(s), engineer(s), third-party report providers, attorneys, and other design or feasibility consultants;
- (F) selection and coordination of the General Contractor and construction contract(s);
- (G) construction oversight;
- (H) other consultative services to and for the Owner;
- (I) guaranties, financial or credit support if a Related Party; and
- (J) any other customary and similar activities determined by the Department to be Developer Services.

(37) Development--A residential rental housing project that consists of one or more buildings under common ownership and financed under a common plan which has applied for Department funds. This includes a project consisting of multiple buildings that are located on scattered sites and contain only rent restricted units. (§2306.6702)

(38) Development Consultant or Consultant--Any Person who provides professional or consulting services relating to the filing of an Application, or post award documents as required by the program.

(39) Development Owner (also referred to as "Owner")--Any Person, General Partner, or Affiliate of a Person who owns or proposes a Development or expects to acquire Control of a Development under a purchase contract or ground lease approved by the Department and is responsible for performing under the allocation and/or Commitment with the Department. (§2306.6702)

(40) Development Site--The area, or if scattered site, areas on which the Development is proposed and to be encumbered by a LURA.

(41) Development Team--All Persons and Affiliates thereof that play a role in the development, construction, rehabilitation, management and/or continuing operation of the subject Development, including any Development Consultant and Guarantor.

(42) Direct Loan--Funds provided through the HOME Program, Neighborhood Stabilization Program, National Housing Trust Fund, Tax Credit Assistance Program Repayment ("TCAP Repayment") or State Housing Trust Fund or other program available through the Department for multifamily development. The terms and conditions for Direct Loans will be determined by provisions in Chapter 13 of this title (relating to Multifamily Direct Loan Rule) and the NOFA under which they are awarded, the Contract or the loan documents. The tax-exempt bond program is specifically excluded.

(43) Economically Distressed Area--An area that is in a census tract that has a median household income that is 75 percent or less of the statewide median household income and in a municipality or, if not within a municipality, in a county that has been awarded funds under the Economically Distressed Areas Program administered by the Texas Water Development Board within the five (5) years ending at the beginning of the Application Acceptance Period. Notwithstanding all other requirements, for funds awarded to another type of political subdivision (*e.g.*, a water district), the Development Site must be within the jurisdiction of the political subdivision.

(44) Effective Gross Income ("EGI")--The sum total of all sources of anticipated or actual income for a rental Development, less vacancy and collection loss, leasing concessions, and rental income from employee-occupied units that is not anticipated to be charged or collected.

(45) Efficiency Unit--A Unit without a separately enclosed Bedroom designed principally for use by a single person.

(46) Elderly Development--A Development that is subject to an Elderly Limitation or a Development that is subject to an Elderly Preference.

(A) Elderly Limitation Development--A Development subject to an "elderly limitation" is a Development that meets the requirements of the Housing for Older Persons Act ("HOPA") under the Fair Housing Act and receives no funding that requires leasing to persons other than the elderly (unless the funding is from a federal program for which the Secretary of HUD has confirmed that it may operate as a Development that meets the requirements of HOPA); or

(B) Elderly Preference Development--A property receiving certain types of federal assistance is a Development subject to an "elderly preference." A Development subject to an Elderly Preference must lease to other populations, including in many cases elderly households with children. A property that is deemed to be a Development

subject to an Elderly Preference must be developed and operated in a manner which will enable it to serve reasonable foreseeable demand for households with children, including, but not limited to, making provision for such in developing its unit mix and amenities.

(47) Eligible Hard Costs--Hard Costs includable in Eligible Basis for the purposes of determining a Housing Credit Allocation.

(48) Environmental Site Assessment ("ESA")--An environmental report that conforms to the Standard Practice for Environmental Site Assessments: Phase I Assessment Process (ASTM Standard Designation: E 1527) and conducted in accordance with §10.305 of this chapter (relating to Environmental Site Assessment Rules and Guidelines) as it relates to a specific Development.

(49) Executive Award and Review Advisory Committee ("EARAC" also referred to as the "Committee")--The Department committee required by Tex. Gov't Code §2306.1112.

(50) Existing Residential Development--Any Development Site which contains existing residential units at any time after the beginning of the Application Acceptance Period.

(51) 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 Land Use Restriction Agreement or

(B) the date which is fifteen (15) years after the close of the Compliance Period.

(52) First Lien Lender--A lender whose lien has first priority as a matter of law or by operation of a subordination agreement or other intercreditor agreement.

(53) General Contractor (including "Contractor")--One who contracts to perform the construction or rehabilitation of an entire Development, rather than a portion of the work. The General Contractor hires subcontractors, such as plumbing contractors, electrical contractors, etc., coordinates all work, and is responsible for payment to the subcontractors. A prime subcontractor will also be treated as a General Contractor, and any fees payable to the prime subcontractor will be treated as fees to the General Contractor, in the scenarios described in subparagraphs (A) and (B) of this paragraph:

(A) any subcontractor, material supplier, or equipment lessor receiving more than 50 percent of the contract sum in the construction contract will be deemed a prime subcontractor; or

(B) if more than 75 percent of the contract sum in the construction contract is subcontracted to three or fewer subcontractors, material suppliers, and equipment lessors, such parties will be deemed prime subcontractors.

(54) General Partner--Any person or entity identified as a general partner in a certificate of formation for the partnership that is the Development Owner and that Controls the partnership. Where a limited liability corporation is the legal structure employed rather than a limited partnership, the manager or managing member of that limited liability corporation is deemed, for the purposes of these rules, to be the functional equivalent of a general partner.

(55) Governing Body--The elected or appointed body of public or tribal officials, responsible for the enactment, implementation, and enforcement of local rules and the implementation and enforcement of applicable laws for its respective jurisdiction.

(56) Governmental Entity--Includes federal, state or local agencies, departments, boards, bureaus, commissions, authorities, and political subdivisions, special districts, tribal governments and other similar entities.

(57) Gross Capture Rate--Calculated as the Relevant Supply divided by the Gross Demand.

(58) Gross Demand--The sum of Potential Demand from the Primary Market Area ("PMA") and demand from other sources.

(59) Gross Program Rent--Maximum rent limits based upon the tables promulgated by the Department's division responsible for compliance, which are developed by program and by county or Metropolitan Statistical Area ("MSA") or Primary Metropolitan Statistical Area ("PMSA") or national non-metro area.

(60) 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.

(61) HTC Development (also referred to as "HTC Property")--A Development subject to an active LURA for Housing Tax Credits allocated by the Department.

(62) HTC Property--See *HTC Development*.

(63) Hard Costs--The sum total of Building Costs, Site Work costs, Off-Site Construction costs and contingency.

(64) Historically Underutilized Businesses ("HUB")--An entity that is certified as such under and in accordance with Tex. Gov't Code, Chapter 2161.

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

(66) Housing Credit Allocation--An allocation of Housing Tax Credits by the Department to a Development Owner for a specific Application in accordance with the provisions of this

chapter and Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan).

(67) Housing Credit Allocation Amount--With respect to a Development or a building within a Development, the amount of Housing Tax Credits the Department determines to be necessary for the financial feasibility of the Development and its viability as a Development throughout the Affordability Period and which the Board allocates to the Development.

(68) Housing Quality Standards ("HQS")--The property condition standards described in 24 CFR §982.401.

(69) Initial Affordability Period--The Compliance Period or such longer period as shall have been elected by the Owner as the minimum period for which Units in the Development shall be retained for low-income tenants and rent restricted, as set forth in the LURA.

(70) Integrated Disbursement and Information System ("IDIS")--The electronic grants management information system established by HUD to be used for tracking and reporting HOME funding and progress and which may be used for other sources of funds as established by HUD.

(71) Land Use Restriction Agreement ("LURA")--An agreement, regardless of its title, between the Department and the Development Owner which is a binding covenant upon the Development Owner and successors in interest, that, when recorded, encumbers the Development with respect to the requirements of the programs for which it receives funds. (§2306.6702)

(72) Low-Income Unit--A Unit that is intended to be restricted for occupancy by an income eligible household, as defined by the Department utilizing its published income limits.

(73) Managing General Partner--A general partner of a partnership (or, as provided for in paragraph (55) of this subsection, its functional equivalent) that is vested with the authority to take actions that are binding on behalf of the partnership and the other partners. The term Managing General Partner can also refer to a manager or managing member of a limited liability company where so designated to bind the limited liability company and its members under its Agreement or any other person that has such powers in fact, regardless of their organizational title.

(74) Market Analysis--Sometimes referred to as "Market Study." An evaluation of the economic conditions of supply, demand and rental rates conducted in accordance with §10.303 of this chapter (relating to Market Analysis Rules and Guidelines) as it relates to a specific Development.

(75) Market Analyst--A real estate appraiser or other professional familiar with the subject property's market area who prepares a Market Analysis.

(76) Market Rent--The achievable rent at the subject Property for a Unit without rent and income restrictions determined by the Market Analyst or Underwriter after adjustments are made to actual rents on Comparable Units to account for differences in net rentable square footage, functionality, overall condition, location (with respect to the subject Property based on proximity to primary employment centers, amenities, services and travel patterns), age, unit amenities, utility structure, and common area amenities. The achievable rent conclusion must also consider the proportion of market units to total units proposed in the subject Property.

(77) Market Study--See *Market Analysis*.

(78) Material Deficiency--Any deficiency in an Application or other documentation that exceeds the scope of an Administrative Deficiency. May include a group of Administrative Deficiencies that, taken together, create the need for a substantial re-assessment or reevaluation of the Application.

(79) Multifamily Programs Procedures Manual--The manual produced and amended from time to time by the Department which reiterates and implements the rules and provides guidance for the filing of multifamily related documents.

(80) Net Operating Income ("NOI")--The income remaining after all operating expenses, including replacement reserves and taxes that have been paid.

(81) Net Program Rent--Calculated as Gross Program Rent less Utility Allowance.

(82) Net Rentable Area ("NRA")--The unit space that is available exclusively to the tenant and is typically heated and cooled by a mechanical HVAC system. NRA is measured to the outside of the studs of a unit or to the middle of walls in common with other units. NRA does not include common hallways, stairwells, elevator shafts, janitor closets, electrical closets, balconies, porches, patios, or other areas not actually available to the tenants for their furnishings, nor does NRA include the enclosing walls of such areas.

(83) Non-HTC Development--Sometimes referred to as Non-HTC Property. Any Development not utilizing Housing Tax Credits or Exchange funds.

(84) Notice of Funding Availability ("NOFA")--A notice issued by the Department that announces funding availability, usually on a competitive basis, for multifamily rental programs requiring Application submission from potential Applicants.

(85) Off-Site Construction--Improvements up to the Development Site such as the cost of roads, water, sewer, and other utilities to provide access to and service the Site.

(86) Office of Rural Affairs--An office established within the Texas Department of Agriculture; formerly the Texas Department of Rural Affairs.

(87) One Year Period ("1YP")--The period commencing on the date on which the Department and the Owner agree to the Qualified Contract price in writing and continuing for twelve (12) calendar months.

(88) Owner--See *Development Owner*.

(89) Person--Without limitation, any natural person, corporation, partnership, limited partnership, joint venture, limited liability company, trust, estate, association, cooperative, government, political subdivision, agency or instrumentality or other organization or entity of any nature whatsoever, and shall include any group of Persons acting in concert toward a common goal, including the individual members of the group.

(90) Persons with Disabilities--With respect to an individual, means that such person has:

- (A) a physical or mental impairment that substantially limits one or more major life activities of such individual;
- (B) a record of such an impairment; or
- (C) is regarded as having such an impairment, to include persons with severe mental illness and persons with substance abuse disorders.

(91) Physical Needs Assessment--See *Property Condition Assessment*.

(92) Place--An area defined as such by the United States Census Bureau, which, in general, includes an incorporated city, town, or village, as well as unincorporated areas known as census designated places. Any part of a census designated place that, at the time of Application, is within the boundaries of an incorporated city, town or village will be considered as part of the incorporated area. The Department may provide a list of Places for reference.

(93) Post Award Activities Manual--The manual produced and amended from time to time by the Department which explains the post award requirements and provides guidance for the filing of such documentation.

(94) Potential Demand--The number of income-eligible, age-, size-, and tenure-appropriate target households in the designated market area at the proposed placement in service date.

(95) Primary Market--Sometimes referred to as "Primary Market Area." The area defined by the Market Analyst as described in §10.303 of this chapter from which a proposed or existing Development is most likely to draw the majority of its prospective tenants or homebuyers.

(96) Primary Market Area ("PMA")--See *Primary Market*.

(97) Principal--Persons that will be capable of exercising Control (which includes voting board members pursuant to §10.3(a)(29) of this chapter) over a partnership, corporation, limited liability company, trust, or any other private entity. In the case of:

(A) partnerships, Principals include all General Partners, and Principals with ownership interest and special limited partners with ownership interest who also possess factors or attributes that give them Control;

(B) corporations, Principals include any officer authorized by the board of directors, regardless of title, to act on behalf of the corporation, including but not limited to the president, vice president, secretary, treasurer, and all other executive officers, and each stock holder having a 10 percent or more interest in the corporation, and any individual who has Control with respect to such stock holder; and

(C) limited liability companies, Principals include all managers, managing members, members having a 10 percent or more interest in the limited liability company, any individual Controlling such members, or any officer authorized to act on behalf of the limited liability company.

(98) Pro Forma Rent--For a restricted Unit, the lesser of the Net Program Rent or the Market Rent. For an unrestricted unit, the Market Rent. Contract Rents, if applicable, will be used as the Pro Forma Rent.

(99) Property--The real estate and all improvements thereon which are the subject of the Application (including all items of personal property affixed or related thereto), whether currently existing or proposed to be built thereon in connection with the Application.

(100) Property Condition Assessment ("PCA")--Sometimes referred to as "Physical Needs Assessment," "Project Capital Needs Assessment," or "Property Condition Report." The PCA provides an evaluation of the physical condition of an existing Property to evaluate the immediate cost to rehabilitate and to determine costs of future capital improvements to maintain the Property. The PCA must be prepared in accordance with §10.306 of this chapter (relating to Property Condition Assessment Guidelines) as it relates to a specific Development.

(101) Qualified Contract ("QC")--A bona fide contract to acquire the non-low-income portion of the building for fair market value and the low-income portion of the building for an amount not less than the Applicable Fraction (specified in the LURA) of the calculation as defined within §42(h)(6)(F) of the Code.

(102) Qualified Contract Price ("QC Price")--Calculated purchase price of the Development as defined within §42(h)(6)(F) of the Code and as further delineated in §10.408 of this chapter (relating to Qualified Contract Requirements).

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

(104) Qualified Entity--Any entity permitted under §42(i)(7)(A) of the Code and any entity controlled by such qualified entity.

(105) Qualified Nonprofit Development--A Development which meets the requirements of §42(h)(5) of the Code, includes the required involvement of a Qualified Nonprofit Organization, and is seeking Competitive Housing Tax Credits.

(106) Qualified Nonprofit Organization--An organization that meets the requirements of §42(h)(5)(C) of the Code for all purposes, and for an allocation in the nonprofit set-aside or subsequent transfer of the property, when applicable, meets the requirements of Tex. Gov't Code §2306.6706, and §2306.6729, and §42(h)(5) of the Code.

(107) Qualified Purchaser--Proposed purchaser of the Development who meets all eligibility and qualification standards stated in this chapter of the year the Request is received, including attending, or assigning another individual to attend, the Department's Property Compliance Training.

(108) Reconstruction--The demolition of one or more residential buildings in an Existing Residential Development and the construction of an equal number of units or less on the Development Site. At least one Unit must be reconstructed in order to qualify as Reconstruction.

(109) Rehabilitation--The improvement or modification of an Existing Residential Development through alteration, incidental addition or enhancement. The term includes the demolition of an Existing Residential Development and the Reconstruction of a Development on the Development Site, but does not include Adaptive Reuse. (§2306.004(26-a)) More specifically, Rehabilitation is the repair, refurbishment and/or replacement of existing mechanical and structural components, fixtures and finishes. Rehabilitation will correct deferred maintenance, reduce functional obsolescence to the extent possible and may include the addition of: energy efficient components and appliances, life and safety systems; site and resident amenities; and other quality of life improvements typical of new residential Developments.

(110) Related Party--As defined in Tex. Gov't Code, §2306.6702.

(111) Relevant Supply--The supply of Comparable Units in proposed and Unstabilized Developments targeting the same population including:

(A) the proposed subject Units;

(B) Comparable Units in another proposed development within the PMA with a priority Application over the subject, based on the Department's evaluation process described in §10.201(6) of this chapter (relating to Procedural Requirements for Application Submission) that may not yet have been presented to the Board for consideration of approval; and

(C) Comparable Units in previously approved but Unstabilized Developments in the PMA.

(112) Report--See *Underwriting Report*.

(113) Request--See *Qualified Contract Request*.

(114) Reserve Account--An individual account:

(A) created to fund any necessary repairs for a multifamily rental housing Development; and

(B) maintained by a First Lien Lender or Bank Trustee.

(115) Right of First Refusal ("ROFR")--An Agreement to provide a right to purchase the Property to a Qualified Entity or a Qualified Nonprofit Organization, as applicable, with priority to that of any other buyer at a price established in accordance with an applicable LURA.

(116) 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 §10.204(5)(A) of this chapter (relating to Required Documentation for Application Submission) or as requested in accordance with §10.204(5)(B).

(117) Single Room Occupancy ("SRO")--An Efficiency Unit that meets all the requirements of a Unit except that it may, but is not required, to be rented on a month to month basis to facilitate Transitional Housing. Buildings with SRO Units have extensive living areas in common and are required to be Supportive Housing and include the provision for substantial supports from the Development Owner or its agent on site.

(118) Site Control--Ownership or a current contract or series of contracts, that meets the requirements of §10.204(10) of this chapter, that is legally enforceable giving the Applicant the ability, not subject to any legal defense by the owner, to develop a Property and subject it to a LURA reflecting the requirements of any awards of assistance it may receive from the Department.

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

(120) State Housing Credit Ceiling--The aggregate amount of Housing Credit Allocations that may be made by the Department during any calendar year, as determined from time to time by the Department in accordance with applicable federal law, including §42(h)(3)(C) of the Code, and Treasury Regulation §1.42-14.

(121) Sub-Market--An area defined by the Underwriter based on general overall market segmentation promulgated by market data tracking and reporting services from which a proposed or existing Development is most likely to draw the majority of its prospective tenants or homebuyers.

(122) Supportive Housing—A residential rental Development that is:

(A) intended for occupancy by households in need of specialized and specific non-medical services in order to maintain independent living;

(B) the provision of services are provided primarily on-site by the Applicant, an Affiliate of the Applicant or a third party provider and ~~that~~the service provider must be able to ~~has demonstrated an established and compliant~~a track-record of providing substantive such services similar to those proposed in the subject Application in residential settings for at least three years prior to the Application Acceptance Period;

(C) the services offered generally must include case management and tenant services that either aid tenants in addressing debilitating conditions or assist tenants in securing the skills, assets, and connections needed for independent living. ~~post residency and, if the population is anticipated to have issues such as substance abuse or psychiatric disorders, an on-site person able to coordinate responses to a wide variety of situations reasonably anticipated to arise in the population served (such on-site position to be staffed and available on a 24/7 basis).~~ Resident populations primarily include the homeless and those at-risk of homelessness; and

(D) the Applicant, General Partner, or Guarantor must meet the following:

(i) demonstrate that it, alone or in partnership with a third party provider, has at least three years experience in developing and operating housing similar to the proposed housing;

(ii) demonstrate that it has secured sufficient funds necessary to maintain the Development's operations through the Affordability Period; ~~and~~

(iii) provide evidence of a history of fundraising activities sufficient to fill unanticipated operating losses; and

(E) is not financed, except for construction financing, with any debt containing foreclosure provisions or debt that contains must-pay repayment provisions (including cash-flow debt). Permanent foreclosable, must-pay debt is permissible if sourced by federal funds, but the Development will not be exempted from Subchapter D of this chapter (relating to Underwriting and Loan Policy). [Debt meeting this criteria may be provided by an Affiliate.](#) Any amendment to an Application or LURA [resulting in the addition of debt prohibited under this definition will result in the revocation](#) ~~pertaining to debt will result in the issuance~~ of IRS Form(s) 8609.

(123) TDHCA Operating Database--Sometimes referred to as "TDHCA Database." A consolidation of recent actual income and operating expense information collected through the Department's Annual Owner Financial Certification process, as required and described in Subchapter F of this chapter (relating to Compliance Monitoring), and published on the Department's web site (www.tdhca.state.tx.us).

(124) Target Population--The designation of types of housing populations shall include Elderly Developments, and those that are Supportive Housing. All others will be considered to serve general populations without regard to any subpopulations.

(125) Tax-Exempt Bond Development--A Development requesting or having been awarded Housing Tax Credits and which receives a portion of its financing from the proceeds of tax-exempt bonds which are subject to the state volume cap as described in §42(h)(4) of the Code, such that the Development does not receive an allocation of tax credit authority from the State Housing Credit Ceiling.

(126) Tax-Exempt Bond Process Manual--The manual produced and amended from time to time by the Department which explains the process and provides guidance for the filing of a Housing Tax Credit Application utilizing Tax-Exempt Bonds.

(127) Third Party--A Person who is not:

(A) an Applicant, General Partner, Developer, or General Contractor; or

(B) an Affiliate to the Applicant, General Partner, Developer, or General Contractor; or

(C) anyone receiving any portion of the administration, contractor, or Developer fees from the Development; or

(D) any individual that is an executive officer or member of the governing board or has greater than 10 percent ownership interest in any of the entities are identified in subparagraphs (A) - (C) of this paragraph.

(128) Total Housing Development Cost--The sum total of the acquisition cost, Hard Costs, soft costs, Developer fee and General Contractor fee incurred or to be incurred through lease-up by the Development Owner in the acquisition, construction, rehabilitation, and financing of the Development.

(129) Transitional Housing--A Supportive Housing development that includes living Units with more limited individual kitchen facilities and is:

(A) used exclusively to facilitate the transition of homeless individuals and those at-risk of becoming homeless, to independent living within twenty-four (24) months; and

(B) is owned by a Development Owner that includes a governmental entity or a nonprofit which provides temporary housing and supportive services to assist such individuals in, among other things, locating and retaining permanent housing. The limited kitchen facilities in individual Units must be appropriately augmented by suitable, accessible shared or common kitchen facilities.

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

(131) U.S. Department of Housing and Urban Development ("HUD")-regulated Building--A building for which the rents and utility allowances of the building are reviewed by HUD.

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

(136) Underwriting Report--Sometimes referred to as the "Report." A decision making tool used by the Department and Board containing a synopsis and reconciliation of the Application information submitted by the Applicant.

(137) Uniform Multifamily Application Templates--The collection of sample resolutions and form letters, produced by the Department, as may be required under this chapter, Chapter 11, 12 or 13 of this title that may be used, (but are not required to be used), to satisfy the requirements of the applicable rule.

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

(139) 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.

(140) Unit Type--Units will be considered different Unit Types if there is any variation in the number of bedroom, full bathrooms or a square footage difference equal to or more than 120 square feet. For example: A two Bedroom/one full bath Unit is considered a different Unit Type than a two Bedroom/two full bath Unit. A three Bedroom/two full bath Unit with 1,000 square feet is considered a different Unit Type than a three Bedroom/two full bath Unit with 1,200 square feet. A one Bedroom/one full bath Unit with 700 square feet will be considered an equivalent Unit Type to a one Bedroom/one full bath Unit with 800 square feet. A powder room is the equivalent of a half-bathroom but does not by itself constitute a change in Unit Type.

(141) Unstabilized Development--A development with Comparable Units that has been approved for funding by the Department's Board of Directors or is currently under construction or has not maintained a 90 percent occupancy level for at least ~~twelve (12) consecutive months~~ninety (90) days following construction completion. A development may be deemed stabilized by the Underwriter based on factors relating to a development's lease-up velocity, Sub-Market rents, Sub-Market occupancy trends and other information available to the Underwriter. The Market Analyst may not consider such development stabilized in the Market Study.

(142) Urban Area--A Place that is located within the boundaries of a primary metropolitan statistical area or a metropolitan statistical area other than a Place described by paragraph (116)(A) of this subsection. For areas not meeting the definition of a Place, the designation as a Rural Area or Urban Area is assigned in accordance with §10.204(5) of this chapter.

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

(144) Work Out Development--A financially distressed Development for which the Owner and/or a primary financing participant is seeking a change in the terms of Department funding or program restrictions.

(b) Request for Staff Determinations. Where the definitions of Development, Development Site, New Construction, Rehabilitation, Reconstruction, Adaptive Reuse, and Target Population do not readily align with the activities proposed in an Application, an Applicant may request and Department staff may provide a determination to an Applicant explaining how staff will review an Application in relation to these specific terms and their usage within the applicable rules. Such 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's determination may take into account the purpose of or policies addressed by a particular rule or requirement, materiality of elements, substantive elements of the development plan that relate to the term or definition, the common usage of the particular term, or other issues relevant to the rule or requirement. All such determinations will be conveyed in writing. If the determination is finalized after submission of the pre-application or Application, the Department may allow corrections to the pre-application or the Application that are directly related to the issues in the determination. It is an Applicant's sole responsibility to request a determination and an Applicant may not rely on any determination for another Application regardless of similarities in a particular fact pattern. For any Application that does not request and subsequently receive a determination, the definitions and applicable rules will be applied as used and defined herein. Such a determination is intended to provide clarity with regard to Applications proposing activities such as: scattered site development or combinations of construction activities (e.g., Rehabilitation with some New Construction). An Applicant may appeal a determination for their Application if the determination provides for a treatment that relies on factors other than the explicit definition. A Board determination or a staff determination not timely appealed cannot be further appealed or challenged.

§10.4.Program Dates. This section reflects key dates for all multifamily development programs except for the Competitive Housing Tax Credit Program. A program calendar for the Competitive Housing Tax Credit Program is provided in Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan). Applicants are strongly encouraged to submit the required items well in advance of established deadlines. Non-statutory deadlines specifically listed in this section may be extended by the Department for a period of not more than five (5) business days provided; however, that the Applicant requests an extension prior to the date of the original deadline and has established to the reasonable satisfaction of the Department that there is good cause for the extension. Except as provided for under 10 TAC §1.1 relating to Reasonable Accommodation Requests, extensions relating to Administrative Deficiency deadlines may only be extended if documentation needed to resolve the item is needed from a Third Party or the documentation involves signatures needed on certifications in the Application.

(1) Full Application Delivery Date. The deadline by which the Application must be submitted to the Department. For Direct Loan Applications, such deadline will generally be defined in the applicable NOFA and for Tax-Exempt Bond Developments, such deadlines are more fully explained in §10.201(2) of this chapter (relating to Procedural Requirements for Application Submission).

(2) Notice to Submit Lottery Application Delivery Date. No later than December 8, 2017, Applicants that receive an advance notice regarding a Certificate of Reservation must submit a notice to the Department, in the form prescribed by the Department.

(3) Applications Associated with Lottery Delivery Date. No later than December 15, 2017, Applicants that participated in the Texas Bond Review Board Lottery must submit the complete tax credit Application to the Department.

(4) Administrative Deficiency Response Deadline. Such deadline shall be five (5) business days after the date on the deficiency notice without incurring a penalty fee pursuant to §10.901 of this chapter (relating to Fee Schedule).

(5) Third Party Report Delivery Date (Environmental Site Assessment (ESA), Property Condition Assessment (PCA), Appraisal (if applicable), Market Analysis and the Site Design and Development Feasibility Report). For Direct Loan Applications, the Third Party reports meeting specific requirements described in §10.205 must be submitted with the Application in order for it to be considered a complete Application, unless the Application is made in conjunction with an Application for Housing Tax Credits or Tax-Exempt Bond, in which case the Delivery Date for those programs will apply. For Tax-Exempt Bond Developments, the Third Party Reports must be submitted no later than seventy-five (75) calendar days prior to the Board meeting at which the tax credits will be considered. The seventy-five (75) calendar day deadlines are available on the Department's website.

(6) Resolutions Delivery Date. Resolutions required for Tax-Exempt Bond Developments must be submitted no later than fourteen (14) calendar days before the Board meeting at which consideration of the award will occur. If the Direct Loan Application is made in

conjunction with an Application for Housing Tax Credits, or Tax-Exempt Bond Developments, the Resolution Delivery Date for those programs will apply to the Direct Loan Application.

(7) Challenges to Neighborhood Organization Opposition Delivery Date. No later than forty-five (45) calendar days prior to the Board meeting at which consideration of the award will occur.

Subchapter B – Site and Development Requirements and Restrictions

§10.101.Site and Development Requirements and Restrictions.

(a) Site Requirements and Restrictions. The purpose of this section is to identify specific requirements and restrictions related to a Development Site seeking multifamily funding or assistance from the Department.

(1) Floodplain. New Construction or Reconstruction Developments located within a one-hundred (100) year floodplain as identified by the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps must develop the site in full compliance with the National Flood Protection Act and all applicable federal and state statutory and regulatory requirements. The Applicant will have to use floodplain maps and comply with regulation as they exist at the time of commencement of construction. Even if not required by such provisions, the Site must be developed so that all finished ground floor elevations are at least one foot above the floodplain and parking and drive areas are no lower than six inches below the floodplain. If there are more stringent local requirements they must also be met. If no FEMA Flood Insurance Rate Maps are available for the proposed Development Site, flood zone documentation must be provided from the local government with jurisdiction identifying the one-hundred (100) year floodplain. Rehabilitation (excluding Reconstruction) Developments with existing and ongoing federal funding assistance from the U.S. Department of Housing and Urban Development (HUD) or U.S. Department of Agriculture (USDA) are exempt from this requirement. However, where existing and ongoing federal assistance is not applicable such Rehabilitation (excluding Reconstruction) Developments will be allowed in the one-hundred (100) year floodplain provided the local government has undertaken and can substantiate sufficient mitigation efforts and such documentation is submitted in the Application or the existing structures meet the requirements that are applicable for New Construction or Reconstruction Developments, as certified to by a Third Party engineer.

(2) Undesirable Site Features. Development Sites within the applicable distance of any of the undesirable features identified in subparagraphs (A) - (K) of this paragraph will be considered ineligible unless it is determined by the Board that information regarding mitigation of the applicable undesirable site feature(s) is sufficient and supports Site eligibility. Rehabilitation (excluding Reconstruction) Developments with ongoing and existing federal assistance from HUD, USDA, or Veterans Affairs (“VA”) may be granted an exemption by the Board; however, depending on the undesirable site feature(s) staff may recommend mitigation still be provided as appropriate. Such an exemption must be requested at the time of or prior to the filing of an Application. Historic Developments that would otherwise qualify under §11.9(e)(6) of this title (relating to the Qualified Allocation Plan) may be granted an exemption by the Board, and such exemption must be requested at the time of or prior to the filing of an Application. The distances are to be measured from the nearest boundary of the Development Site to the nearest boundary of the property or easement containing the undesirable feature, unless otherwise noted below. Where there is a local ordinance that regulates the proximity of such undesirable feature to a multifamily development that has smaller distances than the minimum distances noted below, then such smaller

distances may be used and documentation such as a copy of the local ordinance identifying such distances relative to the Development Site must be included in the Application. If a state or federal cognizant agency would require a new facility under its jurisdiction to have a minimum separation from housing, the Department will defer to that agency and require the same separation for a new housing facility near an existing regulated or registered facility. In addition to these limitations, a Development Owner must ensure that the proposed Development Site and all construction thereon comply with all applicable state and federal requirements regarding separation for safety purposes. If Department staff identifies what it believes would constitute an undesirable site feature not listed in this paragraph or covered under subparagraph (K) of this paragraph, staff may request a determination from the Board as to whether such feature is acceptable or not. If the Board determines such feature is not acceptable and that, accordingly, the Site is ineligible, the Application shall be terminated and such determination of Site ineligibility and termination of the Application cannot be appealed.

(A) Development Sites located within 300 feet of junkyards. For purposes of this paragraph, a junkyard shall be defined as stated in Transportation Code, §396.001;

(B) Development Sites located within 300 feet of a solid waste facility or sanitary landfill facility or illegal dumping sites (as such dumping sites are identified by the local municipality);

(C) Development Sites located within 300 feet of a sexually-oriented business. For purposes of this paragraph, a sexually-oriented business shall be defined in Local Government Code, §243.002, or as zoned, licensed and regulated as such by the local municipality;

(D) Development Sites in which the buildings are 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 the Applicant provides evidence that the city/community has adopted a Railroad Quiet Zone or the railroad in question is commuter or light rail;

(F) Development Sites located within 500 feet of heavy industry (i.e. facilities that require extensive use of land and machinery, produce high levels of external noise, ~~dust or fumes~~ such as manufacturing plants, or maintains fuel storage facilities (excluding gas stations) ~~etc. or that in the course of normal business there is a high volume of rail or truck traffic to deliver materials or transport goods~~);

(G) Development Sites located within 10 miles of a nuclear plant;

(H) Development Sites in which the buildings are located within the accident zones or clear zones of any airport;

(I) Development Sites that contain one or more pipelines, situated underground or aboveground, which carry highly volatile liquids. Development Sites located adjacent to a pipeline easement (for a pipeline carrying highly volatile liquids), the Application must include a plan for developing near the pipeline(s) and mitigation, if any, in accordance with a report conforming to the Pipelines and Informed Planning Alliance (“PIPA”);

(J) Development Sites located within 2 miles of refineries capable of refining more than 100,000 barrels of oil daily; or

(K) Any other Site deemed unacceptable, which would include, without limitation, those with exposure to an environmental factor that may adversely affect the health and safety of the residents or render the Site inappropriate for housing use and which cannot be adequately mitigated.

(3) Undesirable Neighborhood Characteristics.

(A) If the Development Site has any of the characteristics described in subparagraph (B) of this paragraph, the Applicant must disclose the presence of such characteristics in the Application submitted to the Department. For Competitive HTC Applications, an Applicant must disclose at pre-application as required by 11.8(b) of this title (relating to Pre-Application Requirements). For all other Applications, an Applicant may choose to disclose the presence of such characteristics at the time the pre-application (if applicable) is submitted to the Department. Requests for pre-determinations of Site eligibility prior to pre-application or Application submission will not be binding on full Applications submitted at a later date. For Tax-Exempt Bond Developments where the Department is the Issuer, the Applicant may submit the documentation described under subparagraphs (C) and (D) of this paragraph at pre-application or for Tax-Exempt Bond Developments utilizing a local issuer such documentation may be submitted with the request for a pre-determination and staff may perform an assessment of the Development Site to determine Site eligibility. The Applicant understands that any determination made by staff or the Board at that point in time regarding Site eligibility based on the documentation presented, is preliminary in nature. Should additional information related to any of the undesirable neighborhood characteristics become available while the full Application is under review, or the information by which the original determination was made changes in a way that could affect eligibility, then such information will be re-evaluated and presented to the Board. Should staff determine that the Development Site has any of the characteristics described in subparagraph (B) of this paragraph and such characteristics were not disclosed, the Application may be subject to termination. An Applicant’s own non-disclosure is not appealable as such appeal is in direct conflict with certifications made in the Application and within the control of the Applicant. The presence of any characteristics listed in subparagraph (B) of this paragraph will prompt staff to perform an assessment of the Development Site and neighborhood, which may include a site visit, and include, where applicable, a review as described in subparagraph (C) of this paragraph. The assessment of the Development Site and neighborhood will be presented to the Board with a

recommendation with respect to the eligibility of the Development Site. Factors to be considered by the Board, despite the existence of the undesirable neighborhood characteristics are identified in subparagraph (E) of this paragraph. Preservation of affordable units alone does not present a compelling reason to support a conclusion of eligibility. Should the Board make a determination that a Development Site is ineligible, the termination of the Application resulting from such Board action is not subject to appeal.

(B) The undesirable neighborhood characteristics include those noted in clauses (i) – (iv) of this subparagraph and additional information as applicable to the undesirable neighborhood characteristic(s) disclosed as provided in subparagraphs (C) and (D) of this paragraph must be submitted in the Application. If an Application for a Development Site involves three or more undesirable neighborhood characteristics, in order to be found eligible it will be expected that, in addition to demonstrating satisfactory mitigation for each characteristic disclosed, the Development Site must be located within an area in which there is a concerted plan of revitalization already in place or that private sector economic forces, such as those referred to as gentrification are already underway and indicate a strong likelihood of a reasonably rapid transformation of the area to a more economically vibrant area. In order to be considered as an eligible Site despite the presence of such undesirable neighborhood characteristic, an Applicant must demonstrate actions being taken that would lead a reader to conclude that there is a high probability and reasonable expectation the undesirable characteristic will be sufficiently mitigated or significantly improved within a reasonable time, typically prior to placement in service, and that the undesirable characteristic demonstrates a positive trend and continued improvement. Conclusions for such reasonable expectation may need to be affirmed by an industry professional, as appropriate, and may be dependent upon the severity of the undesirable neighborhood characteristic disclosed.

(i) The Development Site is located within a census tract that has a poverty rate above 40 percent for individuals (or 55 percent for Developments in regions 11 and 13).

(ii) The Development Site is located in a census tract or within 1,000 feet of any census tract in an Urban Area and the rate of Part I violent crime is greater than 18 per 1,000 persons (annually) as reported on neighborhoodscout.com.

(iii) The Development Site is located within 1,000 feet (measured from nearest boundary of the Site to the nearest boundary of blighted structure) of multiple vacant structures that have fallen into such significant disrepair, overgrowth, and/or vandalism that they would commonly be regarded as blighted or abandoned.

(iv) The Development Site is located within the attendance zones of an elementary school, a middle school or a high school that does not have a Met Standard rating by the Texas Education Agency. Any school in the attendance zone that has not achieved Met Standard for three consecutive years and has failed by at least one point in the most recent year, unless there is a clear trend

indicating imminent compliance, shall be unable to mitigate due to the potential for school closure as an administrative remedy pursuant to Chapter 39 of the Texas Education Code. In districts with district-wide enrollment or choice districts an Applicant shall use the rating of the closest elementary, middle and high school, respectively, which may possibly be attended by the tenants in determining whether or not disclosure is required. Schools with an application process for admittance, limited enrollment or other requirements that may prevent a child from attending will not be considered as the closest school or the school which attendance zone contains the site. The applicable school rating will be the 2017 accountability rating assigned by the Texas Education Agency. School ratings will be determined by the school number, so that in the case where a new school is formed or named or consolidated with another school but is considered to have the same number that rating will be used. A school that has never been rated by the Texas Education Agency will use the district rating. If a school is configured to serve grades that do not align with the Texas Education Agency's conventions for defining elementary schools (typically grades K-5 or K-6), middle schools (typically grades 6-8 or 7-8) and high schools (typically grades 9-12), the school will be considered to have the lower of the ratings of the schools that would be combined to meet those conventions. In determining the ratings for all three levels of schools, ratings for all grades K-12 must be included, meaning that two or more schools' ratings may be combined. For example, in the case of an elementary school which serves grades K-4 and an intermediate school that serves grades 5-6, the elementary school rating will be the lower of those two schools' ratings. Also, in the case of a 9th grade center and a high school that serves grades 10-12, the high school rating will be considered the lower of those two schools' ratings. Sixth grade centers will be considered as part of the middle school rating. Development Sites subject to an Elderly Limitation is considered exempt and does not have to disclose the presence of this characteristic.

(C) Should any of the undesirable neighborhood characteristics described in subparagraph (B) of this paragraph exist, the Applicant must submit the Undesirable Neighborhood Characteristics Report that contains the information described in clauses (i) - (viii) of this subparagraph and mitigation pursuant to subparagraph (D) of this paragraph as such information might be considered to pertain to the undesirable neighborhood characteristic(s) disclosed so that staff may conduct a further Development Site and neighborhood review.

- (i) A determination regarding neighborhood boundaries, which will be based on the review of a combination of natural and manmade physical features (rivers, highways, etc.), apparent changes in land use, the Primary Market Area as defined in the Market Analysis, census tract or municipal boundaries, and information obtained from any Site visits;
- (ii) An assessment of general land use in the neighborhood, including comment on the prevalence of residential uses;

(iii) An assessment concerning any of the features reflected in paragraph (2) of this subsection if they are present in the neighborhood, regardless of whether they are within the specified distances referenced in paragraph (2) of this subsection;

(iv) An assessment of the number of existing affordable rental units (generally includes rental properties subject to TDHCA, HUD, or USDA restrictions) in the Primary Market Area, including comment on concentration based on the size of the Primary Market Area;

(v) An assessment of the percentage of households residing in the census tract that have household incomes equal to or greater than the median household income for the MSA or county where the Development Site is located;

(vi) An assessment of the number of market rate multifamily units in the neighborhood and their current rents and levels of occupancy;

(vii) An assessment of school performance for each of the schools in the attendance zone containing the Development that did not achieve a 2017 Met Standard rating, for the previous two academic years (regardless of whether the school Met Standard in those years), that includes the TEA Accountability Rating Report, a discussion of performance indicators and what progress has been made over the prior year, and progress relating to the goals and objectives identified in the campus improvement plan or turnaround plan pursuant to §39.107 of the Texas Education Code in effect. This is not just the submission of the campus improvement plan, but an update to the plan or if such update is not available, information from a school official that speaks to progress made under the plan as further indicated under subparagraph (D)(iv) of this paragraph; and

(viii) Any additional information necessary to complete an assessment of the Development Site, as requested by staff.

(D) Information regarding mitigation of undesirable neighborhood characteristics should be relevant to the undesirable characteristics that are present in the neighborhood. Mitigation must include documentation of efforts underway at the time of Application and may include, but is not limited to, the measures described in clauses (i) - (iv) of this subparagraph. In addition to those measures described herein, documentation from the local municipality may also be submitted stating the Development is consistent with their obligation to affirmatively further fair housing.

(i) Evidence that the poverty rate within the census tract has decreased over the five-year period preceding the date of Application, or that the census tract is contiguous to a census tract with a poverty rate below 20% and there are no physical barriers between them such as highways or rivers which would be reasonably considered as separating or dividing the neighborhood containing the proposed Development from the low poverty area must be submitted. Other mitigation may include, but is not limited to, evidence of sustained job growth and employment opportunities, career training opportunities or job placement

services, evidence of gentrification in the area (including an increase in property values) -which may include contiguous census tracts that could conceivably be considered part of the neighborhood containing the proposed Development, and a clear and compelling reason that the Development should be located at the Site.

(ii) Evidence that crime rates are decreasing, based on violent crime data from the city's police department or county sheriff's department, for the police beat or patrol area within which the Development Site is located, based on the population of the police beat or patrol area that would yield a crime rate below the threshold indicated in this section. The instances of violent crimes within the police beat or patrol area that encompass the census tract, calculated based on the population of the census tract, may also be used. A map plotting all instances of violent crimes within a one-half mile radius of the Development Site may also be submitted, provided that it reflects that the crimes identified are not at a level that would warrant an ongoing concern. The data must include incidents reported during the entire 2016 and 2017 calendar year. Violent crimes reported through the date of Application submission may be requested by staff as part of the assessment performed under subparagraph (C) of this paragraph. A written statement from the local police department or local law enforcement agency, including a description of efforts by such enforcement agency addressing issues of crime and the results of their efforts may be provided, and depending on the data provided by the Applicant, such written statement may be required, as determined by staff. For Rehabilitation or Reconstruction Developments, to the extent that the high level of criminal activity is concentrated at the Development Site, documentation may be submitted to indicate such issue(s) could be remedied by the proposed Development. Evidence of such remediation should go beyond what would be considered a typical scope of work and should include a security plan, partnerships with external agencies, or other efforts to be implemented that would deter criminal activity. Information on whether such security features have been successful at any of the Applicant's existing properties should also be submitted, if applicable.

(iii) Evidence of mitigation efforts to address blight or abandonment may include new construction in the area already underway that evidences public and/or private investment. Acceptable mitigation to address extensive blight should include a plan whereby it is contemplated that a responsible party will use the property in a manner that complies with local ordinances. In instances where blight exists but may only include a few properties, mitigation efforts could include partnerships with local agencies to engage in community-wide clean-up efforts, or other efforts to address the overall condition of the neighborhood.

(iv) Evidence of mitigation for all of the schools in the attendance zone that have not achieved Met Standard will include documentation from a school official with oversight of the school in question that indicates current progress towards

meeting the goals and performance objectives identified in the Campus Improvement Plan. For schools that have not achieved Met Standard for two consecutive years, a letter from the superintendent, member of the school board or a member of the transformation team that has direct experience, knowledge and oversight of the specific school must also be submitted. The letter should, at a minimum and to the extent applicable, identify the efforts that have been undertaken to increase student performance, decrease mobility rate, benchmarks for re-evaluation, increased parental involvement, plans for school expansion, plans to implement early childhood education, and long-term trends that would point toward their achieving Met Standard by the time the Development is placed in service. The letter from such education professional should also speak to why they believe the staff tasked with carrying out the plan will be successful at making progress towards acceptable student performance considering that prior Campus Improvement Plans were unable to do so. Such assessment could include whether the team involved has employed similar strategies at prior schools and were successful. In addition to the aforementioned letter from the school official, information should also be provided that addresses the types of services and activities offered at the Development or external partnerships that will facilitate and augment classroom performance.

(E) In order for the Development Site to be found eligible by the Board, despite the existence of undesirable neighborhood characteristics, the Board must find that the use of Department funds at the Development Site must be consistent with achieving the goals in clauses (i) - (iii) of this subparagraph.

(i) Preservation of existing occupied affordable housing units to ensure they are safe and suitable or the new construction of high quality affordable housing units that are subject to federal rent or income restrictions; and

(ii) Determination that the undesirable characteristic(s) that has been disclosed are not of such a nature or severity that should render the Development Site ineligible based on the assessment and mitigation provided under subparagraphs (C) and (D) of this paragraph.; or

(iii) The Applicant has requested a waiver of the presence of undesirable neighborhood characteristics on the basis that the Development is necessary to enable the state, a participating jurisdiction, or an entitlement community to comply with its obligation to affirmatively further fair housing, a HUD approved Conciliation Agreement, or a final and non-appealable court order and such documentation is submitted with the disclosure.

(b) Development Requirements and Restrictions. The purpose of this section is to identify specific restrictions on a proposed Development submitted for multifamily funding by the Department.

(1) Ineligible Developments. A Development shall be ineligible if any of the criteria in subparagraphs (A) or (B) of this paragraph are deemed to apply.

(A) General Ineligibility Criteria.

- (i) Developments such as hospitals, nursing homes, trailer parks, dormitories (or other buildings that will be predominantly occupied by students) or other facilities that are usually classified as transient housing (as provided in the §42(i)(3)(B)(iii) and (iv) of the Code);
- (ii) Any Development with any building(s) with four or more stories that does not include an elevator;
- (iii) A Housing Tax Credit Development that provides on-site continual or frequent nursing, medical, or psychiatric services. Refer to IRS Revenue Ruling 98-47 for clarification of assisted living;
- (iv) A Development that violates §1.15 of this title (relating to Integrated Housing Rule);
- (v) A Development seeking Housing Tax Credits that will not meet the general public use requirement under Treasury Regulation, §1.42-9 or a documented exception thereto; or
- (vi) A Development utilizing a Direct Loan that is subject to the Housing and Community Development Act, §104(d) requirements and proposing Rehabilitation or Reconstruction, if the Applicant is not proposing at least the one-for-one replacement of the existing unit mix. Adding additional units would not violate this provision.

(B) Ineligibility of Elderly Developments.

- (i) Any Elderly Development of two stories or more that does not include elevator service for any Units or common areas above the ground floor;
- (ii) Any Elderly Development with any Units having more than two bedrooms with the exception of up to three employee Units reserved for the use of the manager, maintenance, and/or security officer. These employee Units must be specifically designated as such; or
- (iii) Any Elderly Development (including Elderly in a Rural Area) proposing more than 70 percent two-bedroom Units.

(2) Development Size Limitations. The minimum Development size is 16 Units. New Construction or Adaptive Reuse Developments in Rural Areas are limited to a maximum of 80 total Units. Other Developments do not have a limitation as to the maximum number of Units.

(3) Rehabilitation Costs. Developments involving Rehabilitation must establish a scope of work that will substantially improve the interiors of all units and exterior deferred maintenance and meet the minimum Rehabilitation amounts identified in

subparagraphs (A) – (C) of this paragraph. Such amounts must be maintained through the issuance of IRS Forms 8609. For Developments with multiple buildings that have varying placed in service dates, the earliest date will be used for purposes of establishing the minimum Rehabilitation amounts.

(A) For Housing Tax Credit Developments under the USDA Set-Aside the minimum Rehabilitation will involve at least \$25,000 per Unit in Building Costs and Site Work;

(B) For Tax-Exempt Bond Developments, less than twenty (20) years old, based on the placed in service date, the minimum Rehabilitation will involve at least \$20,000 per Unit in Building Costs and Site Work. If such Developments are greater than twenty (20) years old, based on the placed in service date, the minimum Rehabilitation will involve at least \$30,000 per Unit in Building Costs and Site Work; or

(C) For all other Developments, the minimum Rehabilitation will involve at least \$30,000 per Unit in Building Costs and Site Work.

(4) Mandatory Development Amenities. (§2306.187) New Construction, Reconstruction or Adaptive Reuse Units must include all of the amenities in subparagraphs (A) - (M) of this paragraph. Rehabilitation (excluding Reconstruction) Developments must provide the amenities in subparagraphs (D) - (M) of this paragraph unless stated otherwise. Supportive Housing Developments are not required to provide the amenities in subparagraph (B), (E), (F), (G), (I), 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 tenants. Tenants must be provided written notice of the applicable required amenities for the Development.

(A) All bedrooms, the dining room and living room in Units must be wired with current cabling technology for data and phone;

(B) Laundry connections;

(C) Exhaust/vent fans (vented to the outside) in the bathrooms;

(D) Screens on all operable windows;

(E) Disposal and Energy-Star rated dishwasher (not required for USDA; Rehabilitation Developments exempt from dishwasher if one was not originally in the Unit);

(F) Energy-Star rated refrigerator;

(G) Oven/Range;

(H) Blinds or window coverings for all windows;

(I) At least one Energy-Star rated ceiling fan per Unit;

(J) Energy-Star rated lighting in all Units which may include compact fluorescent or LED light bulbs;

(K) Plumbing fixtures must meet performance standards of Texas Health and Safety Code, Chapter 372;

(L) All areas of the Unit ([excluding exterior storage space on an outdoor patio/balcony](#)) must have heating and air-conditioning; and

(M) Adequate parking spaces consistent with local code, unless there is no local code, in which case the requirement would be one and a half (1.5) spaces per Unit for non- Elderly Developments and one (1) space per Unit for Elderly Developments. The minimum number of required spaces must be available to the tenants at no cost.

(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 tenants and made available throughout normal business hours and maintained throughout the Affordability Period. Tenants must be provided written notice of the elections made by the Development Owner. If fees in addition to rent are charged for amenities, then the amenity may not be included among those provided to satisfy the requirement. All amenities must meet all applicable accessibility standards, including those adopted by the Department, and where a specific space or size requirement for a listed amenity is not specified then the amenity must be reasonably adequate based on the Development size.. Applications for non-contiguous scattered site housing, excluding non-contiguous single family sites, will have the test applied based on the number of Units per individual site and the amenities selected must be distributed proportionately across all sites. In the case of additional phases of a Development any amenities that are anticipated to be shared with the first phase development cannot be claimed for purposes of meeting this requirement for the second phase. The second phase must include enough points to meet this requirement that are provided on the Development Site. For example, if a swimming pool exists on the phase one property and it is anticipated that the second phase tenants will be allowed it use it, the swimming pool cannot be claimed for points for purposes of this requirement for the second phase Development. All amenities must be available to all units via an accessible route.

(C) The common amenities and respective point values are set out in clauses (i) - (xxxi) of this subparagraph.. 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) Full perimeter fencing that includes parking areas and all amenities (excludes guest or general public parking areas); (2 points);
- (ii) Controlled gate access for entrance and exit areas, intended to provide access that is limited to the Development's tenancy (2 points);
- (iii) Gazebo or covered pavilion w/sitting area (seating must be provided) (1 point);
- (iv) Accessible walking/jogging path separate from a sidewalk and in addition to required accessible routes to Units or other amenities (1 point);
- (v) Community laundry room with at least one washer and dryer for every 40 Units (3 points);
- (vi) 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);
- (vii) Swimming pool (3 points);
- (viii) Splash pad/water feature play area (1 point);
- (ix) Furnished fitness center. Equipped with a variety of fitness equipment that includes at least one of the following for every 40 Units: stationary bicycle, elliptical trainer, treadmill, rowing machine, universal gym, multi-functional weight bench, stair-climber, or other similar equipment. Equipment shall be commercial use grade or quality. Fitness center must be located indoors or be a designated room with climate control. (2 points);
- (x) Equipped business/computer center. Must be equipped with 1 computer for every 40 Units (maximum of 5 computers needed) loaded with basic applications/programs to enable email/internet access, word processing, Excel, etc. , 1 laser printer per computer lab and at least one scanner which may be integrated with printer (2 points);
- (xi) Furnished Community room (2 points);
- (xii) Library with an accessible sitting area (separate from the community room) (1 point);
- (xiii) Enclosed community sun porch or covered community porch/patio (1 point);
- (xiv) Service provider office in addition to leasing offices (1 point);
- (xv) Regularly staffed service provider office in addition to leasing offices (3 points);
- (xvi) Activity Room stocked with supplies (Arts and Crafts, board games, etc.) (2 points);
- (xvii) Secured Entry (applicable only if all Unit entries are within the building's interior) (1 point);

- (xviii) Horseshoe pit; putting green; shuffleboard court; pool table; or video game console(s) with a variety of games and a dedicated location accessible to all tenants to play such games (1 point);
- (xix) Community Dining Room with full or warming kitchen furnished with adequate tables and seating (3 points);
- (xx) One Children's Playscape Equipped for 5 to 12 year olds, or one Tot Lot (2 points). Must be covered with a shade canopy or awning, intended to keep equipment cool, provide shade and ultraviolet protection. Can only select this item if clause (xxi) of this subparagraph is not selected; or
- (xxi) Two Children's Playscapes Equipped for 5 to 12 year olds, two Tot Lots, or one of each (4 points). Must be covered with a shade canopy or awning, intended to keep equipment cool, provide shade and ultraviolet protection. Can only select this item if clause (xx) of this subparagraph is not selected;
- (xxii) Sport Court (Tennis, Basketball or Volleyball) (2 points);
- (xxiii) Furnished and staffed Children's Activity Center that must have age appropriate furnishings and equipment. Appropriate levels of staffing must be provided during after-school hours and during school vacations (3 points);
- (xxiv) 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 tenants; and theater seating (3 points);
- (xxv) 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);
- (xxvi) Wi-Fi (with coverage throughout the clubhouse and/or community building) (1 point);
- (xxvii) Twenty-four hour, seven days a week monitored camera/security system in each building. Monitoring may be on-site or off-site. (3 points);
- (xxviii) Bicycle parking that allows for, at a minimum, 1 bicycle for every 5 Units, within reasonable proximity to each residential building that allows for bicycles to be secured with lock (lock not required to be provided to tenant) (1 point);
- (xxix) Shaded rooftop or structural viewing deck of at least 500 square feet (2 points);
- (xxx) Porte-cochere (1 point); or
- (xxxi) Green Building Features. Points under this item are intended to promote energy and water conservation, operational savings and sustainable building practices. Points may be selected from only one of three categories: Enterprise Green Communities, Leadership in Energy and Environmental Design (LEED), and ICC 700 National Green Building Standard. A Development may qualify for no more than two (2) points total under this clause.

(I) 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>.

(II) 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).

(III) ICC 700 National Green Building Standard. The Development must incorporate, at a minimum, all of the applicable criteria necessary to obtain a NAHB Green Certification, regardless of the rating level achieved (i.e. Bronze, Silver, Gold, or Emerald).

(6) Unit Requirements.

(A) Unit Sizes. Developments proposing New Construction or Reconstruction will be required to meet the minimum sizes of Units as provided in clauses (i) - (v) of this subparagraph. These minimum requirements are not associated with any selection criteria. Developments proposing Rehabilitation (excluding Reconstruction) or Supportive Housing Developments will not be subject to the requirements of this subparagraph.

- (i) five hundred (500) square feet for an Efficiency Unit;
- (ii) six hundred (600) square feet for a one Bedroom Unit;
- (iii) eight hundred (800) square feet for a two Bedroom Unit;
- (iv) one thousand (1,000) square feet for a three Bedroom Unit; and
- (v) one thousand, two-hundred (1,200) square feet for a four Bedroom Unit.

(B) Unit and Development Construction Features. Housing Tax Credit Applicants may select amenities for the score of an Application under this section, but must maintain the points associated with those amenities by maintaining the amenity selected or providing substitute amenities with equal or higher point values. Tax-Exempt Bond Developments must include enough amenities to meet a minimum of seven (7) points. Direct Loan Applications not layered with Housing Tax Credits must include enough amenities to meet a minimum of four (4) points. The amenity shall be for every Unit at no extra charge to the tenant. The points selected at Application and corresponding list of amenities will be required to be identified in the LURA, and the points selected at Application must be maintained throughout the Affordability Period. Applications involving scattered site Developments must have a specific amenity located within each Unit to count for points. Rehabilitation Developments will start with a base score of three (3) points and Supportive Housing Developments will start with a base score of five (5) points.

- (i) Covered entries (0.5 point);
- (ii) Nine foot ceilings in living room and all bedrooms (at minimum) (0.5 point);
- (iii) Microwave ovens (0.5 point);
- (iv) Self-cleaning or continuous cleaning ovens (0.5 point);

- (v) Refrigerator with icemaker (0.5 point);
- (vi) Storage room or closet, of approximately 9 square feet or greater, separate from and in addition to bedroom, entryway or linen closets and which does not need to be in the Unit but must be on the property site (0.5 point);
- (vii) Energy-Star qualified laundry equipment (washers and dryers) for each individual Unit; must be front loading washer and dryer in required accessible Units (2 points);
- (viii) Covered patios or covered balconies (0.5 point);
- (ix) Covered parking (may be garages or carports, attached or freestanding) and include at least one covered space per Unit (1.5 points);
- (x) 14 SEER HVAC (or greater) or for Rehabilitation (excluding Reconstruction) where such systems are not being replaced as part of the scope of work, a radiant barrier in the attic is provided (1.5 points);
- (xi) High Speed Internet service to all Units (can be wired or wireless; required equipment for either must be provided) (1 point);
- (xii) Built-in (recessed into the wall) shelving unit (0.5 point);
- (xiii) Recessed or track LED lighting in kitchen and living areas (1 point);
- (xiv) Thirty (30) year roof (0.5 point);
- (xv) Greater than 30 percent stucco or masonry (includes stone, cultured stone, and brick but excludes cementitious and metal siding) on all building exteriors; the percentage calculation may exclude exterior glass entirely (2 points);
- (xvi) Breakfast Bar (a space, generally between the kitchen and dining area, that includes an area for seating although actual seating such as bar stools does not have to be provided) (0.5 points); ~~and~~
- (xvii) Walk-in closet in master bedroom (0.5 points);
- [\(xviii\) Electric Vehicle Charging Station \(0.5 points\); and](#)
- [\(xix\) Ceiling fans in all bedrooms \(0.5 points\).](#)

(7) Tenant Supportive Services. The supportive services include those listed in subparagraphs (A) - (Z) of this paragraph. Tax Exempt Bond Developments must select a minimum of eight (8) points; Direct Loan Applications not layered with Housing Tax Credits must include enough services to meet a minimum of four (4) points. The points selected and complete list of supportive services will be included in the LURA and the timeframe by which services are offered must be in accordance with §10.619 of this chapter (relating to Monitoring for Social Services) and maintained throughout the Affordability Period. The Owner may change, from time to time, the services offered; however, the overall points as selected at Application must remain the same. The services provided should be those that will directly benefit the Target Population of the Development. Tenants must be provided written notice of the elections made by the Development Owner. No fees may be charged to the tenants 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.

(A) partnership with local law enforcement to provide quarterly on-site social and interactive activities intended to foster relationships with residents (such activities could include playing sports, having a cook-out, swimming, card games, etc.) (3 points);

(B) weekday character building program (shall include at least on a monthly basis a curriculum based character building presentation on relevant topics, for example teen dating violence, drug prevention, bullying, teambuilding, internet/social media dangers, stranger danger, etc.) (2 points);

(C) daily transportation such as bus passes, cab vouchers, specialized van on-site (4 points);

(D) Food pantry consisting of an assortment of non-perishable food items and common household items (i.e. laundry detergent, toiletries, etc.) accessible to residents at least on a monthly basis or upon request by a tenant. While it is possible that transportation may be provided to a local food bank to meet the requirement of this tenant service, the tenant must not be required to pay for the items they receive at the food bank (1 point);

(E) GED preparation classes (shall include an instructor providing on-site coursework and exam) (2 points);

(F) English as a second language classes (shall include an instructor providing on-site coursework and exam) (1 point);

(G) quarterly financial planning courses (i.e. homebuyer education, credit counseling, investing advice, retirement plans, etc.). Courses must be offered through an on-site instructor; a CD or online course is not acceptable (1 point);

(H) annual health fair provided by a health care professional(1 point);

(I) quarterly health and nutritional courses (1 point);

(J) organized youth programs or other recreational activities such as games, movies or crafts offered by the Development (1 point);

(K) scholastic tutoring (shall include daily (Monday – Thursday) homework help or other focus on academics) (3 points);

(L) Notary Services during regular business hours (§2306.6710(b)(3)) (1 point);

(M) weekly exercise classes (offered at times when most residents would be likely to attend) (2 points);

(N) twice monthly arts, crafts, and other recreational activities (*e.g.* Book Clubs and creative writing classes) (2 points);

- (O) 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) (1 point);
- (P) monthly transportation to community/social events such as mall trips, community theatre, bowling, organized tours, etc. (1 point);
- (Q) twice monthly on-site social events (i.e. potluck dinners, game night, sing-a-longs, movie nights, birthday parties, etc.) (1 point);
- (R) specific case management services offered by a qualified Owner or Developer, qualified provider or through external, contracted parties for seniors, Persons with Disabilities or Supportive Housing (2 points);
- (S) 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);
- (T) 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);
- (U) contracted career training and placement partnerships with local worksource offices, culinary programs, or vocational counseling services; also resident training programs that train and hire residents for job opportunities inside the development in areas like leasing, tenant services, maintenance, landscaping, or food and beverage operation (2 points);
- (V) external partnerships for provision of weekly substance abuse meetings at the Development Site (2 points);
- (W) 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);
- (X) a full-time resident services coordinator with a dedicated office space at the Development (2 points);
- (Y) a resident-run community garden with annual soil preparation and mulch provided by the Owner and access to water (1 point); and
- (Z) Development Sites located within a one mile radius of one of the following can also qualify for one (1) point provided they also have a referral process in place and provide transportation to and from the facility:
- (i) Facility for treatment of alcohol and/or drug dependency;

- (ii) Facility for treatment of PTSD and other significant psychiatric or psychological conditions;
- (iii) Facility providing therapeutic and/or rehabilitative services relating to mobility, sight, speech, cognitive, or hearing impairments; or
- (iv) Facility providing medical and/or psychological and/or psychiatric assistance for persons of limited financial means.

(8) Development Accessibility Requirements. All Developments must meet all specifications and accessibility requirements as identified in subparagraphs (A) - (C) of this paragraph and any other applicable state or federal rules and requirements. The accessibility requirements are further identified in the Certification of Development Owner as provided in the Application.

(A) The Development shall comply with the accessibility requirements under Federal law and as further defined in Chapter 1, Subchapter B of this title (relating to Accessibility Requirements). (§§2306.6722; 2306.6730)

(B) Regardless of building type, all Units accessed by the ground floor or by elevator (“affected units”) must comply with the visitability requirements in clauses (i) – (iii) of this subparagraph. Design specifications for each item must comply with the standards of the Fair Housing Act Design Manual. Buildings occupied for residential use on or before March 13, 1991 are exempt from this requirement.

(i) All common use facilities must be in compliance with the Fair Housing Design Act Manual;

(ii) There must be an accessible or exempt route, as provided for in the Fair Housing Design Act Manual, from common use facilities to the affected units;

(iii) Each affected unit must include the features in subclauses (a) – (e) of this clause.

(a) at least one zero-step, accessible entrance;

(b) at least one ~~visitable~~ 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;

(c) 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;

(d) 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

(e) light switches, electrical outlets, and thermostats on the entry level must be at accessible heights.

(C) The Development Owner is and will remain in compliance with state and federal laws, including but not limited to, fair housing laws, including Chapter 301, Property Code, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), the Fair Housing Amendments Act of 1988 (42 U.S.C. §§3601 et seq.); the Civil Rights Act of 1964 (42 U.S.C. §§2000a et seq.); the Americans with Disabilities Act of 1990 (42 U.S.C. §§12101 et seq.); the Rehabilitation Act of 1973 (29 U.S.C. §§701 et seq.); Fair Housing Accessibility; the Texas Fair Housing Act; and that the Development is designed consistent with the Fair Housing Act Design Manual produced by HUD, and the Texas Accessibility Standards. (§2306.257; §2306.6705(7))

(D) All Applications proposing Rehabilitation (including Reconstruction) will be treated as substantial alteration, in accordance with Chapter 1, Subchapter B of this title (relating to Section 504 of the Rehabilitation Act of 1973 and the Fair Housing Act).

Subchapter C

Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules

§10.201.Procedural Requirements for Application Submission. This subchapter establishes the procedural requirements for Application submission. Only one Application may be submitted for a Development Site in an Application Round. While the Application Acceptance Period is open or prior to the Application deadline, an Applicant may withdraw an Application and subsequently file a new Application utilizing the original pre-application fee (as applicable) that was paid as long as no substantive evaluation was performed by the Department and the re-submitted Application relates to the same Development Site, consistent with §11.9(e)(3) regarding pre-application Site changes. Applicants are subject to the schedule of fees as set forth in §10.901 of this chapter (relating to Fee Schedule). When providing a pre-application, Application (or notices thereof), or other materials to a state representative, local governmental body, Neighborhood Organization, or anyone else to secure support or approval that may affect the Applicant's competitive posture, an Applicant must disclose that in accordance with the Department's rules aspects of the Development may not yet have been determined or selected or may be subject to change, such as changes in the amenities ultimately selected and provided.

(1) General Requirements.

(A) An Applicant requesting funding from the Department must submit an Application in order to be considered for an award. An Application must be complete (including all required exhibits and supporting materials) and submitted by the required program deadline. If an Application, including the corresponding Application fee as described in §10.901 of this chapter, is not submitted to the Department on or before the applicable deadline, the Applicant will be deemed not to have made an Application; provided, however, that errors in the calculation of applicable fees may be cured via an Administrative Deficiency. The deficiency period for curing fee errors will be three business days and may not be extended. Failure to cure such an error timely will be grounds for termination.

(B) Applying for multifamily funds from the Department is a technical process that must be followed completely. As a result of the competitive nature of some funding sources, an Applicant should proceed on the assumption that deadlines are fixed and firm with respect to both date and time and cannot be waived except where authorized and for truly extraordinary circumstances, such as the occurrence of a significant natural disaster that makes timely adherence impossible. If an Applicant chooses to submit by delivering an item physically to the Department, it is the Applicant's responsibility to be within the Department's doors by the appointed deadline. Applicants are strongly encouraged to submit the required items well in advance of established deadlines. Applicants must ensure that all documents are legible, properly organized and tabbed, and that materials provided in digital media are fully readable by the Department.

Department staff receiving an application may perform a cursory review to see if there are any glaring or readily apparent problems. This is a cursory review and may not be relied upon as confirmation that the Application was complete or in proper form.

(C) The Applicant must timely upload a PDF copy and Excel copy of the complete Application to the Department's secure web transfer server. Each copy must be in a single file and individually bookmarked as further described in the Multifamily Programs Procedures Manual. Additional files required for Application submission (e.g., Third Party Reports) outside the Uniform Application must also be uploaded to the secure web transfer server. It is the responsibility of the Applicant to confirm the upload to the Department's secure web transfer server was successful and to do so in advance of the deadline. Where there are instances of computer problems, mystery glitches, etc. that prevents 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 may be submitted to the Department as described in subparagraphs (A) and (B) of this paragraph. Multiple site applications by the same Applicant for Tax-Exempt Bond Developments will be considered to be one Application as identified in Tex. Gov't Code, Chapter 1372. Applications will be required to satisfy the requirements of the Qualified Allocation Plan (QAP) and Uniform Multifamily Rules in place at the time the Application is received by the Department. Applications that receive a Traditional Carryforward designation after November 15 will not be accepted until after January 2 and will be subject to the QAP and Uniform Multifamily Rules in place at the time the Application is received by the Department.

(A) Lottery Applications. For Applicants participating in the TBRB lottery for private activity bond volume cap and whereby advance notice is given regarding a Certificate of Reservation, the Applicant must submit a Notice to Submit Lottery Application form to the Department no later than the Notice to Submit Lottery Application Delivery Date described in §10.4 of this chapter (relating to Program Dates). The complete Application, accompanied by the Application Fee described in §10.901 of this chapter must be submitted no later than the Applications Associated with Lottery Delivery Date described in §10.4 of this chapter.

(B) Waiting List Applications. Applications designated as Priority 1 or 2 by the TBRB and receiving advance notice of a Certificate of Reservation for private activity bond volume cap must submit Parts 1 - 4 of the Application and the Application Fee described in §10.901 of this chapter prior to the issuance of the Certificate of Reservation by the TBRB. The remaining parts of the Application must be submitted at

least seventy-five (75) days prior to the Board meeting at which the decision to issue a Determination Notice would be made. An Application designated as Priority 3 will not be accepted until after the issuer has induced the bonds, with such documentation included in the Application, and is subject to the following additional timeframes:

(i) The Applicant must submit to the Department confirmation that a Certificate of Reservation from the TBRB has been issued not more than thirty (30) days after the Application is received by the Department. The Department may, for good cause, administratively approve an extension for up to an additional thirty (30) days to submit confirmation the Certificate of Reservation has been issued. The Application may be terminated if the Certificate of Reservation is not received within the required timeframe;

(ii) The Department will require at least seventy-five (75) days to review an Application, unless Department staff can complete its evaluation in sufficient time for Board consideration. Applicants should be aware that unusual financing structures, portfolio transactions, and the need to resolve Administrative Deficiencies may require additional time to review and the prioritization of Applications will be subject to the review priority established in paragraph (6) of this subsection;

(iii) Department staff may choose to delay presentation to the Board in instances in which an Applicant is not reasonably expected to close within sixty (60) days of the issuance of a Determination Notice. Applications that receive Traditional Carryforward will be subject to closing within the same timeframe as would be typical of the Certificate of Reservation. This will be a condition of the award and reflected in the Determination Notice.

(3) Certification of Tax Exempt Bond Applications with New Docket Numbers.

Applications that receive an affirmative Board Determination, but for which closing on the bonds does not occur prior to the Certificate of Reservation expiration date, and which subsequently have that docket number withdrawn from the TBRB, may have their Determination Notice reinstated. In the event that the Department's Board has not yet approved the Application, the Application will continue to be processed and ultimately provided to the Board for consideration. The Applicant would need to receive a new docket number from the TBRB and meet the requirements described in subparagraphs (A) - (C) of this paragraph:

(A) The Application must remain unchanged with regard to: Site Control, total number of Units, unit mix (bedroom sizes and income restrictions), design/site plan documents, financial structure including bond and Housing Tax Credit amounts, development costs, rent schedule, operating expenses, sources and uses, ad valorem tax exemption status, Target Population, scoring criteria (if TDHCA is bond issuer) or TBRB priority status including the effect on the inclusive capture rate. The entities involved in the Applicant entity and Developer cannot change; however, the certification can be submitted even if the lender, syndicator or issuer changes, as long as the financing structure and terms

remain unchanged. Should any of the aforementioned items have changed, but in staff's determination and review such change is determined not to be material or determined not to have an effect on the original underwriting or program review then the Applicant may be allowed to submit the certification and subsequently have the Determination Notice re-issued. Notifications under §10.203 of this chapter (relating to Public Notifications (§2306.6705(9))) are not required to be reissued. A revised Determination Notice will be issued once notice of the assignment of a new docket number has been provided to the Department and the Department has confirmed that the capture rate and market demand remain acceptable. This certification must be submitted no later than thirty (30) calendar days after the date the TBRB issues the new docket number; or

(B) the new docket number may not be issued more than four (4) months from the date the original application was withdrawn from the TBRB. The new docket number must be from the same program year as the original docket number or, for Applications that receive a new docket number from the program year that is immediately succeeding the program year of the original docket number, the requirements in clauses (i) and (ii) of this subparagraph must be met:

(i) The Applicant must certify that the Development will meet all rules and requirements in effect at the time the new docket number is issued; and

(ii) The Department must determine that the changes in the rules applicable to the program(s) under which the Application was originally awarded are not of a material nature that would necessitate a new Application and that any new forms and clarifications to the Application are of a nature that can be resolved through the Administrative Deficiency process; or

(C) if there are changes to the Application as referenced in subparagraph (A) of this paragraph or if such changes in the rules pursuant to subparagraph (B)(ii) of this paragraph are of a material nature the Applicant will be required to submit a new Application in full, along with the applicable fees, to be reviewed and evaluated in its entirety for a new Determination Notice to be issued. If there is public opposition but the Application remains the same pursuant to subparagraph (A) of this paragraph, a new Application will not be required to be submitted; however, the Application must be presented before the Board for consideration of the re-issuance of the Determination Notice.

(4) Withdrawal of Application. An Applicant may withdraw an Application prior to or after receiving an award of funding by submitting to the Department written notice of the withdrawal. For Tax-Exempt Bond Applications that are under review by staff and there are changes to or a lapse in the financing structure or there are still aspects of the Application that are in flux, staff may consider the Application withdrawn and will provide the Applicant of notice to that effect. Once it is clear to staff that the various aspects of the Application have been solidified staff may re-instate the Application and allow the updated information, exhibits, etc. to supplement the existing Application, or staff may require an

entirely new Application be submitted if it is determined that such changes will necessitate a new review of the Application. This provision does not apply to Direct Loan Applications that may be layered with Tax-Exempt Bonds.

(5) Evaluation Process. Priority Applications, which shall include those Applications believed likely to be competitive, will undergo a program review for compliance with submission requirements and selection criteria, as applicable. In general, Application reviews by the Department shall be prioritized based upon the likelihood that an Application will be competitive for an award based upon the set-aside, self score, received date, or other ranking factors. Thus, non-competitive or lower scoring Applications may never be reviewed. The Director of Multifamily Finance will identify those Applications that will receive a full program review based upon a reasonable assessment of each Application's priority, but no Application with a competitive ranking shall be skipped or otherwise overlooked. This initial assessment may be a high level assessment, not a full assessment. Applications deemed to be priority Applications may change from time to time. The Real Estate Analysis division shall underwrite Applications that received a full program review and remain competitive to determine financial feasibility and an appropriate funding amount. In making this determination, the Department will use §10.302 of this chapter (relating to Underwriting Rules and Guidelines) and §13.6 of this title (relating to Multifamily Direct Loan Rule). The Department may have an external party perform all or part of the underwriting evaluation and components thereof to the extent it determines appropriate. The expense of any external underwriting shall be paid by the Applicant prior to the commencement of the aforementioned evaluation pursuant to §10.901(5) of this chapter (relating to Fee Schedule, Appeals and other Provisions). Applications will undergo a previous participation review in accordance with Chapter 1 Subchapter C of this title (relating to Previous Participation) and a Development Site may be evaluated by the Department or its agents through a physical site inspection or site visit, (which may include neighboring areas), independent of or concurrent with a site visit that may be performed in conjunction with §10.101(a)(3) (relating to Undesirable Neighborhood Characteristics). The Department will, from time to time during the review process, publish an application log which shall include the self-score and any scoring adjustments made by staff. The posting of such scores on the application log may trigger appeal rights and corresponding deadlines pursuant to Tex. Gov't. Code §2306.6715 and §10.902 of this chapter (relating to Appeals Process). The Department may also provide a courtesy scoring notice reflecting such score to the Applicant.

(6) Prioritization of Applications under various Programs. This paragraph identifies how ties or other prioritization matters will be handled when dealing with de-concentration requirements, capture rate calculations, and general review priority of Applications submitted under different programs.

(A) De-concentration and Capture Rate. Priority will be established based on the earlier date associated with an Application. The dates that will be used to establish priority are as follows:

- (i) For Tax-Exempt Bond Developments, the issuance date of the Certificate of Reservation issued by the TBRB; or in instances where there is Traditional Carryforward associated with an Application the Department will utilize the date the complete HTC Application that is associated with the Traditional Carryforward is submitted to the Department; and
- (ii) For all other Developments, the date the Application is 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. Review priority for Applications under various multifamily programs will be established based on Department staff's consideration of any statutory timeframes associated with a program or Application in relation to the volume of Applications being processed. Those with statutory deadlines or more restrictive deadlines will be prioritized for review and processing ahead of those that are not subject to the same constraints. In general, any non-Competitive Housing Tax Credit Applications received during the competitive tax credit round that include a request to be placed on the May, June or July Board agendas will not be prioritized for review or underwriting due to the statutory constraints on the award and allocation of competitive tax credits. Applicants are advised to keep this in consideration when planning the submission of an Application and issuance of the Certificate of Reservation. Should an Applicant submit an Application regardless of this provision, the Department is not obligated to include the Application on the requested Board meeting agenda and the Applicant should be prepared to be placed on a subsequent Board meeting agenda. Moreover, Applications that have undergone a program review and there are threshold, eligibility or other items that remain unresolved, staff may suspend further review and processing of the Application, including underwriting and previous participation reviews, until such time the item(s) has been resolved or there has been a specific and reasonable timeline provided by which the item(s) will be resolved. By way of illustration, if during staff's review a question has been raised regarding whether the Applicant has demonstrated sufficient site control, such Application will not be prioritized for further review until the matter has been sufficiently resolved to the satisfaction of staff.

(7) Administrative Deficiency Process. The purpose of the Administrative Deficiency process is to allow an Applicant to provide clarification, explanation, or non-material missing information to resolve inconsistencies in the original Application or to assist staff in evaluating the Application. Applicants are encouraged to utilize manuals, frequently asked questions, or other materials produced by staff, as additional guidance in conjunction with the rules to provide appropriate support for each item substantiating a claim or representation, such as claims for points, qualification for set-asides, or meeting of threshold requirements. Applicants are also encouraged to contact staff directly with

questions regarding completing parts of the Application. Any Application that staff identifies as having insufficient support information will be directed to cure the matter via the Administrative Deficiency process. Applicants are reminded that this process may not be used to increase a scoring item's points or to change any aspect of the proposed development, financing structure, or other element of the Application. The sole purpose of the Administrative Deficiency will be to substantiate one or more aspects of the Application to enable an efficient and effective review by staff. Any narrative created by response to the Administrative Deficiency cannot contain new information. Staff will request such information via a deficiency notice. Because the review of an Application occurs in several phases, deficiency notices may be issued during any of these phases. Staff will send the deficiency notice via an e-mail to the Applicant and one other contact party if identified by the Applicant in the Application. The time period for responding to a deficiency notice commences on the first business day following the deficiency notice date. Deficiency notices may be sent to an Applicant prior to or after the end of the Application Acceptance Period and may also be sent in response to reviews on post-award submissions. Responses are required to be submitted electronically as a PDF or multiple PDF files. A review of the response provided by the Applicant may reveal that issues initially identified as an Administrative Deficiency are actually determined to be beyond the scope of an Administrative Deficiency process, meaning that they in fact implicated matters of a material nature not susceptible to being resolved. Department staff may in good faith provide an Applicant confirmation that an Administrative Deficiency response has been received or that such response is satisfactory. Communications from staff that the response was satisfactory do not establish any entitlement to points, eligibility status, or to any presumption of having fulfilled any requirements. Final determinations regarding the sufficiency of documentation submitted to cure an Administrative Deficiency as well as the distinction between material and non-material missing information are reserved for the Director of Multifamily Finance, Executive Director, and Board.

(A) It is critical that the use of the Administrative Deficiency 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 non-material missing information (that should already been in existence prior to Application submission), there is a reasonable expectation that a party responding to an Administrative Deficiency will be able to respond immediately. It is the responsibility of a person who receives an Administrative Deficiency to address the matter fully by the close of business on the date by which resolution must be complete and the Administrative Deficiency fully resolved. Merely submitting materials prior to that time places the responsibility on the responding party that if the materials do not fully resolve the matter there may be adverse consequences such as point deductions or termination.

(B) Administrative Deficiencies for Competitive HTC Applications. Unless an extension has been timely requested and granted, if an Administrative Deficiency is not fully resolved to the satisfaction of the Department by 5:00 p.m. on the fifth business day following the date of the deficiency notice, then (5 points) shall be deducted from the selection criteria score for each additional day the deficiency remains unresolved. If Administrative Deficiencies are not resolved by 5:00 p.m. on the seventh business day

following the date of the deficiency notice, then the Application shall be terminated, subject to appeal. An Applicant may not change or supplement any part of an Application in any manner after the filing deadline or while the Application is under consideration for an award, and may not add any set-asides, increase the requested credit amount, revise the Unit mix (both income levels and Bedroom mixes), or adjust their self-score except in response to a direct request from the Department to do so as a result of an Administrative Deficiency. (§2306.6708(b); §2306.6708) To the extent that the review of Administrative Deficiency documentation or the imposing of point reductions for late responses alters the score assigned to the Application, such score will be reflected in the updated application log published on the Department's website.

(C) Administrative Deficiencies for all other Applications or sources of funds. Administrative Deficiencies must be resolved to the satisfaction of the Department by 5:00 p.m. on the fifth business day following the date of the deficiency notice. Applications with unresolved deficiencies after 5:00 p.m. on the seventh business day following the date of the deficiency notice will be suspended from further processing and the Applicant will be provided with notice to that effect, until such time the item(s) are sufficiently resolved to the satisfaction of the Department. If, during the period of time when the Application is suspended from review private activity bond volume cap or Direct Loan funds become oversubscribed, the Applicant will be informed that unless the outstanding item(s) are resolved within one business day the Application will be terminated. For purposes of priority under the Direct Loan set-asides, if the outstanding item(s) are resolved within one business day, the date by which the item is submitted shall be the new received date pursuant to §13.5(c) of this chapter (relating to Multifamily Direct Loan Rule). Applicants should be prepared for additional time needed for completion of staff reviews as described in paragraph (2)(B) of this section.

(8) Limited Priority Reviews. If, after the submission of the Application, an Applicant identifies an error in the Application that could likely be the subject of an Administrative Deficiency, the Applicant may request a limited priority review of the specific and limited issues in need of clarification or correction. The issue may not relate to the score of an Application. This limited priority review may only cover the specific issue and not the entire Application. If the limited priority review results in the identification of an issue that requires correction or clarification, staff will request such through the Administrative Deficiency process as stated in paragraph (7) of this section, if deemed appropriate. A limited priority review is intended to address:

(A) clarification of issues that Department staff would have difficulty identifying due to the omission of information that the Department may have access to only through Applicant disclosure, such as a prior removal from a tax credit transaction or participation in a Development that is not identified in the previous participation portion of the Application; or

(B) technical correction of non-material information that would cause an Application deemed non-competitive to be deemed competitive and, therefore, subject to a staff review. For example, failure to mark the Nonprofit Set-Aside in an Application that

otherwise included complete submission of documentation for participation in the Nonprofit Set-Aside.

(9) Challenges to Opposition. Any written statement from a Neighborhood Organization expressing opposition to an Application may be challenged if it is contrary to findings or determinations, including zoning determinations, of a municipality, county, school district, or other local Governmental Entity having jurisdiction or oversight over the finding or determination. If any such comment is challenged, the challenger must declare the basis for the challenge and submit such challenge by the Challenges to Neighborhood Organization Opposition Delivery Date as identified in §10.4 of this chapter and no later than May 1, 2018 for Competitive HTC Applications. The Neighborhood Organization expressing opposition will be given seven (7) calendar days to provide any information related to the issue of whether their assertions are contrary to the findings or determinations of a local Governmental Entity. All such materials and the analysis of the Department's staff will be provided to a fact finder, chosen by the Department, for review and a determination of the issue presented by this subsection. The fact finder will not make determinations as to the accuracy of the statements presented, but only with regard to whether the statements are contrary to findings or determinations of a local Governmental Entity. The fact finder's determination will be final and may not be waived or appealed.

§10.202. Ineligible Applicants and Applications. The purpose of this section is to identify those situations in which an Application or Applicant may be considered ineligible for Department funding and subsequently terminated. Such matters may be brought to the attention of staff by anyone, including members of the general public. If such ineligibility is raised by non-staff members it must be made in writing to the Executive Director and the Applicant and must cite the specific ineligible criteria under paragraph (1) of this section and provide factual evidence to support the claim. Any unsupported claim or claim determined to be untrue may be subject to all remedies available to the Department or Applicant. Staff will make enquiry as it deems appropriate and may send a notice to the Applicant and provide them the opportunity to explain how they believe they or their Application is eligible. Staff will present the matter to the Board, accompanied by staff's recommendation. The Board may take such action as it deems warranted by the facts presented, including any testimony that may be provided, either declining to take action, in which case the Applicant or Application, as applicable, remains eligible, or finding the Applicant is ineligible, or, for a matter relating to a specific Application, that that Application is ineligible. A Board finding of ineligibility is final. The items listed in this section include those requirements in §42 of the Code, Tex. Gov't Code, Chapter 2306, and other criteria considered important by the Department, and does not represent an exhaustive list of ineligibility criteria that may otherwise be identified in applicable rules or a NOFA specific to the programmatic funding. One or more of the matters enumerated in paragraph (1) of this section may also serve as a basis for debarment, or the assessment of administrative penalties, and nothing herein shall limit the Department's ability to pursue any such matter.

(1) Applicants. An Applicant may be considered ineligible if any of the criteria in subparagraphs (A) - (M) 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 procurement in a state or Federal program, including listed in HUD's System for Award Management (SAM); (§2306.0504)

(B) has been convicted of a state or federal felony crime involving fraud, bribery, theft, misrepresentation of material fact, misappropriation of funds, or other similar criminal offenses within fifteen (15) years preceding the Application submission;

(C) is, at the time of Application, subject to an order in connection with an enforcement or disciplinary action under state or federal securities law or by the NASD; subject to a federal tax lien (other than a contested lien for which provision has been made); or the subject of a proceeding in which a Governmental Entity has issued an order to impose penalties, suspend funding, or take adverse action based on an allegation of financial misconduct or uncured violation of material laws, rules, or other legal requirements governing activities considered relevant by the Governmental Entity;

(D) has materially breached a contract with a public agency, and, if such breach is permitted to be cured under the contract, has been given notice of the breach and a reasonable opportunity to cure, and failed to cure that breach within the time specified in the notice of breach;

(E) has misrepresented to a subcontractor the extent to which the Developer has benefited from contracts or financial assistance that has been awarded by a public agency, including the scope of the Developer's participation in contracts with the agency, and the amount of financial assistance awarded to the Developer by the agency;

(F) has been found by the Board to be ineligible based on a previous participation review performed in accordance with Chapter 1 Subchapter C of this title;

(G) is delinquent in any loan, fee, or escrow payments to the Department in accordance with the terms of the loan, as amended, or is otherwise in default with any provisions of such loans;

(H) has failed to cure any past due fees owed to the Department within the time frame provided by notice from the Department and at least ten (10) days prior to the Board meeting at which the decision for an award is to be made;

(I) would be prohibited by a state or federal revolving door or other standard of conduct or conflict of interest statute, including Tex. Gov't Code, §2306.6733, or a provision of Tex. Gov't Code, Chapter 572, from participating in the Application in the manner and capacity they are participating;

(J) has, without prior approval from the Department, had previous Contracts or Commitments that have been partially or fully deobligated during the twelve (12) months prior to the submission of the Application, and through the date of final allocation due to a failure to meet contractual obligations, and the Person is on notice that such deobligation results in ineligibility under this chapter;

(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 re-affirmed or Department funds repaid; or

(M) fails to disclose, in the Application, any Principal or any entity or Person in the Development ownership structure who was or is involved as a Principal in any other affordable housing transaction, that has terminated voluntarily or involuntarily within the past ten (10) years or plans to or is negotiating to terminate their relationship with any other affordable housing development. Failure to disclose is grounds for termination. The disclosure must identify the person or persons and development involved, the identity of each other development, and contact information for the other Principals of each such development, a narrative description of the facts and circumstances of the termination or proposed termination, and any appropriate supporting documents. An Application may be referred to the Board for termination based upon factors in the disclosure. Staff shall present a determination to the Board as to a person's fitness to be involved as a principal with respect to an Application using the factors described in clauses (i) – (v) of this subparagraph as considerations:

(i) The amount of resources in a 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.

(2) Applications. An Application shall be ineligible if any of the criteria in subparagraphs (A) - (C) of this paragraph apply to the Application:

(A) a violation of Tex. Gov't Code, §2306.1113, exists relating to Ex Parte Communication. An ex parte communication occurs when an Applicant or Person representing an Applicant initiates substantive contact (other than permitted social contact) with a board member, or vice versa, in a setting other than a duly posted and convened public meeting, in any manner not specifically permitted by Tex. Gov't Code, §2306.1113(b). Such action is prohibited. For Applicants seeking funding after initial awards have been made, such as waiting list Applicants, the ex parte communication prohibition remains in effect so long as the Application remains eligible for funding. The ex parte provision does not prohibit the Board from participating in social events at which a Person with whom communications are prohibited may, or will be present; provided that no matters related to any Application being considered by the Board may be discussed. An attempted but unsuccessful prohibited ex parte communication, such as a letter sent to one or more board members but not opened, may be cured by full disclosure in a public meeting, and the Board may reinstate the Application and establish appropriate consequences for cured actions, such as denial of the matters made the subject to the communication.

(B) the Application is submitted after the Application submission deadline (time or date); is missing multiple parts of the Application; or has a Material Deficiency; or

(C) for any Development utilizing Housing Tax Credits or Tax-Exempt Bonds:

(i) at the time of Application or at any time during the two-year period preceding the date the Application Round begins (or for Tax-Exempt Bond Developments any time during the two-year period preceding the date the Application is submitted to the Department), the Applicant or a Related Party is or has been a person covered by Tex. Gov't Code, §2306.6703(a)(1) or §2306.6733;

(ii) the Applicant proposes to replace in less than fifteen (15) years any private activity bond financing of the Development described by the Application, unless the exceptions in Tex. Gov't Code, §2306.6703(a)(2) of the are met.

§10.203. Public Notifications (§2306.6705(9)). A certification, as provided in the Application, that the Applicant met the requirements and deadlines identified in paragraphs (1) - (3) of this section must be submitted with the Application. For Applications utilizing Competitive Housing Tax Credits, notifications must not be older than three (3) months from the first day of the Application Acceptance Period. For Tax-Exempt Bond Developments notifications and proof thereof must not be older than three (3) months prior to the date Parts 5 and 6 of the Application are submitted, and for all other Applications no older than three (3) months prior to the date the Application is submitted. If notifications were made in order to satisfy requirements of pre-application submission (if applicable to the program) for the same Application, then no additional notification is required at Application. However, re-notification is required by all Applicants who have

submitted a change from pre-application to Application that reflects a total Unit increase of greater than 10 percent or a 5 percent increase in density (calculated as units per acre) as a result of a change in the size of the Development Site. In addition, should a change in elected official occur between the submission of a pre-application and the submission of an Application, Applicants are required to notify the newly elected (or appointed) official no later than the Full Application Delivery Date.

(1) Neighborhood Organization Notifications.

(A) The Applicant must identify and notify all Neighborhood Organizations on record with the county or the state as of 30 days prior to the Full Application Delivery Date 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 Application, all Neighborhood Organizations on record with the county or state as of 30 days prior to the Full Application Delivery Date and whose boundaries include the proposed Development Site as of the submission of the Application.

(2) Notification Recipients. No later than the date the Application is submitted, notification must be sent to all of the persons or entities identified in subparagraphs (A) - (H) of this paragraph. Developments located in an Extra Territorial Jurisdiction (ETJ) of a city are required to notify both city and county officials. The notifications may be sent by e-mail, fax or mail with return receipt requested or similar tracking mechanism in the format required in the Application Notification Template provided in the Application. Evidence of notification is required in the form of a certification provided in the Application. The Applicant is required to retain proof of delivery in the event it is requested by the Department. Evidence of proof of delivery is demonstrated by a signed receipt for mail or courier delivery and confirmation of receipt by recipient for fax and e-mail. Officials to be notified are those officials in office at the time the Application is submitted. Note that between the time of pre-application (if made) and full Application, such officials may change and the boundaries of their jurisdictions may change. By way of example and not by way of limitation, events such as redistricting may cause changes which will necessitate additional notifications at full Application. Meetings and discussions do not constitute notification. Only a timely and compliant written notification to the correct person constitutes notification.

(A) Neighborhood Organizations on record with the state or county as of 30 days prior to the Full Application Delivery Date whose boundaries include the entire Development Site;

(B) Superintendent of the school district in which the Development Site is located;

(C) Presiding officer of the board of trustees of the school district in which the Development Site is located;

- (D) Mayor of the municipality (if the Development Site is within a municipality or its extraterritorial jurisdiction);
- (E) All elected members of the Governing Body of the municipality (if the Development Site is within a municipality or its extraterritorial jurisdiction);
- (F) Presiding officer of the Governing Body of the county in which the Development Site is located;
- (G) All elected members of the Governing Body of the county in which the Development Site is located; and
- (H) State Senator and State Representative of the districts whose boundaries include the Development Site.

(3) Contents of Notification.

(A) The notification must include, at a minimum, all information described in clauses (i) - (vi) 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.); and
- (vi) the total number of Units proposed and total number of low-income Units proposed.

(B) The Applicant must disclose that, in accordance with the Department's rules, aspects of the Development may not yet have been determined or selected or may be subject to change, such as changes in the amenities ultimately selected and provided;

(C) The notification may not contain any false or misleading statements. Without limiting the generality of the foregoing, the notification may not create the impression that the proposed Development will serve a Target Population exclusively or as a preference unless such targeting or preference is documented in the Application and is or will be in full compliance with all applicable state and federal laws, including state and federal fair housing laws; and

(D) Notifications or any other communications may not contain any statement that violates Department rules, statute, code, or federal requirements.

§10.204. Required Documentation for Application Submission. The purpose of this section is to identify the documentation that is required at the time of Application submission, unless specifically indicated or otherwise required by Department rule. If any of the documentation indicated in this section is not resolved, clarified or corrected to the satisfaction of the Department through either original Application submission or the Administrative Deficiency process, the Application will be terminated. Unless stated otherwise, all documentation identified in this section must not be dated more than six (6) months prior to the close of the Application Acceptance Period or the date of Application submission as applicable to the program. The Application may include, or Department staff may request, documentation or verification of compliance with any requirements related to the eligibility of an Applicant, Application, Development Site, or Development.

(1) Certification, Acknowledgement and Consent of Development Owner. A certification of the information in this subchapter as well as Subchapter B of this chapter must be executed by the Development Owner and addresses the specific requirements associated with the Development. The Person executing the certification is responsible for ensuring all individuals referenced therein are in compliance with the certification and that they have given it with all required authority and with actual knowledge of the matters certified.

(A) The Development will adhere to the Texas Property Code relating to security devices and other applicable requirements for residential tenancies, and will adhere to local building codes or, if no local building codes are in place, then to the most recent version of the International Building Code.

(B) This Application and all materials submitted to the Department constitute records of the Department subject to Tex. Gov't Code, Chapter 552.

(C) All representations, undertakings and commitments made by Applicant in the Application process for Development assistance expressly constitute conditions to any Commitment, Determination Notice, Carryover Allocation, or Direct Loan Commitment for such Development which the Department may issue or award, and the violation of any such condition shall be sufficient cause for the cancellation and rescission of such Commitment, Determination Notice, Carryover Allocation, or Direct Loan Commitment by the Department. If any such representations, undertakings and commitments concern or relate to the ongoing features or operation of the Development, they shall each and all shall be enforceable even if not reflected in the Land Use Restriction Agreement. All such representations, undertakings and commitments are also enforceable by the Department and the tenants of the Development, including enforcement by administrative penalties for failure to perform, in accordance with the Land Use Restriction Agreement.

(D) The Development Owner has read and understands the Department's fair housing educational materials posted on the Department's website as of the beginning of the Application Acceptance Period.

(E) The Development Owner agrees to implement a plan to use Historically Underutilized Businesses (HUB) in the development process consistent with the Historically Underutilized Business Guidelines for contracting with the State of Texas. The Development Owner will be required to submit a report of the success of the plan as part of the cost certification documentation, in order to receive IRS Forms 8609 or, if the Development does not have Housing Tax Credits, release of retainage.

(F) The Applicant will attempt to ensure that at least 30 percent of the construction and management businesses with which the Applicant contracts in connection with the Development are Minority Owned Businesses as further described in Tex. Gov't Code, §2306.6734.

(G) The Development Owner will specifically market to veterans through direct marketing or contracts with veteran's organizations. The Development Owner will be required to identify how they will specifically market to veterans and report to the Department in the annual housing report on the results of the marketing efforts to veterans. Exceptions to this requirement must be approved by the Department.

(H) The Development Owner will comply with any and all notices required by the Department.

(I) If the Development has an existing LURA with the Department, the Development Owner will comply with the existing restrictions.

(2) Applicant Eligibility Certification. A certification of the information in this subchapter as well as Subchapter B of this chapter must be executed by any individuals required to be listed on the organizational chart and also identified in subparagraphs (A) – (D) below. The certification must identify the various criteria relating to eligibility requirements associated with multifamily funding from the Department, including but not limited to the criteria identified under §10.202 of this chapter (relating to Ineligible Applicants and Applications).

(A) for for-profit corporations, any officer authorized by the board of directors, regardless of title, to act on behalf of the corporation, including but not limited to the president, vice president, secretary, treasurer, and all other executive officers, and each stock holder having a 10 percent or more interest in the corporation, and any individual who has Control with respect to such stock holder;

(B) for non-profit corporations or governmental instrumentalities (such as housing authorities), any officer authorized by the board, regardless of title, to act on behalf of the corporation, including but not limited to the president, vice president, secretary, treasurer, and all other executive officers, the Audit committee chair, the Board chair, and anyone identified as the Executive Director or equivalent;

(C) for trusts, all beneficiaries that have the legal ability to Control the trust who are not just financial beneficiaries; and

(D) for limited liability companies, all managers, managing members, members having a 10 percent or more interest in the limited liability company, any individual Controlling such members, or any officer authorized to act on behalf of the limited liability company.

(3) Architect Certification Form. The certification, addressing all of the accessibility requirements applicable to the Development Site, must be executed by the Development engineer or accredited architect after careful review of the Department's accessibility requirements. (§2306.6722; §2306.6730) The certification must include a statement describing how the accessibility requirements relating to Unit distribution will be met. An acceptable, but not required, form of such statement may be obtained in the Multifamily Programs Procedures Manual.

(4) Notice, Hearing, and Resolution for Tax-Exempt Bond Developments. In accordance with Tex. Gov't Code, §2306.67071, the following actions must take place with respect to the filing of an Application and any Department awards for a Tax-Exempt Bond Development.

(A) Prior to submission of an Application to the Department, an Applicant must provide notice of the intent to file the Application in accordance with §10.203 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 FFAST 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 §10.4 of this chapter (relating to Program Dates). An acceptable, but not required, form of resolution may be obtained in the Multifamily Programs Procedures Manual. Applicants should ensure that the resolutions all have the appropriate references and certifications or the resolution may be determined by staff to be invalid. The resolution(s) must certify that:

- (i) Notice has been provided to the Governing Body in accordance with Tex. Gov't Code, §2306.67071(a);
- (ii) The Governing Body has had sufficient opportunity to obtain a response from the Applicant regarding any questions or concerns about the proposed Development;
- (iii) The Governing Body has held a hearing at which public comment may be made on the proposed Development in accordance with Tex. Gov't Code, §2306.67071(b) ; and
- (iv) After due consideration of the information provided by the Applicant and public comment, the Governing Body does not object to the proposed Application.

(5) Designation as Rural or Urban.

(A) Each Application must identify whether the Development Site is located in an Urban Area or Rural Area of a Uniform State Service Region. The Department shall make available a list of Places meeting the requirements of Tex. Gov't Code, §2306.004(28-a)(A) and (B), for designation as a Rural Area and those that are an Urban Area in the Site Demographics Characteristics Report. Some Places are municipalities. For any Development Site located in the ETJ of a municipality and not in a Place, the Application shall have the Rural Area or Urban Area designation of the municipality whose ETJ within which the Development Site is located. For any Development Site not located within the boundaries of a Place or the ETJ of a municipality, the applicable designation is that of the closest Place.

(B) Certain areas located within the boundaries of a primary metropolitan statistical area or a metropolitan statistical area can request a Rural designation from the Department for purposes of receiving an allocation Housing Tax Credits (§2306.6740). In order to apply for such a designation, a letter must be submitted from a duly authorized official of the political subdivision or census designated place addressing the

factors outlined in clauses (i) – (vi) of this subparagraph. Photographs and other supporting documentation are strongly encouraged. In order for the area to be designated Rural by the Department for the 2018 Application Round, such requests must be made no later than December 15, 2017. 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 fifty percent contiguity with urban designated places is presumptively rural in nature;

(iv) The political subdivision or census designated place contains a significant number of unimproved roads or relies on unimproved roads to connect it to other places;

(v) The political subdivision or census designated place lacks major amenities commonly associated with urban or suburban areas; and

(vi) The boundaries of the political subdivision or census designated place contain, or are surrounded by, significant areas of undeveloped or agricultural land. For purposes of this assessment, significant being more than one-third of the total surface area of political subdivision/census designated place, or a minimum of 1,000 acres immediately contiguous to the border.

(6) Experience Requirement. Evidence that meets the criteria as stated in subparagraph (A) of this paragraph must be provided in the Application, unless an experience certificate was issued by the Department in the years 2014 through 2017 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. 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) Experience may not be established for a Person who at any time within the preceding three years has been involved with affordable housing in another state in which the Person or Affiliate has been the subject of issued IRS Form 8823 citing non-compliance that has not been or is not being corrected with reasonable due diligence.

(D) If a Principal is determined by the Department to not have the required experience, an acceptable replacement for that Principal must be identified prior to the date the award is made by the Board.

(E) Notwithstanding the foregoing, no person may be used to establish such required experience if that Person or an Affiliate of that Person would not be eligible to be an Applicant themselves.

(7) Financing Requirements.

(A) Non-Department Debt Financing. Interim and permanent financing sufficient to fund the proposed Total Housing Development Cost less any other funds requested from the Department must be included in the Application. For any Development that is a part of a larger development plan on the same site, the Department may request and evaluate information related to the other components of the development plan in instances in which the financial viability of the Development is in whole or in part dependent upon the other portions of the development plan. Any local, state or federal financing identified in this section which restricts household incomes at any level that is lower than restrictions required pursuant to this chapter or elected in accordance with Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan) must be identified in the rent schedule and the local, state or federal income restrictions must include corresponding rent levels in accordance with §42(g) of the Code. The income and corresponding rent restrictions will be memorialized in a recorded LURA and monitored for compliance. Financing amounts must be consistent throughout the Application and acceptable documentation shall include those described in clauses (i) and (ii) of this subparagraph.

(i) Financing is in place as evidenced by:

(I) a valid and binding loan agreement; and

(II) a valid recorded deed(s) of trust lien on the Development in the name of the Development Owner as grantor in favor of the party providing such financing and covered by a lender's policy of title insurance in their name;

(ii) Term sheets for interim and permanent loans issued by a lending institution or mortgage company that is actively and regularly engaged in the business of lending money must:

(I) have been signed by the lender;

(II) be addressed to the Development Owner or Affiliate;

(III) for a permanent loan, include a minimum loan term of fifteen (15) years with at least a thirty (30) year amortization;

(IV) include either a committed and locked interest rate, or the currently projected interest rate and the mechanism for determining the interest rate;

(V) include all required Guarantors, if known;

(VI) include the principal amount of the loan;

(VII) include an acknowledgement of the amounts and terms of all other anticipated sources of funds; and

(VIII) include and address any other material terms and conditions applicable to the financing. The term sheet may be conditional upon the completion of specified due diligence by the lender and upon the award of tax credits, if applicable; or

(iii) For Developments proposing to refinance an existing USDA Section 515 loan, a letter from the USDA confirming that it has been provided with the Preliminary Assessment Tool.

(iv) For Direct Loan Applications or Tax-Exempt Bond Development Applications utilizing FHA financing, the Application shall include the applicable pages from the HUD Application for Multifamily Housing Project. If the HUD Application has not been submitted at the time the Application is submitted then a statement to that effect should be included in the Application along with an estimated date for submission. Applicants should be aware that staff's underwriting of an Application will not be finalized and presented to the Board until staff has evaluated the HUD Application relative to the Application.

(B) Gap Financing. Any anticipated federal, state, local or private gap financing, whether soft or hard debt, must be identified and described in the Application. Applicants must provide evidence that an application for such gap financing has been made. Acceptable documentation may include a letter from the funding entity confirming receipt of an application or a term sheet from the lending agency which clearly describes the amount and terms of the financing. Other Department funding requested with Housing Tax Credit Applications must be on a concurrent funding period with the Housing Tax Credit Application, and no term sheet is required for such a request. Permanent loans must include a minimum loan term of fifteen (15) years with at least a thirty (30) year amortization or for non-amortizing loan structures a term of not less than thirty (30) years. A term loan request must also comply with the applicable terms of the NOFA under which an Applicant is applying.

(C) Owner Contributions. If the Development will be financed in part by a capital contribution by the General Partner, Managing General Partner, any other partner or investor that is not a partner providing the syndication equity, a guarantor or a Principal in an amount that exceeds 5 percent of the Total Housing Development Cost, a letter from a Third Party CPA must be submitted that verifies the capacity of the contributor to provide the capital from funds that are not otherwise committed or pledged. Additionally, a letter from the contributor's bank(s) or depository(ies) must be submitted confirming sufficient funds are readily available to the contributor. The contributor must certify that the funds are and will remain readily available at Commitment and until the required investment is completed. Regardless of the amount, all capital contributions other than syndication equity will be deemed to be a part of and therefore will be added to the Deferred Developer Fee for feasibility purposes under §10.302(i)(2) of this chapter (relating to Underwriting Rules and Guidelines) or where scoring is concerned, unless the Development is a Supportive Housing Development, the Development is not supported with Housing Tax Credits, or the ownership structure includes a nonprofit organization with a documented history of fundraising sufficient to support the development of affordable housing.

(D) Equity Financing. (§2306.6705(2) and (3)) If applicable to the program, the Application must include a term sheet from a syndicator that, at a minimum, includes:

- (i) an estimate of the amount of equity dollars expected to be raised for the Development;
- (ii) the amount of Housing Tax Credits requested for allocation to the Development Owner;
- (iii) pay-in schedules;
- (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.

(E) Financing Narrative. (§2306.6705(1)) A narrative must be submitted that describes all aspects of the complete financing plan for the Development, including but not limited to, the sources and uses of funds; construction, permanent and bridge loans, rents, operating subsidies, project-based assistance, and replacement reserves; and the status (dates and deadlines) for applications, approvals and closings, etc. associated with the commitments for all funding sources. For applicants requesting Direct Loan funds, Match in the amount of at least 5 percent of the Direct Loan funds requested must be documented with a letter from the anticipated provider of Match indicating the provider's willingness and ability to make a financial commitment should the Development receive an award of Direct Loan funds, if applicable. The information provided must be consistent with all other documentation in the Application.

(8) Operating and Development Cost Documentation.

(A) 15-year Pro forma. All Applications must include a 15-year pro forma estimate of operating expenses, in the form provided by the Department. Any "other" debt service included in the pro forma must include a description.

(B) Utility Allowances. This exhibit, as provided in the Application, must be submitted along with documentation from the source of the utility allowance estimate used in completing the Rent Schedule provided in the Application. This exhibit must clearly indicate which utility costs are included in the estimate and must comply with the requirements of §10.614 of this chapter (relating to Utility Allowances), including deadlines for submission. Where the Applicant uses any method that requires Department review, documentation indicating that the requested method has been granted by the Department must be included in the Application.

(C) Operating Expenses. This exhibit, as provided in the Application, must be submitted indicating the anticipated operating expenses associated with the Development. Any expenses noted as "other" in any of the categories must be identified. "Miscellaneous" or other nondescript designations are not acceptable.

(D) Rent Schedule. This exhibit, as provided in the Application, must indicate the type of Unit designation based on the Unit's rent and income restrictions. The rent and utility

limits available at the time the Application is submitted should be used to complete this exhibit. Gross rents cannot exceed the maximum rent limits unless documentation of project-based rental assistance is provided and rents are consistent with such assistance and applicable legal requirements. The unit mix and net rentable square footages must be consistent with the site plan and architectural drawings. For Units restricted in connection with Direct Loans, the restricted Units will generally be designated "floating" unless specifically disallowed under the program specific rules. For Applications that propose utilizing Direct Loan funds, at least 90 percent of the Units restricted in connection with the Direct Loan program must be available to households or families whose incomes do not exceed 60 percent of the Area Median Income.

(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 the Off-Site Cost Breakdown prepared by a Third Party engineer must be provided. The certification from a Third Party engineer must describe the necessity of the off-site improvements, including the relevant requirements of the local jurisdiction with authority over building codes. If any Off-Site Construction costs are included in Eligible Basis, a letter must be provided from a certified public accountant allocating which portions of those costs should be included in Eligible Basis. If off-site costs are included in Eligible Basis based on PLR 200916007, a statement of findings from a CPA must be provided which describes the facts relevant to the Development and affirmatively certifies that the fact pattern of the Development matches the fact pattern in PLR 200916007.

(F) Rental Assistance/Subsidy. (§2306.6705(4)) If rental assistance, an operating subsidy, an annuity, or an interest rate reduction payment is proposed to exist or continue for the Development, any related contract or other agreement securing those funds or proof of application for such funds must be provided. Such documentation shall, at a minimum, identify the source and annual amount of the funds, the number of units receiving the funds, and the term and expiration date of the contract or other agreement.

(G) Occupied Developments. The items identified in clauses (i) - (vi) of this subparagraph must be submitted with any Application where any structure on the

Development Site is occupied at any time after the Application Acceptance Period begins or if the Application proposes the demolition of any housing occupied at any time after the Application Acceptance Period begins. For Applications that do not include Direct Loan funds or 811 PRA, if the current property owner is unwilling to provide the required documentation then a signed statement from the Applicant attesting to that fact must be submitted. If one or more of the items described in clauses (i) - (vi) of this subparagraph is not applicable based upon the type of occupied structures on the Development Site, the Applicant must provide an explanation of such non-applicability. Applicant must submit:

(i) at least one of the items identified in subclauses (I) - (IV) of this clause:

(I) historical monthly operating statements of the Existing Residential Development for twelve (12) consecutive months ending not more than three (3) months from the first day of the Application Acceptance Period;

(II) the two (2) most recent consecutive annual operating statement summaries;

(III) the most recent consecutive six (6) months of operating statements and the most recent available annual operating summary; or

(IV) all monthly or annual operating summaries available; and

(ii) a rent roll not more than six (6) months old as of the first day the Application Acceptance Period that discloses the terms and rate of the lease, rental rates offered at the date of the rent roll, Unit mix, and tenant names or vacancy;

(iii) a written explanation of the process used to notify and consult with the tenants in preparing the Application; (§2306.6705(6))

(iv) a relocation plan outlining relocation requirements and a budget with an identified funding source; (§2306.6705(6))

(v) any documentation necessary for the Department to facilitate, or advise an Applicant with respect to or to ensure compliance with the Uniform Relocation Act and any other relocation laws or regulations as may be applicable; and

(vi) if applicable, evidence that the relocation plan has been submitted to all appropriate legal or governmental agencies or bodies. (§2306.6705(6))

(9) Architectural Drawings. All Applications must include the items identified in subparagraphs (A) - (D) of this paragraph, unless specifically stated otherwise, and must be consistent with all applicable exhibits throughout the Application. The drawings must have a legible scale and show the dimensions of each perimeter wall and floor heights.

(A) For all New Construction, Reconstruction and Adaptive Reuse Developments a site plan is submitted that includes the items identified in clauses (i) - (v) of this subparagraph and for all Rehabilitation Developments, the site plan includes the items identified in clauses (i) - (ix) of this subparagraph:

- (i) includes a unit and building type table matrix that is consistent with the Rent Schedule and Building/Unit Configuration forms provided in the Application;
- (ii) identifies all residential and common buildings;
- (iii) clearly delineates the flood plain boundary lines and shows all easements;
- (iv) if applicable, indicates possible placement of detention/retention pond(s);
- (v) indicates the location and number of the parking spaces;
- (vi) indicates the location and number of the accessible parking spaces;
- (vii) describes, if applicable, how flood mitigation or any other required mitigation will be accomplished;
- (viii) delineates compliant accessible routes; and
- (ix) indicates the distribution of accessible Units.

(B) Building floor plans must be submitted for each building type. Building floor plans must include the locations of the accessible Units and must also include square footage calculations for balconies, breezeways, corridors and any other areas not included in net rentable area;

(C) Unit floor plans for each type of Unit must be included in the Application and must include the square footage for each type of Unit. Unit floor plans must be submitted for the accessible Units. Applications for Adaptive Reuse are only required to include Unit floor plans for each distinct floor plan such as one-bedroom, two-bedroom and for all floor plans that vary in Net Rentable Area by 10 percent from the typical floor plan; and

(D) Elevations must be submitted for each side of each building type (or include a statement that all other sides are of similar composition as the front) and include a percentage estimate of the exterior composition and proposed roof pitch. Applications for Rehabilitation and Adaptive Reuse may submit photographs if the Unit configurations are not being altered and post-renovation drawings must be submitted if Unit configurations are proposed to be altered.

(10) Site Control.

(A) Evidence that the Development Owner has Site Control must be submitted. If the evidence is not in the name of the Development Owner, then an Affiliate of the Development Owner must have Site Control that allows for an ability to assign the Site Control to the Development Owner. All of the sellers of the proposed Property for the thirty-six (36) months prior to the first day of the Application Acceptance Period and their relationship, if any, to members of the Development Team must be identified at the time of Application. The Department may request documentation at any time after submission of an Application of the Development Owner's ability to compel title of any affiliated property acquisition(s) and the Development Owner must be able to promptly provide such documentation or the Application, award, or Commitment may be terminated. The Department acknowledges and understands that the Property may have one or more encumbrances at the time of Application submission and the

Department will take into account whether any such encumbrance is reasonable within the legal and financial ability of the Development Owner to address without delaying development on the timeline contemplated in the Application. Tax-Exempt Bond Lottery Applications must have Site Control valid through December 1 of the prior program year with the option to extend through March 1 of the current program year.

(B) In order to establish Site Control, one of the items described in clauses (i) - (iii) of this subparagraph must be provided. In the case of land donations, Applicants must demonstrate that the entity donating the land has Site Control as evidenced through one of the items described in clauses (i) - (iii) of this subparagraph or other documentation acceptable to the Department.

(i) a recorded warranty deed vesting indefeasible title in the Development Owner or, if transferrable to the Development Owner, an Affiliate of the Owner, with corresponding executed settlement statement (or functional equivalent for an existing lease with at least forty-five (45) years remaining); or

(ii) a contract or option for lease with a minimum term of forty-five (45) years that includes a price; address and/or legal description; proof of consideration in the form specified in the contract; and expiration date; or

(iii) a contract for sale or an option to purchase that includes a price; address and/or legal description; proof of consideration in the form specified in the contract; and expiration date;

(C) If the acquisition can be characterized as an identity of interest transaction, as described in §10.302 of this chapter, then the documentation as further described therein must be submitted in addition to that of subparagraph (B) of this paragraph.

(11) Zoning. (§2306.6705(5)) Acceptable evidence of zoning for all Developments must include one of subparagraphs (A) - (D) of this paragraph. In instances where annexation of a Development Site occurs while the Application is under review, the Applicant must submit evidence of appropriate zoning with the Commitment or Determination Notice.

(A) No Zoning Ordinance in Effect. The Application must include a letter from a local government official with appropriate jurisdiction stating that the Development is located within the boundaries of a political subdivision that has no zoning.

(B) Zoning Ordinance in Effect. The Application must include a letter from a local government official with appropriate jurisdiction stating the Development is permitted under the provisions of the zoning ordinance that applies to the location of the Development.

(C) Requesting a Zoning Change. The Application must include evidence in the form of a letter from a local government official with jurisdiction over zoning matters that the Applicant or Affiliate has made formal application for a required zoning change and that

the jurisdiction has received a release whereby the applicant for the zoning change has agreed to hold the political subdivision and all other parties harmless in the event the appropriate zoning is not granted. Documentation of final approval of appropriate zoning must be submitted to the Department with the Commitment or Determination Notice.

(D) Zoning for Rehabilitation Developments. In an area with zoning, the Application must include documentation of current zoning. If the Property is currently conforming but with an overlay that would make it a non-conforming use as presently zoned, the Application must include a letter from a local government official with appropriate jurisdiction which addresses the items in clauses (i) - (v) of this subparagraph:

- (i) a detailed narrative of the nature of non-conformance;
- (ii) the applicable destruction threshold;
- (iii) that it will allow the non-conformance;
- (iv) Owner's rights to reconstruct in the event of damage; and
- (v) penalties for noncompliance.

(12) Title Commitment/Policy. A title commitment or title policy must be submitted that includes a legal description that is consistent with the Site Control. If the title commitment or policy is dated more than six (6) months prior to the beginning of the Application Acceptance Period, then a letter from the title company indicating that nothing further has transpired during the six-month period on the commitment or policy must be submitted.

(A) The title commitment must list the name of the Development Owner as the proposed insured and lists the seller or lessor as the current owner of the Development Site.

(B) The title policy must show that the ownership (or leasehold) of the Development Site is vested in the name of the Development Owner.

(13) Ownership Structure and Previous Participation.

(A) Organizational Charts. A chart must be submitted that clearly illustrates the complete organizational structure of the final proposed Development Owner and of any Developer and Guarantor, identifying all Principals thereof and providing the names and ownership percentages of all Persons having an ownership interest in the Development Owner, Developer and Guarantor, as applicable, whether directly or through one or more subsidiaries. Nonprofit entities, public housing authorities, publicly traded corporations, individual board members, and executive directors must be included in this exhibit and trusts must list all beneficiaries that have the legal ability to control or direct activities of the trust and are not just financial beneficiaries. The List of Organizations form, as provided in the Application, must include all Persons identified on the organizational charts, and further identify which of those Persons listed exercise Control of the Development.

(B) Previous Participation. Evidence must be submitted that each entity shown on the organizational chart described in subparagraph (A) of this paragraph that the Development Owner and each Affiliate (with an ownership interest in the Development), including entities and individuals (unless excluded under 10 TAC Chapter 1, Subchapter C) has provided a copy of the completed previous participation information to the Department. Individual Principals of such entities identified on the organizational chart and on the List of Organizations form, must provide the previous participation information, unless excluded from such requirement pursuant to Chapter 1 Subchapter C of this title. The information must include a list of all developments that are, or were, previously under ownership or Control of the Applicant and/or each Principal, including any Person providing the required experience. All participation in any Department funded or monitored activity, including non-housing activities, as well as Housing Tax Credit developments or other programs administered by other states using state or federal programs must be disclosed. The individuals providing previous participation information will authorize the parties overseeing such assistance to release compliance histories to the Department.

(14) Nonprofit Ownership. Applications that involve a §501(c)(3) or (4) nonprofit General Partner or Owner shall submit the documentation identified in subparagraph (A) or (B) of this paragraph as applicable.

(A) Competitive HTC Applications. Applications for Competitive Housing Tax Credits involving a §501(c)(3) or (4) nonprofit General Partner and which meet the Nonprofit Set-Aside requirements, must submit all of the documents described in this subparagraph and indicate the nonprofit status on the carryover documentation and IRS Forms 8609. (§2306.6706) Applications that include an affirmative election to not be treated under the set-aside and a certification that they do not expect to receive a benefit in the allocation of tax credits as a result of being affiliated with a nonprofit only need to submit the documentation in subparagraph (B) of this paragraph.

- (i) An IRS determination letter which states that the nonprofit organization has been determined by the Internal Revenue Service to be tax-exempt under §501(c)(3) or (4) of the Code;
- (ii) The Nonprofit Participation exhibit as provided in the Application, including a list of the names and contact information for all board members, directors, and officers;
- (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 §42(h)(5) of the Code and the basis for that opinion;
 - (III) that one of the exempt purposes of the nonprofit organization is to provide low-income housing;

(IV) that the nonprofit organization prohibits a member of its board of directors, other than a chief staff member serving concurrently as a member of the board, from receiving material compensation for service on the board;

(V) that the Qualified Nonprofit Development will have the nonprofit entity or its nonprofit Affiliate or subsidiary be the Developer or co-Developer as evidenced in the development agreement;

(VI) that the nonprofit organization has the ability to do business as a nonprofit in Texas;

(iv) a copy of the nonprofit organization's most recent financial statement as prepared by a Certified Public Accountant; and

(v) evidence in the form of a certification that a majority of the members of the nonprofit organization's board of directors principally reside:

(I) in this state, if the Development is located in a Rural Area; or

(II) not more than ninety (90) miles from the Development, if the Development is not located in a Rural Area.

(B) All Other Applications. Applications that involve a §501(c)(3) or (4) nonprofit General Partner or Owner must submit an IRS determination letter which states that the nonprofit organization has been determined by the Internal Revenue Service to be tax-exempt under §501(c)(3) or (4) of the Code; and the Nonprofit Participation exhibit as provided in the Application. If the Application involves a nonprofit that is not exempt from taxation under §501(c)(3) or (4) of the Code, then they must disclose in the Application the basis of their nonprofit status.

(15) Site Design and Development Feasibility Report. This report, compiled by the Applicant or Third Party Consultant, and prepared in accordance with this paragraph, which reviews site conditions and development requirements of the Development and Development Site, is required for any New Construction or Reconstruction Development.

(A) Executive Summary as a narrative overview of the Development in sufficient detail that would help a reviewer of the Application better understand the site, the site plan, off site requirements (including discussion of any seller contributions or reimbursements), any other unique development requirements, and their impact on Site Work and Off Site Construction costs. The summary should contain a general statement regarding the level of due diligence that has been done relating to site development (including discussions with local government development offices). Additionally, the overview should contain a summary of zoning requirements, subdivision requirements, property identification number(s) and millage rates for all taxing jurisdictions, development ordinances, fire department requirements, site ingress and egress requirements, building codes, and local design requirements impacting the Development (include website links but do not attach copies of ordinances). Careful focus and attention should be made regarding any atypical items

materially impacting costs or the successful and timely execution of the Development plan.

(B) Survey or current plat as defined by the Texas Society of Professional Surveyors in their Manual of Practice for Land Surveying in Texas (Category 1A - Land Title Survey or Category 1B - Standard Land Boundary Survey). Surveys may not be older than twelve (12) months from the beginning of the Application Acceptance Period. Plats must include evidence that it has been recorded with the appropriate local entity and that, as of the date of submission, it is the most current plat. Applications proposing noncontiguous single family scattered sites are not required to submit surveys or plats at Application, but this information may be requested during the Real Estate Analysis review.

(C) Preliminary site plan prepared by the civil engineer with a statement that the plan materially adheres to all applicable zoning, site development, and building code ordinances. The site plan must identify all structures, site amenities, parking spaces (include handicap spaces and ramps) and driveways, topography (using either existing seller topographic survey or U.S. Geological Survey (USGS)/other database topography), site drainage and detention, water and waste water utility tie-ins, general placement of retaining walls, set-back requirements, and any other typical or locally required items. Off-site improvements required for utilities, detention, access or other requirement must be shown on the site plan or ancillary drawings.

(D) Architect or civil engineer prepared statement describing the entitlement, site development permitting process and timing, building permitting process and timing, and an itemization specific to the Development of total anticipated impact, site development permit, building permit, and other required fees.

§10.205. Required Third Party Reports. The Environmental Site Assessment, Property Condition Assessment, Appraisal (if applicable), and the Market Analysis must be submitted no later than the Third Party Report Delivery Date as identified in §10.4 of this chapter (relating to Program Dates). For Competitive HTC Applications, the Environmental Site Assessment, Property Condition Assessment, Appraisal (if applicable), and the Primary Market Area map (with definition based on census tracts, and site coordinates in decimal degrees, area of PMA in square miles, and list of census tracts included) must be submitted no later than the Full Application Delivery Date as identified in §11.2 of this title (relating to Program Calendar for Competitive Housing Tax Credits) and the Market Analysis must be submitted no later than the Market Analysis Delivery Date as identified in §11.2 of this title. For Competitive HTC Applications, if the reports, in their entirety, are not received by the deadline, the Application will be terminated. An electronic copy of the report in the format of a single file containing all information and exhibits clearly labeled with the report type, Development name and Development location are required. All Third Party reports must be prepared in accordance with Subchapter D of this chapter (relating to Underwriting and Loan Policy). The Department may request additional information from the report provider or revisions to the report as needed. In instances of non-response

by the report provider, the Department may substitute in-house analysis. The Department is not bound by any opinions expressed in the report.

(1) Environmental Site Assessment. This report, required for all Developments and prepared in accordance with the requirements of §10.305 of this chapter (relating to Environmental Site Assessment Rules and Guidelines), must not be dated more than twelve (12) months prior to the first day of the Application Acceptance Period. If this timeframe is exceeded, then a letter or updated report must be submitted, dated not more than three (3) months prior to the first day of the Application Acceptance Period from the Person or organization which prepared the initial assessment confirming that the site has been re-inspected and reaffirming the conclusions of the initial report or identifying the changes since the initial report.

(A) Existing Developments funded by USDA will not be required to supply this information; however, it is the Applicant's responsibility to ensure that the Development is maintained in compliance with all state and federal environmental hazard requirements.

(B) If the report includes a recommendation that an additional assessment be performed, then a statement from the Applicant must be submitted with the Application indicating those additional assessments and recommendations will be performed prior to closing. If the assessments require further mitigating recommendations, then evidence indicating the mitigating recommendations have been carried out must be submitted at cost certification.

(2) Market Analysis. The Market Analysis, required for all Developments and prepared in accordance with the requirements of §10.303 of this chapter (relating to Market Analysis Rules and Guidelines), must not be dated more than six (6) months prior to the first day of the Application Acceptance Period. If the report is older than six (6) months, but not more than twelve (12) months prior to the first day of the Application Acceptance Period, the Qualified Market Analyst that prepared the report may provide a statement that reaffirms the findings of the original Market Analysis. The statement may not be dated more than six (6) months prior to the first day of the Application Acceptance Period and must be accompanied by the original Market Analysis.

(A) The report must be prepared by a disinterested Qualified Market Analyst approved by the Department in accordance with the approval process outlined in §10.303 of this chapter;

(B) Applications in the USDA Set-Aside proposing Rehabilitation with residential structures at or above 80 percent occupancy at the time of Application submission, the appraisal, required for Rehabilitation Developments and Identity of Interest transactions prepared in accordance with §10.304 of this chapter (relating to Appraisal Rules and Guidelines), will satisfy the requirement for a Market Analysis; however, the Department may request additional information as needed. (§2306.67055; §42(m)(1)(A)(iii))

(C) It is the responsibility of the Applicant to ensure that this analysis forms a sufficient basis for the Applicant to be able to use the information obtained to ensure that the Development will comply with fair housing laws.

(3) Property Condition Assessment (PCA). This report, required for Rehabilitation (excluding Reconstruction) and Adaptive Reuse Developments and prepared in accordance with the requirements of §10.306 of this chapter (relating to Property Condition Assessment Guidelines), must not be dated more than six (6) months prior to the first day of the Application Acceptance Period. If the report is older than six (6) months, but not more than twelve (12) months prior to the first day of the Application Acceptance Period, the report provider may provide a statement that reaffirms the findings of the original PCA. The statement may not be dated more than six (6) months prior to the first day of the Application Acceptance Period and must be accompanied by the original PCA. For Developments which require a capital needs assessment from USDA the capital needs assessment may be substituted and may be more than six (6) months old, as long as USDA has confirmed in writing that the existing capital needs assessment is still acceptable and it meets the requirements of §10.306 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.

(4) Appraisal. This report, required for all Rehabilitation Developments and prepared in accordance with the requirements of §10.304 of this chapter, is required for any Application claiming any portion of the building acquisition in Eligible Basis, and Identity of Interest transactions pursuant to Subchapter D of this chapter, must not be dated more than six (6) months prior to the first day of the Application Acceptance Period. For Developments that require an appraisal from USDA, the appraisal may be more than six (6) months old, as long as USDA has confirmed in writing that the existing appraisal is still acceptable.

§10.206. Board Decisions (§§2306.6725(c); 2306.6731; and 42(m)(1)(A)(iv)). The Board's decisions regarding awards shall be based upon the Department's and the Board's evaluation of the proposed Developments' consistency with, and fulfillment of, the criteria and requirements set forth in this chapter, Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan) and other applicable Department rules and other applicable state, federal and local legal requirements, whether established in statute, rule, ordinance, published binding policy, official finding, or court order. The Board shall document the reasons for each Application's selection, including any discretionary factors used in making its determination, including good cause, and the reasons for any decision that conflicts with the recommendations made by Department staff. Good cause includes the Board's decision to apply discretionary factors where authorized. The Department reserves the right to reduce the amount of funds requested in an Application, condition the award recommendation or terminate the Application based on the Applicant's inability to demonstrate compliance with program requirements.

§10.207.Waiver of Rules.

This waiver section, unless otherwise specified, is applicable to Subchapter A of this chapter (relating to General Information and Definitions), Subchapter B of this chapter (relating to Site and Development Requirements and Restrictions), Subchapter C of this chapter (relating to Application Submission Requirements, Ineligibility Criteria, Board Decisions, and Waiver of Rules for Applications), Subchapter D of this chapter (relating to Underwriting and Loan Policy), Subchapter E of this chapter (relating to Post Award and Asset Management Requirements), Subchapter F of this chapter (relating to Compliance Monitoring) Subchapter G of this chapter (relating to Fee Schedule, Appeals, and Other Provisions), Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan), Chapter 12 of this title (relating to Multifamily Housing Revenue Bond Rules), and Chapter 13 (relating to Multifamily Direct Loan Program Rules). An Applicant may request a waiver in writing at or prior to the submission of the pre-application (if applicable) or the Application or subsequent to an award. Waiver requests on Competitive HTC Applications will not be accepted between submission of the Application and any award for the Application. Staff may identify and initiate a waiver request as part of another Board action request. Where appropriate, the Applicant is encouraged to submit with the requested waiver any plans for mitigation or alternative solutions. Any such request for waiver must be specific to the unique facts and circumstances of an actual proposed Development and must be submitted to the Department in the format required in the Multifamily Programs Procedures Manual. Any waiver, if granted, shall apply solely to the Application and shall not constitute a general modification or waiver of the rule involved. All waiver requests must meet the requirements of paragraphs (1) and (2) of this subsection.

(1) The waiver request must establish how the need for the waiver was both not reasonably foreseeable and was not preventable by the Applicant. In applicable circumstances, this may include limitations of local building or zoning codes, limitations of existing building structural elements for Adaptive Reuse or Rehabilitation (excluding Reconstruction) Developments, required amenities or design elements in buildings designated as historic structures that would conflict with retaining the historic nature of the building(s), or provisions of the design element or amenity that would not benefit the tenants due to limitations of the existing layout or design of the units for Adaptive Reuse or Rehabilitation (excluding Reconstruction) Developments. A recommendation for a waiver may be subject to the Applicant's provision of alternative design elements or amenities of a similar nature or that serve a similar purpose. Waiver requests for items that were elected to meet scoring criteria or where the Applicant was provided a menu of options to meet the requirement will not be considered to satisfy this paragraph as such waiver request would be either or both foreseeable and preventable.

(2) The waiver request must establish how, by granting the waiver, it better serves the policies and purposes articulated in Tex. Gov't Code, §§2306.001, 2306.002, 2306.359, and 2306.6701, (which are general in nature and apply to the role of the Department and its programs, including the Housing Tax Credit program) than not granting the waiver.

(3) The Board may not grant a waiver to provide directly or implicitly any forward commitments or any waiver that is prohibited by statute (i.e., statutory requirements may not be waived). The Board may grant a waiver that is in response to a natural, federally declared disaster that occurs after the adoption of the multifamily rules to the extent authorized by a governor declared disaster proclamation suspending regulatory requirements.

Subchapter G – Fee Schedule, Appeals and other Provisions

§10.901. Fee Schedule. Any fees, as stated in this section, not paid will cause an Applicant to be ineligible to apply for Department funding, ineligible to receive additional Department funding associated with a Commitment, Determination Notice or Contract, and ineligible to submit extension requests, ownership transfers, and Application amendments until such time the Department receives payment. Payments of the fees shall be in the form of a check and to the extent there are insufficient funds available, it may cause the Application, Commitment, Determination Notice or Contract to be terminated or Allocation rescinded. Other forms of payment may be considered on a case-by-case basis. The Department may extend the deadline for specific extenuating and extraordinary circumstances, provided the Applicant submits a written request for an extension no later than ten (10) business days prior to the deadline associated with the particular fee. For those requests that do not have a specified deadline, the written request for a fee waiver and description of extenuating and extraordinary circumstances must be included in the original request cover letter.

(1) Competitive Housing Tax Credit Pre-Application Fee. A pre-application fee, in the amount of \$10 per Unit, based on the total number of Units reflected in the pre-application, must be submitted with the pre-application in order for the pre-application to be considered accepted by the Department. Pre-applications in which a Community Housing Development Corporation (CHDO) or a private Qualified Nonprofit Organization intends to serve as the Managing General Partner of the Development Owner, or Control the Managing General Partner of the Development Owner, may be eligible to receive a discount of 10 percent off the calculated pre-application fee provided such documentation is submitted with the fee. (§2306.6716(d))

(2) Refunds of Pre-application Fees. (§2306.6716(c)) Upon written request from the Applicant, the Department shall refund the balance of the pre-application fee for a pre-application that is withdrawn by the Applicant and that is not fully processed by the Department. The amount of refund will be commensurate with the level of review completed. Initial processing will constitute 50 percent of the review, threshold review prior to a deficiency issued will constitute 30 percent of the review, and deficiencies submitted and reviewed constitute 20 percent of the review.

(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 percent off the calculated Application fee provided such documentation is submitted with the fee. (§2306.6716(d))

(B) Direct Loan Applications. The fee will be \$1,000 per Application except for those Applications that are layered with Housing Tax Credits and submitted simultaneously with the Housing Tax Credit Application. Pursuant to Tex. Gov't Code §2306.147(b), the Department is required to waive Application fees for private nonprofit organizations that offer expanded services such as child care, nutrition programs, job training assistance, health services, or human services and if HOME funds are awarded. In lieu of the Application fee, these organizations must include proof of their exempt status and a description of their supportive services as part of the Application. The Application fee is not a reimbursable cost under the HOME Program.

(4) Refunds of Application Fees. Upon written request from the Applicant, the Department shall refund the balance of the Application fee for an Application that is withdrawn by the Applicant and that is not fully processed by the Department. The amount of refund will be commensurate with the level of review completed. Initial processing will constitute 10 percent, the site visit will constitute 10 percent, program review will constitute 40 percent, and underwriting review will constitute 40 percent.

(5) Third Party Underwriting Fee. Applicants will be notified in writing prior to the evaluation in whole or in part of a Development by an independent external underwriter if such a review is required. The fee must be received by the Department prior to the engagement of the underwriter. The fees paid by the Development Owner to the Department for the external underwriting will be credited against the Commitment or Determination Notice Fee, as applicable, established in paragraphs (8) and (9) of this section, in the event that a Commitment or Determination Notice is issued by the Department to the Development Owner.

(6) Third Party Deficiency Request Fee. For Competitive Housing Tax Credits (HTC) Applications, a fee equal to \$500 must be submitted with a Third Party Request for Administrative Deficiency that is submitted per Application pursuant to §11.10 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan).

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

(8) Tax Exempt Bond Development Determination Notice Fee. No later than the expiration date in the Determination Notice, a fee equal to 4 percent of the annual Housing Credit Allocation amount must be submitted. If the Development Owner has paid the fee and is not able close on the bonds, then a refund of 50 percent of the Determination Notice Fee may be issued upon request.

(9) Building Inspection Fee. (For Housing Tax Credit and Tax-Exempt Bond Developments only.) No later than the expiration date in the Commitment or Determination Notice, a fee of \$750 must be submitted. If the Development Owner has paid the fee and returns the Housing Credit Allocation or for Tax-Exempt Bond Developments, is not able to close on the bonds, then the Building Inspection Fee may be refunded upon request.

(10) Tax-Exempt Bond Credit Increase Request Fee. Requests for increases to the credit amounts to be issued on IRS Forms 8609 for Tax-Exempt Bond Developments must be submitted with a request fee equal to 4 percent of the amount of the credit increase for one (1) year.

(11) Extension Fees. All extension requests for deadlines relating to the Carryover, 10 Percent Test (submission and expenditure), Construction Status Reports, or Cost Certification requirements submitted at least thirty (30) calendar days in advance of the applicable original deadline will not be required to submit an extension fee. Any extension request submitted fewer than thirty (30) days in advance or after the original deadline must be accompanied by an extension fee of \$2,500. Fees for each subsequent extension request on the same activity will increase by increments of \$500, regardless of whether the first request was submitted thirty (30) calendar days in advance of the applicable deadline. An extension fee will not be required for extensions requested on Developments that involve Rehabilitation when the Department or U.S. Department of Agriculture (USDA) is the primary lender if USDA or the Department is the cause for the Applicant not meeting the deadline. For each Construction Status Report received after the applicable deadline, extension fees will be automatically due (regardless of whether an extension request is submitted). Unpaid extension fees related to Construction Status Reports will be accrued and must be paid prior to issuance of IRS Forms 8609. For purposes of Construction Status Reports, each report will be considered a separate activity.

(12) Amendment Fees. An amendment request for a non-material change that has not been implemented will not be required to pay an amendment fee. Material amendment requests (whether implemented or not), or non-material amendment requests that have already been implemented will be required to submit an amendment fee of \$2,500. Fees for each subsequent amendment request related to the same application will increase by increments of \$500. A subsequent request, related to the same application, regardless of whether the first request was non-material and did not require a fee, must include a fee of \$3,000. Amendment fees and fee increases are not required for the Direct Loan programs.

(13) Right of First Refusal Fee. Requests for approval of the satisfaction of the Right of First Refusal provision of the Land Use Restriction Agreement (LURA) must be accompanied by a non-refundable fee of \$2,500.

(14) Qualified Contract Pre-Request Fee. A Development Owner must file a preliminary Qualified Contract Request to confirm eligibility to submit a Qualified Contract request. The Pre-Request must be accompanied by a non-refundable processing fee of \$250.

(15) Qualified Contract Fee. Upon eligibility approval of the Qualified Contract Pre-Request, the Development Owner may file a Qualified Contract Request. Such request must be accompanied by a non-refundable processing fee of \$3,000.

(16) Ownership Transfer Fee. Requests to approve an ownership transfer must be accompanied by a non-refundable processing fee of \$1,000.

(17) Unused Credit or Penalty Fee. Development Owners who have more tax credits allocated to them than they can substantiate through Cost Certification will return those excess tax credits prior to issuance of IRS Form 8609. For Competitive Housing Tax Credit Developments, a penalty fee equal to the one year credit amount of the lost credits (10 percent of the total unused tax credit amount) will be required to be paid by the Owner prior to the issuance of IRS Form 8609 if the tax credits are not returned, and 8609's issued, within one hundred eighty (180) days of the end of the first year of the credit period. This penalty fee may be waived without further Board action if the Department recaptures and re-issues the returned tax credits in accordance with Internal Revenue Code, §42. If an Applicant returns a full credit allocation after the Carryover Allocation deadline required for that allocation, the Executive Director may recommend to the Board the imposition of a penalty on the score for any Competitive Housing Tax Credit Applications submitted by that Applicant or any Affiliate for any Application in an Application Round occurring concurrent to the return of credits or if no Application Round is pending, the Application Round immediately following the return of credits. If any such point penalty is recommended to be assessed and presented for final determination by the Board, it must include notice from the Department to the affected party not less than fourteen (14) calendar days prior to the scheduled Board meeting. The Executive Director may, but is not required, to issue a formal notice after disclosure if it is determined that the matter does not warrant point penalties. The penalty will be assessed in an amount that reduces the Applicant's final awarded score by an additional 20 percent.

(18) Compliance Monitoring Fee. Upon receipt of the cost certification for HTC Developments or HTC Developments that are layered with Direct Loan funds, or upon the completion of the 24-month development period and the beginning of the repayment period for Direct Loan only Developments, the Department will invoice the Development Owner for compliance monitoring fees. The amount due will equal \$40 per tax credit Unit and \$34 per Direct Loan designated Unit, with two fees due for units that are dually designated. For HTC Developments, the fee will be collected, retroactively if applicable, beginning with the first year of the credit period. For Direct Loan only Developments, the fee will be collected beginning with the first year of the repayment period. The invoice must be paid prior to the issuance of IRS Form 8609 for HTC properties. Subsequent anniversary dates on which the compliance monitoring fee payments are due shall be determined by the month the first building is placed in service. Compliance fees may be adjusted from time to time by the Department.

(19) Public Information Request Fee. Public information requests are processed by the Department in accordance with the provisions of Tex. Gov't Code, Chapter 552. The

Department uses the guidelines promulgated by the Office of the Attorney General to determine the cost of copying and other costs of production.

(20) Adjustment of Fees by the Department and Notification of Fees. (§2306.6716(b))

All fees charged by the Department in the administration of the tax credit and Direct Loan programs may be revised by the Department from time to time as necessary to ensure that such fees compensate the Department for its administrative costs and expenses. Unless otherwise determined by the Department, all revised fees shall apply to all Applications in process and all Developments in operation at the time of such revisions.

§10.902.Appeals Process (§2306.0321; §2306.6715).

(a) An Applicant or Development Owner may appeal decisions made by the Department pursuant to the process identified in this section. Matters that can be appealed include:

(1) A determination regarding the Application's satisfaction of applicable requirements, Subchapter B of this chapter (relating to Site and Development Requirements and Restrictions) and Subchapter C of this chapter (relating to Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules for Applications), pre-application threshold criteria, underwriting criteria;

(2) The scoring of the Application under the applicable selection criteria;

(3) A recommendation as to the amount of Department funding to be allocated to the Application;

(4) Misplacement of an Application or parts of an Application, mathematical errors in scoring an Application, or procedural errors resulting in unequal consideration of the Applicant's proposal;

(5) Denial of a change to a Commitment or Determination Notice;

(6) Denial of a change to a loan agreement;

(7) Denial of a change to a LURA;

(8) Any Department decision that results in the termination of an Application; and

(9) Any other matter for which an appeal is permitted under this chapter.

(b) An Applicant or Development Owner may not appeal a decision made regarding an Application filed by or an issue related to another Applicant or Development Owner.

(c) An Applicant or Development Owner must file its appeal in writing with the Department not later than seven (7) calendar days after the date the Department publishes the results

of any stage of the Application evaluation or otherwise notifies the Applicant or Development Owner of a decision subject to appeal. The appeal must be signed by the person designated to act on behalf of the Applicant or an attorney that represents the Applicant. For Application related appeals, the Applicant must specifically identify the Applicant's grounds for appeal, based on the original Application and additional documentation filed with the original Application as supplemented in accordance with the limitations and requirements of this chapter.

(d) The Executive Director may respond in writing not later than fourteen (14) calendar days after the date of actual receipt of the appeal by the Department. If the Applicant is not satisfied with the Executive Director's response to the appeal or the Executive Director does not respond, the Applicant may appeal directly in writing to the Board. While additional information can be provided in accordance with any rules related to public comment before the Board, the Department expects that a full and complete explanation of the grounds for appeal and circumstances warranting the granting of an appeal be disclosed in the appeal documentation filed with the Executive Director. Full disclosure allows the Executive Director to make a fully informed decision based on a complete analysis of the circumstances, and verification of any information that may warrant a granting of the appeal in the Applicant's or Development Owner's favor.

(e) An appeal filed with the Board must be received by Department staff not more than seven (7) days after a response from the Executive Director and at least seven (7) days prior to the applicable Board meeting or if the period for an Executive Director response has elapsed the appeal can be heard by the Board if filed at least three (3) days prior to the applicable meeting.

(f) Board review of an Application related appeal will be based on the original Application.

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

(h) The Department will post to its website an appeal filed with the Department or Board and any other document relating to the processing of an Application related appeal. (§2306.6717(a)(5))

§10.903. Adherence to Obligations. (§2306.6720) Any Applicant, Development Owner, or other Person that fails to adhere to its obligations with regard to the programs of the Department, whether contractual or otherwise, made false or misleading representations to the Department with regard to an Application, request for funding, or compliance requirements, or otherwise violated a provision of Tex. Gov't Code, Chapter 2306 or a rule adopted under that chapter, may be subject to:

(1) Assessment of administrative penalties in accordance with the Department's rules regarding the assessment of such penalties. Each day the violation continues or occurs is a separate violation for purposes of imposing a penalty; and/or

(2) in the case of the competitive Low Income Housing Tax Credit Program, a point reduction of up to ten (10) points for any Application involving that Applicant over the next two Application Rounds succeeding the date on which the Department first gives written notice of any such failure to adhere to obligations or false or misleading representations. Point reductions under this section may be appealed to the Board.

§10.904. Alternative Dispute Resolution (ADR) Policy. In accordance with Tex. Gov't Code, §2306.082, it is the Department's policy to encourage the use of appropriate ADR procedures under the Governmental Dispute Resolution Act, Tex. Gov't Code, Chapter 2010, to assist in resolving disputes under the Department's jurisdiction. As described in Civil Practices and Remedies Code, Chapter 154, ADR procedures include mediation. Except as prohibited by law and the Department's Ex Parte Communications policy, the Department encourages informal communications between Department staff and Applicants, and other interested persons, to exchange information and informally resolve disputes. The Department also has administrative appeals processes to fairly and expeditiously resolve disputes. If at any time an Applicant or other person would like to engage the Department in an ADR procedure, the person may send a proposal to the Department's Dispute Resolution Coordinator. For additional information on the Department's ADR Policy, see the Department's General Administrative Rule on ADR at §1.17 of this title. Any Applicant may request an informal conference with staff to attempt to resolve any appealable matter, and the Executive Director may toll the running of periods for appeal to accommodate such meetings. In the event a successful resolution cannot be reached, the statements made in the meeting process may not be used by the Department as admissions.