

**SUPPLEMENTAL BOARD BOOK
OF
September 3, 2020**



**Leslie Bingham, Vice-Chair
Paul Braden, Member
Sharon Thomason, Member
Leo Vasquez III, Member**

Texas Department of Housing and Community Affairs

PROGRAMMATIC IMPACT

Fiscal Year 2019 (September 1, 2018, through August 31, 2019)

Owner Financing and Down Payment	
<ul style="list-style-type: none"> 30-year, fixed interest rate mortgage loans Mortgage credit certificates Down payment, closing cost assistance Homebuyer education 	
Programs:	
<ul style="list-style-type: none"> Homebuyer Assistance Program (HBA)* Single Family Homeownership 	
Expended Funds:	\$1,693,834,604
Total Households Served:	9,605

Energy Related Assistance	
<ul style="list-style-type: none"> Utility bill payment assistance Energy consumption education Weatherization for energy efficiency 	
Programs:	
<ul style="list-style-type: none"> Comprehensive Energy Assistance Program (CEAP) Weatherization Assistance Program (WAP) 	
Expended Funds:	\$147,270,662
Total Households Served:	162,668

Multifamily New Construction	
<ul style="list-style-type: none"> Affordable rental units financed and developed 	
Programs:	
<ul style="list-style-type: none"> 9% Housing Tax Credits (HTC) 4% Housing Tax Credits (HTC) Multifamily Bonds Multifamily Direct Loan Program* 	
Expended Funds:	\$108,945,178
Total Households Served:	7,062

Homelessness Services	
<ul style="list-style-type: none"> Shelter building rehabilitation, conversion, operations Essential services e.g., health services, transportation, job training, employment services 	
Programs:	
<ul style="list-style-type: none"> Emergency Solutions Grant Program (ESG) Homeless Housing and Services Program (HHSP) 	
Expended Funds:	\$12,162,959
Total Individuals Served:	71,350

Multifamily Rehab Construction	
<ul style="list-style-type: none"> Affordable rental units financed and rehabilitated 	
Programs:	
<ul style="list-style-type: none"> 9% Housing Tax Credits (HTC) 4% Housing Tax Credits (HTC) Multifamily Bonds 	
Expended Funds:	\$56,792,063
Total Households Served:	2,503

Supportive Services	
Provides administrative support for essential services for low income individuals through Community Action Agencies	
Program:	
<ul style="list-style-type: none"> Community Services Block Grant Program (CSBG) 	
Expended Funds:	\$31,103,729
Total Individuals Served:	561,906

Owner Rehabilitation Assistance	
<ul style="list-style-type: none"> Home rehabilitation, reconstruction Manufactured housing unit replacement Accessibility modifications e.g., ramp, grab bar installation 	
Programs:	
<ul style="list-style-type: none"> Homeowner Rehabilitation Assistance Program (HRA)* Amy Young Barrier Removal Program 	
Expended Funds:	\$11,384,025
Total Households Served:	251

Rental Assistance	
<ul style="list-style-type: none"> Short, long term rent payment help Assistance linked with services Transitional assistance Security, utility deposits 	
Programs:	
<ul style="list-style-type: none"> Tenant-Based Rental Assistance (TBRA)* Section 8 Housing Choice Vouchers Section 811 	
Expended Funds:	\$11,021,909
Total Households Served:	1,932

Single Family Development	
<ul style="list-style-type: none"> Single family development, reconstruction, rehabilitation Do-it-yourself, "sweat equity" construction, rehabilitation Contract for Deed refinance 	
Programs:	
<ul style="list-style-type: none"> Single Family Development Program (SFD)* Contract for Deed (CFD) 	
Expended Funds:	\$3,769,888
Total Households Served:	85

Total Expended Funds:	\$2,076,285,016
Total Households Served:	817,362
All FY2019 data as reported in TDHCA's 2020 State Low Income Housing Plan and Annual Report (SLIHP).	
Note: Some households may have been served by more than one TDHCA program.	

* Administered through the federally funded HOME Investment Partnerships Program

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
GOVERNING BOARD MEETING

A G E N D A
9:00 AM
September 3, 2020

Meeting Location: In light of the March 13, 2020, disaster declaration by the Office of the Governor, and the subsequent waivers of portions of Tex. Gov't Code, Ch. 551*, this meeting of the TDHCA Governing Board will be accessible to the public via the telephone and web link information, below. In order to engage in two-way communication during the meeting, persons must first register (at no cost) to attend the webinar via the link provided. Anyone who calls into the meeting without registering online will not be able to ask questions or provide comments, but the meeting will still be audible. A recording of the meeting will be made available to the public as soon as possible following the meeting.

Governing Board Webinar registration:

<https://attendee.gotowebinar.com/register/1312464349205216780>

Dial-in number: +1 (631) 992-3221, access code 591-553-382 (persons who use the dial-in number and access code without registering online will only be able to hear the Board meeting and will not be able to ask questions or provide comments). Note, this meeting will be proceeding as a videoconference under Tex. Gov't Code §551.127, as modified by waiver.

If the GoToWebinar terminates prior to adjournment of the meeting (i.e. if the webinar session "crashes") the meeting will be recessed. A new link to the meeting will be posted immediately on the TDHCA Board meetings web page (<https://www.tdhca.state.tx.us/board/meetings.htm>) along with the time the meeting will resume. The time indicated to resume the meeting will be within six hours of the interruption of the webinar. Please note that in this contingency, the original meeting link will no longer function, and only the new link (posted on the TDHCA Board meetings web page) will work to return to the meeting.

CALL TO ORDER

ROLL CALL

Leslie Bingham, Vice Chair

CERTIFICATION OF QUORUM

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

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

Resolution designating October as National Energy Awareness Month

CONSENT AGENDA

* The list of Open Meeting laws subject to temporary suspension effective March 16, 2020, is available at: <https://www.texasattorneygeneral.gov/sites/default/files/images/admin/2020/Press/Open%20Meeting%20Laws%20Subject%20to%20Temporary%20Suspension.pdf>

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

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

EXECUTIVE

- a) Presentation, discussion, and possible action on Board meeting minutes summaries for May 21, 2020; June 25, 2020; and July 14,2020

Beau Eccles
General Counsel

ASSET MANAGEMENT

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

Rosalio Banuelos
Director of Asset
Management

14427	Kennedy Brothers Communities	El Paso
17028/19702	The Vineyard on Lancaster	Fort Worth
18069	Palladium Farmersville	Farmersville
19214	Lakeridge Villas	Ennis
19410	Eisenhower II	El Paso

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

97167	Columbia Luxar Townhomes	Dallas
05097	Cathy's Pointe	Amarillo
05099	Madison Pointe	Cotulla

- d) Presentation, discussion, and possible action regarding a Material Amendment to the Housing Trust Fund Affordable Housing Match Program Application and Land Use Restriction Agreement

1001336	Temenos Place Apartments II	Houston
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MULTIFAMILY FINANCE

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

Teresa Morales
Director of
Multifamily Bonds

20466	Blue Water Gardens	Hereford
20415	Avenue on 34 th	Houston
20473	Agave East	Austin ETJ
20454	South Terrace	Waco
20475	Northview	San Antonio
20411	Kitty Hawk	San Antonio ETJ
20478	Vera at Odessa	Odessa
20483	Shady Oaks	Fort Worth

- f) Presentation, discussion, and possible action on a waiver of 10 TAC §13.3(d)(2)(A) (#20501 Samano, Brownsville)
- g) Presentation, discussion, and possible action on the Sixth Amendment to the 2020-1 Multifamily Direct Loan Notice of Funding Availability

Andrew Sinnott
Multifamily Loan Programs
Administrator

COMMUNITY AFFAIRS

h) Presentation, discussion, and possible action on the Section 8 Program 5-Year and 2021 Annual Public Housing Agency (PHA) Plan for the Housing Choice Voucher Program.

Michael De Young
Director of
Community Affairs

i) Presentation, Discussion and Possible Action on Extensions to the Release of Coronavirus Aid, Relief, and Economic Security Act Community Services Block Grant Funds and Low Income Home Energy Assistance Program Funds Held in Emergency Reserve and Authorization to Award Such Funds

BOND FINANCE

j) Presentation, discussion, and possible action on Inducement Resolution No. 21-001 for Multifamily Housing Revenue Bonds Regarding Authorization for Filing Applications for Private Activity Bond Authority

Teresa Morales
Director of
Multifamily Bonds

20626	Palladium Mountain Creek Apartments	Dallas
20627	Palladium Simpson Stuart Apartments	Dallas
20628	Mayhill Road Apartments	Denton
20629	Residences at Merritt Hill Apartments	Rowlett

SINGLE FAMILY & HOMELESS PROGRAMS

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

Abigail Versyp
Director of Single Family &
Homeless Programs

RULES

l) Presentation, Discussion and Possible Action on the statutory four-year rule review and proposed re adoption of 10 TAC Chapter 1, Subchapter D, Uniform Guidance for Recipients of Federal and State Funds, §1.406 Fidelity Bond Requirement, §1.407 Inventory Report, and §1.408 Travel; and directing their publication for public comment in the Texas Register

Brooke Boston
Deputy Director
of Programs

m) Presentation, discussion, and possible action on an order proposing the repeal, and proposed new rule, for 10 TAC Chapter 1, Subchapter D, Uniform Guidance for Recipients of Federal and State Funds, §1.401 Definitions, §1.402 Cost Principles and Administrative Requirements, §1.403 Single Audit Requirements, §1.404 Purchase and Procurement Standards, §1.405 Bonding Requirements, §1.409 Records Retention, §1.410 Determination of Alien Status for Program Beneficiaries; an order and directing their publication for public comment in the Texas Register

n) Presentation, discussion, and possible action on order proposing the repeal of 10 TAC Chapter 23, Single Family HOME Program, and orders proposing new 10 TAC Chapter 23, Single Family HOME Program Rules, and directing their publication for public comment in the Texas Register

Abigail Versyp
Director of Single Family &
Homeless Programs

o) Presentation, discussion, and possible action on an order proposing the repeal of 10 TAC Chapter 12, concerning the Multifamily Housing Revenue Bond Rules, and an order proposing new 10 TAC Chapter 12 concerning the Multifamily Housing Revenue Bond Rules, and directing their publication for public comment in the Texas Register

Teresa Morales
Director of
Multifamily Bonds

CONSENT AGENDA REPORT ITEMS

ITEM 2: THE BOARD ACCEPTS THE FOLLOWING REPORTS:

a) Outreach and Activities Report (July-September)

Michael Lyttle
Director of
External Affairs

b) Report on Activities Related to the Department's Response to COVID-19 Pandemic

Brooke Boston
Deputy Director
of Programs

- c) Report to the Board on 811 PRA Program award
- d) Housing Finance Activity Report
- e) Report on the closing of the Department's 2020 Series A Single Family Mortgage Revenue Bonds and 2020 Series B Single Family Mortgage Revenue Refunding Bonds (Taxable)

Cathy Gutierrez
Director of Texas Homeownership
Monica Galuski
Director of Bond Finance

ACTION ITEMS

ITEM 3: INTERNAL AUDIT

- a) Report on the meeting of the Internal Audit and Finance Committee

Sharon Thomason
Chair of Audit and Finance Committee

ITEM 4: HOUSING RESOURCE CENTER

- a) Presentation, discussion and possible action of a substantial amendment to the 2019 State of Texas Consolidated Plan: One-Year Action Plan and approval of programming for ESG CARES II and CDBG CARES funding

Elizabeth Yevich
Director of Housing Resource Center

ITEM 5: RULES

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

Andrew Sinnott
Multifamily Loan Programs Administrator

ITEM 6: ASSET MANAGEMENT

- a) Report on six-month extension to the placed-in-service deadline for 2018 9% Housing Tax Credit developments

Rosalio Banuelos
Director of Asset Management

ITEM 7: BOND FINANCE

- a) Presentation, discussion, and possible action regarding the Issuance of Multifamily Housing Revenue Bonds (Fish Pond at Corpus Christi) Resolution No. 21-002, a Determination Notice of Housing Tax Credits and an Award of Direct Loan Funds

Teresa Morales
Director of Multifamily Bonds

ITEM 8: MULTIFAMILY FINANCE

- a) Presentation, Discussion and Possible Action regarding a waiver of §10.402(b) relating to Determination Notices for Gala at Central Park (#20406)
- b) Presentation, discussion, and possible action on the proposed repeal of 10 TAC Chapter 11 concerning the Housing Tax Credit Program Qualified Allocation Plan, and a proposed new 10 TAC Chapter 11 concerning the Housing Tax Credit Program Qualified Allocation Plan and directing its publication for public comment in the Texas Register
- c) Presentation, discussion, and possible action on timely filed scoring appeals under the Department's Multifamily Program Rules for Application 20116 Dian Street Villas, Houston

Teresa Morales
Director of Multifamily Bonds
Marni Holloway
Director of Multifamily 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):

Leslie Bingham
Vice Chair

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

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

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

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

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

OPEN SESSION

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

ADJOURN

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

Individuals who require auxiliary aids, services or sign language interpreters for this meeting should contact Nancy Dennis, at 512-475-3959 or Relay Texas at 1-800-735-2989, at least five days before the meeting so that appropriate arrangements can be made. Non-English speaking individuals who require interpreters for this meeting should contact Elena Peinado, 512-475-3814, at least five days before the meeting so that appropriate arrangements can be made.

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

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BOARD ACTION REQUEST
COMMUNITY AFFAIRS DIVISION
SEPTEMBER 3, 2020

Presentation, Discussion and Possible Action on Extensions to the Release of Coronavirus Aid, Relief, and Economic Security Act Community Services Block Grant Funds and Low Income Home Energy Assistance Program Funds Held in Emergency Reserve and Authorization to Award Such Funds

RECOMMENDED ACTION

WHEREAS, on March 27, 2020, the President of the United States signed the Coronavirus Aid, Relief, and Economic Security (CARES) Act into law which provides relief for individuals and businesses negatively impacted by COVID-19;

WHEREAS, Title VIII and Title IX of the CARES Act provide supplemental formula funding to states to carry out activities of the Community Services Block Grant (CSBG) and Low Income Home Energy Assistance Program (LIHEAP) to prevent, prepare for, and respond to COVID-19;

WHEREAS, the Texas Department of Housing and Community Affairs (the Department) is designated the recipient of the CARES Act CSBG and LIHEAP funding for the State of Texas and received \$48.1 million in CSBG CARES funding and \$94 million in LIHEAP CARES funding from the U.S. Department of Health and Human Services (USHHS) which must be expended by September 30, 2022, and September 30, 2021, respectively;

WHEREAS, at the Board Meeting of April 23, 2020, the Board awarded the majority of these funds to subrecipients, but approved that 7% of the CSBG CARES funding and 9% of the LIHEAP CARES funding be held in reserve until August 31, 2020, for any future allowable use or incentive awards;

WHEREAS, in the case of LIHEAP CARES funding, staff had anticipated awarding these funds to those subrecipients who were most effectively expending their contract funds, but expenditures have not yet reached a level to clearly identify which subrecipients will best be able to utilize these funds, and staff is recommended that the timeframe in which to award the LIHEAP reserved funds be extended;

WHEREAS, in the case of CSBG CARES funding, the 7% of funds that was held in reserve, is now being recommended to be used to develop an eviction diversion pilot program in collaboration with one or more court systems in the state of Texas, however if such a pilot program is not able to be successfully instituted, the 7% of funds will be distributed to those entities most efficiently and promptly using their CSBG CARES program funds;

WHEREAS, in the case of CARES LIHEAP and in the event that CSBG CARES is not used for an eviction diversion pilot program, staff also recommends that the Executive Director be authorized to make the award decisions on these funds within the pool of already awarded subrecipients based on their expenditure rates and their ability to efficiently utilize the funds; and

WHEREAS, because of the different federal expenditure deadlines on these funds, staff is recommending that the date to allocate the LIHEAP CARES reserve funds be extended from August 31, 2020, to November 30, 2020, and that the date to allocate the CSBG CARES reserve funds, if not programmed for an eviction diversion pilot program, be extended from August 31, 2020, to January 31, 2021;

NOW, therefore, it is hereby

RESOLVED, that the use of the 7% of CSBG CARES funds, approximately \$3.3 million, for an eviction diversion pilot program is hereby approved;

FURTHER RESOLVED, that the deadline by which to make awards of the LIHEAP CARES reserve funds is hereby extended through November 30, 2020, and the deadline by which to make awards of the CSBG CARES reserves funds, if not programmed for an eviction diversion pilot program, is hereby extended to January 31, 2021; and

FURTHER RESOLVED, that the Executive Director and his designees each of them be and they hereby are, authorized, empowered, and directed, for and on behalf of this Board, to make awards of these funds to only those CSBG and LIHEAP subrecipients, that have up to that date expended the highest proportional amounts of their CARES Act allocations as determined by and at the discretion of the Executive Director or designee, and issue contracts for these funds, only upon confirmation of previous participation review by the Compliance Division and subject to a positive recommendation from EARAC and subject to any EARAC conditions, consistent with the policy noted herein.

BACKGROUND

President Trump signed the CARES Act into law on March 27, 2020, which ultimately provided Texas with \$48.1 million in CSBG CARES funding and \$94 million in LIHEAP CARES funding from USHHS which must be expended by September 30, 2022, and September 30, 2021, respectively for the relief of low-income individuals economically impacted by COVID-19.

On April 23, 2020, the Board approved that 7% of the CSBG CARES discretionary funding and 9% of the LIHEAP CARES funding be held in an reserve until August 31, 2020, for any future allowable emergency use (e.g., COVID-19 hot spots). If the reserves remained unobligated through August 31, 2020, the funds would be redistributed proportionally to those subrecipients which have expended the CARES Act funds at the highest rate as of August 31, 2020.

As it relates to the CSBG funds, the looming eviction crisis in Texas is of critical concern for those in poverty. Staff is therefore recommending that the 7% of CARES CSBG funds that was held in reserve,

which totals approximately \$3.3 million, be used to develop an eviction diversion pilot program in collaboration with one or more court systems in the state of Texas. On a larger scale, the eviction diversion pilot program is intended to keep Texans in their homes who have fallen behind on their rent because of the impact of COVID-19 and whose landlords have initiated eviction proceedings. Rental assistance will be in the form of lump sum payments to landlords in exchange for allowing tenants to remain in their homes, forgiving late fees and possibly some portion of the amount due. Such a diversion program has been developed in Michigan and this pilot will allow the Department to pilot this concept in Texas and assess whether it can be successfully operated. With the pilot funds, tenants assisted will be those not exceeding the CSBG CARES poverty limits. If this pilot program is not able to be successfully instituted, the 7% of funds will be distributed to those entities most efficiently and promptly using their CSBG CARES program funds.

For LIHEAP because subrecipients have not reached expenditure levels on their original allocation of CARES Act funding to make such a determination yet Department staff believes it is not prudent to commit these funds at this time. Additionally no specific COVID "hot spots" have been identified that are not already receiving funds. Because the CSBG CARES discretionary funds have a longer period for federal expenditure, it is recommended that these deadlines be different for each program. Staff therefore recommends an extension for the commitment of the LIHEAP CARES reserve funds to November 30, 2020, and an extension for the commitment of the CSBG CARES reserves funds, if not successfully used for the eviction diversion pilot program, to January 31, 2021.

It is also recommended that the Executive Director have the authority to make award of these funds by such dates if used only for additional funds for previously awarded contract uses. These awards would be distributed proportionally to only subrecipients which have expended the CARES Act funds at the highest rate as of October 31, 2020, for LIHEAP CARES, and as of December 31, 2020, for CSBG CARES, with a positive recommendation from EARAC and subject to any EARAC conditions.

Approving this action will provide flexibility for the Department by allowing additional time to decide which subrecipients are best able to efficiently expend these funds to assist COVID-affected Texans.

The award of the additional LIHEAP funds when made, will be executed as amendments to the existing CARES contracts. For LIHEAP this allows that the previous participation review will be limited to ensuring no federal or state debarment exists, no outstanding balances exist, and that single audit filing requirements are current.

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Attached letter is a supplemental document to the BAR and materials
already posted for the item on 8/27/2020



**800 North Point Parkway
Suite 125
Alpharetta, Georgia 30005**
770-552-8070 telephone
770-552-8748 facsimile

August 28th, 2020

Ms. Teresa Morales
Director of Multifamily Bonds
Texas Department of Housing & Community Affairs
221 E. 11th Street
Austin, Texas 78701

RE: City of Rowlett Letter Dated August 26, 2020 Opposing NuRock's Bond Transaction

Dear Ms. Morales:

We are in receipt of Ms. Munal Mauladad's letter dated August 26, 2020 expressing the City of Rowlett's opposition to the Residences at Merritt Hill and apparent opposition to our bond inducement through the Texas Department of Housing & Community Affairs ("TDHCA"). We write to correct certain factual inaccuracies in Ms. Mauladad's letter.

As a preliminary matter, while the original financing structure for the Residences at Merritt Hill included an inducement by the Rowlett Housing Finance Corporation ("HFC") and a partnership with the HFC, which by the virtue of their not-for-profit status, would have allowed for full tax abatement, if the HFC were part of the partnership, the current financing structure does not include the HFC or any related tax abatement. As such, the alleged concerns raised in Ms. Mauladad's letter are both misplaced and inapplicable. Because the HFC is involved, each of the bases upon which the City states it is opposed to the Residences at Merritt Hill simply do not apply.

Further, Ms. Mauladad's letter claims that "...it became clear that the developer had no intentions of working with the City..." as it related to the negotiation of a PILOT agreement. This is incorrect. To the contrary, despite the fact that the HFC's April 15, 2020 Board of Director Minutes stated, "The Residences at Merritt Hill now has full approval from the City to move forward,"¹ Ms. Mauladad was personally involved in our attempt to negotiate with the City over a PILOT as late as June of this year. Exhibit "A" to this letter is a June 3rd email from the HFC's Executive Director, Mr. Rick Sheffield. He addressed this email to Ms. Mauladad specifically, requesting how our group can meet with the City (predominantly Ms. Mauladad, since she was the contact representative for the City at that point) to see how we can put a PILOT agreement together. Mr.

¹ See Board of Directors' Meeting Minutes, ROWLETT HOUSING FINANCE CORPORATION, (April 15, 2020), <https://rowlethfc.org/meeting-minutes/Approved%20Minutes%204.15.20.pdf?dl=0>.

Sheffield requested guidance on how to structure the PILOT to take into account the additional amenities/infrastructure that the developer was providing. Ms. Mauladad responded the same day, stating that she was happy to discuss the PILOT and that she had Thursday morning, June 11th, available. Mr. Sheffield responded by asking whether 11:00 am on Thursday, June 11th was workable for Ms. Mauladad, and Ms. Mauladad responded by sending out a ZOOM invite for June 11th.

The meeting took place on June 11, 2020 at 11:30am with Mr. Sheffield of the HFC, Mr. Lacey of The NuRock Companies, Carlos Monsalve of Rowlett City and Planning, and Ms. Mauladad. As Ms. Mauladad may recall, the subject matter centered on creating a PILOT agreement acceptable to the City. After discussing details of the project that directly benefited the city, i.e. 3 roads constructed to be conveyed to the City at no cost to the City, Ms. Mauladad stated that she would meet with the City Manager, Brian Funderburk, and get his feedback as to what would be acceptable. Ms. Mauladad further confirmed that she would meet with Mr. Funderburk within the next week and get back to the group on the results of that meeting and to let us know how to proceed.

After the June 11th video meeting, Ms. Mauladad inexplicably failed to return numerous phone calls or emails from either Mr. Sheffield or Mr. Lacey, which had the unfortunate effect of essentially shutting us down for any follow up meeting with the City to negotiate and resolve the outstanding PILOT topic.

During the last week of June 2020, literally one day prior to a Special City Council meeting, we learned that the Mayor placed on this city council agenda a topic to “discuss” our transaction. Although Ms. Mauladad spoke during that city council meeting, she failed to inform the City that we had contacted her in June to attempt to resolve the PILOT issues and that she held a ZOOM meeting with us on June 11th to discuss the PILOT.

In July 2020, in order to close the bonds, the mayor had a ministerial duty to execute the TEFRA but refused to do so. As is our right and in an attempt to save our development, we requested a hearing to address a temporary restraining order. Unfortunately for all parties, that hearing was scheduled on the same day that we needed the TEFRA executed, and the presiding Judge had only minutes to decide the issue.

We are surprised that the City appears to have ignored our good faith efforts to work with the City and our requests for a method and path to negotiate and finalize a PILOT agreement and, instead, opposes the Residences at Merritt Hill because we were forced to exercise our rights under both the U.S. and Texas Constitutions.

Ms. Mauladad’s letter appears to oppose the new financial structure of the development because the City believes that the “tax-exempt status would shift the financial burden of the provision of services to other taxpayers in the absence of a PILOT agreement. Ms. Mauladad’s letter further states that the HFC is no longer considering a partnership with us. It is unclear what, exactly, the City now opposes, and it appears that the City’s opposition is based upon several fundamental misunderstandings:

1. This new bond allocation is being issued by TDHCA, not the HFC. We are not requesting any form of property tax abatement from any governing body, much less the City of Rowlett. The City is going to receive every penny of the taxes it may legally be due because of this structure. Any PILOT agreement would be irrelevant because there is nothing to pay in lieu of taxes.
2. Because there is no tax abatement being considered as part of the current financing structure, we did not invite the HFC to be part of the revised structure and the application for bonds sent to TDHCA does not include the HFC to be a partner going forward. Simply, the HFC is not relevant to the current financing structure.

In summary, all ad valorem taxes that are legally owed are to be paid to the City, with no abatement being requested, and NuRock did not invite the HFC to participate.

The City's purported bases for its opposition to the Residences at Merritt Hill are misplaced. Any issue of a PILOT agreement is irrelevant because all ad valorem taxes that are legally owed are to be paid in full. The HFC's desire or lack thereof to be a partner in the new financial structure is similarly irrelevant, as the HFC was not invited to participate.

As set forth above, the closing statement in Ms. Mauladad's letter that, "...the City of Rowlett is opposed to this request as the City would be obligated to provide a range of services at no cost and the developer has repeatedly resisted negotiating a PILOT agreement..." is entirely incorrect. All ad valorem taxes that are legally owed are to be paid in full. As such, the City will not be obligated to provide services at no cost.

With the benefit of the factual corrections set forth in this letter and in light of the City's statement that it "welcomes affordable housing projects," we trust that the City will withdraw its letter of opposition and replace it with a letter of non-opposition to the Residences at Merritt Hill. I look forward to receiving such correspondence.

Thank you for your attention to this matter and the opportunity to correct the record. Please do not hesitate to contact me if you have any questions or concerns.

NuRock Development Group, Inc.



By: Robert Hoskins, its President

cc: Munal Mauladad, Director of Community Development
Mayor Tammy Dana-Bashian
William Stark, Greenberg Traurig

EXHIBIT “A”

Rowlett Housing Finance Corporation

Board of Directors' Meeting Minutes: April 15, 2020, 9:00 a.m.

Video Conference

Board Members:

Present by Zoom Conference: President Barbara Holst, Dan Pence, Bruce Hargrave, Karl Crawley, Rikki Harper (joined during the meeting), and Rick Sheffield, Past President and Executive Director,

Absent: None

Quorum present? Yes

Others Present: Tim Nelson, Hilltop Securities; Ryan Bowen, Chapman Cutler

1. Call to order.

The meeting was called to order at 9:04 a.m. by President Barbara Holst.

2. Consider action to approve the March 25, 2020 meeting minutes.

Barbara Holst noted that the minutes did not reflect that Rikki Harper was on the conference call. Dan Pence made a motion to approve the meeting minutes as amended, seconded by Bruce Hargrave. The motion passed unanimously.

3. Hear presentation on March 2020 financials.

Staff presented the Monthly Reporting of Accounts for March 2020.

4. Discuss and consider action regarding financial donations to city-focused service organizations responding to the COVID-19 pandemic.

The Board discussed the various service organizations and weighed their merits against one another. Several examples were given of the work performed and the people served by each service group.

Karl Crawley made a motion to distribute \$2,500 each to Life Message, Senior Citizens of Rowlett (SCOR), and Operation Community Outreach (OCO). The motion was seconded by Bruce Hargrave and passed unanimously.

5. New/Other Business

Staff presented the Board with the information that Governor Abbott has officially waived the requirement for a Resolution of No Objection during this disaster declaration. **The Residences at Merritt Hill now has full approval from the City to move forward.**

Tim Nelson asked for assistance in bringing NuRock to the table to discuss outstanding issues, including debt and equity partners, TEFRA hearing, appraisal district tax exempt determination, among others. Staff will reach out to NuRock to get the discussions started.

Tim also updated the Board that they have had discussions with Bonner Carrington for their development. They will be going for the August 15th fallout to apply for bonds for the project.

Bruce Hargrave inquired about the sales price for the Fulton Building, suggesting that the HFC consider purchasing the property. Staff will get all of the sales information for the building and distribute to the Board.

6. Adjourn

The meeting adjourned at 9:49 a.m.

DocuSigned by:

Barbara Holst

Barbara Holst, President

DocuSigned by:

Rick Sheffield

Rick Sheffield, Secretary

Date approved: 5/20/2020

Robert Hoskins

From: Gary Lacey
Sent: Friday, August 28, 2020 12:59 PM
To: Robert Hoskins; Robby Block
Subject: FW: Residences at Merritt Hill - PILOT Agreement
Attachments: NuRock PILOT - Zoom Invite from Munal.ics

Regarding the email trail below and the attached invite from Munal for a Zoom meeting, the invite was accepted and attended by Rick Sheffield, Carlos Monsalve of City of Planning and Munal Mauladad.

The meeting took place on June 11, 2020 at 11:30am with all of the above mentioned attending. The subject matter centered on creating a PILOT agreement acceptable to the City of Rowlett. After discussing details of the project that directly benefited the city, ie 3 roads constructed to be conveyed over to the city at no costs, Munal said she would meet with the City Manager, Brian Funderburk, and get his feedback as to what would be acceptable. She confirmed she would meet with him within the next week and get back to us with information from the meeting to let us know how to proceed. Munal did not get back with us nor return phone calls or Rick's emails from that point on.

Gary Lacey
The Nurock Companies
4113 Main St, Suite 205
Rowlett, Tx 75088
972-815-5500

From: Gary Lacey
Sent: Friday, August 28, 2020 9:00 AM
To: Robert Hoskins <rhoskins@nurock.com>; Robby Block <rblock@nurock.com>
Subject: FW: Residences at Merritt Hill - PILOT Agreement

See email trail below.....

Gary Lacey
The NuRock Companies
4113 Main St, Suite 205
Rowlett, Tx 75088
Mobile: 972.815.5500

From: Rick Sheffield [<mailto:rsheffield@rowletthfc.org>]
Sent: Thursday, June 4, 2020 12:49 PM
To: Munal Mauladad <mmauladad@rowlett.com>
Cc: Gary Lacey <GLacey@nurock.com>; Carlos Monsalve <CMonsalve@rowlett.com>
Subject: Re: Residences at Merritt Hill - PILOT Agreement

Is Thursday at 11:00 a.m. acceptable? Otherwise, Gary will have to cover alone on our end if you need to set it up earlier in the day.

Robert Hoskins

Subject: FW: Residences at Merritt Hill - PILOT Agreement

From: Gary Lacey

Sent: Friday, August 28, 2020 10:00 AM

To: Robert Hoskins <rhoskins@nurock.com>; Robby Block <rblock@nurock.com>

Subject: FW: Residences at Merritt Hill - PILOT Agreement

See email trail below.....

Gary Lacey

The NuRock Companies

4113 Main St, Suite 205

Rowlett, Tx 75088

Mobile: 972.815.5500

From: Rick Sheffield [<mailto:rsheffield@rowletthfc.org>]

Sent: Thursday, June 4, 2020 12:49 PM

To: Munal Mauladad <mmauladad@rowlett.com>

Cc: Gary Lacey <GLacey@nurock.com>; Carlos Monsalve <CMonsalve@rowlett.com>

Subject: Re: Residences at Merritt Hill - PILOT Agreement

Is Thursday at 11:00 a.m. acceptable? Otherwise, Gary will have to cover alone on our end if you need to set it up earlier in the day.

Rick Sheffield

Executive Director

Rowlett Housing Finance Corporation

4113 Main St.

Suite 105

Rowlett, TX 75088

469-431-0108 Office

214-773-1061 Cell

rsheffield@rowletthfc.org



Rowlett

Housing Finance Corporation

[Providing the opportunity for safe, affordable housing as a foundation for a meaningful life.](#)

From: Munal Mauladad <mmauladad@rowlett.com>
Sent: Wednesday, June 3, 2020 12:28 PM
To: Rick Sheffield <rsheffield@rowletthfc.org>
Cc: Gary Lacey <GLacey@nurock.com>; Carlos Monsalve <CMonsalve@rowlett.com>
Subject: RE: Residences at Merritt Hill - PILOT Agreement

Rick,
Happy to discuss the PILOT. Unfortunately, my calendar can't accommodate your schedule. I have Thursday morning open at the moment.
Regards



Munal Mauladad | Director of Community Development
City of Rowlett | 5702 Rowlett Road | Rowlett, TX 75089
o 972.412.6187 | f 972.412.6228 | mmauladad@rowlett.com
Visit our Citizen Action Center at www.rowlett.com for questions or requests.

OUR PURPOSE IS TO SERVE!

From: Rick Sheffield <rsheffield@rowletthfc.org>
Sent: Wednesday, June 3, 2020 11:14 AM
To: Munal Mauladad <mmauladad@rowlett.com>
Cc: Gary Lacey <GLacey@nurock.com>
Subject: Residences at Merritt Hill - PILOT Agreement

CAUTION: External Email

Munal,

Gary and I would like to get some of your and/or your team's time early next week to discuss how we put the PILOT agreement together. As you know, the scope of what was initially proposed by NuRock is vastly different from the product they now intend to build. We need to talk about how to structure the PILOT to take into account the additional amenities/infrastructure being provided versus the City's need to recover costs to service the development going forward.

I currently have Monday, Tuesday (until 2:00pm) and Wednesday morning (until 11:00am) available.

Thanks,

Rick Sheffield
Executive Director

Rowlett Housing Finance Corporation
4113 Main St.
Suite 105

Rowlett, TX 75088
469-431-0108 Office
214-773-1061 Cell
rsheffield@rowletthfc.org



[Providing the opportunity for safe, affordable housing as a foundation for a meaningful life.](#)

Robert Hoskins

From:
Sent:
To:
Subject:

See my meeting invite acceptance below

Gary Lacey
The NuRock Companies
4113 Main St, Suite 205
Rowlett, Tx 75088
Mobile: 972.815.5500

-----Original Appointment-----

From: Gary Lacey
Sent: Thursday, June 4, 2020 1:58 PM
To: Munal Mauladad
Subject: Accepted: NuRock PILOT
When: Thursday, June 11, 2020 11:30 AM-12:00 PM (UTC-06:00) Central Time (US & Canada).
Where: Virtual

4a

PULLED FROM THE AGENDA

5a

BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION
SEPTEMBER 3, 2020

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

RECOMMENDED ACTION

WHEREAS, the Texas Department of Housing and Community Affairs (the Department) is authorized to administer Direct Loan Program Funds pursuant to Tex. Gov't Code Ch. 2306, Subchapter I, Housing Finance Division;

WHEREAS, the Department plans to administer the fund sources used in making these awards of loans and grants in a specific manner that necessitates this Multifamily Direct Loan Rule;

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, such proposed rulemaking will be published for public comment in compliance with the State Administrative Procedures Act in the *Texas Register* from September 18, 2020, through October 9, 2020, and subsequently returned to the Board for final adoption; and

WHEREAS public comment, in accordance with the Citizen Participation Plan requirements in 24 CFR §91.105, will be accepted between September 8, 2020, and October 9, 2020;

NOW, therefore, it is hereby

RESOLVED, that the proposed repeal of 10 TAC Chapter 13, and a proposed new 10 TAC Chapter 13, Multifamily Direct Loan Rule, together with the preambles presented to this meeting, are hereby approved for publication in the *Texas Register* for public comment; and

FURTHER RESOLVED, that the Executive Director and his designees be and each of them are hereby authorized, empowered, and directed, for and on behalf of the Department, to cause the proposed repeal and replacement Multifamily Direct Loan Rules, together with the changes, if any, made at this meeting and the preambles, in the form presented to this meeting, to be published in the *Texas Register* for public comment and, in connection

therewith, make such non-substantive technical corrections, including any required revisions to the preambles, as they may deem necessary to effectuate the foregoing.

BACKGROUND

Attached to this Board Action Request is the staff draft of the 2021 Multifamily Direct Loan Rule (MFDL Rule), which reflects staff's recommendations for the Board's consideration. The attached MFDL Rule identifies the differences between the 2020 MFDL Rule and the proposed 2021 MFDL Rule in blackline format. The MFDL Rule submitted to the *Texas Register* will be a proposed new version of the 2021 MFDL Rule, and will not identify the changes between 2020 and 2021. The Department's Public Comment page will also include a blackline version of the proposed 2021 MFDL Rule as approved by the Board to facilitate stakeholders' engagement with the changes.

This rule considers staff and stakeholder input in establishing more effective means of requesting, prioritizing, vetting, and potentially awarding MFDL funding. This rule specifically targets procedurally efficient and substantively proven means of improving application and award processing, loan closing, and the disbursement process throughout the development period. It provides explanatory types and timings of permitted requests to waive, amend, or otherwise change important terms of the deal.

Proposed 10 TAC Chapter 13 potentially contains a Substantial Amendment to the state's method of distribution described in its 2020 Action Plan, subject to further discussion with HUD staff. Other proposed changes to this Chapter would be minor amendments to the Plan. The Multifamily Direct Loan Rule final adoption, and the Substantial Amendment will be brought before the Board in November for approval, and subsequently be published in the *Texas Register* for adoption and sent to HUD, as applicable.

Upon Board approval, the proposed 2021 MFDL Rule will be posted to the Department's website and published in the *Texas Register*. Public comment, in accordance with the Citizen Participation Plan requirements in 24 CFR §91.105, will be accepted between September 8, 2020, and October 9, 2020. In compliance with the State Administrative Procedures Act, public comment will be accepted upon the rule's publication in the *Texas Register* from September 18, 2020, through October 9, 2020.

Staff will consider and prepare reasoned responses to public comment as part of the final action on the MFDL Rule that will be brought before the Board on November 5, 2020, for approval, adoption, and subsequent publication in the *Texas Register*.

Attachment A: Preamble, including required analysis, for proposed repeal of 10 TAC Chapter 13, the Multifamily Direct Loan Rule

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of 10 TAC Chapter 13, Multifamily Direct Loan Rule. The purpose of the proposed repeal is to provide for clarification of the existing rule through new rulemaking action.

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

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

1. Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the proposed repeal would be in effect, the proposed repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous readoption making changes to an existing activity, administration of the Multifamily Direct Loan Program.

2. The proposed repeal does not require a change in work that would require the creation of new employee positions, nor is the proposed repeal significant enough to reduce work load to a degree that any existing employee positions are eliminated.

3. The proposed repeal does not require additional future legislative appropriations.

4. The proposed repeal does not result in an increase in fees paid to the Department nor in a decrease in fees paid to the Department.

5. The proposed repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.

6. The proposed action will repeal an existing regulation, but is associated with a simultaneous readoption making changes to an existing activity, administration of the Multifamily Direct Loan Program.

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

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

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

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

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The proposed repeal does not contemplate nor authorize a taking by the Department, therefore no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6). The Department has evaluated the proposed repeal as to its possible effects on local economies

and has determined that for the first five years the proposed repeal would be in effect there would be no economic effect on local employment; therefore no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the proposed repeal is in effect, the public benefit anticipated as a result of the repealed section would be increased clarity and improved access to the Multifamily Direct Loan funds. There will not be economic costs to individuals required to comply with the repealed section.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the proposed repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 18, 2020, to October 9, 2020, to receive input on the proposed repealed section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Andrew Sinnott, Multifamily Direct Loan Administrator, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or email htc.public-comment@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. Austin local time OCTOBER 9, 2020.

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

10 TAC Chapter 13, Multifamily Direct Loan Rule

§13.1 Purpose

§13.2 Definitions

§13.3 General Loan Requirements

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

§13.5 Application and Award Process

§13.6 Scoring Criteria

§13.7 Maximum Funding Requests

§13.8 Loan Structure and Underwriting Requirements

§13.9 Construction Standards

§13.10 Development and Unit Requirements

§13.11 Post-Award Requirements

§13.12 Pre-Closing Amendments to Direct Loan Terms

§13.13 Post-Closing Amendments to Direct Loan Terms

Attachment B: Preamble, including required analysis, for proposed new 10 TAC Chapter 13, Multifamily Direct Loan Rule

The Texas Department of Housing and Community Affairs (the Department) proposes new 10 TAC Chapter 13, Multifamily Direct Loan Rule. The purpose of the proposed new sections is to provide compliance with Tex. Gov't Code §2306.111 and to update the rule to: clarify program requirements in multiple sections, codify in rule practices of the division, and change citations to align with changes to other multifamily rules. In general, most changes proposed are corrective in nature, intended to gain consistency with state or federal rules, delete duplicative language or provisions, correct or update rule references, and clarify language or processes to more adequately communicate the language or process.

Tex. Gov't Code §2001.0045(b) does not apply to the rule proposed for action because it was determined that no costs are associated with this action, and therefore no costs warrant being offset.

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

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

Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the proposed new rule would be in effect:

1. The proposed rule does not create or eliminate a government program, but relates to the re-adoption of this rule which makes changes to an existing activity, administration of the Multifamily Direct Loan Program.
2. The proposed new rule does not require a change in work that would require the creation of new employee positions nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.
3. The proposed rule changes do not require additional future legislative appropriations.
4. The proposed rule changes will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.
5. The proposed rule is not creating a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions.
6. The proposed rule will not expand, limit, or repeal an existing regulation.
7. The proposed rule will not increase or decrease the number of individuals subject to the rule's applicability; and
8. The proposed rule will not negatively or positively affect the state's economy.

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

drafting this proposed rule, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code, §2306.111.

1. The Department has evaluated this rule and determined that none of the adverse effect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

2. This rule relates to the procedures for multifamily direct loan applications and award through various Department fund sources. Other than in the case of a small or micro-business that is an applicant for such a loan product, no small or micro-businesses are subject to the rule. It is estimated that approximately 200 small or micro-businesses are such applicants; for those entities the new rule provides for a more clear, transparent process for applying for funds and does not result in a negative impact for those small or micro-businesses. There are not likely to be any rural communities subject to the proposed rule because this rule is applicable only to direct loan applicants for development of properties, which are not generally municipalities. The fee for applying for a Multifamily Direct Loan product is \$1,000, unless the Applicant is a nonprofit that provides supportive services or the Applicant is applying for Housing Tax Credits in conjunction with Multifamily Direct Loan funds, in which case the application fee may be waived. These fee costs are not inclusive of external costs required by the basic business necessities underlying any real estate transaction, from placing earnest money on land, conducting an Environmental Site Assessment, conducting a market study, potentially retaining counsel, hiring an architect and an engineer to construct basic site designs and elevations, and paying any other related, third-party fees for securing the necessary financing to construct multifamily housing.

There are 1,296 rural communities potentially subject to the proposed rule for which the economic impact of the rule is projected to be \$0. 10 TAC Chapter 13 places no financial burdens on rural communities, as the costs associated with submitting an Application are born entirely by private parties. In an average year the volume of applications for MFDL resources that are located in rural areas is approximately fifteen. In those cases, a rural community securing a loan will experience an economic benefit, including, potentially, increased property tax revenue from a multifamily Development.

3. The Department has determined that because there are rural MFDL awardees, this program helps promote construction activities and long term tax base in rural areas of Texas. Aside from the fees and costs associated with submitting an Application, there is a probable positive economic effect on small or micro-businesses or rural communities that receive MFDL awards and successfully use those awards to construct multifamily housing, although the specific impact is not able to be quantified in advance.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The proposed rule does not contemplate or authorize a taking by the Department, therefore no Takings Impact Assessment is required.

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

The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the proposed rule may provide a possible positive economic effect on local employment in association with this rule since MFDL Developments, layered with housing tax credits, often involve a typical minimum investment of \$10 million in capital, and more commonly an investment from \$20 million to \$30 million. Such a capital investment has direct, indirect, and induced effects on the local and regional economies and local employment. However, because the exact location of where program funds or developments are directed is not determined in rule, and is driven by real estate demand, there is no way to predict during rulemaking where these positive effects may occur. Furthermore, while the Department believes that any and all impacts are positive, that impact is not able to be quantified for any given community until MFDL awards and LIHTCs are actually awarded to a proposed Development, given the unique characteristics of each proposed multifamily Development.

Texas Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." Considering that significant construction activity is associated with any MFDL Development layered with LIHTC and each apartment community significantly increases the property value of the land being developed, there are no probable negative effects of the new rule on particular geographic regions. If anything, positive effects will ensue in those communities where developers receive MFDL awards.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of the new sections will be improved clarity of program requirements in multiple sections, codification in rule practices of the division, and change citations to align with changes to other multifamily rules. There will not be any economic cost to any individuals required to comply with the new sections because this rule does not have any new requirements that would cause additional costs to applicants.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the new sections are in effect, enforcing or administering the new sections does not have any foreseeable implications related to costs or revenues of the state or local governments because it does not have any new requirements that would cause additional costs to applicants.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 18, 2020, to October 9, 2020, to receive input on the proposed new sections. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Andrew Sinnott, Multifamily Direct Loan Administrator, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or email htc.public-comment@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. Austin local time OCTOBER 9, 2020.

STATUTORY AUTHORITY. The new sections are proposed pursuant to Tex. Gov't Code §2306.053,

which authorizes the Department to adopt rules. Except as described herein the proposed new sections affect no other code, article, or statute.

Draft 2021 MULTIFAMILY DIRECT LOAN RULE

§13.1	Purpose
§13.2	Definitions
§13.3	General Loan Requirements
§13.4	Set-Asides, Regional Allocation, and NOFA Priorities
§13.5	Application and Award Process
§13.6	Scoring Criteria
§13.7	Maximum Funding Requests and Minimum Number of MFDL Units
§13.8	Loan Structure and Underwriting Requirements
§13.9	Construction Standards
§13.10	Development and Unit Requirements
§13.11	Post-Award Requirements
§13.12	Pre-Closing Amendments to Direct Loan Terms
§13.13	Post-Closing Amendments to Direct Loan Terms

§13.1. Purpose.

(a) Authority. The rules in this chapter apply to the funds provided to Multifamily Developments through the Multifamily Direct Loan Program (MFDL or Direct Loan Program) by the Texas Department of Housing and Community Affairs (the Department). Notwithstanding anything in this chapter to the contrary, loans and grants issued to finance the Development of multifamily rental housing are subject to the requirements of the laws of the State of Texas, including but not limited to Tex. Gov't Code, Chapter 2306 (sometimes referred to as the State Act), and federal law pursuant to the requirements of Title II of the Cranston-Gonzalez National Affordable Housing Act, Division B, Title III of the Housing and Economic Recovery Act (HERA) of 2008 - Emergency Assistance for the Redevelopment of Abandoned and Foreclosed Homes, Section 1497 of the Dodd-Frank Wall Street Reform and Consumer Protection Act: Additional Assistance for Neighborhood Stabilization Programs, Title I of the Housing and Economic Recovery Act of 2008, Section 1131 (Public Law 110-289), and the implementing regulations 24 CFR Part 91, Part 92, Part 93, and Part 570 as they may be applicable to a specific fund source. The Department is authorized to administer Direct Loan Program funds pursuant to Tex. Gov't Code, Chapter 2306, Subchapter I, Housing Finance Division.

(b) General. This chapter applies to an award of MFDL funds by the Department and establishes the general requirements associated with the application and award process for such funds. Applicants pursuing MFDL assistance from the Department are required to certify, among other things, that they have familiarized themselves with all applicable rules that govern that specific program including, but not limited to this chapter, Chapter 1 of this title (relating to Administration), Chapter 2 of this title (relating to Enforcement), Chapter 10 of this title (relating to Uniform Multifamily Rules), Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan (QAP)), and Chapter 12 of

this title (relating to Multifamily Housing Revenue Bond Rules) will apply if MFDL funds are layered with those other Department programs. The Applicant is also required to certify that it is familiar with [the requirements of](#) any other federal, state, or local financing sources that it identifies in its Application. Any conflict with rules, regulations, or statutes will be resolved on a case by case basis that allows for compliance with all requirements. Conflicts that cannot be resolved may result in Application ineligibility, with the right to an Appeal as provided in 10 TAC §1.7 of this title (relating to Appeals Process) or 10 TAC §11.902 of this title (relating to Appeals Process), as applicable.

(c) Waivers. Requests for waivers of any program rules or requirements must be made in accordance with 10 TAC §11.207 of this title (relating to Waiver of Rules), as limited by the rules in this chapter. In no instance will the Department consider a waiver request that would violate federal program requirements or state or federal statute, as provided in paragraphs (1) through (3) of this subsection.

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

(2) Waivers for Non-Layered Developments. For Direct Loan Developments not [contemporaneously](#) layered with Competitive Housing Tax Credits, an Applicant may request that the Department amend its NOFA, amend its Consolidated Plan or OYAP, or ask HUD to grant a waiver of its regulations. If the Applicant's request is approved by the Department's Governing Board (Board), the Application Acceptance Date will then be the date the Department completes the amendment process or receives a waiver from HUD. If this date occurs after the NOFA closes, the Applicant will be required to [apply submit a new Application](#), and the Direct Loan awardee (pre-closing) may be required to reapply, under a new or otherwise open NOFA; and

(3) Waivers under Closed NOFAs. The Board may not waive any portion of a closed NOFA prior to Construction Completion. Thereafter, the Board may only waive any portion of a closed NOFA as part of an approved Asset Management Division work out. Allowable Post-Closing Amendments are described in 10 TAC §13.13 of this title.

(d) Eligibility and Threshold Requirements. Applications for Multifamily Direct Loan funds must meet all applicable eligibility and threshold requirements of Chapter 11 of this title (relating to the Qualified Allocation Plan (QAP)), unless otherwise excepted in this rule or NOFA.

§13.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Any capitalized terms not specifically mentioned in this section shall have the meaning as defined in Tex. Gov't Code, Chapter 2306, §§141, 142, and 145 of the Internal Revenue Code, 24 CFR Part 91, Part 92, Part 93, and 2 CFR Part 200, and 10 TAC Chapters 1 of this title regarding Administration, 2 of this title regarding Enforcement, 10 of this title regarding Uniform Multifamily Rules, and 11 of this title regarding the Qualified

Allocation Plan.

(1) Application Acceptance Date--The date the MFDL Application is considered received by the Department as described in this chapter, chapter 11 of this title, or in the NOFA.

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

(3) Community Housing Development Organization (CHDO)--A private nonprofit organization with experience developing or owning affordable rental housing that meets the requirements in 24 CFR Part 92 for purposes of receiving HOME Investment Partnerships Program (HOME) funds under the CHDO Set-Aside. In addition, a member of a CHDO's board cannot be a Principal of the Development beyond their role as a board member of the CHDO or be an employee of the development team, and may not receive financial benefit other than reimbursement of expenses from the CHDO (e.g., a voting board member cannot also be a paid executive).

(4) Deobligated Funds--The funds released by the Development Owner or recovered by the Department canceling a Contract or award involving some or all of a contractual financial obligation between the Department, and a Development Owner or Applicant.

(5) Federal Affordability Period--The period commencing on the later of the date of ~~after~~ Construction Completion and after all Direct Loan funds have been disbursed for the project, or the date of Project Completion as defined in 24 CFR §92.2 or §93.3, as applicable, and ending on the date which is the required number of years as defined by the federal program from the date of Construction Completion.

(6) HOME Match-Eligible Unit--A Unit in the Development that is not assisted with HOME Program funds, but would qualify as eligible for Match under 24 CFR Part 92. Unless otherwise identified by the provisions in the Notice of Funding Availability (NOFA), TCAP Repayment Funds (TCAP RF) and matching contribution on NSP and NHTF Developments must meet all criteria to be classified as HOME-Match Eligible Units.

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

(8) Land Use Restriction Agreement (LURA) Term--The period commencing on the effective date of the LURA and ending on the date which, at a minimum, is the greater of the loan term or 30 years. The LURA may include the Federal Affordability Period, in addition to the State Affordability Period requirements and State restrictive criteria.

(9) Matching Contribution (Match)--A contribution to a Development from nonfederal sources that may be in one or more of the forms provided in subparagraphs (A) through (E) of this paragraph:

(A) Cash contribution (grant), except for cash contributions made by investors in a limited partnership or other business entity subject to pass through tax benefits in a tax credit transaction or owner equity (including Deferred Developer Fee and General Partner advances);

(B) Reduced fees or donated labor from certain eligible contractors, subcontractors, architects, attorneys, engineers, excluding any contributions from a party related to the Developer or Owner;

(C) Net present value of yield foregone from a below market interest rate loan as described in HUD Community Planning and Development (CPD) Notice 97-03;

(D) Waived or reduced fees or taxes from cities or counties not related to the Applicant in connection with the proposed Development; or

(E) Donated land or land sold by an unrelated third party at a price below market value, as evidenced by a third party appraisal.

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

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

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

(11) Section 234 Condominium Housing Basic Mortgage Limits (Section 234 Condo Limits)--

The per-unit subsidy limits for all MFDL funding. These limits take into account whether or not a Development is elevator served and any local conditions that may make development of multifamily housing more or less expensive in a given metropolitan statistical area. If the high cost percentage adjustment applicable to the Section 234 Condo Limits for HUD's Fort Worth Multifamily Hub is applicable for all Developments that TDHCA finances through the MFDL Program, then confirmation of that applicability will be included in the applicable NOFA.

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

(13) State Affordability Period--The LURA Term as described in the MFDL contract and loan documents and as required by the Department in accordance with the State Act which ~~is~~ usually may be an additional period after the Federal Affordability Period.

(14) Surplus Cash--Except when the first lien mortgage is a federally insured HUD mortgage which shall be subject to HUD's surplus cash definition, Surplus Cash is any cash remaining:

(A) After the payment of:

(i) All sums due or currently required to be paid under the terms of any superior lien;

(ii) All amounts required to be deposited in the reserve funds for replacement;

- (iii) Operating expenses actually incurred by the borrower for the Development during the period with an appropriate adjustment for an allocable share of property taxes and insurance premiums;
 - (iv) Recurring maintenance expenses actually incurred by the borrower for the Development during the period; and
 - (v) All other obligations of the Development approved by the Department; and
- (B) After the segregation of an amount equal to the aggregate of all special funds required to be maintained for the Development; and
- (C) Excluding payment of:
- (i) All sums due or currently required to be paid under the terms of any subordinate liens against the property;
 - (ii) Any development fees that are deferred including those in eligible basis; and
 - (iii) Any payments or obligations to the borrower, ownership entities of the borrower, related party entities; any payment to the management company exceeding 5% of the effective gross income; incentive management fee; asset management fees; or any other expenses or payments that shall be negotiated between the Department and borrower.

§13.3. General Loan Requirements.

(a) Funding Availability. Direct Loan funds may be made available through a NOFA or other similar governing document that includes the basic Application and funding requirements.

(b) Oversourced Developments. A Direct Loan ~~funds request~~ may ~~be reduced or not be contracted~~ recommended if an underwriting report issued by the Department's Real Estate Analysis Division concludes the Development does not need all or part of the MFDL ~~funding for which it has applied~~ funds requested in the Application because it is oversourced, and for which a timely appeal has been completed, as provided in 10 TAC §1.7 of this title (relating to Appeals Process) or 10 TAC §11.902 of this title (relating to Appeals Process for Competitive HTC Applications), as applicable.

(c) Funding Sources. Direct Loan funds are composed of annual HOME and National Housing Trust Fund (NHTF) allocations from HUD, repayment of TCAP or TCAP RF loans, HOME Program Income, ~~NSP~~ NSP Program Income (~~NSP~~ NSP PI or NSP), and any other similarly encumbered funding that may become available by Board action, except as otherwise noted in this chapter. Similar funds include any funds that are identified by the Board to be loaned or granted for the development of multifamily property and are not governed by another chapter in this title, with the exception of State funds appropriated for a specific purpose.

(d) Eligible and Ineligible Activities.

(1) Eligible Activities. Direct Loan funds may be used for the predevelopment, acquisition, new construction, reconstruction, rehabilitation, or preservation of affordable housing with suitable amenities, including real property acquisition, site improvements, conversion, demolition, or operating cost reserves, ~~all~~ subject to applicable HUD guidance. Other expenses, such as financing costs, relocation expenses of any displaced persons, families, businesses, or organizations may be included. MFDL funds may be used to assist Developments previously awarded by the Department when approved by specific action of the Board. Eligible Activities may have fund source restrictions or may be restricted by a NOFA.

(2) Ineligible Activities. Direct Loan funds may not be used for:

(A) Adaptive Reuse Developments; or

(B) Developments layered with Housing Tax Credits that have elected the income averaging election under Section 42(g)(1)(C) of the Internal Revenue Code that have more than 15% of the Units designated as Market Rate Units.

(e) Ineligible Costs. All costs associated with the Development and known by the Applicant must be disclosed as part of the Application. Costs ineligible for reimbursement with Direct Loan funds in accordance with 24 CFR Part 91, Part 92, Part 93, Part 570, and 2 CFR Part 200, as federally required or identified in the NOFA, include but are not limited to:

(1) Offsite costs;

(2) Stored Materials;

(3) Site Amenities;

(4) Detached Community Buildings;

(5) Carports and/or [parking garages, unless attached as a feature of the Unit;](#)

~~(6) Parking garages;~~

~~(7) Swimming pools;~~

~~(8) Commercial Space costs;~~

~~(9) Reserve accounts not related to NHTF~~[except Operating Deficit Reserve accounts;](#)

~~(10) TDHCA fees;~~

~~(11) Syndication and organizational costs;~~

~~(12) Delinquent fees, taxes, or charges;~~

~~(13) Costs incurred more than 24 months prior to the effective date of the Direct Loan contract, unless the Application is awarded TCAP RF, and if specifically allowed by the Board;~~

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

~~(15) Deferred Developer Fee;~~

~~(16) Texas Bond Review Board (BRB) fees;~~

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

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

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

§13.4. Set-Asides, Regional Allocation, and [NOFA](#) Priorities.

(a) Set-Asides. Specific types of Activities or Developments for which a portion of MFDL funds may be reserved in a NOFA will be grouped in Set-Asides. The Soft Repayment Set-Aside, CHDO Set-Aside, and General Set-Aside, as described below, are fixed Set-Asides that will be included in the annual NOFA (except if CHDO requirements are waived or reduced by HUD). The remaining Set-Asides described below are flexible Set-Asides and are applicable only if identified in a NOFA; flexible Set-Asides are not required to be programmed on an annual basis. [The Board may approve Set-Asides not described in this section.](#) The amount of a single award may be credited to multiple Set-Asides, in which case the credited portion of funds may be repositioned into an oversubscribed Set-Aside prior to a defined collapse deadline. Applications under any and all Set-Asides may or may not be layered with other Department Multifamily programs except as provided in this section or as determined by the Board to address unique

circumstances not addressed by these rules.

(1) Fixed Set-Asides:

(A) Soft Repayment Set-Aside. The Soft Repayment Set-Aside will be funded primarily with NHTF allocations received by the Department. The Soft Repayment Set-Aside is reserved for developments providing Supportive Housing and/or extremely low-income and rent restrictions that would not exist otherwise. ~~Soft repayment loans may be structured as deferred payable, deferred forgivable, or Surplus Cash flow loans at an interest rate as low as 0%. It is the responsibility of the Applicant to account for any Eligible Basis and/or taxable event implications when requesting any of the potential loan structures available in this set-aside.~~ Applicants seeking to qualify under this set-aside must propose Developments in which all Units assisted with MFDL funds are available for households earning the greater of the poverty rate and 30% AMI, and have rents no higher than the rent limits for extremely low-income tenants in 24 CFR §93.302(b) and that meet either the requirements of clause (i) or (ii) of this subparagraph:

(i) The Supportive Housing requirements in 10 TAC §11.1(d)(~~121~~122) including the underwriting considerations for Supportive Housing Developments in 10 TAC §11.302(g)(~~3~~)(4) of this title (relating to Underwriting and Loan Policy); or

(ii) The requirements in subclauses (I) - (~~IV~~III) of this clause, for which all Units assisted with MFDL funds:

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

~~(II)~~

(I) May not also be receiving any project-based subsidy;

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

(IV) May not be restricted to 30% AMI or less by Housing Tax Credits, or any other fund source.

(B) CHDO Set-Aside. Unless waived or reduced by HUD, a portion of the Department's annual HOME allocation, will be set aside for eligible CHDOs meeting the requirements of the definition of Community Housing Development Organization in 24 CFR §92.2 and 10 TAC §13.2(4) of this chapter. Applicants under the CHDO Set-Aside must be proposing to develop housing on Development Sites located outside Participating Jurisdictions (PJ), unless the award is made within a Persons with Disabilities (PWD) ~~set-aside~~Set-Aside, or the requirement under Tex. Gov't Code §2306.111(c)(1) has been waived by the Governor ~~as the result of a disaster declaration~~. CHDO funds are typically available as fully-repayable amortizing debt consistent with 10 TAC §13.8 of this chapter (relating to Loan Structure and Underwriting Requirements). In instances where an application submitted under the CHDO Set-Aside also would qualify under the Soft Repayment Set-Aside, funds under this Set-Aside may be structured in accordance with the Soft Repayment Set-Aside requirements. A grant for CHDO operating expenses may be awarded in conjunction with an award of MFDL funds under this Set-Aside, if no other CHDO operating grants have been awarded to the Applicant in the same Calendar year, in accordance with 24 CFR

§92.208. Applications under the CHDO Set-Aside may not have a for profit special limited partner within the ownership organization chart.

(C) General Set-Aside. The General Set-Aside is for all other applications that do not meet the requirements of the Soft Repayment, CHDO, or Flexible Set-Asides, if any. A portion of the General Set-Aside may be reallocated into the CHDO Set-Aside in order to fully fund a CHDO award that exceeds the remaining amount in the Set-Aside.

(2) Flexible Set-Asides:

(A) 4% HTC and Bond Layered Set-Aside. The 4% and Bond Layered Set-Aside is reserved for Applications layered with 4% Housing Tax Credits and Private Bond funds where the Development Owner does not meet the definition of a CHDO, but that the Application does meet all other MFDL requirements.

(B) Persons with Disabilities (PWD) Set-Aside. The PWD Set-Aside is reserved for Developments restricting Units for residents who meet the requirements of Tex. Gov't Code §2306.111(c)(2) while not exceeding the number of Units limited by 10 TAC §1.15 of this title (relating to the Integrated Housing Rule). MFDL funds will be awarded in a NOFA for the PWD Set-Aside only if sufficient funds are available to award at least one Application within a Participating Jurisdiction under Tex. Gov't Code §2306.111(c)(1).

(C) 9% HTC Layered Set-Aside. The 9% Layered Set-Aside is reserved for Applications that are layered with 9% Housing Tax Credits that do not meet the definition of CHDO, but that do meet all other MFDL requirements. Awards under this ~~set~~Set-aside ~~are~~Are dependent on the concurrent award of a 9% HTC allocation; however, an allocation of 9% HTC does not ensure that a sufficient amount of MFDL funds will be available for award.

(D) Additional Set-Asides may be developed, subject to Board approval, to meet the requirements of specific funds sources, or address Department priorities. To the extent such Set-Asides are developed, they will be reflected in a NOFA or other similar governing document.

(b) Regional Allocation and Collapse. All funds received directly from HUD ~~in the annual NOFA~~ will be allocated to regions and potentially subregions based on a Regional Allocation Formula (RAF) within the applicable Set-Asides (unless the funds have already been through a RAF ~~of the annual NOFA and/or Special Purpose NOFA~~). The RAF methodology may differ by fund source. HOME funds will be allocated in accordance with Tex. Gov't Code Chapter 2306. The end date ~~and Application Acceptance Date~~ for the RAF will be identified in the NOFA, but in no instance shall it be less than 30 days from the date a link to the Board approved NOFA or NOFA Amendment is published on the Department's website.

(1) After expiration of the RAF, remaining funds within each respective Set-Aside may collapse on an end date identified in the NOFA. All Applications received prior to these collapse period deadlines will continue to hold their priority unless they are withdrawn, terminated, suspended, or funded.

(2) Funds remaining after expiration of the Set-Asides on the end date identified in the NOFA, which have not been requested in the form of a complete Application, may be made available statewide on a first-come first-served basis to Applications submitted after the collapse dates, as further described in the NOFA.

(3) In instances where the RAF would result in regional or subregional allocations insufficient to fund an Application, the Department may use an alternative method of distribution,

including an early collapse, revised formula or other methods as approved by the Board, and reflected in the NOFA.

(c) Notice of Funding Availability (NOFA). MFDL funds will be distributed pursuant to the terms of a published NOFA that provides the specific collapse dates and deadlines as well as Set-Aside and RAF amounts applicable to each NOFA, along with scoring criteria, priorities, award limits, and other Application information. Set-asides, RAFs, and total funding amounts may increase or decrease in accordance with the provisions herein without further Board action as authorized by the Board.

(1) Priorities for the Annual NOFA. Complete Applications received during the period of the RAF (if one is used in the Annual NOFA) will be prioritized for review and recommendation to the Board, if funds are available ~~both~~ in the region or subregion (as applicable) and in the Set-Aside under which the Application is received. If insufficient funds are available in a region or subregion to fund all Applications then the scoring criteria in §13.6 of this Chapter will be applied if necessary and the oversubscribed Applications will be evaluated only after the RAF and/or Set-Aside collapse and in accordance with the additional priority levels below, unless an Application received earlier is withdrawn or terminated. If insufficient funds are available within a region, subregion, or Set-Aside, the Applicant may request to be considered under another Set-Aside if they qualify, prior to the collapse. Applications will be reviewed and recommended to the Board if funds are available in accordance with the order of prioritization described in paragraphs ~~(1)–(3A) - (C)~~ of this subsection.

~~(1A)~~ Priority 1. Applications not layered with current year 9% Housing Tax Credits (HTC) that are received prior to the Market Analysis Delivery Date as described in 10 TAC §11.2 of this title (relating to Program Calendar for Housing Tax Credits). Priority 1 Applications may be prioritized based on score within their respective Set-Aside for a certain time period, for certain populations, or for certain geographical areas, as further described in the NOFA.

~~(2B)~~ Priority 2. Applications layered with current year 9% HTC will be prioritized based on their recommendation status and score for an HTC allocation under the provisions of the Qualified Allocation Plan (QAP). All Priority 2 applications will be deemed received on the Market Analysis Delivery Date identified in Chapter 11 of this title, relating to the QAP. Priority 2 applications will be recommended for approval of the MFDL award at the same meeting when the Board approves the 9% HTC allocations. Applications for 9% HTC allocations are not guaranteed the availability of MFDL funds, as further provided in §13.5(f) of this chapter.

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

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

§13.5. Application and Award Process.

~~(a) Notice of Funding Availability (NOFA).~~ All MFDL funds from the annual allocation will be distributed pursuant to the terms of a published NOFA that provides the specific collapse dates and deadlines as well as set aside and RAF amounts applicable to the MFDL program, along with scoring criteria, priorities, award limits, and other Application information. Other funds may be distributed by NOFA or through other lawful methods approved by the Board. Set asides, RAFs, and total funding amounts may increase or decrease in accordance with the provisions herein without further Board action as long as the NOFA itself did not require Board action.

~~(b)~~ **(a) Applications.** MFDL Applicants must follow the applicable requirements in 10 TAC Chapter 11 Subchapter C (relating to Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules).

(e) Application Acceptance Date. Applications will be considered received on the business day of receipt, unless a different time period is described in the Department's rules or NOFA. If an Application is received after 5:00 p.m., Austin local time, it will be determined to have been received on the following business day. Applications received on a non-business day will be considered received on the next day the Department is open. Applications will be considered complete at the time all Application materials, required third party reports and application fee(s) are received by the Department. Within certain Set-Asides or priorities, the date of receipt may be fixed, regardless of the earlier actual date a complete Application is received, if so specified in the Department's rules or NOFA. If multiple Applications have the same Application Acceptance Date, in the same region or subregion (as applicable), and within the same Set-Aside, then score and tiebreaker factors, as described in §13.6 of this chapter (relating to Selection Criteria) for MFDL or 10 TAC §11.7 and §11.9 of this title (relating to Tie Breaker Factors and Competitive HTC Selection Criteria, respectively) for Applications layered with 9% HTC, will be used to determine the Application's rank.

(d) Market Analysis. Applications proposing Rehabilitation that request MFDL as the only source of Department funding may be exempted from the Market Analysis requirement in 10 TAC §11.205(2) (relating to Required Third Party Reports) if the Development's rent rolls for the most recent six months reflect occupancy of at least 80% of all habitable Units.

(e) ~~Environmental Clearance~~ Required Site Control Agreement Provisions. All Applicants for MFDL funds must include the ~~following language~~ following provisions in the purchase contract or site control agreement if the subject property is not already owned by the Applicant:

(1) "Notwithstanding any other provision of this Contract, Purchaser shall have no obligation to purchase the Property, and no transfer of title to the Purchaser may occur, unless and until the Department has provided Purchaser and/or Seller with a written notification that: (A) It has completed a federally required environmental review and its request for release of federal funds has been approved and, subject to any other Contingencies in this Contract, (i) the purchase may proceed, or (ii) the purchase may proceed only if certain conditions to address issues in the environmental review shall be satisfied before or after the purchase of the property; or (B) It has determined that the purchase is exempt from federal environmental review and a request for release of funds is not required."; "2" and

~~(f)~~ (2) "The Buyer does not have the power of eminent domain relating to the purchase and acquisition of the Property. The Buyer may use federal funds from the U.S. Department of

Housing and Urban Development (HUD) to complete this purchase. HUD will not use eminent domain authority to condemn the Property. All parties entered this transaction voluntarily and the Buyer has notified the Seller of what it believes the value of the Property to be in accordance with 49 CFR Part 24 Appendix A. If negotiations between both parties fail, Buyer will not take further action to acquire the Property.”

(e) Oversubscribed Funds for 9% HTC-Layered Applications. Should MFDL funds be oversubscribed in a Set-Aside or for a fund source that has geographic limitations within a Set-Aside, Applications concurrently requesting 9% HTC will be notified and may amend their Application to accommodate another fund source and make changes that still meet threshold requirements in 10 TAC Chapter 11 and 13 of this title, and do not impact scoring under 10 TAC Chapter 11 of this title. The Department will provide notice to all impacted Applicants in the case of over-subscription, which will include a deadline for response. Multiple Applications from a single or affiliated Applicants does not constitute oversubscription, and the Applicant(s) will not be able to amend their Applications as described in this paragraph. If MFDL funds become available between the Market Analysis Delivery Date, and the last Board meeting in July, they will not be reserved for 9% HTC-layered Applications, unless the reservation is described in the NOFA.

~~**(g) Source of Direct Loan Funds.** When determining the source of funds that an Application will receive when recommended for an award~~

(f) Availability of funds for 4% HTC-layered Applications. If an Application requesting layered 4% HTC and Direct Loan funds is terminated under 10 TAC §11.201(2)(E), it will receive a new Application Acceptance Date for purposes of Direct Loan on submission of the new Certificate of Reservation. Direct Loan funds will not be reserved for terminated Applications, and may not be available for the Application with a new Reservation.

(f) Source of Direct Loan Funds. To the extent that an Application is submitted under a Set-Aside where multiple sources of Direct Loan funds are available, the Department will select sources of funds for recommended Applications, as provided in paragraphs (1) – (4) of this subsection.

(1) The Department will generally select the recommended source of funds to award to an Application in the order described in subparagraphs (A) – (C) of this paragraph, which may be limited by the type of activity an Application is proposing or the proposed Development Site of an Application:

(A) Federal funds with commitment and expenditure deadlines will be selected first;

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

(C) Nonfederal funds that do not have commitment and expenditure deadlines will be selected last; however,

(2) The Department may also consider repayment risk or ease of compliance with other fund sources when assigning the source of funds to recommend for award to an Application;

(3) The Department may move to the next fund source prior to exhausting another selection; and

(4) The Department will make the final decision regarding the fund source to be recommended for an award (within a Set-Aside that has multiple fund sources), and this

recommendation may be not be appealed.

(hg) Eligibility Criteria and Determinations. The Department will evaluate Applications received under [the Annual](#) NOFA for eligibility and threshold pursuant to the requirements of this chapter and Chapter 11 of this title (relating to the Qualified Allocation Plan). The Department may terminate the Application if there are changes at any point prior to MFDL loan closing that would have had an adverse effect on the score and ranking order of the Application that would have resulted in the Application being ranked below another Application received prior to the subject Application.

(1) Applicants requesting MFDL as the only source of Department funds must meet the Experience Requirement as provided in either subparagraph (A) or (B) of this paragraph:

(A) The Experience Requirement as provided in 10 TAC §11.204(6) of this title (relating to Required Documentation for Application Submission); or

(B) Alternatively by providing the acceptable documentation listed in §11.204(6)(i)-(ix) of this title evidencing the successful development, and at least five years of the successful operation, of a project or projects with at least twice as many affordability restricted Units as requested in the Application.

(2) The Executive Director or authorized designee must make eligibility determinations for Applications for Developments that meet the criteria in subparagraph (A) or (B) of this paragraph regardless of available fund sources:

(A) Received an award of funds ~~for~~ [resources from](#) the Development from the Department within 15 years preceding the Application Acceptance Date; or

(B) Started or completed construction, and are not proposing acquisition or rehabilitation.

(3) An Application that requires an eligibility determination must identify that fact prior to, or in their Application so that an eligibility determination may be made subject to the Applicant's appeal rights under 10 TAC §11.902 or 10 TAC §1.7 of this title, as applicable. A finding of eligibility under this section does not guarantee an award. Applications requiring eligibility determinations generally will not be funded with HOME₇ or NSP funds.

(A) Requests under this subsection will not be considered more than 60 calendar days prior to the first Application Acceptance Date published in the NOFA, for the Set-Aside in which the Applicant plans to apply.

(B) Criteria for consideration include clauses (i) - (iii) of this subparagraph:

(i) Evidence of circumstances beyond the Applicant's control that could not have been prevented with appropriate due diligence; or

(ii) Force Majeure events (not including weather events); and

(iii) Evidence that no further exceptional conditions exist that will delay or cause further cost increases.

(C) Criteria for consideration shall not include weather events, typical construction, or financing delays.

(D) Applications for Developments that previously received an award from the Department in within 15 years preceding the Application Acceptance Date will be evaluated at no more than the amount of Developer Fee proposed the last time that the Department published an Underwriting Report. MFDL funds may not be used to fund increased Developer Fee, regardless of the allowability of the increase under other Department rules.

(h) Request for Preliminary Determination. Applicants considering a request for Direct Loan layered with a 9% HTC Application may submit a Request for Preliminary Determination with the HTC Pre-Application. The results of evaluation of the Request may be used as evidence of review of the Development and the Principals for purposes of scoring under 10 TAC §11.9(e)(1)(E). Submission of a Request for Preliminary Determination does not obligate the Applicant to request Multifamily Direct Loan funds with their full Application. The Preliminary Determination is based solely on the information provided in the request, and does not indicate that the full Application will be accepted. It is not a guarantee that Direct Loan funds will be available or awarded to the full Application.

(i) Effective rules and contractual terms. The contractual terms of an award will be governed by and reflect the rules in effect at the time of Application; however, any changes in federal requirements will be reflected in the contractual terms. Further provided, that if after award, but prior to execution of such Contract, there are new rules in effect, the Direct Loan awardee may elect to be governed by the new rules, provided the Application would continue to have been eligible for award under the rules and NOFA in effect at the time of Application.

§13.6. Scoring Criteria.

The criteria identified in paragraphs (1) - (6) of this section will be used in the evaluation and ranking of Applications if other Applications have the same Application Acceptance Date, within the same Set-Aside, and having the same prioritization. There is no rounding of numbers in this section, unless rounding is explicitly indicated for that particular calculation or criteria. The scoring items used to calculate the score for a 9% HTC-Layered Application will be utilized for scoring for an MFDL Application, and evaluated in the same manner, except as specified below. Scoring criteria in Chapter 11 of this title will always be superior to Scoring Criteria in this chapter if an MFDL Application is also concurrently requesting 9% HTC:

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

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

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

(4) Subsidy per Unit. An Application that caps the per MFDL eligible cost per Unit subsidy limit below Section 234 Condo Limits or HUD 221(d)(4) statutory limits (as applicable) for all Direct Loan Units regardless of Unit size at:

(A) \$100,000 per MFDL eligible cost per Unit (4 points).

(B) \$80,000 per MFDL eligible cost per Unit (8 points).

(C) \$60,000 per MFDL eligible cost per Unit (10 points).

(5) Rent Levels of Residents. Except for Applications submitted under the Soft Repayment Set-Aside, an Application may qualify to receive up to 13 points for placing the following rent and income restrictions on the proposed Development for the Federal and State Affordability Periods. These Units must not be restricted to 30% or less of AMI by another fund source; however, layering on other HTC Units may be considered for scoring purposes.

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

- (B) At least 10% of all low-income Units at 30% or less of AMI or, for a Development located in a Rural Area, 7.5% of all low-income Units at 30% or less of AMI (12 points); or
- (C) At least 5% of all low-income Units at 30% or less of AMI (7 points).

(6) Tiebreaker. In the event that two or more Applications receive the same number of points based on the scoring criteria above, staff will recommend for award the Application that proposes the greatest percentage of 30% AMI MFDL Units within the Development that would convert to households at 15% AMI in the event of a tie as represented in the Tiebreaker Certification submitted at the time of Application.

[\(7\) Application Changes between Submission and Award. Changes to Applications where scoring is utilized under Chapter 13 will not be allowed between submission and award.](#)

§13.7. Maximum Funding Requests and Minimum Number of MFDL Units.

(a) Maximum Funding Request. The maximum funding request for an Application will be identified in the NOFA, and may vary by development type, set-aside, or fund source.

(b) Maximum New Construction or Reconstruction Per-Unit Subsidy Limits. While more restrictive per-Unit subsidy caps are allowable and incentivized as point scoring items in 10 TAC §13.6 of this chapter (relating to Scoring Criteria) or, the per-Unit subsidy limit for a Development will be determined by the Department as the Section 234 Condo limits with the applicable high cost percentage adjustment in effect at the start date of the NOFA, which are the maximum MFDL eligible cost per-Unit subsidy limits that an Applicant may use to determine the amount of MFDL funds combined with other federal funds that may subsidize a Unit.

(c) Maximum Rehabilitation Per-Unit Subsidy Limits. The MFDL eligible cost per-Unit to rehabilitate a Development may not exceed the HUD 221(d)(4) statutory limits, subject to high cost factors- as published in the NOFA.

(d) Minimum Number of MFDL Units. The minimum required number of MFDL Units will be determined by the MFDL per-Unit subsidy limits and the cost allocation analysis, which will ensure the amount of MFDL Units as a percentage of total Units is equal to or greater than the percentage of MFDL funds requested as a percentage of total eligible MFDL Development costs. Applicants may be able to estimate the minimum number of MFDL Units by entering Application information into the Direct Loan Unit Calculator Tool available on the Department's website, but this tool might not cover the specific requirements of every Application. A larger number of Units may also be required if scoring is utilized.

§13.8. Loan Structure and Underwriting Requirements.

(a) Loan Structures. Except for awards made under the Soft Repayment Loan structures will generally be governed by the Direct Loan fund source as described below but may be further differentiated within a Set-Aside, all Multifamily Direct as described in a NOFA.

(1) Loans awarded under the annual NOFA as construction to permanent of NHTF may be structured as deferred payable, deferred forgivable, or amortizing loan at an interest rate as low as 0%. The amortization period for an NHTF amortizing loan will not exceed 40 years. Terms for these loans will be underwritten published in the NOFA. It is the responsibility of the Applicant to account for any Basis, taxable event implications, and other federal superior lender requirements when requesting the deferred forgivable or deferred payable loan structure available in this Set-Aside.

(2) Loans of HOME, NSP PI, and TCAP RF will be structured as fully repayable (must pay) at an interest rate specified in the NOFA and approved by the Board, ~~and a 30 year~~with an amortization with a period not to exceed 40 years and loan term that matches the term of any superior loans (within six months) at the time of Application. ~~If the Department determines that the Development does not support this structure, the Department may recommend an alternative that makes the Development feasible under all applicable sections of this chapter and 10 TAC §11.302 (relating to Underwriting Rules and Guidelines), or may conclude the Development is infeasible and recommend denial, within the requirements of §13.8(c)(3) of this chapter. To the extent the Direct Loan has first lien position during the permanent term, the amortization period and loan term must meet the requirements of §13.8(c)(3) of this Chapter. Terms for these loans will be published in the NOFA.~~ The interest rate, amortization period, and term for the loan will be fixed by the Board at the time of award, and can only be amended prior to loan closing by the process in 10 TAC §13.12 (relating to Pre-Closing Amendments to Direct Loan Terms).

(3) Requirements of any other fund source will be determined in the NOFA.

(b) Closing Memo to Underwriting Report. Any changes to the total development cost, expenses, income, and/or other sources of funds from time of the publication of the initial Underwriting Report at the time of award to the time of loan closing, must be reevaluated by Real Estate Analysis staff, who will typically publish a Closing Memo to the Underwriting Report, ~~and~~ The Report may recommend changes to the principal amount and/or the repayment structure for the Multifamily Direct Loan ~~that pursuant to §11.302 of this title (relating to Underwriting Rules and Guidelines)~~, except that the change must have been an available option in the rule or NOFA (as applicable), and may not be made to awards that were competitively scored to the extent that change would have caused the Development to lose points. This will allow the Department to uphold the competitive process, mitigate any increased risk, ~~and~~ ~~or~~ to ensure that the Development is not oversubsidized. Where the Department determines such risk is not adequately mitigated, the award may be terminated or reconsidered by the Board. Increases in the principal amount or scheduled payment amounts of any superior loans that cause the total Debt Coverage Ratio (DCR) to decrease by more than .05 require approval by the Board. If the changes cause the total DCR to no longer comply with 10 TAC §11.302 of this title (relating to Underwriting Rules and Guidelines), the award may be subject to termination.

(c) Criteria for Construction-to-Permanent Loans. Direct Loans awarded through the Department must adhere to the following criteria as identified in paragraphs (1) - ~~(119)~~ of this subsection if being requested as construction-to-permanent loans, for which the interest rate will be specified in the NOFA and approved by the Board:

(1) The construction term for MFDL loans shall be coterminous with any superior construction loan(s), but no greater than 36 months. In the event the MFDL loan is the only loan with a construction term or the superior construction loan, the construction term shall be 24 months with one available six-month extension that may be approved for good cause by the Executive Director or his designee;

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

(3) The permanent loan term ~~for MFDL loans at the time of award~~ shall be no less than ~~1015~~ years and no greater than 40 years and six months, and the amortization schedule period shall be between 30 to 40 years. The Department's loan must mature at the same time or within

six months of the shortest term of any senior debt, so long as neither exceeds 40 years and six months. The loan term commences following the end of the construction term;

(4) For ~~a non-surplus cash loan, an amortized~~ For Direct Loans structured as deferred payable loans, the loan shall be structured with either one balloon payment due at the end of the loan or with several payments due at a point in time during the loan term. For Direct Loans structured as deferred forgivable, the loan shall be structured with one balloon payment due at the end of the loan term. ~~loan shall be structured with a regular monthly payment beginning on the first of the month following the end of the construction term; and continuing for.~~

(5) For amortized Direct Loans that are not subordinate to a HUD-insured loan, the loan term. ~~For a surplus cash loan, an amortized loan~~ shall be structured with ~~an annual payment~~ regular monthly payments beginning on the first of the month following the end of the construction term and continuing for the loan term;

~~(5) If the first lien mortgage is a~~ (6) For amortized Direct Loans that are subordinate to a federally HUD-insured HUD mortgage, the Department may approve a loan structure, the loan shall be structured with an annual paymentspayment beginning on the first of the month following one year after the end of the construction term ~~payable from surplus cash flow as defined by~~ and continuing until the end of the loan term;

(7) If an amortized Direct Loan is subordinate to a HUD- ~~provided that the DCR, inclusive of the loan, continues to meet the requirements in this title;~~

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

(8) Loans shall be secured with a deed of trust with a permanent lien position that is superior to any other sources for financing including hard repayment debt that is in an amount less than or equal to the Direct Loan amount and superior to any other sources that have soft repayment structures, non-amortizing balloon notes, have deferred forgivable provisions, or in which the lender has an identity of interest with any member of the Development Team. Parity liens may only be considered with USDA Rural Development;

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

(A) A letter from a Third Party Certified Public Accountant verifying the capacity of the Applicant, Developer, or Development Owner to provide at least 10% of the Total Housing Development Cost as a short term loan for the Development; or

(B) Evidence of a line of credit or equivalent tool in the sole determination of the Department equal to at least 10% of the Total Housing Development Cost from a financial institution that is available for use during the proposed Development activities; ~~and-~~

(10) If the Direct Loan is the only source of permanent Department funding for the Development, the Development Owner must provide all items required in subparagraphs (A) and (B) of this paragraph:

(A) Equity in an amount not less than 10% of Total Housing Development Costs; however,

- (i) An Applicant for Direct Loan funds may request Board approval to have an equity requirement of less than 10% that would not have to meet the waiver requirements in 10 TAC §11.207 of this title. The request must specify the proposed equity that will be provided and provide support for why that reduced level of equity will be sufficient to provide reasonable assurance that such owner will be able to complete construction and stabilization timely; and
- (ii) "Sweat equity" or other forms of equity that cannot be readily accessed will not be allowed to count toward the equity requirement; and

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

~~(d) Evaluations.~~

~~(11) Up to 50% of the loan may be advanced at loan closing should there be sufficient eligible costs to reimburse that amount.~~

(d) Criteria for Construction Only Loans. Direct Loans through the Department must adhere to the following criteria as identified in paragraphs (1) - (3) of this subsection if being requested as construction only loans:

(1) The term of the construction loan must be coterminous with any superior construction loan(s), but no greater than 36 months. In the event that the Direct Loan is the only construction loan or is the superior construction loan, the term may not exceed 24 months with available six-month extension that may be approved for good cause by the Executive Director or his designee;

(2) The interest rate may be as low as 0%; and

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

(e) Criteria for Permanent Refinance Loans. If 90% of the Department's loan will repay existing debt, the first payment will be due the month after the month of loan closing, in which 90% of the loan may be advanced at loan closing, unless the Board approves another date.

(f) Evaluations. All Direct Loan Applicants in which third-party financing entities are part of the sources of funding must include a pro forma and lender approval letter evidencing review of the Development and the Principals, as described in 10 TAC §11.9(e)(1) of this title (relating to Competitive HTC Selection Criteria). Where no third-party financing exists, the Department reserves the right to procure a third-party evaluation which will be required to be prepaid by the Applicant.

~~(e) Criteria for Construction Only Loans.~~ Direct Loans through the Department must adhere to the following criteria as identified in paragraphs (1) - (3) of this subsection if being requested as construction only loans:

~~(1) The term of the construction loan must be coterminous with any superior construction loan(s), but no greater than 36 months. In the event that the Direct Loan is the only construction loan, the term may not exceed 24 months;~~

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

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

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

~~approves another date.~~

(g) Pass-Through Loans. Department funds may not be used as pass-through financing. The Department's Borrower must be the Development Owner.

§13.9. Construction Standards.

All Developments financed with Direct Loans will be required to meet at a minimum the applicable requirements in Chapter 11 of this title (relating to the Qualified Allocation Plan). In addition, Developments must meet all applicable state and local codes, ordinances, and standards; the 2015 International Existing Building Code (IEBC) or International Building Code (IBC), as applicable. Should IEBC be more restrictive than local codes, or should local codes not exist, then the Development must meet the requirements imposed by IEBC or IBC, as applicable. Developments must also meet the requirements in subsections (a) - (e) of this section:

(a) Third-Party Recommendations. Recommendations made in the Environmental Site Assessment (§11.305 of this title) and any Scope of Work and Cost Review (§11.306 of this title) with respect to health and safety issues, life expectancy of major systems (structural support; roofing; cladding and weatherproofing; plumbing; electrical; and heating, ventilation, and air conditioning) must be implemented;

(b) Lead and Asbestos Testing. For properties originally constructed prior to 1978, the Scope of Work and Cost Review and scope of work must be provided to the party conducting the lead-based paint and/or asbestos testing, and the Development Owner must implement the mitigation recommendations of the testing report;

(c) Broadband Infrastructure. The broadband infrastructure requirements described in 24 CFR §92.251(a)(2)(vi) or (b)(1)(x) for HOME, NSP, or TCAP RF; or 24 CFR §93.301(a)(2)(vi) or 24 CFR §93.301(b)(2)(vi) for NHTF, as applicable;

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

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

§13.10. Development and Unit Requirements.

(a) Proportionality. The bedroom/bathroom/amenities and square footages for Direct Loan Units must be comparable to the bedroom/bathroom/amenities and square footages for the total number of Units in the Development based on the amount of Direct Loan funds requested as a percentage of total MFDL eligible costs. As a result of this requirement, the Department will use the Proration Method as the Cost Allocation Method in accordance with CPD Notice 16-15, except as described in subsection (b) of this section. Additionally, the amount of Direct Loan funds requested cannot exceed the per-unit subsidy limit described in this chapter or in the applicable NOFA. Direct Loan Units must be provided as a percentage of each Unit Type, in proportion to the percentage of total costs included in the Direct Loan.

(b) Floating Units. [Floating Direct Loan Units may only float among the Units as described in the Direct Loan Contract and Direct Loan LURA.](#)

(1) For HOME, NSP, and TCAP RF, Direct Loan Units must float throughout the Development

unless the Development also contains public housing Units that will receive Operating Fund or Capital Fund assistance under Section 9 of the 1937 Act as defined in 24 CFR §5.100.

(2) For NHTF, Direct Loan Units must float throughout the Development, except as prohibited by 24 CFR §93.203. ~~Floating Direct Loan Units may only float among the Units as described in the Direct Loan Contract and Direct Loan LURA, or as specifically approved in writing by the Department.~~

(c) Unit Match Requirements.

(1) For a Development funded with NSP and/or NHTF, a required matching contribution will result in at least one HOME Match-Eligible Unit, in addition to the NSP and/or NHTF Units.

(2) For a Development funded with HOME, a required matching contribution may or may not result in a HOME Match-Eligible Unit, beyond the Department's HOME assisted Units.

(3) For a Development funded with TCAP RF in the annual NOFA, a matching contribution in addition to the Match that the Department counts from the TCAP RF investment will result in some amount of TCAP RF assisted Units being considered HOME Match-Eligible Units.

(d) Minimum Affordability Period. The minimum affordability period for all Direct Loan Units awarded under a NOFA will match the greater of the term of the loan, or 30 years unless a lesser period is approved by the Board. The Department reserves the right to extend the Affordability Period for Developments that fail to meet Program requirements.

(e) Restricted Units. If the Department is the only source of permanent funding for the Development by virtue of equity from HTC and MFDL funding, all Units must be income and rent restricted under a combination of HTC and Direct Loan LURAs, regardless of the amount of deferred Developer Fee as a permanent source. If the MFDL funding is the only source of permanent funding for the Development, all Units must be income and rent restricted by the Direct Loan LURA, and all costs must be MFDL eligible, regardless of the amount of deferred Developer Fee as a permanent source.

(f) Income Levels Committed at Time of Application. If the Direct Loan funds are used in a 9% or 4% HTC-Layered Development that is electing Income Averaging to qualify under IRC §42, the Direct Loan Units required by the LURA must continue to be provided at the income levels committed at the time of Application. Direct Loan Unit designations may not change to meet Income Averaging requirements.

(g) Mandatory Development Features. Development features described under 10 TAC §11.101(b)(4) may be selected to meet federal or state requirements, without a change to the number or description of features (e.g. selection of Broadband).

§13.11. Post-Award Requirements.

(a) ~~(a)~~ Direct Loan awardees must satisfactorily complete the following Post-Award Requirements after the Board approval date.

(b) If a Direct Loan award is declined by the Direct Loan awardee and returned after Board approval, or if the Direct Loan awardee or Affiliates fail to timely enter into the Contract, close the loan, begin and complete construction, or leave a portion of the Direct Loan award unexpended, penalties may apply under 10 TAC §11.9(f) (relating to Competitive HTC Selection Criteria), and/or the Department may prohibit the Applicant and all Affiliates from applying for MFDL funds for a period of two years.

~~(bc)~~ Extensions to the benchmarks in paragraphs (1) - (4) and ~~(7) - (8)~~ of this subsection may only

be approved by the Executive Director or authorized designee in accordance with 10 TAC §13.12 or 10 TAC §13.13 of this chapter, as applicable.

(1) Award Letter ~~and Loan Term Sheet (ALLTS)~~. If provided, Direct Loan awardees must execute and return to the Department an Award Letter ~~and Loan Term Sheet~~ provided by the Department within 15 calendar days after receipt. The ~~ALLTS Award Letter~~ will be conditional in nature, and provide a basic outline of the terms and conditions approved by the Board.

(2) Environmental Clearance. In order to obtain environmental clearance, ~~(if applicable)~~, Direct Loan awardees must submit a fully completed environmental review ~~(if applicable)~~ including any applicable reports to the Department within 90 calendar days of the Board approval date. If the awardee was contemporaneously awarded 9% HTC and selected Readiness to Proceed points under 10 TAC §11.9(c)(8), this period is within 14 calendar days of the Board approval date. ~~If the awardee receives an allocation of 9% HTC from the waitlist after the July Board meeting, the fully completed environmental review must be submitted within 90 calendar days of receipt of the Carryover Allocation Agreement.~~ Applicants or Direct Loan awardees that commit any choice limiting activities as defined by HUD in 24 CFR Part 58 prior to obtaining environmental clearance ~~will~~may be subject to termination of the Direct Loan award.

(3) Contract Execution. After a Development receives environmental clearance (if applicable), the Department will draft a Contract to be emailed to the Direct Loan awardee. Direct Loan awardees must execute and return a Contract to the Department within 30 calendar days after receipt of the Contract.

(4) Loan Closing and Construction Commencement. Loan closing must occur and construction must begin on or before the date described in the Contract. If construction has not commenced within 12 months of the Contract Effective Date, the award may be terminated.

(5) Quarterly Construction Status Reports. The Development Owner is required to submit quarterly Construction Status Reports to the Asset Management Division as described and by the deadlines specified in 10 TAC §10.402(h) of this title (relating to Construction Status Report).

(6) Mid-Construction Development Inspection Letter. In addition to any other obligations required as the result of any other Department funding sources, the Development Owner must submit a Mid-Construction Development Inspection Request once the Development has met at least 25% construction completion as indicated on the G703 Continuation Sheet or HUD equivalent form. Department inspection staff will issue a Mid-Construction Development Inspection Letter that confirms work is being done in accordance with the applicable codes, the construction contract, and construction documents. Regardless of how Direct Loan funds are allocated among acquisition, Hard, and Soft costs, up to 50% of the Direct Loan award may be released prior to issuance of the Mid-Construction Development Inspection Letter, with the remaining 50% available for ~~distribution~~disbursement in accordance with the percentage of Construction Completion.

(7) Construction Completion. Construction must be completed, as reflected by the Development's certificate(s) of occupancy (if ~~applicable~~),new construction and/or reconstruction and Certificate of Substantial Completion (AIA Form G704), ~~and issuance of) or Form HUD-92485 for instances in which~~ a ~~Closed Final Development Inspection Letter by~~

~~the Department~~ federally insured HUD loan is being utilized, within the construction term of any superior construction loan(s) or 24 months of the actual loan closing date if no superior construction loan(s) ~~exist, with the repayment period beginning at the same time as the repayment on any superior permanent loan(s) or on the first day of the 25th month following the actual date of loan closing if no superior permanent loan(s) exist, unless extended in accordance with applicable provisions in §13.12 or §13.13 of this chapter exists.~~

(8) Closed Final Development Inspection Letter. The Closed Final Development Inspection Letter must be issued by the Department within 36 months of loan closing. This letter will verify committed amenities have been provided and confirm compliance with all applicable accessibility requirements; this letter may include deficiencies that require resolution. The Final Development Inspection may be conducted concurrently with a Uniform Physical Condition Standards (UPCS) inspection. However, any letters associated with a UPCS inspection will not satisfy the Closed Final Development Inspection Letter required by this subsection.

(89) Initial Occupancy. Initial occupancy of all MFDL assisted Units by eligible households shall occur within six months of the final Direct Loan draw. Requests to extend the initial occupancy period must be accompanied by documentation of marketing efforts and a marketing plan. The marketing plan may be submitted to HUD for final approval, if required by the MFDL fund source.

(910) Per Unit Repayment. Repayment will may be required on a per Unit basis for Units that have not been rented to eligible households within 18 months of the final Direct Loan draw.

(1011) Termination and Repayment for Failure to Complete. Termination of the Direct Loan award and repayment of all disbursed funds will be required for any Development that is not completed within four years of the effective date of a Direct Loan Contract.

(1112) Loan Closing. In preparation for closing any Direct Loan, the Development Owner must submit the items described in subparagraphs (A) - (F) of this paragraph. Providing incomplete documents, or not responding timely to subsequent Department requests for materials needed to facilitate closing, may significantly inhibit the Department's ability to meet closing timelines. Any request to change the financing structure of the Development, or the ownership structure, will in most cases extend the amount of time it will take for the Department to meet closing timelines, and may move prioritization of the closing below that of other Developments.

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

(B) Due diligence items determined by the Department to be prudent and necessary to meet the Department's rules and to secure the interests of the Department, as requested by Staff.

(C) When Department funds have a first lien position during the construction ~~period, term,~~ or if the Development is a public work under state law assurance of completion of the Development in the form of payment and performance bonds in the full amount of the construction contract or equivalent guarantee as allowable under state law in the sole determination of the Department is required. Development Owners utilizing the USDA §515 program for a Development that is not a public work are exempt from this requirement, but must meet the alternative requirements set forth by USDA.

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

(i) Substantially final information necessary for REA staff to reevaluate the transaction prior to loan closing, including but not limited to a substantially final development cost schedule, sources and uses, operating pro forma, annual operating expenses, rent schedule, updated written financial commitments or term sheets, and any additional financing exhibits that have changed since the time of Application.

(ii) Substantially final Draft Owner/General Contractor agreement and draft Owner/Architect agreement prior to closing with final executed copies required by the day of closing;

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

(iv) Plans and specifications for review by the Department's inspection staff. Inspection staff will issue a plan review letter that is intended to assist in identifying early concerns associated with the Department's final construction requirements; and

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

(E) If required by the fund source, prior to Contract Execution unless an earlier period is described in Chapters 10, 11, or 12 of this title, the Development Owner must provide verification of:

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

(ii) Site and Neighborhood clearance from the Department;

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

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

(F) The Direct Loan Contract as executed, which will be drafted by the Department's counsel or its designee for the Department. No changes proposed by the Developer or Developer's counsel will be accepted unless approved by the Department's Legal Division or its designee.

(1213) Loan Documents. The Development Owner is required to execute all loan closing documents required by and in the form and substance acceptable to the Department's Legal Division.

(A) Loan closing documents include but are not limited to a promissory note, deed of trust, construction loan agreement (if the proceeds of the loan are to be used for construction), LURA, Architect and/or licensed engineer certification of understanding to complete environmental mitigation if such mitigation is identified in HUD's environmental clearance or the Real Estate Analysis Division (REA) Underwriting Report and assignment and security instruments whereby the Developer, the Development Owner, and/or any Affiliates (if applicable) grants the Department their respective right, title, and interest in and to other collateral, including without limitation the Owner/Architect agreement and the Owner/General Contractor agreement, to secure the payment and performance of

the Development Owner's obligations under the loan documents.

(B) Loan terms and conditions may vary based on the type of Development, Real Estate Analysis Underwriting Report, and the Set-Aside under which the award was made.

(1314) Disbursement of Funds. The Borrower must comply with the requirements in subparagraphs (A) - (K) of this paragraph in order to receive a disbursement of funds to reimburse eligible costs incurred. Submission of documentation related to the Borrower's compliance with these requirements is required with a request for disbursement:

(A) All requests for disbursement must be submitted through the Department's Housing Contract System, using the MFDL draw workbook or such other format as the Department may require;

(B) Documentation of the total construction costs incurred and costs incurred since the last disbursement of funds must be submitted. Such documentation must be signed by the General Contractor and certified by the Development architect and is generally in the form of an AIA Form G702/ G703 or HUD equivalent form;

(C) Disbursement requests must include a down-date endorsement to the Direct Loan (mortgagee) title policy or Nothing Further Certificate that includes a title search through the date of the Architect's signature on AIA form G702 or HUD equivalent form. For release of retainage, the down-date endorsement to the Direct Loan title policy or Nothing Further Certificate must be dated at least 30 calendar days after the date of the completion as certified on the Certificate of Substantial Completion (AIA Form G704) with \$0 as the work remaining to be completed. If AIA Form G704 or HUD equivalent form indicates an amount of work remaining to be completed, the Architect must provide confirmation that all work has been completed. Disbursement requests for acquisition and closing costs are exempt from this requirement;

(D) At least 50% of Direct Loan funds [\(except as otherwise allowed for Permanent Refinance Loans described in 10 TAC §13.8\(e\)\)](#) will be withheld from the initial disbursement of loan funds to allow for periodic disbursements;

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

(F) Up to 75% of Direct Loan funds may be drawn before providing evidence of Match. Thereafter, the Borrower must provide evidence of Match being credited to the Development prior to release of the final 25% of funds;

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

(i) For Developments in which the loan is secured by a first lien deed of trust against the Property, 75% shall be disbursed in accordance with percent of construction completed. 75% of the total allowable fee will be multiplied by the percent completion, as documented by the construction contract and as may be verified by an inspection by the Department. The remaining 25% shall be disbursed at the time of release of retainage; or

(ii) For Developments in which the loan is not secured by a first lien deed of trust or the Development is also utilizing Housing Tax Credits, Developer Fees will not be reimbursed by the Department, except as follows. If all other lenders and syndicator

in a Housing Tax Credit Development (if applicable) provide written confirmation that they do not have an existing or planned agreement to govern the disbursement of Developer Fees and expect that Department funds shall be used to fund Developer Fees, they shall be reimbursed in the same manner as described in subparagraph (A) of this paragraph; and

(iii) The Department may reasonably withhold any disbursement in accordance with the Loan Documents and if it is determined that the Development is not progressing as reasonably necessary to meet the benchmarks for the timely completion of construction of the Development as set forth in the loan documents, or that cost overruns have put the Development Owner's ability to repay its Direct Loan or complete the construction at risk in accordance with the terms of the loan documents and within budget. If disbursement has been withheld under this subsection, the Development Owner must provide evidence to the satisfaction of the Department that the Development will be timely completed and occupied in order to continue receiving funds. If disbursement is withheld for any reason, disbursement of any remaining Developer Fee will be made only after construction of the Development has been completed, and all requirements for expenditure and occupancy have been met; and

(H) Expenditures must be allowable and reasonable in accordance with federal and state rules and regulations. The Department shall review each expenditure requested for reasonableness. The Department may request the Development Owner make modifications to the disbursement request and is authorized to modify the disbursement procedures set forth herein and to establish such additional requirements for payment of Department funds to Development Owner as may be necessary or advisable for compliance with all program requirements;

(I) Table Funding ([the wiring of Direct Loan funds to the title company at loan closing](#)) may be permitted at the time of closing, for disbursement of funds related to eligible acquisition costs and eligible softs costs incurred, and in an amount not to exceed 50% of the total funds. Table Funding must be requested in writing and will not be considered unless the Direct Loan Contract has been executed, and all necessary documentation has been submitted to and accepted by the Department at least 10 calendar days prior to the anticipated closing date;

(J) Following 50% construction completion, any funds will be released in accordance with the percentage of construction completion as documented on AIA Form G702/703 or HUD equivalent form. 10% of requested Hard Costs will be retained and will not be released until the final draw request. If the Development is receiving funds from more than one MFDL source, the retainage requirement will apply to each fund source individually. All of the items described in clauses (i) - (xii) of this subparagraph are required in order to approve the final draw request:

(i) Fully executed Certificate of Substantial Completion (AIA Form G704) [or Form HUD-92485 \(for instances in which a federally insured HUD loan is being utilized\)](#) with \$0 as the cost estimate of work that is incomplete. If AIA Form G704 [or Form HUD-92485](#) indicates an amount of work remaining to be completed, the Architect must provide confirmation that all work has been completed;

- (ii) A down date endorsement to the Direct Loan title policy or Nothing Further Certificate dated at least 30 calendar days after the date of completion as certified on the Certificate of Substantial Completion (AIA Form G704~~;~~) or Form HUD-92485;
 - (iii) For Developments not layered with Housing Tax Credits, a Closed Final Development Inspection Letter from the Department;
 - (iv) For Developments subject to the Davis-Bacon Act, evidence from the Department's Senior Labor Standards Specialist that the final wage compliance report was received and approved or confirmation that HUD or other entity maintains Davis-Bacon oversight ~~as a result of a HUD-insured first lien loan;~~
 - (v) Certificate(s) of Occupancy (~~for~~ New Construction or Reconstruction Units);
 - (vi) Development completion reports, which includes, but is not limited to, documentation of full compliance with the Uniform Relocation Act/104(d), Match Documentation requirements, and Section 3 of the Housing and Urban Development Act of 1968, as applicable to the Development, and any other applicable requirement; and
 - (vii) If applicable to the Development, certification from Architect or a licensed engineer that all HUD environmental mitigation conditions have been met; ~~and~~ (K) No disbursement of funds will be approved without receipt of all closing documents in the form and substance required by the Department's Legal Division; and
 - (J) The final draw request must be submitted within 24 months from loan closing the construction term as determined in accordance with 10 TAC §13.8(c)(1) or (d)(1) as applicable, unless Development Periodthe construction term has been extended in accordance with 10 TAC §13.12 or 10 TAC §13.13 of this chapter, as applicable.
- (1415) Annual Audits and Cost Certifications under 24 CFR §93.406(b).**

(A) Annual Audits under 24 CFR §93.406(b). Unless otherwise directed by the Department, the Development Owner shall arrange for the performance of an annual financial and compliance audit of funds received and performances rendered under the Direct Loan Contract, subject to the conditions and limitations set forth in the executed Direct Loan Contract. All approved audit reports will be made available for public inspection within 30 days after completion of the audit.

(B) Cost Certifications under 24 CFR §93.406(b).

(i) Non-HTC-Layered Developments. Within 180 calendar days of the later of all title transfer requirements and construction work having been performed, as reflected by the Development's Certificate(s) of Occupancy (if New Construction) or Certificate of Substantial Completion (AIA Form G704 or HUD equivalent form), or when all modifications required as a result of the Department's Final Construction Inspection are cleared as evidenced by receipt of the Closed Final Development Inspection Letter, the Development Owner will submit to the Department a cost certification done by an independent licensed certified public accountant of all Development costs (including project NHTF eligible costs), subject to the conditions and limitations set forth in the executed Direct Loan Contract.

(ii) HTC-Layered Developments. With the Cost Certification required by the Low Income Housing Tax Credit Program, the Development Owner must submit to the Department a cost certification completed by an independent licensed certified public

accountant of all Development costs (including NHTF project eligible costs), subject to the conditions and limitations set forth in the executed Direct Loan Contract.

§13.12. Pre-Closing Amendments to Direct Loan Terms.

(a) Executive Approval Required Pre-Closing. The Executive Director or authorized designee may approve amendments to loan terms prior to closing as described in paragraphs (1) - (6) of this subsection.

(1) Extensions of up to six months to the loan closing date required in 10 TAC §13.11(~~ec~~)(4) of this chapter (relating to Post-Award Requirements) may be approved prior to closing. An Applicant must submit sufficient evidence documenting good cause, including but not limited to, documented delays caused by circumstances outside the control of the applicant or constraints in arranging a multiple fund source closing. An extension will not be available if an Applicant has:

(A) Failed to timely begin or complete a process required to close; including, but not limited to:

- (i) The process of finalizing all equity and debt financing;
- (ii) The environmental clearance process;
- (iii) The due diligence processing requirements; or

(B) Made changes to the Development that require significant additional underwriting by the Department without at least 45 days to complete the review.

(2) Changes to the construction term and/or loan maturity date to accommodate the requirements of other lenders or to maintain parity of term may be approved prior to closing.

(3) Extensions of up to 12 months to the Construction Completion date or date of receipt of a Closed Final Development Inspection Letter required in 10 TAC §13.11(~~gc~~)(8) of this chapter may be requested but generally are not approved prior to initial loan closing. Extensions under this paragraph are determined based on documentation that the extension is necessary to complete construction and that there is good cause for the extension.

(4) ~~Changes Only~~ to the loan extent determined necessary by Real Estate Analysis to maintain financial feasibility, changes to the amortization period (not to exceed 40 years) or interest rate (to not less than the minimum specified in rule or NOFA) that cause the annual repayment amount to decrease less than 20%, or any changes to the amortization or interest rate that increase the annual repayment amount up to 20%, ~~may be approved prior to closing.~~

(5) Decreases in the Direct Loan amount, provided the decrease does not jeopardize the financial viability of the Development in the determination of Real Estate Analysis may be approved prior to closing, though the Development Owner may be subject to penalties as further described in 10 TAC §13.11 of this chapter (relating to Post-Award Requirements). Increases will not be approved unless the Applicant competes/applies for the additional funding under an open NOFA.

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

(b) Board Approval Required Pre-Closing. Board approval is necessary for any other changes prior to closing.

§13.13. Post-Closing Amendments to Direct Loan Terms.

(a) Good Cause Extensions. The Executive Director or authorized designee may approve extensions of up to 12 months under 10 TAC §13.11(g) or (m)(11) of this chapter (relating to Post-Award Requirements) based on documentation that there is good cause for the extension.

(b) Amendments to MFDL Awards. Except in cases of Force Majeure, changes to terms of awards subject to mandatory HUD reporting requirements will only be processed after the Construction Completion is reported to the federal oversight entity as completed, and the last of the MFDL funds have been drawn.

(c) Executive Amendments. The Executive Director or authorized designee may approve amendments to loan terms post-closing as described in paragraphs (1) - (3) of this subsection. Board approval is necessary for any other changes post-closing.

(1) Changes in Terms. Changes to the amortization or maturity date to accommodate the requirements of other lenders or maintain parity of term may be approved post-closing, provided the changes result in the Direct Loan continuing to meet the requirements of 10 TAC §13.8(c)(1) and (3) of this chapter (relating to Loan Structure and Underwriting Requirements), and NOFA requirements.

(2) Post-Closing Subordinations or Re-subordinations of MFDL Liens. Re-subordination of the Direct Loan in conjunction with refinancing may be approved post-closing, provided the conditions in subparagraphs (A) - (E) of this paragraph are met:

(A) The Borrower is current with loan payments to the Department, and no notice has been given of any Event of Default on any MFDL loan. Histories of late or non-payment on any other MFDL loan may result in denial of the request;

(B) The refinance does not propose payment to any of the Development Owner or Developer parties (including the Limited Partners);

(C) A proposal for partial repayment of the MFDL lien is made with the request; and

(D) The new superior lien is in an amount that is equal to or less than the original senior lien and does not negatively affect the financial feasibility of the Development.

(i) For purposes of this section, a negative effect on the financial feasibility of the Development shall mean a reduction in the total Debt Coverage Ratio (DCR) of more than 0.05, or if the DCR no longer meets the requirements of 10 TAC §11.302 of this title; and

(ii) Changes to accommodate refinancing with a new superior lien that is in an amount that exceeds the original senior lien and which will be directly applied to property improvements, as evidenced by the loan or security agreements (exclusive of fees associated with the refinance and any required reserves), will be considered on a case by case basis.

(E) The subordination or re-subordination request does not include a request to subordinate or resubordinate any MFDL LURA, with the exception of partial subordination or re-subordination of receivership rights (subject to the proposed receiver entity or Affiliate not having been Debarred by the Department or on the Federal Suspended or Debarred Listing).

(3) Workout Arrangements. Changes required to the Department's loan terms or amounts that are part of an approved Asset Management Division work out arrangement may be

approved after Construction Completion.

(d) Contract Assignments and Assumptions of MFDL Liens. The Executive Director or authorized designee may approve the Contract Assignment and Assumption of MFDL Liens following approval of an Ownership Transfer request if the conditions in paragraphs (1) – (3) of this subsection are met:

(1) The assignment or assumption is not prohibited by the Contract, Loan Documents, or regulations;

(2) The assignment or assumption request is based on either subparagraph (A) or (B) of this paragraph:

(A) There are insufficient funds available in the transaction to fully repay the Direct Loan at the time of acquisition, for which Deferred Developer Fee, Development Owner or Affiliate Contributions, or other similar liabilities will not be considered in determining whether the Direct Loan could be repaid at the time of acquisition; or

(B) The new superior lien will be directly applied to property improvements as evidenced by the loan or security agreements, exclusive of fees association with the new financing and any required reserves; and

(3) The corresponding Ownership Transfer has been approved in accordance with all requirements in 10 TAC §10.406 of this title (relating to Ownership Transfers), and no prospective Owner (~~including entity, person, Board Member or affiliate, as those terms are defined in 2 CFR Part 180, including Limited Partners, and 2 CFR Part 2424, Subpart I~~); ~~have~~ has been subject to state Debarment or are on the Federal Suspended or Debarred Listing. This includes Board Members and Limited Partners.

8a

BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION
SEPTEMBER 3, 2020

Presentation, Discussion and Possible Action regarding a waiver of §10.402(b) relating to Determination Notices for Gala at Central Park (#20406)

RECOMMENDED ACTION

WHEREAS, at the Board Meeting on June 25, 2020, the Board approved a Determination Notice (Notice) for 4% Housing Tax Credits in the amount of \$486,783, along with an award of Multifamily Direct Loan National Housing Trust Fund (NHTF) in the amount of \$3,000,000 for Gala at Central Park (#20406), a new construction development in Hurst;

WHEREAS, subsequent to Board approval, staff issued an Award Letter for the NHTF award on August 4, 2020, and the Determination Notice on June 26, 2020. The Award Letter was executed and timely returned on August 12, 2020. The Determination Notice had an expiration date of July 27, 2020, whereby all of the documents as stated therein, along with an executed copy by the Development Owner, and payment of the Determination Notice fee was required to be submitted to the Department;

WHEREAS, the aforementioned Determination Notice documents and fee were not submitted by the deadline, and pursuant to §10.402(b) the Notice has expired;

WHEREAS, the applicant has requested a waiver relating to §10.402(b), to allow an extension of the Notice due to unforeseeable and uncontrollable circumstances beyond the applicant's control;

WHEREAS, the applicant's waiver request cited COVID-19 as the reason the Determination Notice and associated documents were not submitted by the deadline; specifically relating to individuals responsible for coordinating the response to the Notice working from home which created delays in communication and the need to obtain information from third parties;

WHEREAS, the documents required under the Determination Notice were subsequently provided to staff on August 21, 2020;

WHEREAS, the Determination Notice is required in order to execute a contract for the NHTF, and such contract is required to meet a federal commitment deadline;

WHEREAS, failure to meet the federal commitment deadline will result in the loss of \$3,000,000 for the Application, rendering it infeasible, and the probable loss of those same funds to the State; and

WHEREAS, in accordance with 10 TAC §11.207, though staff may not consider the requirements to recommend that such waiver be granted have been met for the Determination Notice, alone, but the overriding concern regarding loss of the NHTF funds warrants staff's recommendation of approval of the waiver;

NOW, therefore, it is hereby

RESOLVED, that the waiver of 10 TAC §10.402(b) is hereby approved.

BACKGROUND

Staff was given authority by the Board at its meeting on June 25, 2020, to issue a Determination Notice reflecting an amount of 4% housing tax credits that the Real Estate Analysis division determined the proposed Gala at Central Park was eligible for based on the submitted application. In addition, the Board made an award of National Housing Trust Fund to the Development.

Upon Board approval, staff proceeded with issuing the Determination Notice which, pursuant to 10 TAC §10.402(b) of the Uniform Multifamily Rule (Rule) requires an executed copy, along with certain documents and the Determination Notice fee to be returned to the Department within 30 days of the effective date of the Notice. The Notice was issued on June 26, 2020, and was required to be returned no later than July 27, 2020. The requirement in the Rule reads as follows:

“(b) Determination Notices. For Tax Exempt Bond Developments, the Department shall issue a Determination Notice which shall confirm the Board's determination that the Development satisfies the requirements of this chapter as applicable and other applicable Department rules in accordance with the §42(m)(1)(D) of the Internal Revenue Code (the Code). The Determination Notice shall also state the Department's determination of a specific amount of housing tax credits that the Development may be eligible for, subject to the requirements set forth in the Department's rules, as applicable. The Determination Notice shall expire on the date specified therein, which shall be 30 calendar days from the effective date, unless the Development Owner indicates acceptance by executing the Determination Notice, pays the required fee specified in Chapter 11, Subchapter E of this title, and satisfies any conditions set forth therein by the Department. The Determination Notice expiration date may not be extended. The Determination Notice will be rescinded if the Tax Exempt Bonds are not closed within the timeframe provided for by the Board on its approval of the Determination Notice, by the expiration of the Certificate of Reservation associated with the Determination Notice, or if there are material changes to the financing or Development as determined by the Department pursuant to its rules and any conditions of approval included in the Board approval or underwriting report.”

Pursuant to §10.402(f) of the Rule and reiterated under Section A(II) of the Notice, the following items are required to be submitted by the stated deadline:

- Determination Notice Fee equal to 2% of the awarded credit amount;
- evidence from the Secretary of State (SOS) of the authority to do business in Texas (can be pulled from the SOS website);
- evidence of franchise tax account status from the Comptroller (can be pulled from their website),
- a corporate resolution that the signer of the Notice has the authority to sign on behalf of the applicant;
- evidence of final zoning (site was properly zoned at application);
- satisfaction of any conditions relating to underwriting or previous participation that needed to be met at Determination Notice (there were none);
- documentation of any amendments or extensions pursuant to Asset Management Rules (there were none); and
- an attorney opinion identifying the statutory basis for the property tax exemption (applicable to this application).

Staff received a phone call from the applicant on August 14, 2020, indicating they could not find a record of the Notice being submitted to the Department. Staff confirmed that, in fact, nothing had been submitted. On August 21, 2020, the applicant submitted the required documents under the Notice which reflected the following:

- The Notice was signed by the development owner on August 14, 2020;
- A check for the Determination Notice fee, dated August 14, 2020, (was received by the Department on August 24, 2020);
- the evidence from the SOS indicated they had been filed in February 2020 and June 2020;
- the evidence of franchise tax status was dated June 30, 2020;
- the corporate resolution was dated July 2020;
- evidence of appropriate zoning was not required as the site was zoned appropriately at application; and
- the attorney opinion was not submitted with the original package on August 21, 2020. Staff followed-up with the applicant on August 24 requesting the opinion and it was provided that same day and dated August 24, 2020.

A Determination Notice for Gala at Central Park is not required by any state or federal regulations in order to close on the bond financing. A reservation of private activity bonds is required in order to have access to the 4% housing tax credits and the reservation for Gala at Central Park was issued under a Priority 3 designation, which pursuant to Texas Government Code, Chapter 1372 is not required to apply for housing tax credits. That being said, the applicant can close on the bond financing and once construction is complete they can complete the cost certification process. Upon review of the cost certification package and development costs, the Department could issue IRS Form 8609's despite having an expired Determination Notice.

On August 4, 2020, staff also issued an Award Letter under 10 TAC §13.11(b)(1) for the NHTF award, which requires that the executed Letter be returned within 15 calendar days. The executed letter was returned on August 12, 2020. The Award Letter is required prior to the Department issuing a Contract, in preparation for loan closing. The Contract serves a dual purpose, in that it memorializes the agreement to terms and conditions of the award and loan, and meets federal requirements of documentation to meet HUD commitment deadlines. In order to execute the Contract for Gala at Central Park, and meet the upcoming NHTF commitment deadline of October 3, 2020, extension of the Determination Notice is required.

Failure to have a fully executed contract on or before the HUD commitment deadline will mean that \$3,000,000 of NHTF will be lost to the Applicant and likely to the state of Texas. While the Applicant's waiver request is not of the kind that staff would generally recommend to the Board staff is recommending the waiver in this circumstance because of the immediate need to commit these funds. Staff believes the policies and purposes under Texas Government Code, Chapter 2306 would be better met if a waiver of §10.402(b) is granted.

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BARRY PALMER
DIRECTOR

BPALMER@COATSROSE.COM
DIRECT: (713) 653-7395
FAX: (713) 890-3944

August 24, 2020

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

Re: Gala at Central Park (the "Project")
Hurst, Texas

Dear Ms. Morales,

In connection with the above captioned matter, we would like to respectfully request a waiver of 10 TAC 10.402(b) in connection with our application for Low Income Housing Tax Credits for the Project.

10 TAC 402(b) requires that The Determination Notice issued by TDHCA shall expire thirty days after its issuance, unless the Development Owner indicates acceptance by executing the Determination Notice, paying the required fee, and satisfying any conditions set therein by the Department. While 10 TAC 402(b) provides that there are no extensions of this expiration, we respectfully request that a waiver be granted and the expiration be extended due to unforeseeable and uncontrollable circumstances beyond the applicant's control.

Although the Determination Notice issued to the Project expired upon July 24, 2020, an extension is appropriate in this instance. In response to the COVID-19 pandemic and related emergency responses, the applicant and developer team experienced unforeseeable and uncontrollable difficulties which have significantly slowed the team's ability to respond as quickly or efficiently as may have been possible in past cycles as contemplated by 10 TAC 402(b). These difficulties have been exacerbated by pandemic response efforts, including requirements and policies that have caused many of the individuals responsible for coordinating the response to the determination notice to operate in a work-from-home environment. This has resulted in delays due to increased impediments in the communication process as well as in obtaining needed documentation from third parties. The occurrence of the pandemic and the accompanying need for drastic measures in response to the local, state, and national emergency has been outside of the control of the applicant and was neither reasonably foreseeable nor preventable. The Covid-19 pandemic has specifically impacted the developer team in a number of ways, including a slow down in response time from third party vendors, difficulty in

August 24, 2020

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coordination among team members no longer working from a central office and reduced productivity resulting from staff with young children working at home without childcare.

The thirty day response period provided for in 10 TAC 402(b) was adopted at a time when a pandemic and state emergency like those of COVID-19 could not have been foreseen, either by the applicant or by TDHCA. In our opinion, delays of this nature were not contemplated at the time of adoption, nor should waivers of this type be prohibited. Pursuant to 10 TAC 207(b), “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.” We respectfully request that a waiver be issued in response to the existing declared Covid-19 disaster, which occurred subsequent to the issuance of the multifamily rules.

By granting this waiver, it is our belief that TDHCA will better serve its purpose in both (a) providing for the housing needs of individuals and families of low, very low, and extremely low-income families and families of moderate income and (b) contributing to the preservation, development, and redevelopment of neighborhoods and communities. The Gala at Central Park is a much-needed addition to its surrounding community and granting this waiver is necessary to the financial viability of the Project, allowing for the needed development and providing much-needed housing for low- and moderate-income families as contemplated by Sections 2306.001(2) and (3) of the Texas Government Code. Further, support of this project will help TDHCA to achieve its aspirations under Section 2306.002 of the Government Code in that it will assist in the development of decent, safe, and affordable housing through the combination of local assistance with a state loan and federal tax credits, through which combination government at all levels would be involved in assisting individuals and families of low income in obtaining a decent, safe, and affordable living environment. This waiver and these funds are critical to the completion of this Project.

Very truly yours,



Barry Palmer

cc: Ryan Combs

8b

BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION
SEPTEMBER 3, 2020

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

RECOMMENDED ACTION

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

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

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

WHEREAS, upon approval of the proposed QAP, the rule will be made available for public comment in the *Texas Register* through October 9, 2020, and then returned to the Board for final approval; and

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

NOW, therefore, it is hereby

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

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

comment and, in connection therewith, make such non-substantive technical corrections, including any required revisions to the preambles, as they may deem necessary to effectuate the foregoing.

BACKGROUND

General Information: Attached to this Board Action Request is the Qualified Allocation Plan (QAP), which reflects staff's recommendations for the Board's consideration. The attached QAP identifies the differences between the 2020 QAP and the proposed 2021 QAP in blackline format. The QAP submitted to the *Texas Register* will be a proposed new version of the 2021 QAP, and will not identify the changes between 2020 and 2021. The Department's Public Comment page will also include a blackline version of the proposed 2021 QAP as approved by the Board to facilitate stakeholders' engagement with the changes.

In December 2019, the Board approved the 2020 QAP Project Plan, which included several topics to be discussed at roundtables in the coming year. The Plan contemplated continuing the conversations staff had with stakeholders over the past several years, to gather input and reach decisions about changes to the QAP for 2021. At the May 21 meeting, the Board approved a revision to the Plan due to COVID-19. The revised plan described changes "primarily limited to correcting errors or clarifying matters that have arisen since publication of the 2020 QAP." It also discussed publication of a staff draft QAP prior to the draft document presented today.

Due to timing and staff constraints, it was not possible to publish a staff draft. The draft QAP presented to the Board at this meeting has not received early scrutiny by stakeholders, as have QAPs in recent years. Staff believes that the changes proposed are primarily minimal and necessary, having completed the 9% cycle, and processed a large increase in 4% volume since publication of the final 2020 QAP.

Rule-Making Timeline: Upon Board approval, the proposed 2021 QAP will be posted to the Department's website and published in the *Texas Register*. Public comment will be accepted between September 18, 2020, and October 9, 2020. Staff will then consider and prepare reasoned responses to public comment as part of the final action on the QAP that will be brought before the Board on November 5, 2019, for approval. Subsequently, the QAP will be submitted to the Office of the Governor not later than November 15, 2020, for him to approve, approve with changes, or reject. Upon the Governor's approval, approval with modifications, or rejection, which must occur no later than December 1, 2020, the adopted 2021 QAP will be published in the *Texas Register* and posted to the Department's website.

Summary of Proposed Changes:

While not inclusive of all changes proposed, a description of the more significant recommendations that are considered changes of policy are described below.

10 TAC Chapter 11, Subchapter A

§11.1(d) – Definitions. The definition of Supportive Housing was revised to add clear requirements

for criminal background checks, and the methods for underwriting projects was updated to reflect recent experience. Corresponding changes are made to the underwriting subchapter.

§11.2 – Program Calendar. This section is modified to reflect dates for the 2021 Application round.

§11.3(f) – Additional Phase. This limitation was removed, with the exception of the limitation on Developer Fee, which was moved to 10 TAC §11.302(e)(7).

§11.4(c) – Increase in Eligible Basis. Parts of this paragraph were re-arranged for clarity.

§11.8(b) – Pre-Application Threshold Criteria (Competitive HTC Only). The description of schools that trigger disclosure requirements has been clarified to remove year-specific references. This change corresponds to changes in Neighborhood Risk Factors. Applicants will be required to provide an accurate mailing address for Notification Recipients.

§11.8(d) – Pre-Application Threshold Criteria. Applicants who plan to request Multifamily Direct Loan funds as the only source of permanent financing for their Development may submit a Request for Preliminary Determination with the Pre-Application. The result of the Preliminary Determination can be used in the full Application to gain maximum points under Financial Feasibility.

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

§11.9(b)(2) – Sponsor Characteristics. Affiliates, including spouses, of any other principal in the Application, may not be the principal of the HUB or qualified nonprofit used to gain points for this item.

§11.9(c)(4) – Opportunity Index. The distance to many amenities was increased for both urban and rural scoring.

§11.9(c)(7) – Proximity to Job Areas. The date for the required OnTheMap report has been modified.

§11.9(c)(8) – Readiness to proceed in disaster impacted counties. The period of eligibility was expanded from three years to four years so that the counties impacted by Hurricane Harvey remain eligible for this scoring item. Clarification was added so that the current declaration for the COVID-19 pandemic does not trigger all areas of the State to be eligible for these points.

§11.9(e)(1) – Financial Feasibility. Revisions allow certain USDA Application and Direct Loan layered Application to receive the full 26 points.

§11.9(e)(2) – Cost per Square Foot. Costs were increased across all categories.

10 TAC Chapter 11, Subchapter B

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

- *(a)(2) Undesirable Site Features.* Provision is added for a pre-determination of eligibility.

- *(a)(3) Neighborhood Risk Factors.* Because TEA will not be publishing school ratings for the 2019-2020 academic year, and the assumed difficulty of getting information from school districts during pandemic restrictions, requirements to provide mitigation for schools is suspended for 2021.

10 TAC Chapter 11, Subchapter C

§11.201(1) – General Requirements The time to cure a fee error is changed to 3 days following the deficiency notice, rather than 3 days after it was due.

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

§11.201(2)(E) – Withdrawal of Certificate of Reservation. New requirement is added such that Applicants must notify the Department if their bond Reservation is withdrawn. Provides for consideration of the Application as originally submitted to be considered sufficient or a new Application to be required. Discloses order of processing for re-submitted Applications.

§11.201(3) Certification of Tax Exempt Bond Applications with New Docket Numbers. New requirement for a Request for Determination Notice Reinstatement and fee.

§11.201(4) – Withdrawal of Application. Clarifies potential penalty for withdrawal of a Direct Loan Application after award.

§11.201(5) – Evaluation Process. Removes description of Application Log publication as potentially triggering appeal rights.

§11.201(6)(B) – Order of review of Applications under various Programs. Modifies review priority for non-Competitive Housing Tax Credit Applications for changes in statute and internal processes.

§11.201(7) – Deficiency Process. Deficiency responses must be uploaded to the Application’s ServU folder, rather than emailed.

§11.201(7)(D) – Deficiencies for Direct Loan only Applications. Provides for suspension and termination of Applications for late deficiency responses.

§11.204(6) – Experience Requirement. Limitation is added that acting only as the HUB for a Development does not meet requirements for an Experience Certificate.

§11.204(8)(D) – Operating and Development Cost Documentation. Rent Schedule is modified for Direct Loan requirements.

§11.204(10)(E) – Site Control. Is modified for clarity regarding the requirement

§11.204(11) – Zoning. Age of Zoning letter is clarified and provision for places without zoning is added.

10 TAC Chapter 11, Subchapter D

§11.302 (d)(1)(A)(iii) – Rental Income Clarifies existing procedure of not including tenant-based voucher or rental assistance as income as the funds are portable with a tenant and not tied to any particular Development.

§11.302 (d)(4) – Debt Coverage Ratio Clarification of what debt is to be included in the Debt Coverage Ratio calculation.

- *§11.302(d)(4)(A)*: Clarification of the information needed to better understand the components of variable interest rate loans.
- *§11.302 (d)(4)(B)*: Clarification language added.
- *§11.302 (d)(4)(D) Acceptable Debt Coverage Ratio Range* Results from change in clarification language change in 11.302(d)(4). In (D)(i), the Acceptable Debt Coverage Ratio Range reprioritizes adjustments made to Direct Loan terms when the debt coverage ratio is less than the 1.15 times minimum. The interest rate and if needed the amortization will be adjusted before the amount of the Direct Loan will be adjusted downward. In (D)(ii), changes address adjustments made to Direct Loan terms when the debt coverage ratio is greater than the 1.35 times maximum. The interest rate and if needed the amortization will be adjusted before any assumption of increased non-Department financing.

§11.302 (e)(1) – Acquisition Costs Changes to this section in total propose to remove the identity of interest provisions for Acquisition and Rehabilitation developments. Identity of interest provisions remain applicable to Land, Reconstruction and Adaptive Reuse acquisitions. An appraisal will be required on any acquisition and rehabilitation development regardless of if the Applicant is claiming building acquisition tax credit basis. Although not in this section but by reference, all appraisals submitted to the Department will be reviewed by a third-party appraiser as outlined in §11.304 (relating to Appraisal Rules and Guidelines).

§11.302 (e)(7)(A) – Developer Fee For developments proposing an additional phase to an existing Development, the developer fee will not exceed 15% regardless of the number of units being added to the original phase.

§11.302 (e)(7)(B) – Developer Fee Deletion of this provision allows for developer fee on the acquisition of building basis regardless of whether the transaction is an identity of interest or not.

§11.302 (g)(4) – Supportive Housing This section is deleted in its entirety. The section is descriptive and explanatory information about the differences between underwriting supportive housing developments and traditional housing developments and how the underwriter may approach the analysis. Because the technics and considerations remain allowed by rule, deletion of the section does not change how supportive housing applications are evaluated and underwritten.

§ 11.302 (g)(4) – Direct Loan This section is added to comply with 24 CFR §§92.250 and 93.300(b) regarding methodology for over-enrichment testing on Direct Loan awards.

§11.302 (i) – Feasibility Conclusion This change deletes the ability of the Underwriter to determine alternative structures to allow for a recommendation of an application. While the flexibility is removed, the provisions suggests to some that the underwriter has an obligation to do so.

§11.302 (i)(3) – Pro Forma Rent This change deletes an obsolete and unused provision.

§11.302 (i)(5) – Exceptions These changes clarify current understanding and application of the rule.

§11.302 (i)(5)(B)(iv) – Supportive Housing Feasibility This change is necessary because of the changes in the definition of supportive housing for developments that are not financed with hard debt. The change also moves the requirements for a board resolution from the deleted section §11.302(g)(4) above.

§11.303 (d)(10)(E)(iv) – Market Study Conclusions Allows the Underwriter to request additional analysis from the Market Analyst when a proposed development is located near the market area of either another proposed or an unstabilized comparable development. This is a practice currently done by the Underwriter to ensure the relevance of primary market area.

§11.304 (a)(2) – Appraisal Review This new rule requires that all appraisals submitted to the Department will be reviewed by a third-party appraiser. The reviewing appraiser will be selected by the Underwriter from a list of approved appraisers. The rule authorizes the Underwriter to reconcile values and determine the value used in the analysis.

§11.306 (d)(8)(j) – Scope and Cost Review Checklist New requirement that the Scope and Cost Review provider provides a checklist to help ensure that the Scope and Cost Review reports conform to the rules.

10 TAC Chapter 11, Subchapter E

§11.901 – Fee Schedule. The fee reduction from 2020 has been removed. Determination Notice Reinstatement Fee and Appraisal Review Fee are added.

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

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

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

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

1. Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the proposed repeal would be in effect, the proposed repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous readoption making changes to an existing activity, concerning the allocation of Low Income Housing Tax Credits (LIHTC).

2. The proposed repeal does not require a change in work that would require the creation of new employee positions, nor is the proposed repeal significant enough to reduce work load to a degree that any existing employee positions are eliminated.

3. The proposed repeal does not require additional future legislative appropriations.

4. The proposed repeal does not result in an increase in fees paid to the Department or in a decrease in fees paid to the Department.

5. The proposed repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.

6. The proposed action will repeal an existing regulation, but is associated with a simultaneous readoption making changes to an existing activity, concerning the allocation of LIHTC.

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

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

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

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

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

The proposed repeal does not contemplate nor authorize a takings by the Department; therefore, no Takings Impact Assessment is required.

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

The Department has evaluated the proposed repeal as to its possible effects on local economies and has determined that for the first five years the proposed repeal would be in effect there would be no economic effect on local employment; therefore no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX GOV'T CODE §2001.024(a)(5).

Mr. Wilkinson has also determined that, for each year of the first five years the proposed repeal is in effect, the public benefit anticipated as a result of the repealed section would be an updated and more germane rule for administering the allocation of LIHTC. There will not be economic costs to individuals required to comply with the repealed section.

f. FISCAL NOTE REQUIRED BY TEX GOV'T CODE §2001.024(a)(4).

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

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 18, 2020, to October 9, 2020 to receive stakeholder comment on the proposed repealed section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Matthew Griego, QAP Public Comment, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 475-1895, attn: Matthew Griego, QAP Public Comments, or by email to htc.public-comment@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. Austin local time OCTOBER 9, 2020.

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

10 TAC Chapter 11, Qualified Allocation Plan

SUBCHAPTER A

§11.1 General

§11.2 Program Calendar for Housing Tax Credits

§11.3 Housing De-Concentration Factors

§11.4 Tax Credit Request and Award Limits

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

§11.6 Competitive HTC Allocation Process

§11.7 Tie Breaker Factors

§11.8 Pre-Application Requirements (Competitive HTC Only)

§11.9 Competitive HTC Selection Criteria

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

SUBCHAPTER B

§11.101 Site and Development Requirements and Restrictions

SUBCHAPTER C

§11.201 Procedural Requirements for Application Submission

§11.202 Ineligible Applicants and Applications

§11.203 Public Notifications (§2306.6705(9))

§11.204 Required Documentation for Application Submission

§11.205 Required Third Party Reports

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

§11.207 Waiver of Rules

SUBCHAPTER D

§11.301 General Provisions

§11.302 Underwriting Rules and Guidelines

§11.303 Market Analysis Rules and Guidelines

§11.304 Appraisal Rules and Guidelines

§11.305 Environmental Site Assessment Rules and Guidelines

§11.306 Property Condition Assessment Guidelines

SUBCHAPTER E

§11.901 Fee Schedule

§11.902 Appeals Process

§11.903 Adherence to Obligations

§11.904 Alternative Dispute Resolution (ADR) Policy

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

The Texas Department of Housing and Community Affairs (the “Department”) proposes new 10 TAC Chapter 11, Qualified Allocation Plan (QAP). The purpose of the proposed new section is to provide compliance with Tex. Gov’t Code §2306.67022 and to update the rule to: clarify how Applications will be treated in the Deficiency Process and Appeals Process; clarify and amend the definition of Supportive Housing; update the Program Calendar; amend the readiness to proceed in disaster impacted counties scoring item to look back four years so that Applications in Hurricane Harvey counties are still eligible for these points and add a provision that a FEMA declaration of statewide disaster does not apply; update provisions to Neighborhood Risk Factors and mitigation allowed for those factors; revise timelines associated with Tax-Exempt Bond Developments; and, specify provisions for termination for Applications seeking Tax-Exempt Bond or Direct Loan funds.

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

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

Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the proposed new rule would be in effect:

1. The proposed rule does not create or eliminate a government program, but relates to the re-adoption of this rule which makes changes to an existing activity, concerning the allocation of Low Income Housing Tax Credits (LIHTC).
2. The proposed new rule does not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.
3. The proposed rule changes do not require additional future legislative appropriations.
4. The proposed rule changes will result in an increase in fees paid to the Department in some cases. A new Determination Notice Reinstatement Fee has been added in the amount of \$1,000; only rarely will applicants be in a situation that may prompt them to want to pursue a reinstatement. A new Appraisal Review Fee has been added only for those applicants required to submit an appraisal. The fee amount is not fixed; however the rule provides that it will not exceed \$6,000. The proposed rule removes a one-time adjustment to the Commitment and Determination Fee amounts from 4% to 2%.
5. The proposed rule is not creating a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions.
6. The proposed rule will not limit or repeal an existing regulation, but can be considered to “expand” the existing regulations on this activity because the proposed rule has sought to clarify Application requirements.

Some “expansions” are offset by corresponding “contractions” in the rules, compared to the 2020 QAP. Notably, the Department has sought to remove superfluous language wherever possible and to consolidate rules into just one section.

These additions, removals, and revisions to the QAP are necessary to ensure compliance with IRC §42

and Tex. Gov't Code §2306.67022.

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

8. The proposed rule will not negatively affect the state's economy, and may be considered to have a positive effect on the state's economy because changes at 10 TAC §11.9(c)(7), Proximity to Job Areas, may help to encourage the Development of affordable multifamily housing in robust markets with strong and growing economies.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX GOV'T CODE §2006.002. The Department, in drafting this proposed rule, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code, §2306.67022. Some stakeholders have reported that their average cost of filing an Application is between \$50,000 and \$60,000, which may vary depending on the specific type of Application, location of the Development Site, and other non-state of Texas funding sources utilized. The proposed rules do not, on average, result in an increased cost of filing an application as compared to the existing program rules. Two new fees were added to this rule, however the instances in which these fees would be required to be paid are limited to the rare instance of an applicant wanting to request that a determination notice be reinstated and for those applicants required to submit an appraisal. Additionally, because of revisions to how Applicants may mitigate neighborhood risk factors, recipients of HTC awards may be able to decrease the cost of having to comply with this rule.

1. The Department has evaluated this rule and determined that none of the adverse effect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

2. There are approximately 100 to 150 small or micro-businesses subject to the proposed rule for which the economic impact of the rule may range from \$480 to many thousands of dollars, just to submit an Application for Competitive or non-Competitive HTCs. The Department bases this estimate on the potential number of Applicants and their related parties who may submit applications to TDHCA for LIHTC. The fee for submitting an Application for LIHTC is \$30 per unit, and all Applicants are required to propose constructing, at a minimum, 16 Units. While, in theory, there is no limit to the number of Units that could be proposed in a single Application, practically speaking, the Department sees few proposed Developments larger than 350 Units, which, by way of example, would carry a fee schedule of \$10,500. These Application Fee costs are not inclusive of external costs required by the basic business necessities underlying any real estate transaction, from placing earnest money on land, conducting an Environmental Site Assessment, conducting a market study, potentially retaining counsel, hiring an architect and an engineer to construct basic site designs and elevations, and paying any other related, third-party fees for securing the necessary financing to construct multifamily housing. Nor does this estimate include fees from the Department for Applications that successfully attain an award.

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

multifamily Development.

3. The Department has determined that because there are rural tax credit awardees, this program helps promote construction activities and long term tax base in rural areas of Texas. Aside from the fees and costs associated with submitting an Application, there is a probable positive economic effect on small or micro-businesses or rural communities that receive LIHTC awards and successfully use those awards to construct multifamily housing, although the specific impact is not able to be quantified in advance.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX GOV'T CODE §2007.043. The proposed rule does not contemplate or authorize a takings by the Department. Therefore, no Takings Impact Assessment is required.

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

The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the proposed rule may provide a possible positive economic effect on local employment in association with this rule since LIHTC Developments often involve a total input of, typically at a minimum, \$5 million in capital, but often an input of \$10 million - \$30 million. Such a capital investment has concrete direct, indirect, and induced effects on the local and regional economies. However, because the exact location of where program funds and development are directed is not determined in rule, there is no way to determine during rulemaking where the positive effects may occur. Furthermore, while the Department knows that any and all impacts are positive, that impact is not able to be quantified for any given community until a proposed Development is actually awarded LIHTC, given the unique characteristics of each proposed multifamily Development and region in which it is being developed.

Texas Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." Considering that significant construction activity is associated with any LIHTC Development and that each apartment community significantly increases the property value of the land being developed, there are no probable negative effects of the new rule on particular geographic regions. If anything, positive effects will ensue in those communities where developers receive LIHTC awards.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the new section will be an updated and more germane rule for administering the allocation of LIHTC with considerations made for applicants as it relates to the impact of the COVID-19 pandemic on the application process. Other than the fees mentioned in section a4 above, there is no change to the economic cost to any individuals required to comply with the new section because the same processes described by the rule have already been in place through the rule found at this section being repealed. The average cost of filing an application remains between \$50,000 and \$60,000, which may vary depending on the specific type of application, location of the development site, and other non-state of Texas funding sources utilized. The proposed rules do not, on average, result in an increased cost of filing an application as compared to the existing program rules.

f. FISCAL NOTE REQUIRED BY TEX GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined

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

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 18, 2020, to October 9, 2020 to receive stakeholder comment on the new proposed section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Matthew Griego, QAP Public Comment, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 475-1895, attn: Matthew Griego, QAP Public Comments, or by email to htc.public-comment@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. Austin local time OCTOBER 9, 2020.

STATUTORY AUTHORITY. The new sections are proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules. Except as described herein the proposed new sections affect no other code, article, or statute.

DRAFT 2021 CHAPTER 11, QUALIFIED ALLOCATION PLAN (QAP)

SUBCHAPTER A PRE-APPLICATION, DEFINITIONS, THRESHOLD REQUIREMENTS AND COMPETITIVE SCORING

§11.1- General

(a) Authority. This chapter applies to the awarding and allocation by the Texas Department of Housing and Community Affairs (the Department) of Competitive and non-Competitive Housing Tax Credits. The federal laws providing for the awarding and allocation of Housing Tax Credits require states to adopt a qualified allocation plan. Pursuant to Tex. Gov't Code, Chapter 2306, Subchapter DD, the Department is assigned responsibility for this activity. As required by Internal Revenue Code (the Code), §42(m)(1), the Department has developed this Qualified Allocation Plan (QAP) and it has been duly approved to establish the procedures and requirements relating to an award and allocation of Housing Tax Credits. All requirements herein and all those applicable to a Housing Tax Credit Development or an Application under Chapter 10 of this title (relating to Post Award and Asset Management Requirements, Compliance Monitoring, and Incomes and Rents rules) collectively constitute the QAP required by Tex. Gov't Code §2306.67022- and §42(m)(1)(B) of the Code. Unless otherwise specified, certain provisions in sections §11.1 through §11.4 also apply to non-Competitive Housing Tax Credits. Subchapters B through E of this chapter also apply to non-Competitive Housing Tax Credits and Multifamily Direct Loans. Applicants are required to certify, among other things, that they have familiarized themselves with the rules that govern that specific program including, but not limited to, Chapter 1 of this title (relating to Administration), Chapter 2 of this title (relating to Enforcement), Chapter 10 of this title (relating to Uniform Multifamily Rules), Chapter 12 of this title (relating to Multifamily Housing Revenue Bond Rules), Chapter 13 of this title (relating to Multifamily Direct Loan Rule), and other Department rules. This subchapter does not apply to operating assistance programs or funds unless incorporated by reference in whole or in part in a Notice of Funding Availability (NOFA) or rules for such a program except to the extent that Developments receiving such assistance and otherwise subject to this chapter remain subject to this chapter.

(b) Due Diligence and Applicant Responsibility. Department staff may, from time to time, make available for use by Applicants information and informal guidance in the form of reports and responses to specific questions. The Department encourages communication with staff in order to clarify any issues that may not be fully addressed in the QAP, or may be unclear when applied to specific facts. However, while these resources are offered to help Applicants prepare and submit accurate information, Applicants should also appreciate that this type of guidance is limited by its nature, and that staff will apply the rules of the QAP to each specific situation as it is presented in the submitted Application. The Multifamily Programs Procedures Manual is not a rule and is provided as good faith guidance and assistance, but in all respects the statutes and rules governing the Low Income Housing Tax Credit program supersede these guidelines and are controlling. Moreover, after the time that an issue is initially presented and guidance is provided, additional information may be identified and/or the issue itself may continue to develop based upon additional research and guidance. Thus, until confirmed through final action of the Board, staff guidance must be considered merely as an aid and an Applicant continues to assume full responsibility for any actions Applicant takes regarding an Application. In addition, although the Department may compile data from outside sources in order to assist Applicants in the Application process, it remains the sole responsibility of the Applicant to perform independently the necessary due diligence to research, confirm, and verify any data, opinions,

interpretations, or other information upon which an Applicant bases an Application or includes in any submittal in connection with an Application.

(c) Competitive Nature of Program. Applying for Competitive Housing Tax Credits is a technical process that must be followed completely and correctly. Any person who desires to request any reasonable accommodation for any aspect of this process is directed to §1.1 of this Title (relating to Reasonable Accommodation Requests to the Department). As a result of the highly competitive nature of applying for Housing Tax Credits, an Applicant should proceed on the assumption that deadlines are fixed and firm as further provided for in subsection (f) of this section.

(d) Definitions. The capitalized terms or phrases used herein are defined below. Any capitalized terms not specifically mentioned in this section or any section referenced in this document shall have the meaning as defined in Tex. Gov't Code Chapter 2306, Internal Revenue Code (the Code) §42, the HOME Final Rule, and other federal or Department rules, as applicable. Defined terms, when not capitalized, are to be read in context and construed according to common usage.

(1) Adaptive Reuse--The change-in-use of an existing building not, at the time of Application, being used, in whole or in part, for residential purposes (e.g., school, warehouse, office, hospital, hotel, etc.), into a building which will be used, in whole or in part, for residential purposes. Adaptive Reuse requires that at ~~least 75~~ least 75% of the original building remains at completion of the proposed Development. Ancillary non-residential buildings, such as a clubhouse, leasing office ~~and/or~~ amenity center may be newly constructed outside the walls of the existing building or as detached buildings on the Development Site. Adaptive Reuse Developments will be considered as New Construction.

(2) Administrative Deficiency--Information requested by Department staff that staff requires to clarify or explain one or more inconsistencies; to provide non-material missing information in the original Application or pre-application; or to assist staff in evaluating the Application or pre-application that, in the Department staff's reasonable judgment, may be cured by supplemental information or explanation which will not necessitate a substantial reassessment or re-evaluation of the Application or pre-application. Administrative Deficiencies may be issued at any time while the Application or pre-application or Contract is under consideration by the Department, including at any time while reviewing performance under a Contract, processing documentation for a Commitment of Funds, closing of a loan, processing of a disbursement request, closing out of a Contract, or resolving of any issues related to compliance. A matter may begin as an Administrative Deficiency but later be determined to have constituted a Material Deficiency. If an Applicant claims points for a scoring item, but provides supporting documentation that would support fewer points for that item, staff would treat this as an inconsistency and issue an Administrative Deficiency which will result in a correction of the claimed points to align with the provided supporting documentation. If the supporting documentation is not provided for claimed points, the item would be assigned no points.

(3) Affiliate--An individual, corporation, partnership, joint venture, limited liability company, trust, estate, association, cooperative or other organization or entity of any nature whatsoever that directly, or indirectly through one or more intermediaries, has Control of, is Controlled by, or is under common Control with any other Person. All entities that share a Principal are Affiliates.

(4) Affordability Period--The Affordability Period commences as specified in the Land Use Restriction Agreement (LURA) or federal regulation, or commences on the first day of the Compliance Period as defined by the Code §42(i)(1), and continues through the appropriate program's affordability

requirements or termination of the LURA, whichever is earlier. The term of the Affordability Period shall be imposed by the LURA or other deed restriction, and in some circumstances may be terminated upon foreclosure or deed in lieu of foreclosure. The Department reserves the right to extend the Affordability Period for Developments that fail to meet program requirements. During the Affordability Period, the Department shall monitor to ensure compliance with programmatic rules as applicable, regulations, and Application representations.

(5) ~~(5)~~ Applicable Percentage--The percentage used to determine the amount of the Housing Tax Credit for any Development, as defined more fully in Code, §42(b).

(A) For purposes of the Application, the Applicable Percentage will be projected at:

(i) nine percent for 70% present value credits, pursuant to Code, §42(b); or

(ii) fifteen basis points over the current Applicable Percentage for 30% present value credits, unless fixed by Congress, pursuant to Code, §42(b) for the month in which the Application is submitted to the Department.

(B) For purposes of making a credit recommendation at any other time, the Applicable Percentage will be based on:

(i) the percentage indicated in the Agreement and Election Statement, if executed; or

(ii) the percentage as calculated in subparagraph (A) of this paragraph if the Agreement and Election Statement has not been executed and no buildings have been placed in service.

(6) Applicant--Means any Person or a group of Persons and any Affiliates of those Persons who file an Application with the Department requesting funding or a tax credit allocation subject to the requirements of this chapter or 10 TAC Chapters 12 or 13 and who have undertaken or may contemplate the later formation of one or more business entities, such as a limited partnership, that is to be engaged in the ownership of a Development.

(7) Application Acceptance Period--That period of time during which Applications may be submitted to the Department. For Tax-Exempt Bond Developments it is the date the Application is submitted to the Department.

(8) Award Letter ~~and Loan Term Sheet~~--A document that may be issued to an awardee of a Direct Loan before the issuance of a Commitment ~~and/or~~ Contract which preliminarily sets forth the terms and conditions under which the Direct Loan will be made available. An Award Letter ~~and Loan Term Sheet~~ will typically be contingent on the awardee satisfying certain requirements prior to executing a Commitment ~~and/or~~ Contract.

(9) Bank Trustee--A federally insured bank with the ability to exercise trust powers in the State of Texas.

(10) Bedroom--A portion of a Unit which is no less than 100 square feet; has no width or length less than eight feet; is self contained with a door (or the Unit contains a second level sleeping area of 100 square feet or more); has at least one window that provides exterior access; and has at least one closet that is not less than two feet deep and three feet wide and high enough to accommodate five feet of hanging space. A den, study or other similar space that could reasonably function as a Bedroom and meets this definition is considered a Bedroom.

(11) Breakeven Occupancy--The occupancy level at which rental income plus secondary income is equal to all operating expenses, including replacement reserves and taxes, and mandatory debt service requirements for a Development.

(12) Building Costs--Cost of the materials and labor for the vertical construction or rehabilitation of buildings and amenity structures.

(13) Carryover Allocation--An allocation of current year tax credit authority by the Department pursuant to the provisions of the Code, §42(h)(1)(C) and U.S. Treasury Regulations, §1.42-6.

(14) Carryover Allocation Agreement--A document issued by the Department, and executed by the Development Owner, pursuant to §10.402(f) of this Title (relating to Carryover for Competitive Housing Tax Credits Only and Tax Exempt Bond Developments).

(15) Cash Flow--The funds available from operations after all expenses and debt service required to be paid have been considered.

(16) Certificate of Reservation or Traditional Carryforward Designation--The notice given by the Texas Bond Review Board (TBRB) to an issuer reserving a specific amount of the private activity bond state ceiling for a specific Development.

(17) Code--The Internal Revenue Code of 1986, as amended from time to time, together with any applicable regulations, rules, rulings, revenue procedures, information statements or other official pronouncements issued thereunder by the U.S. Department of the Treasury or the Internal Revenue Service (IRS).

(18) Code of Federal Regulations (CFR)--The codification of the general and permanent rules and regulations of the federal government as adopted and published in the Federal Register.

(19) Commitment (also referred to as Contract)--A legally binding written contract, setting forth the terms and conditions under which housing tax credits, loans, grants, or other sources of funds or financial assistance from the Department will be made available.

(20) Commitment of Funds--Occurs after the Development is approved by the Board and once a Commitment or Award Letter ~~and Loan Term Sheet~~ is executed between the Department and Development Owner. For Direct Loan Programs, this process is distinct from "Committing to a specific local project" as defined in 24 CFR Part 92 and Part 93, which may occur when the activity is set up in the disbursement and information system established by HUD, known as the Integrated Disbursement and Information System (IDIS). The Department's Commitment of Funds may not align with commitments made by other financing parties.

(21) Committee--See Executive Award and Review Advisory Committee.

(22) Common Area--Enclosed space outside of Net Rentable Area, whether conditioned or unconditioned, to include such area contained in: property management offices, resident service offices, 24-hour front desk office, clubrooms, lounges, community kitchens, community restrooms, exercise rooms, laundry rooms, mailbox areas, food pantry, meeting rooms, libraries, computer labs, classrooms, break rooms, flex space programmed for resident use, interior corridors, common porches and patios, and interior courtyards. Common Area does not include individualized garages, maintenance areas, equipment rooms, or storage.

(23) Comparable Unit--A Unit, when compared to the subject Unit, is similar in net rentable square footage, number of Bedrooms, number of bathrooms, overall condition, location (with respect to the subject Property based on proximity to employment centers, amenities, services and travel patterns), age, Unit amenities, utility structure, and common amenities.

(24) Competitive Housing Tax Credits (HTC)--Tax credits available from the State Housing Credit Ceiling.

(25) Compliance Period--With respect to a building financed, in part with proceeds of Housing Tax Credits, the period of 15 taxable years, beginning with the first taxable year of the credit period pursuant to Code, §42(i)(1).

(26) Continuously Occupied--The same household has resided in the Unit for at least 12 months.

(27) Contract--See Commitment.

(28) Contract Rent--Net rent based upon current and executed rental assistance contract(s), typically with a federal, state or local governmental agency.

(29) Contractor--See General Contractor.

(30) Control (including the terms "Controlling," "Controlled by," and/or "under common Control with")--The power, ability, or authority, acting alone or in concert with others, directly or indirectly, to manage, direct, superintend, restrict, regulate, govern, administer, or oversee. As used herein "acting in concert" involves more than merely serving as a single member of a multi-member body. A member of a multi-member body is not acting in concert and therefore does not exercise control in that role, but may have other roles, such as executive officer positions, which involve actual or apparent authority to exercise control. Controlling entities of a partnership include the general partners, may include special limited partners when applicable, but not investor limited partners or special limited partners who do not possess other factors or attributes that give them Control. Controlling individuals and entities are set forth in subparagraphs (A) - (E) of this paragraph. Multiple Persons may be deemed to have Control simultaneously.

(A) For for-profit corporations, any officer authorized by the board of directors, regardless of title, to act on behalf of the corporation, including but not limited to the president, vice president, secretary, treasurer, and all other executive officers, and each stock holder having a 50% or more interest in the corporation, and any individual who has Control with respect to such stockholder;

(B) For nonprofit corporations or governmental instrumentalities (such as housing authorities), any officer authorized by the board, regardless of title, to act on behalf of the corporation, including but not limited to the president, vice president, secretary, treasurer, and all other executive officers, the Audit committee chair, the Board chair, and anyone identified as the executive director or equivalent;

(C) For trusts, all beneficiaries that have the legal ability to Control the trust who are not just financial beneficiaries;

(D) For limited liability companies, all managers, managing members, members having a 50% or more interest in the limited liability company, any individual Controlling such members, or any officer authorized to act on behalf of the limited liability company; or

(E) For partnerships, Principals include all General Partners, and Principals with ownership interest and special limited partners with ownership interest who also possess factors or attributes that give them Control.

(31) Debt Coverage Ratio (DCR)--Sometimes referred to as the "Debt Coverage" or "Debt Service Coverage." Calculated as Net Operating Income for any period divided by scheduled debt service required to be paid during the same period, and as described in §11.302(d)(4) of this chapter.

(32) Deferred Developer Fee--The portion of the Developer Fee used as a source of funds to finance the development and construction of the Property, and as described in §11.302(i)(2) of this chapter.

(33) Deobligated Funds--The funds released by the Development Owner or recovered by the Department canceling a Contract or award involving some or all of a contractual financial obligation between the Department and a Development Owner or Applicant.

(34) Determination Notice--A notice issued by the Department to the Development Owner of a Tax-Exempt Bond Development which specifies the Department's preliminary determination as to the amount of tax credits that the Development may be eligible to claim pursuant to the Code, §42(m)(1)(D).

(35) Developer--Any Person entering into a contractual relationship with the Owner to provide Developer Services with respect to the Development and receiving the right to earn a fee for such services and any other Person receiving any portion of a Developer Fee, whether by subcontract or otherwise, except if the Person is acting as a consultant with no Control. The Developer may or may not be a Related Party or Principal of the Owner.

(36) Developer Fee--Compensation in amounts defined in §11.302(e)(7) of this chapter (relating to Total Housing Development Costs, Developer Fee in the Underwriting Rules and Guidelines) paid by the Owner to the Developer for Developer Services inclusive of compensation to a Development Consultant(s), Development Team member or any subcontractor that performs Developer Services or provides guaranties on behalf of the Owner will be characterized as Developer Fee. A person who is entitled to a Developer Fee assumes the risk that it may not be paid if the anticipated sources of repayment prove insufficient.

(37) Developer Services--A scope of work relating to the duties, activities and responsibilities for pre-development, development, design coordination, and construction oversight of the Property generally including but not limited to:

- (A) Site selection and purchase or lease contract negotiation;
- (B) Identifying and negotiating sources of construction and permanent financing, including financing provided by the Department;
- (C) Coordination and administration of activities, including the filing of applications to secure such financing;
- (D) Coordination and administration of governmental permits, and approvals required for construction and operation;
- (E) Selection and coordination of development consultants including architect(s), engineer(s), third-party report providers, attorneys, and other design or feasibility consultants;
- (F) Selection and coordination of the General Contractor and construction contract(s);
- (G) Construction oversight;
- (H) Other consultative services to and for the Owner;
- (I) Guaranties, financial or credit support if a Related Party or Affiliate; and
- (J) Any other customary and similar activities determined by the Department to be Developer Services.

(38) Development--A residential rental housing project that consists of one or more buildings under common ownership and financed under a common plan which has applied for Department funds. This includes a proposed qualified low income housing project, as defined by Code, §42(g), that consists of one or more buildings containing multiple Units owned that is financed under a common plan, and that is owned by the same Person for federal tax purposes and may consist of multiple buildings that are located on scattered sites and contain only rent restricted Units. (§2306.6702(a)(6))

(39) Development Consultant or Consultant--Any Person who provides professional or consulting services relating to the filing of an Application, or post award documents as required by the program.

(40) Development Owner (also referred to as "Owner")--Any Person, General Partner, or Affiliate of a Person who owns or proposes a Development or expects to acquire Control of a Development under a purchase contract or ground lease approved by the Department and is responsible for performing under the allocation ~~and/or~~ Commitment with the Department. (§2306.6702(a)(7))

(41) Development Site--The area or, if more than one tract (which may be deemed by the Internal Revenue Service ~~and/or~~ the Department to be a scattered site), areas on which the Development is proposed and to be encumbered by a LURA, including access to that area or areas through ingress and egress easements.

(42) Development Team--All Persons and Affiliates thereof that play a role in the development, construction, rehabilitation, management ~~and/or~~ continuing operation of the subject Development, including any Development Consultant and Guarantor.

(43) Direct Loan--Funds provided through the HOME Program, Neighborhood Stabilization Program, (NSP), National Housing Trust Fund, (NHTF), Tax Credit Assistance Program Repayment Funds (TCAP RF) or State Housing Trust Fund or other program available through the Department for multifamily development. The terms and conditions for Direct Loans will be determined by provisions in Chapter 13 of this title (relating to Multifamily Direct Loan Rule) and the NOFA under which they are awarded, the Contract, or the loan documents. The tax-exempt bond program is specifically excluded.

(44) Economically Distressed Area--An area that is in a census tract that has a median household income that is 75% or less of the statewide median household income and in a municipality or, if not within a municipality, in a county that has been awarded funds under the Economically Distressed Areas Program administered by the Texas Water Development Board. Notwithstanding all other requirements, for funds awarded to another type of political subdivision (e.g., a water district), the Development Site must be within the jurisdiction of the political subdivision.

(45) Effective Gross Income (EGI)--As provided for in §11.302(d)(1)(D) of this chapter. The sum total of all sources of anticipated or actual income for a rental Development, less vacancy and collection loss, leasing concessions, and rental income from employee-occupied units that is not anticipated to be charged or collected.

(46) Efficiency Unit--A Unit without a separately enclosed Bedroom.

(47) Elderly Development--A Development that either meets the requirements of the Housing for Older Persons Act (HOPA) under the Fair Housing Act, or a Development that receives federal funding that has a requirement for a preference or limitation for elderly persons or households, but must accept qualified

households with children.

(48) Eligible Hard Costs--Hard Costs includable in Eligible Basis for the purposes of determining a Housing Credit Allocation.

(49) Environmental Site Assessment (ESA)--An environmental report that conforms to the Standard Practice for Environmental Site Assessments: Phase I Assessment Process (ASTM Standard Designation: E 1527) and conducted in accordance with §11.305 of this chapter (relating to Environmental Site Assessment Rules and Guidelines) as it relates to a specific Development.

(50) Executive Award and Review Advisory Committee (EARAC also referred to as the Committee). The Department committee required by Tex. Gov't Code §2306.1112.

(51) Existing Residential Development--Any Development Site which contains existing residential Units at any time as of the beginning of the Application Acceptance Period.

(52) Extended Use Period--With respect to an HTC building, the period beginning on the first day of the Compliance Period and ending the later of:

(A) The date specified in the LURA; or

(B) The date which is 15 years after the close of the Compliance Period.

(53) First Lien Lender--A lender whose lien has first priority as a matter of law or by operation of a subordination agreement or other intercreditor agreement.

(54) General Contractor (including "Contractor")--One who contracts to perform the construction or rehabilitation of an entire Development, rather than a portion of the work. The General Contractor hires subcontractors, such as plumbing contractors, electrical contractors, etc., coordinates all work, and is responsible for payment to the subcontractors. A prime subcontractor will also be treated as a General Contractor, and any fees payable to the prime subcontractor will be treated as fees to the General Contractor, in the scenarios described in subparagraphs (A) or (B) of this paragraph:

(A) Any subcontractor, material supplier, or equipment lessor receiving more than 50% of the contract sum in the construction contract will be deemed a prime subcontractor; or

(B) If more than 75% of the contract sum in the construction contract is subcontracted to three or fewer subcontractors, material suppliers, and equipment lessors, such parties will be deemed prime subcontractors.

(55) General Partner--Any person or entity identified as a general partner in a certificate of formation for the partnership or is later admitted to an existing partnership as a general partner that is the Development Owner and that Controls the partnership. Where a limited liability corporation is the legal structure employed rather than a limited partnership, the manager or managing member of that limited liability corporation is deemed, for the purposes of these rules, to be the functional equivalent of a general partner.

(56) Governing Body--The elected or appointed body of public or tribal officials, responsible for the enactment, implementation, and enforcement of local rules and the implementation and enforcement of applicable laws for its respective jurisdiction.

(57) Governmental Entity--Includes federal, state or local agencies, departments, boards, bureaus,

commissions, authorities, and political subdivisions, special districts, tribal governments and other similar entities.

(58) Gross Capture Rate--Calculated as the Relevant Supply divided by the Gross Demand, and as described in §11.302(i)(1) of this chapter.

(59) Gross Demand--The sum of Potential Demand from the Primary Market Area (PMA) and demand from other sources, as described in §11.303(d)(9)(E)(ii) of this chapter.

(60) Gross Program Rent--Maximum rent limits based upon the tables promulgated by the Department's division responsible for compliance, which are developed by program and by county or Metropolitan Statistical Area (MSA) or Primary Metropolitan Statistical Area (PMSA) or national non-metro area.

(61) Guarantor--Any Person that provides, or is anticipated to provide, a guaranty for all or a portion of the equity or debt financing for the Development.

(62) HTC Development (also referred to as "HTC Property")--A Development subject to an active LURA for Housing Tax Credits allocated by the Department.

(63) HTC Property--See HTC Development.

(64) Hard Costs--The sum total of Building Costs, Site Work costs, Off-Site Construction costs and contingency.

(65) Historically Underutilized Businesses (HUB)--An entity that is certified as such under and in accordance with Tex. Gov't Code, Chapter 2161.

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

(67) Housing Credit Allocation--An allocation of Housing Tax Credits by the Department to a Development Owner as provided for in Code.

(68) Housing Credit Allocation Amount--With respect to a Development or a building within a Development, the amount of Housing Tax Credits the Department determines to be necessary for the financial feasibility of the Development and its viability as a Development throughout the Affordability Period and which the Board allocates to the Development.

(69) Initial Affordability Period--The Compliance Period or such longer period as shall have been elected by the Owner as the minimum period for which Units in the Development shall be retained for low-income tenants and rent restricted, as set forth in the LURA.

(70) Integrated Disbursement and Information System (IDIS)--The electronic grants management information system established by HUD to be used for tracking and reporting HOME and NHTF funding and progress and which may be used for other sources of funds as established by HUD.

(71) Land Use Restriction Agreement (LURA)--An agreement, regardless of its title, between the

Department and the Development Owner which is a binding covenant upon the Development Owner and successors in interest, that, when recorded, encumbers the Development with respect to the requirements of the programs for which it receives funds. (§2306.6702)

(72) Low-Income Unit--A Unit that is intended to be restricted for occupancy by an income eligible household, as defined by the Department utilizing its published income limits.

(73) Managing General Partner--A general partner of a partnership (or, as provided for in the definition of General Partner in this subsection, its functional equivalent) that is vested with the authority to take actions that are binding on behalf of the partnership and the other partners. The term Managing General Partner can also refer to a manager or managing member of a limited liability company where so designated to bind the limited liability company and its members under its Agreement or any other person that has such powers in fact, regardless of their organizational title.

(74) Market Analysis--Sometimes referred to as "Market Study." An evaluation of the economic conditions of supply, demand and rental rates conducted in accordance with §11.303 of this chapter (relating to Market Analysis Rules and Guidelines) as it relates to a specific Development.

(75) Market Analyst--A real estate appraiser or other professional satisfying the qualifications in §11.303(c) of this chapter, and familiar with the subject property's market area who prepares a Market Analysis.

(76) Market Rent--The achievable rent at the subject Property for a Unit without rent and income restrictions determined by the Market Analyst or Underwriter after adjustments are made to actual rents on Comparable Units to account for differences in net rentable square footage, functionality, overall condition, location (with respect to the subject Property based on proximity to primary employment centers, amenities, services and travel patterns), age, Unit amenities, utility structure, and Common Area amenities. The achievable rent conclusion must also consider the proportion of market Units to total Units proposed in the subject Property.

(77) Market Study--See Market Analysis.

(78) Material Deficiency--Any deficiency in a pre-application or an Application or other documentation that exceeds the scope of an Administrative Deficiency. Inability to provide documentation that existed prior to submission of an Application to substantiate claimed points or meet threshold requirements is material and may result in denial of the requested points or a termination in the case of threshold items. It is possible that multiple deficiencies that could individually be characterized as Administrative Deficiencies, when taken as a whole would create a need for substantial re-review of the Application and as such would be characterized as constituting a Material Deficiency.

(79) Multifamily Programs Procedures Manual--The manual produced and amended from time to time by the Department which reiterates and implements the rules and provides guidance for the filing of multifamily related documents.

(80) Net Operating Income (NOI)--The income remaining after all operating expenses, including replacement reserves and taxes have been paid, as provided for in §11.302(d)(3) of this chapter.

(81) Net Program Rent--Calculated as Gross Program Rent less Utility Allowance.

(82) Net Rentable Area (NRA)--The Unit space that is available exclusively to the tenant and is heated and cooled by a mechanical HVAC system. NRA is measured to the outside of the studs of a Unit or to the middle of walls in common with other Units. If the construction does not use studs, NRA is measured to the outside of the material to which the drywall is affixed. Remote Storage of no more than 25 square feet per Unit may be included in NRA. For Developments using Multifamily Direct Loan funds the Remote Storage may only be included in NRA if the storage area shares a wall with the residential living space. NRA does not include common hallways, stairwells, elevator shafts, janitor closets, electrical closets, balconies, porches, patios, or other areas not actually available to the tenants for their furnishings, nor does NRA include the enclosing walls of such areas.

(83) Non-HTC Development--Sometimes referred to as Non-HTC Property. Any Development not utilizing Housing Tax Credits or Exchange funds.

(84) Notice of Funding Availability (NOFA)--A notice issued by the Department that announces funding availability, usually on a competitive basis, for multifamily rental programs requiring Application submission from potential Applicants.

(85) Off-Site Construction--Improvements up to the Development Site such as the cost of roads, water, sewer, and other utilities to provide access to and service the Site.

(86) Office of Rural Affairs--An office established within the Texas Department of Agriculture; formerly the Texas Department of Rural Affairs.

(87) One Year Period (1YP)--The period commencing on the date on which the Department and the Owner agree to the Qualified Contract price in writing and continuing for 12 calendar months.

(88) Owner--See Development Owner.

(89) Person--Without limitation, any natural person, corporation, partnership, limited partnership, joint venture, limited liability company, trust, estate, association, cooperative, government, political subdivision, agency or instrumentality or other organization or entity of any nature whatsoever, and shall include any group of Persons acting in concert toward a common goal, including the individual members of the group.

(90) Person or Persons with Disabilities--With respect to an individual, means that such person has:

(A) ~~a~~A physical or mental impairment that substantially limits one or more major life activities of such individual;

(B) ~~a~~A record of such an impairment; or

(C) ~~i~~s regarded as having such an impairment, to include persons with severe mental illness and persons with substance abuse disorders.

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

(92) Place--An area defined as such by the United States Census Bureau, which, in general, includes an incorporated city, town, or village, as well as unincorporated areas known as Census Designated Places. Any part of a Census Designated Place that, at the time of Application, is within the boundaries of an incorporated city, town or village will be considered as part of the incorporated area. The Department

may provide a list of Places for reference.

(93) Post Award Activities Manual--The manual produced and amended from time to time by the Department which explains the post award requirements and provides guidance for the filing of such documentation.

(94) Potential Demand--The number of income-eligible, age-, size-, and tenure-appropriate target households in the designated market area at the proposed placement in service date.

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

(96) Primary Market--Sometimes referred to as "Primary Market Area." The area defined by the Market Analyst as described in §11.303 of this chapter from which a proposed or existing Development is most likely to draw the majority of its prospective tenants or homebuyers.

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

(98) Principal--Persons that will be capable of exercising Control pursuant to §11.1(d) of this chapter (relating to the definition of Control) over a partnership, corporation, limited liability company, trust, or any other private entity.

(99) Pro Forma Rent--For a restricted Unit, the lesser of the Net Program Rent or the Market Rent. For an unrestricted Unit, the Market Rent. Contract Rents, if applicable, will be used as the Pro Forma Rent.

(100) Property--The real estate and all improvements thereon which are the subject of the Application (including all items of personal property affixed or related thereto), whether currently existing or proposed to be built or rehabilitated thereon in connection with the Application.

(101) Qualified Contract (QC)--A bona fide contract to acquire the non-low-income portion of the building for fair market value and the low-income portion of the building for an amount not less than the Applicable Fraction (specified in the LURA) of the calculation as defined within §42(h)(6)(F) of the Code.

(102) Qualified Contract Price (QC Price)--Calculated purchase price of the Development as defined within Code, §42(h)(6)(F) and as further delineated in §10.408 of this ~~Title~~title (relating to Qualified Contract Requirements).

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

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

(105) Qualified Nonprofit Development--A Development which meets the requirements of Code, §42(h)(5), includes the required involvement of a Qualified Nonprofit Organization, and is seeking Competitive Housing Tax Credits.

(106) Qualified Nonprofit Organization--An organization that meets the requirements of Code §42(h)(5)(C) for all purposes, and for an allocation in the nonprofit set-aside or subsequent transfer of the property, when applicable, meets the requirements of Tex. Gov't Code §2306.6706, and §2306.6729, and Code, §42(h)(5), including having a Controlling interest in the Development.

(107) Reconstruction--The demolition of one or more residential buildings in an Existing Residential Development and the construction of Units on the same or another Development Site. At least one Unit must be reconstructed in order to qualify as Reconstruction. The total number of Units to be reconstructed will be determined by program requirements. Developments using Multifamily Direct Loan funds are required to follow the applicable federal requirements.

(108) Rehabilitation--The improvement or modification of an Existing Residential Development through alteration, incidental addition or enhancement. The term includes the demolition of an Existing Residential Development and the Reconstruction of any Development Units on the Development Site, but does not include Adaptive Reuse. (§2306.004(26-a)) Reconstructed Units will be considered New Construction for purposes of calculating the Replacement Reserves under 10 TAC §11.302(d)(2)(I). More specifically, Rehabilitation is the repair, refurbishment ~~and/or~~ replacement of existing mechanical ~~and/or~~ structural components, fixtures and finishes. Rehabilitation will correct deferred maintenance, reduce functional obsolescence to the extent possible and may include the addition of: energy efficient components and appliances, life and safety systems; site and resident amenities; and other quality of life improvements typical of new residential Developments.

(109) Relevant Supply--The supply of Comparable Units in proposed and Unstabilized Developments targeting the same population including:

(A) The proposed subject Units;

(B) Comparable Units in another proposed Development within the PMA in an Application submitted prior to the subject, based on the Department's evaluation process described in §11.201(6) of this chapter (relating to Procedural Requirements for Application Submission) that may not yet have been presented to the Board for consideration of approval; and

(C) Comparable Units in previously approved but Unstabilized Developments in the PMA.

(110) Report--See Underwriting Report.

(111) Request--See Qualified Contract Request.

(112) Reserve Account--An individual account:

(A) Created to fund any necessary repairs or other needs for a Development; and

(B) Maintained by a First Lien Lender or Bank Trustee.

(113) Right of First Refusal (ROFR)--An Agreement to provide a series of priority rights to negotiate for the purchase of a Property by a Qualified Entity or a Qualified Nonprofit Organization at a negotiated price at or above the minimum purchase price as defined in Code §42(i)(7) or as established in accordance with an applicable LURA.

(114) Rural Area--

(A) A Place that is located:

(i) outside the boundaries of a primary metropolitan statistical area or a metropolitan statistical area;

(ii) within the boundaries of a primary metropolitan statistical area or a metropolitan statistical area, if the statistical area has a population of 25,000 or less and does not share a boundary with an Urban Area; or

(iii) within the boundaries of a local political subdivision that is outside the boundaries of an Urban Area.

(B) For areas not meeting the definition of a Place, the designation as a Rural Area or Urban Area is assigned in accordance with §11.204(5)(A) of this chapter (relating to Required Documentation for Application Submission) or as requested in accordance with §11.204(5)(B).

(115) Scope and Cost Review (SCR)--Sometimes referred to as "Physical Needs Assessment," "Project Capital Needs Assessment," or "Property Condition Report." The SCR provides an evaluation of the physical condition of an existing Property to evaluate the immediate cost to rehabilitate and to determine costs of future capital improvements to maintain the Property. The SCR must be prepared in accordance with §11.306 of this chapter (relating to Scope and Cost Review Guidelines), as it relates to a specific Development.

(116) Scoring Notice--Notification provided to an Applicant of the score for their Application after Staff review. More than one Scoring Notice may be issued for an Application.

(117) Single Room Occupancy (SRO)--An Efficiency Unit that meets all the requirements of a Unit except that it may, but is not required, to be rented on a month to month basis to facilitate Transitional Housing. Buildings with SRO Units have extensive living areas in common and are required to be Supportive Housing and include the provision for substantial supports from the Development Owner or its agent on site.

(118) Site Control--Ownership or a current contract or series of contracts that meets the requirements of §11.204(10) of this chapter, that is legally enforceable giving the Applicant the ability, not subject to any legal defense by the Owner or anyone else, to develop and operate a Property and subject it to a LURA reflecting the requirements of any awards of assistance it may receive from the Department.

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

(120) State Housing Credit Ceiling--The aggregate amount of Housing Credit Allocations that may be made by the Department during any calendar year, as determined from time to time by the Department in accordance with applicable federal law, including Code, §42(h)(3)(C), and Treasury Regulation §1.42-14.

(121) Sub-Market--An area defined by the Underwriter based on general overall market segmentation promulgated by market data tracking and reporting services from which a proposed or existing Development is most likely to draw the majority of its prospective tenants or homebuyers.

(122) Supportive Housing--A residential rental Development and Target Population meeting the requirements of subparagraphs (A) through (E) of this paragraph.

(A) Be intended for and targeting occupancy for households in need of specialized and specific non-medical services in order to maintain housing or transition into independent living;

(B) Be owned and operated by an Applicant or General Partner that must:

(i) have supportive services provided by the Applicant, an Affiliate of the Applicant, or a Third Party

provider if the service provider is able to demonstrate a record of providing substantive services similar to those proposed in the Application in residential settings for at least three years prior to the beginning of the Application Acceptance Period, or Application Submission Date for Multifamily Direct Loan Applications;

(ii) secure sufficient funds necessary to maintain the Supportive Housing Development's operations throughout the entire Affordability Period; ~~and~~

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

(iv) provide a fully executed guaranty agreement whereby the Applicant or its Affiliate assume financial responsibility of any outstanding operating deficits, as they arise, and throughout the entire Affordability Period; ~~and~~

(v) have Tenant Selection Criteria that fully comply with §10.802 of this title (regarding Written Policies and Procedures), which require a process for evaluation of prospective residents against a clear set of credit, criminal conviction, and prior eviction history that may disqualify a potential resident.

(I) The criminal screening criteria must not allow residents to reside in the Development that are on the National or Texas Sex Offender website or that have been convicted for the illegal manufacture or distribution of a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802); and

(-a-) Permanent denial based on criminal history at application or recertification of any conviction for murder related offense, sexual assault, kidnapping, or arson;

(-b-) Temporary denial for a minimum of three years based on criminal history at application or recertification of any felony conviction for discharge/display or firearm or illegal/deadly weapon, armed offense, stalking, obstruction or retaliation, violation of a protective order, or similar offense involving harm to others;

(-c-) Temporary denial for a minimum of two years for non-violent felonies; and

(-d-) Temporary denial for a minimum of one year for Class A misdemeanors

(II) The criminal screening criteria may include provisions for mitigation of temporary denials including documented drug/alcohol treatment, participation in case management, letters of recommendation from mental health professionals, employers, case managers, or others with personal knowledge of the tenant. The criteria may include provision for individual review of permanent denials if the conviction is more than 20 years old and the prospective resident has no additional felony convictions in the last 20 years

(III) Disqualifications in a property's Tenant Selection Criteria cannot be a total prohibition, unless such a prohibition is required by federal statute or regulation, or this subparagraph (i.e. the Development must have an appeal process for other required criteria). As part of the appeal process the prospective resident must be allowed to demonstrate that information in a third party database is incorrect.

(C) Where supportive services are tailored for members of a household with specific needs, such as:

(i) homeless or persons at-risk of homelessness;

(ii) persons with physical, intellectual, ~~and~~/or developmental disabilities;

(iii) youth aging out of foster care;

(iv) persons eligible to receive primarily non-medical home or community-based services;

(v) persons transitioning out of institutionalized care;

(vi) persons unable to secure permanent housing elsewhere due to specific, non-medical, or other high barriers to access and maintain housing;

(vii) Persons with Special Housing Needs including households where one or more individuals have alcohol ~~and~~/or drug addictions, Violence Against Women Act Protections (domestic violence, dating violence, sexual assault, and stalking), HIV/AIDS, or is a veteran with a disability; or

(viii) other target populations that are served by a federal or state housing program in need of the

type and frequency of supportive services characterized herein, as represented in the Application and determined by the Department on a case-by-case basis.

(D) Supportive services must meet the minimum requirements provided in clauses (i) – (iv) of this subparagraph:

(i) regularly and frequently offered to all residents, primarily on-site;

(ii) easily accessible and offered at times that residents are able to use them;

(iii) must include readily available resident services ~~and/or~~ service coordination that either aid in addressing debilitating conditions, or assist residents in securing the skills, assets, and connections needed for independent living; and

(iv) a resident may not be required to access supportive services in order to qualify for or maintain tenancy in a rent restricted Unit that the household otherwise qualifies for; and,

(E) Supportive Housing Developments must meet the criteria of either clause (i) or (ii) of this subparagraph:

(i) not financed, except for construction financing, or a deferred-forgivable or deferred-payable construction-to-permanent Direct Loan from the Department, with any debt containing foreclosure provisions or debt that contains ~~must pay~~ scheduled or periodic repayment provisions. For tax credit applications only, permanent foreclosable debt that contains scheduled or periodic repayment provisions (including payments subject to available 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).~~ otherwise structured to meet valid debt requirements for tax credit eligible basis considerations. In addition, permanent foreclosable, cash-flow debt provided by an Affiliate is permissible if originally sourced from charitable contributions or pass-through local government ~~non-federal funds.~~ funds and the foreclosure provisions are triggered only by default on non-monetary default provisions. Developments meeting these requirements are not subject to §11.302(i)(4) & (5) of Subchapter D of this chapter (relating to Underwriting and Loan Policy). Any amendment to an Application or Underwriting Report resulting in the addition of debt prohibited under this definition will result in the revocation of IRS Form(s) 8609, and may not be made for Developments that have Direct Loans after a LURA is executed, except as a part of an approved Asset Management Division work out arrangement; or

(ii) financed with debt that meets feasibility requirements under Subchapter D of this chapter without exemptions and must also be supported by project-based rental or project-based operating subsidies for 25% of all the Units evidenced by an executed agreement with an unaffiliated or governmental third party able to make that commitment, and meet all of the criteria in subclauses (I) ~~through~~ (VIII) of this clause:

(I) the Application includes documentation of how resident feedback has been incorporated into design of the proposed Development;

(II) the Development is located less than ~~1/2~~ 1/2 mile from regularly-scheduled public transportation, including evenings and weekends;

(III) at least 10% of the Units in the proposed Development meet the 2010 ADA standards with the exceptions listed in "Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities" 79 Federal Register 29671 for persons with mobility impairments;

(IV) multiple systems will be in place for residents to provide feedback to Development staff;

(V) a resident is or will be a member of the Development Owner or service provider board of directors;

~~(VI) the Development's Tenant Selection Criteria will include a clear description of any credit, criminal conviction, or prior eviction history that may disqualify a potential resident. The disqualification cannot be a total prohibition, unless such a prohibition is required by federal statute or regulation (i.e. the Development must have an appeal process for non-federally~~

~~required criteria);~~

~~(VI)~~ _____

(VI) the Development will have a comprehensive written eviction prevention policy that includes an appeal process; and

~~(VII)~~ (VII) the Development will have a comprehensive written services plan that describes the available services, identifying whether they are provided directly or through referral linkages, by whom, and in what location and during what days and hours. A copy of the services plan will be readily accessible to residents.

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

(123) TDHCA Operating Database--Sometimes referred to as "TDHCA Database." A consolidation of recent actual income and operating expense information collected through the Department's Annual Owner Financial Certification process, as required and described in Chapter 10, Subchapter F of this title (relating to Compliance Monitoring), and published on the Department's web site (www.tdhca.state.tx.us).

(124) Target Population--The designation of types of housing populations shall include Elderly Developments, and those that are Supportive Housing. All others will be considered to serve general populations without regard to any subpopulations, although the Application may request that any other populations required for targeting, preference, or limitation by a federal or state fund source are identified.

(125) Tax-Exempt Bond Development--A Development requesting or having been awarded Housing Tax Credits and which receives a portion of its financing from the proceeds of Tax-Exempt Bonds which are subject to the state volume cap as described in Code, §42(h)(4), such that the Development does not receive an allocation of tax credit authority from the State Housing Credit Ceiling.

(126) Tax-Exempt Bond Process Manual--The manual produced and amended from time to time by the Department which explains the process and provides guidance for the filing of a Housing Tax Credit Application utilizing Tax-Exempt Bonds.

(127) Third Party--A Person who is not:

- (A) An Applicant, General Partner, Developer, or General Contractor;
- (B) An Affiliate to the Applicant, General Partner, Developer, or General Contractor;
- (C) Anyone receiving any portion of the administration, contractor, or Developer Fee from the Development; or
- (D) In Control with respect to the Development Owner.

(128) Total Housing Development Cost--The sum total of the acquisition cost, Hard Costs, soft costs, Developer Fee and General Contractor fee incurred or to be incurred through lease-up by the Development Owner in the acquisition, construction, rehabilitation, and financing of the Development.

(129) Transitional Housing--A Supportive Housing Development funded with HOME, NSP, or TCAP _RF, and not layered with Housing Tax Credits that includes living Units with more limited individual kitchen facilities and is:

- (A) Used exclusively to facilitate the transition of homeless individuals and those at-risk of becoming homeless, to independent living within 24 months; and
- (B) Is owned by a Development Owner that includes a Governmental Entity or a nonprofit which provides temporary housing and supportive services to assist such individuals in, among other things, locating and retaining permanent housing. The limited kitchen facilities in individual Units must be

appropriately augmented by suitable, accessible shared or common kitchen facilities.

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

(131) U.S. Department of Housing and Urban Development (HUD)-regulated Building--A building for which the rents and utility allowances of the building are reviewed by HUD.

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

(133) Underwriting Report--Sometimes referred to as the Report. A decision making tool prepared by the ~~Department's~~ Department's Real Estate Analysis Division that contains a synopsis of the proposed Development and that reconciles the Application information, including its financials and market analysis, with the ~~underwriter's~~ underwriter's analysis. The Report allows the Department and Board to determine whether the Development will be financially feasible as required by Code §42(m), or other federal or state regulations.

(134) Uniform Multifamily Application Templates--The collection of sample resolutions and form letters, produced by the Department, as may be required under this chapter or Chapters 12 and 13 of this title (relating to Multifamily Housing Bond Rules and Multifamily Direct Loan Rule, respectively) that may be used, (but are not required to be used), to satisfy the requirements of the applicable rule.

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

(136) Unit--Any residential rental Unit in a Development consisting of an accommodation, including a single room used as an accommodation on a non-transient basis, that contains complete physical facilities and fixtures for living, sleeping, eating, cooking and sanitation.

(137) Unit Type--Units will be considered different Unit Types if there is any variation in the number of Bedrooms, full bathrooms or a square footage difference equal to or more than 120 square feet. A powder room is the equivalent of a half-bathroom, but does not by itself constitute a change in Unit Type.

(138) Unstabilized Development--A Development with Comparable Units that has been approved for funding by the Department's Board of Directors or is currently under construction or has not maintained a 90% occupancy level for at least 90 days following construction completion. A development may be deemed stabilized by the Underwriter based on factors relating to a development's lease-up velocity, Sub-Market rents, Sub-Market occupancy trends and other information available to the Underwriter. The Market Analyst may not consider such development stabilized in the Market Study.

(139) Urban Area--A Place that is located within the boundaries of a primary metropolitan statistical area or a metropolitan statistical area other than a Place described by subparagraph (A) within the definition of Rural Area in this subsection. For areas not meeting the definition of a Place, the designation as a Rural Area or Urban Area is assigned in accordance with §11.204(5) of this chapter.

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

(141) Work Out Development--A financially distressed Development for which the Owner ~~and~~/or a primary financing participant is seeking a change in the terms of Department funding or program restrictions.

(e) Data. Where this chapter requires the use of American Community Survey or Housing & Urban Development data, the Department shall use the most current data available as of October 1, ~~2019~~2020, unless specifically otherwise provided in federal or state law or in the rules. All American Community Survey data must be 5-year estimates, unless otherwise specified. The availability of more current data shall be disregarded. Where other data sources are specifically required, such as Neighborhoodscout, the data available after October 1, but before Pre-Application Final Delivery Date, will be permissible. The NeighborhoodScout report submitted in the Application must include the report date.

(f) Deadlines. Where a specific date or deadline is identified in this chapter, the information or documentation subject to the deadline must be received by the Department on or before 5:00 p.m. Austin local time on the day of the deadline. If the deadline falls on a weekend or holiday, the deadline is 5:00 p.m. Austin local time on the next day which is not a weekend or holiday and on which the Department is open for general operation. Unless otherwise noted or provided in statute, deadlines are based on calendar days. Deadlines, with respect to both date and time, cannot be waived except where authorized and for truly extraordinary circumstances, such as the occurrence of a significant natural disaster that could not have been anticipated and makes timely adherence impossible. Applicants should further ensure that all required documents are included, legible, properly organized, and tabbed, and that materials in required formats involving digital media are complete and fully readable. Applicants are strongly encouraged to submit the required items well in advance of established deadlines.

(g) Documentation to Substantiate Items and Representations in an Application. In order to ensure the appropriate level of transparency in this highly competitive program, Applications and all correspondence and other information relating to each Application are posted on the Department's website and updated on a regular basis. Applicants must use the Application form posted online to provide appropriate support for each item substantiating a claim or representation, such as claims for points, qualification for set-asides, meeting of threshold requirements, or timely requesting a waiver or determination. Any Application that staff identifies as having insufficient support information will be directed to cure the matter via the Deficiency process. Applicants are reminded that this process may not be used to increase a scoring item's points or to change any aspect of the proposed Development, financing structure, or other element of the Application. Although a responsive narrative will be created after Application submission, all facts and materials to substantiate any item in response to such an Administrative Deficiency must have been clearly established at the time of submission of the Application.

(h) Board Standards for Review. Some issues may require or benefit from board review. The Board is not constrained to a particular standard, and while its actions on one matter are not binding as to how it will address another matter, the Board does seek to promote consistency with its policies, including the policies set forth in this chapter.

(i) Public Information Requests. Pursuant to Tex. Gov't Code §2306.6717, any pre-application and any full Application, including all supporting documents and exhibits, must be made available to the public, in their entirety, on the Department's website. The filing of a pre-application or Application with the Department shall be deemed as consent to the release of any and all information contained therein, including supporting documents and exhibits. As part of its certifications, the Applicant shall certify that the authors of the reports and other information and documents submitted with the Application have given their consent to the Applicant to submit all reports and other information and documents to the Department,

and for the Department to publish anything submitted with the Application on its website and use such information and documents for authorized purposes.

(j) Responsibilities of Municipalities and Counties. In considering resolutions regarding housing de-concentration issues, threshold requirements, or scoring criteria, municipalities and counties should consult their own staff and legal counsel as to whether their handling of actions regarding such resolution(s) are consistent with Fair Housing laws as they may apply, including, as applicable, consistency with any Fair Housing Activity Statement-Texas (FHAAT) form on file, any current Analysis of Impediments to Fair Housing Choice, any current Assessment of Fair Housing, or any current plans such as one year action plans or five year consolidated plans for HUD block grant funds, such as HOME or CDBG funds.

(k) Request for Staff Determinations. Where the requirements of this Chapter do not readily align with the activities proposed in an Application, an Applicant may request and Department staff may provide a determination to an Applicant explaining how staff will review an Application in relation to the applicable rules. In no instance will staff provide a determination regarding a scoring item. Any such request must be received by the Department prior to submission of the pre-application (if applicable to the program) or Application (if no pre-application was submitted). Staff may, in its sole discretion, provide the request to the Board for it to make the determination. Staff's determination may take into account the articulated purpose of or policies addressed by a particular rule or requirement, materiality of elements, substantive elements of the development plan that relate to a term or definition, a common usage of the particular term, or other issues relevant to a rule or requirement. All such requests and determinations will be conveyed in writing. If the determination is finalized after submission of the pre-application or Application, the Department may allow corrections to the pre-application or the Application that are directly related to the issues in the determination. It is an Applicant's sole responsibility to request a determination and an Applicant may not rely on any determination for another Application regardless of similarities in a particular fact pattern. For any Application that does not request and subsequently receive a determination, the definitions and applicable rules will be applied as used and defined herein. An Applicant may appeal a determination for their Application, using the Appeal Process provided for in §11.902 of this chapter, if the determination provides for a treatment that relies on factors other than the explicit definition. A Board determination may not be appealed. A staff or Executive Director determination not timely appealed cannot be further appealed or challenged.

§11.2- Program Calendar for Housing Tax Credits

(a) Competitive HTC Deadlines. Non-statutory deadlines specifically listed in the Program Calendar may be extended by the Department for a period of not more than 5 business days provided that the Applicant has, in writing, requested an extension prior to the date of the original deadline and has established to the reasonable satisfaction of the Department that there is good cause for the extension.

Deadline	Documentation Required
01/04/2021	Application Acceptance Period Begins. Public Comment period starts.
01/08/2021	Pre-Application Final Delivery Date (including waiver requests).
02/15/2021	Deadline for submission of Application for .ftp access if pre-application not

Deadline	Documentation Required
	submitted.
03/01/2021	<p>End of Application Acceptance Period and Full Application Delivery Date. (including Quantifiable Community Participation documentation; Environmental Site Assessments (ESAs), Scope and Cost Reviews (SCRs); Appraisals; Primary Market Area Map; Site Design and Development Feasibility Report; all Resolutions necessary under §11.3 of this chapter related to Housing De-Concentration Factors).</p> <p>Final Input from Elected Officials Delivery Date (including Resolution for Local Government Support pursuant to §11.9(d)(1) of this chapter and State Representative Input pursuant to §11.9(d)(5) of this chapter).</p>
04/01/2021	Market Analysis Delivery Date pursuant to §11.205 of this chapter.
05/03/2021	Deadline for Third Party Request for Administrative Deficiency.
Mid-May 2020	Scoring Notices Issued for Majority of Applications Considered "Competitive."
06/18/2021	Public comment to be included in the Board materials relating to presentation for awards are due in accordance with 10 TAC §1.10.
June 2021	On or before June 30, publication of the list of Eligible Applications for Consideration for Award in July.
July 2021	On or before July 31, Board issuance of Final Awards.
Mid-August	Commitments are Issued.
11/01/2021	Carryover Documentation Delivery Date.
11/30/2021	Deadline for closing under §11.9(c)(8) (if applicable) (not subject to an extension under 10 TAC §11.2(a) pursuant to the requirements of 10 TAC §11.9(c)(8)).
07/01/2022	10% Test Documentation Delivery Date.
12/31/2023	Placement in Service.
Five business days after the date on the Deficiency	Administrative Deficiency Response Deadline (unless an extension has been granted).

Deadline	Documentation Required
Notice (without incurring point loss)	

(b) Tax-Exempt Bond and Direct Loan Development Dates and Deadlines. This section reflects key dates for all multifamily development programs except for the Competitive Housing Tax Credit Program. Applicants are strongly encouraged to submit the required items well in advance of established deadlines. Non-statutory deadlines specifically listed in this section may be extended by the Department for a period of not more than five business days provided; however, that the Applicant requests an extension prior to the date of the original deadline. Other deadlines may be found in 10 TAC Chapters 12 and 13 or a NOFA.

(1) Full Application Delivery Date. The deadline by which the Application must be received by the Department. For Direct Loan Applications, such deadline will generally be defined in the applicable NOFA and for Tax-Exempt Bond Developments, such deadlines are more fully explained in §11.201(2) of this chapter (relating to Procedural Requirements for Application Submission).

~~(2) Notice to Submit Lottery Application Delivery Date. No later than December 6, 2019, Applicants that receive an advance notice regarding a Certificate of Reservation shall submit a notice to the Department, in the form prescribed by the Department.~~

~~(3) Applications Associated with Lottery Delivery Date. No later than December 13, 2019, Applicants that participated in the Texas Bond Review Board Lottery must submit the complete tax credit Application, including all required Third Party Reports, to the Department.~~

~~(4)~~

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

~~(5)~~

(3) Third Party Report Delivery Date (Environmental Site Assessment (ESA), Scope and Cost Review (SCR), Appraisal (if applicable), Market Analysis and the Site Design and Development Feasibility Report). For Direct Loan Applications, the Third Party reports meeting specific requirements described in §11.205 of this chapter must be submitted with the Application in order for it to be considered a complete Application, unless the Application is made in conjunction with an Application for Housing Tax Credits or Tax-Exempt Bond, in which case the Delivery Date for those programs will apply. For Tax-Exempt Bond Developments, the Third Party Reports must be received by the Department pursuant to §11.201(2) of this chapter.

~~(6)~~

(4) Resolutions Delivery Date. Resolutions required for Tax-Exempt Bond Developments must be received by the Department no later than 14 calendar days before the Board meeting 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)~~

(5) Challenges to Neighborhood Organization Opposition Delivery Date. Challenges must be received by the Department no later than 45 calendar days prior to the Board meeting at which consideration of the

award will occur.

§11.3- Housing De-Concentration Factors

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(a) Rules reciting statutory limitations are provided as a convenient reference only, and to the extent there is any deviation from the provisions of statute, the statutory language is controlling.

(b) Two Mile Same Year Rule (Competitive HTC Only).

(1) As required by Tex. Gov't Code §2306.6711(f), staff will not recommend for award, and the Board will not make an award to an Application that proposes a Development Site located in a county with a population that exceeds one million, if the proposed Development Site is also located less than two linear miles from the proposed Development Site of another Application within said county that is awarded in the same calendar year. If two or more Applications are submitted that would violate §2306.6711(f), the lower scoring Application will not be reviewed unless the higher scoring Application is terminated or withdrawn.

(2) This subsection does not apply if an Application is located in an area that, within the past five years, meets the requirements of Tex. ~~Gov't~~ Gov't Code §2306.6711(f-1), which excludes any municipality with a population of two million or more where a federal disaster has been declared by the Full Application Delivery Date as identified in §11.2(a) of this chapter, and the governing body of the municipality containing the Development has by vote specifically authorized the allocation of housing tax credits for the Development in a resolution submitted by the Full Application Delivery Date as identified in §11.2(a) of this chapter, and the municipality is authorized to administer disaster recovery funds as a subgrant recipient, for the disaster identified in the federal disaster declaration.

(c) Twice the State Average Per Capita (Competitive and Tax-Exempt Bond Only). As provided for in Tex. Gov't Code §2306.6703(a)(4), if a proposed Development is located in a municipality, or if located completely outside a municipality, a county, that has more than twice the state average of units per capita supported by Housing Tax Credits or private activity bonds at the time the Application Acceptance Period Begins (or for Tax-Exempt Bond Developments, Applications submitted after the Application Acceptance Period Begins), then the Applicant must obtain prior approval of the Development from the Governing Body of the appropriate municipality or county containing the Development. Such approval must include a resolution adopted by the Governing Body of the municipality or county, as applicable, setting forth a written statement of support, specifically citing Tex. Gov't Code §2306.6703(a)(4) in the text of the actual adopted resolution, and authorizing an allocation of Housing Tax Credits for the Development. An acceptable, but not required, form of resolution may be obtained in the Uniform Multifamily Application Templates. Required documentation must be submitted by the Full Application Delivery Date as identified in §11.2(a) of this chapter (relating to Competitive HTC Deadlines Program Calendar) or Resolutions Delivery Date in §11.2(b) of this chapter (relating to Tax-Exempt Bond and Multifamily Loan Development Dates and Deadlines), as applicable.

(d) One Mile Three Year Rule. (Competitive and Tax-Exempt Bond Only). (§2306.6703(a)(3))

(1) An Application that proposes the New Construction or Adaptive Reuse of a Development that is located one linear mile or less (measured between closest boundaries by a straight line on a map) from another development that meets all of the criteria in subparagraphs (A) - (C) of this paragraph shall be considered ineligible.

(A) A Development serves the same Target Population as the proposed Development, regardless of whether the Development serves general, Elderly, or Supportive Housing; and

(B) A Development has received an allocation of Housing Tax Credits or private activity bonds for any New Construction at any time during the three-year period preceding the date the Application Round begins (or for Tax-Exempt Bond Developments the three-year period preceding the date the Certificate of Reservation is issued); and

(C) The Development in subparagraph B has not been withdrawn or terminated from the Housing Tax Credit Program.

(2) Paragraph (1) of this subsection does not apply to a proposed Development:

(A) That is using federal HOPE VI (or successor program) funds received through HUD;

(B) That is using locally approved funds received from a public improvement district or a tax increment financing district;

(C) That is using funds provided to the state under the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. §§12701 et seq.);

(D) That is using funds provided to the state and participating jurisdictions under the Housing and Community Development Act of 1974 (42 U.S.C. §§5301 et seq.);

(E) That is located in a county with a population of less than one million;

(F) That is located outside of a metropolitan statistical area; or

(G) That the Governing Body of the appropriate municipality or county where the Development is to be located has by vote specifically allowed the construction of a new Development located within one linear mile or less from a Development described under paragraph (1)(A) of this subsection. An acceptable, but not required, form of resolution may be obtained in the Uniform Multifamily Application Templates. Required documentation must be submitted by the Full Application Delivery Date as identified in §11.2(a) of this chapter, regarding Competitive HTC Deadlines, or Resolutions Delivery Date in §11.2(b) of this chapter, regarding Tax-Exempt Bond and Direct Loan Development Dates and Deadlines, as applicable.

(3) Where a specific source of funding is referenced in paragraph (2)(A) - (D) of this subsection, a commitment or resolution documenting a commitment of the funds must be provided in the Application.

(e) Limitations on Developments in Certain Census Tracts. An Application that proposes the New Construction or Adaptive Reuse of a Development proposed to be located in a census tract that has more than 20% Housing Tax Credit Units per total households as ~~established by the 5-year American Community Survey~~ reflected in the Department's current Site Demographic Characteristics Report shall be considered ineligible unless the Governing Body of the appropriate municipality or county containing the Development has, ~~by vote, specifically supported the Application for the Proposed Development, and~~ adopted a resolution stating the proposed Development is consistent with the ~~jurisdiction's~~ jurisdiction's obligation to affirmatively further fair housing and that the Governing Body of the appropriate municipality or county containing the Development has no objection to the Application. Rehabilitation Developments are not required to obtain such resolution. The resolution must be submitted by the Full Application Delivery Date as identified in §11.2(a) of this chapter, regarding Competitive HTC Deadlines, or Resolutions Delivery Date in §11.2(b) of this chapter, regarding Tax-Exempt Bond and Direct Loan Development Dates and Deadlines, as applicable.

~~**(f) Additional Phase.** An Application proposing an additional phase of an existing tax credit Development that is under common or Affiliate ownership, or Control serving the same Target Population or Applications proposing Developments that are adjacent to an existing tax credit Development that is under common or Affiliate ownership or Control serving the same Target Population, shall be considered ineligible unless the~~

~~other Developments or phase(s) of the Development have been completed and have maintained occupancy of at least 90% for a minimum six month period as reflected in the submitted rent roll. If the Additional Phase is proposed by any Principal of the existing tax credit Development, the Developer Fee included in Eligible Basis for the Additional Phase may not exceed 15%, regardless of the number of Units. If the Application proposes the Rehabilitation or replacement of existing federally assisted affordable housing Units or federally assisted affordable housing Units demolished on the same site within two years of the beginning of the Application Acceptance Period, this provision does not apply.~~

~~(g)~~

(f) Proximity of Development Sites. (Competitive HTC Only) In a county with a population that is less than one million, if two or more HTC Applications, regardless of the Applicant(s), are proposing Developments serving the same Target Population on sites separated by 1,000 feet or less, the lower scoring Application(s), including consideration of tie-breakers, will be considered ineligible and will not be reviewed unless the higher scoring Application is terminated or withdrawn.

~~(h)~~

(g) One Award per Census Tract Limitation (Competitive HTC Only). If two or more Competitive HTC Applications are proposing Developments in the same census tract in an urban subregion, the lower scoring Application(s), including consideration of tie breakers, will be considered ineligible and will not be reviewed unless the higher scoring Application is terminated or withdrawn. This subsection does not apply to Applications submitted under the USDA Set-Aside (10 TAC §11.5(2)) or the At-Risk Set-Aside (10 TAC §11.5(3)).

§11.4- Tax Credit Request and Award Limits

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(a) Credit Amount (Competitive HTC Only). (§2306.6711(b)) The Board may not award or allocate to an Applicant, Developer, Affiliate, or Guarantor (unless the Guarantor is also the General Contractor or provides the guaranty only during the construction period, and is not a Principal of the Applicant, Developer or Affiliate of the Development Owner) Housing Tax Credits in an aggregate amount greater than \$3 million in a single Application Round. Prior to posting the agenda for the last Board meeting in June, an Applicant that has Applications pending for more than \$3 million in credit may notify staff in writing or by email of the Application(s) they will not pursue in order to bring their request within the \$3 million cap. Any other Applications they do not wish to pursue will remain on the waiting list if not otherwise terminated. If the Applicant has not made this self-selection by this date, staff will first select the Application(s) that will enable the Department to comply with the state and federal non-profit set-asides, and will then select the highest scoring Application, including consideration of tie-breakers if there are tied scores. The Application(s) that does not meet Department criteria will not be reviewed unless the Applicant withdraws an Application that is eligible for an award and has been reviewed. All entities that are under common Control are Affiliates. For purposes of determining the \$3 million limitation, a Person is not deemed to be an Applicant, Developer, Affiliate, or Guarantor solely because it:

- (1) Raises or provides equity;
- (2) Provides "qualified commercial financing";
- (3) Is a Qualified Nonprofit Organization or other not-for-profit entity that is providing solely loan funds, grant funds or social services; or
- (4) Receives fees as a consultant or advisor that do not exceed \$200,000.

(b) Maximum Request Limit (Competitive HTC Only). For any given Development, an Applicant may not request more than 150% of the credit amount available in the subregion based on estimates released by the Department on December 1, or \$1,500,000, whichever is less, or \$2,000,000 for Applications under

the At-Risk Set-Aside. In addition, for Elderly Developments in a Uniform State Service Region containing a county with a population that exceeds one million, the request may not exceed the final amount published on the ~~Department's~~ Department's website after the annual release of the Internal Revenue Service notice regarding the credit ceiling. For all Applications, the Department will consider the amount in the funding request of the pre-application and Application to be the amount of Housing Tax Credits requested and will reduce the Applicant's request to the maximum allowable under this subsection through the underwriting process. Regardless of the credit amount requested or any subsequent changes to the request made by staff, the Board may not award to any individual Development more than \$2 million in a single Application Round. (§2306.6711(b))

(c) Increase in Eligible Basis (30% Boost). Applications will be evaluated for an increase of up to ~~but not to exceed~~ 30% in Eligible Basis provided they meet the criteria identified in paragraphs (1) - ~~(3)~~ of this subsection, ~~or if required under Code, §42.~~ Staff will recommend no increase or a partial increase in Eligible Basis if it is determined it would cause the Development to be over sourced, as evaluated by the Real Estate Analysis division, in which case a credit amount necessary to fill the gap in financing will be recommended. In no instance will the boost exceed more than the amount of credits required to create the HTC rent-restricted Units, ~~as determined by the Real Estate Analysis division of TDHCA.~~ The criteria in paragraph (3) of this subsection are not applicable to Tax-Exempt Bond Developments.

(1) The Development is located in a Qualified Census Tract (QCT) (as determined by the Secretary of HUD) that has less than 20% Housing Tax Credit Units per total households in the tract as ~~established by the U.S. Census Bureau for the 5-year American Community Survey~~ reflected in the Department's current Site Demographic Characteristics Report. New Construction or Adaptive Reuse Developments located in a QCT that has in excess of 20% Housing Tax Credit Units per total households ~~in the tract~~ are not eligible to ~~qualify~~ for a 30% increase in Eligible Basis, which would otherwise be available for the Development Site pursuant to §42(d)(5) of the Code, unless the Application includes a resolution acknowledging ~~that~~ the Development is located in a census ~~tracts~~ tract that has more than 20% Housing Tax Credits Units per total households and stating that the Governing Body of the appropriate municipality or county containing the Development has ~~by vote specifically supported~~ no objection to the Application ~~for the proposed Development and referencing this rule.~~ Rehabilitation Developments located in a QCT with 20% or greater Housing Tax Credit Units per total households are eligible ~~to qualify~~ for the boost and are not required to obtain such a resolution from the Governing Body. The Application must include a census map that includes the 11-digit census tract number and clearly shows that the proposed Development is located within a QCT;
or

(2) The Development is located in a Small Area Difficult Development Area (SADDA) (based on Small Area Fair Market Rents as determined by the Secretary of HUD) that has high construction, land and utility costs relative to the AMGI. The Application must include the SADDA map that clearly shows the proposed Development is located within the boundaries of a SADDA; or

(3) For Competitive Housing Tax Credits, Development meets one of the criteria described in subparagraphs (A) - (F) of this paragraph pursuant to Code, §42(d)(5)(B)(v):

(A) The Development is located in a Rural Area;

(B) The Development is entirely Supportive Housing and is in accordance with 10 TAC §11.1(d)(122)(E) related to the definition of Supportive Housing;

(C) The Development meets the criteria for the Opportunity Index as defined in §11.9(c)(4) of this chapter (relating to Competitive HTC Selection Criteria);

(D) The Applicant elects to restrict 10% of the proposed low income Units for households at or below 30%

of AMGI. ~~These Units may not be used to meet any scoring criteria, or used to meet any Multifamily Direct Loan program requirement;~~

(E) The Development is in an area covered by a concerted revitalization plan, is not an Elderly Development, and is not located in a QCT. ~~A Development will be considered to be in an area covered by a concerted revitalization plan if it is eligible for and elects points under §11.9(d)(7) of this chapter; or~~

(F) The Development is located in a Qualified Opportunity Zone designated under the Bipartisan Budget Act of 2018 (H.R. 1892).

~~(4) For Tax-Exempt Bond Developments, as a general rule and unless federal guidance states otherwise, a QCT or SADDA designation would have to coincide with the program year the Certificate of Reservation is issued in order for the Department to apply the 30% boost in its underwriting evaluation. The Department acknowledges guidance contained in the Federal Register regarding effective dates of QCT and SADDA designations. Pursuant to the Federal Register Notice, unless federal guidance states otherwise, complete HTC Applications (including all Third Party Reports) with a corresponding Certificate of Reservation that are submitted to the Department in the year the QCT or SADDA designation is effective may be underwritten to include the 30% boost, provided there are no changes that would affect the materiality of the submission. Pursuant to the Federal Register Notice, a complete application (as defined in the Notice) may also be submitted to the bond issuer, in lieu of the Department, in the year the QCT or SADDA designation is effective. Where this is the case, the HTC Application must contain a certification from the issuer that speaks to the date on which such complete application (as defined in the Notice) was submitted. If the issuer is a member of the organizational structure then such certification must come from the bond counsel to the issuer. An acceptable, but not required, form of resolution may be obtained in the Multifamily Programs Procedures Manual. Required documentation must be submitted by the Full Application Delivery Date as identified in §11.2(a) of this chapter, regarding Competitive HTC Deadlines, or Resolutions Delivery Date in §11.2(b) of this chapter, regarding Tax-Exempt Bond and Direct Loan Development Dates and Deadlines, as applicable. ~~Applicants must submit a copy of the census map that includes the 11-digit census tract number and clearly shows that the proposed Development is located within a QCT; OR~~~~

~~(2) The Development is located in a Small Area Difficult Development Area (SADDA) (based on Small Area Fair Market Rents (FMRs) as determined by the Secretary of HUD) that has high construction, land and utility costs relative to the AMGI. For Tax-Exempt Bond Developments, as a general rule, a SADDA designation would have to coincide with the program year in which the Certificate of Reservation is issued in order for the Department to apply the 30% boost in its underwriting evaluation. Applicants must submit a copy of the SADDA map that clearly shows the proposed Development is located within the boundaries of a SADDA; OR~~

~~(3) For Competitive Housing Tax Credits, Development meets one of the criteria described in subparagraphs (A)–(F) of this paragraph pursuant to Code, §42(d)(5)(B)(v):-~~

~~(A) The Development is located in a Rural Area;-~~

~~(B) The Development is entirely Supportive Housing and is in accordance with 10 TAC §11.1(d)(122)(E) related to the definition of Supportive Housing;-~~

~~(C) The Development meets the criteria for the Opportunity Index as defined in §11.9(c)(4) of this chapter (relating to Competitive HTC Selection Criteria);-~~

~~(D) The Applicant elects to restrict 10% of the proposed low income Units for households at or below 30% of AMGI. These Units may not be used to meet any scoring criteria, or used to meet any Multifamily Direct Loan program requirement;~~

~~(E) The Development is in an area covered by a concerted revitalization plan, is not an Elderly Development, and is not located in a QCT. A Development will be considered to be in an area covered by a concerted revitalization plan if it is eligible for and elects points under §11.9(d)(7) of this chapter; or~~

~~(F) The Development is located in a Qualified Opportunity Zone designated under the Bipartisan Budget Act of 2018 (H.R. 1892).~~

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

This section identifies the statutorily-mandated Set-asides which the Department is required to administer. An Applicant may elect to compete in each of the Set-asides for which the proposed Development qualifies. In order to be eligible to compete in the Set-aside, the Application must meet the requirements of the Set-aside as of the Full Application Delivery Date. Election to compete in a Set-aside does not constitute eligibility to compete in the Set-aside, and Applicants who are ultimately deemed not to qualify to compete in the Set-aside will be considered not to be participating in the Set-aside for purposes of qualifying for points under §11.9(e)(3) of this chapter (related to pre-application Participation). Commitments of Competitive HTCs issued by the Board in the current program year will be applied to each Set-aside, Rural regional allocation, Urban regional allocation, and/or USDA Set-aside for the current Application round as appropriate.

(1) Nonprofit Set-Aside. (§2306.6729 and §2306.6706(b)) At least 10% of the State Housing Credit Ceiling for each calendar year shall be allocated to Qualified Nonprofit Developments which meet the requirements of Code, §42(h)(5) and Tex. Gov't Code §2306.6729 and §2306.6706(b). Qualified Nonprofit Organizations must have the controlling interest in the Development Owner applying for this Set-aside (i.e., greater than 50% ownership in the General Partner). If the Application is filed on behalf of a limited partnership, the Qualified Nonprofit Organization must be the Managing General Partner. If the Application is filed on behalf of a limited liability company, the Qualified Nonprofit Organization must be the controlling Managing Member. Additionally, for Qualified Nonprofit Development in the Nonprofit Set-aside the nonprofit entity or its nonprofit Affiliate or subsidiary must be the Developer or a co-Developer as evidenced in the development agreement. An Applicant that meets the requirements to be in the Qualified Nonprofit Set-aside is deemed to be applying under that Set-aside unless their Application specifically includes an affirmative election to not be treated under that Set-aside and a certification that they do not expect to receive a benefit in the allocation of tax credits as a result of being affiliated with a nonprofit. The Department reserves the right to request a change in this election and/or to not recommend credits for those unwilling to change elections if insufficient Applications in the Nonprofit Set-Aside are received. Applicants may not use different organizations to satisfy the state and federal requirements of the Set-aside.

(2) USDA Set-Aside. (§2306.111(d-2)) At least 5% of the State Housing Credit Ceiling for each calendar year shall be allocated to Rural Developments which are financed through USDA. If an Application in this Set-aside involves Rehabilitation it will be attributed to and come from the At-Risk Development Set-aside; if an Application in this set-aside involves New Construction it will be attributed to and come from the applicable Uniform State Service Region and will compete within the applicable subregion unless the Application is receiving USDA Section 514 funding. Applications must also meet all requirements of Tex. Gov't Code §2306.111(d-2).

(A) Eligibility of Certain Developments to Participate in the USDA or Rural Set-asides. (§2306.111 (d-4)) A proposed or Existing Residential Development that, before September 1, 2013, has been awarded or has received federal financial assistance provided under Section 514, 515, or 516 of the Housing Act of 1949 (42 U.S.C. Section 1484, 1485, or 1486) may be attributed to and come from the At-Risk Development Set-aside or the Uniform State Service Region in which the Development is located, regardless of whether the Development is located in a Rural Area.

(B) All Applications that are eligible to participate under the USDA Set-aside will be considered Rural for all scoring items under this chapter. If a Property receiving USDA financing is unable to participate under the USDA Set-aside and it is located in an Urban subregion, it will be scored as Urban.

(3) At-Risk Set-Aside. (§2306.6714; §2306.6702)

(A) At least 15% of the State Housing Credit Ceiling for each calendar year will be allocated under the At-Risk Development Set-aside and will be deducted from the State Housing Credit Ceiling prior to the application of the regional allocation formula required under §11.6 of this chapter (relating to Competitive HTC Allocation Process). Through this Set-aside, the Department, to the extent possible, shall allocate credits to Applications involving the preservation of Developments identified as At-Risk Developments. (§2306.6714) Up to 5% of the State Housing Credit Ceiling associated with this Set-aside may be given priority to Rehabilitation Developments under the USDA Set-aside.

(B) An At-Risk Development qualifying under Tex. ~~Gov't~~Gov't Code §2306.6702(a)(5)(A) must meet the following requirements:

(i) Pursuant to Tex. ~~Gov't~~Gov't Code §2306.6702(a)(5)(A)(i), a Development must have received the benefit of a subsidy in the form of a qualified below-market interest rate loan, interest rate reduction, rental subsidy, Section 8 housing assistance payment, rental supplement payment, rental assistance payment, or equity incentive from any of the programs provided in subclauses (I) to (VIII) of this clause. Applications participating in the At-Risk Set-Aside must include evidence of the qualifying subsidy.

(I) Sections 221(d)(3) and (5), National Housing Act (12 U.S.C. Section 1715l);

(II) Section 236, National Housing Act (12 U.S.C. Section 1715z-1);

(III) Section 202, Housing Act of 1959 (12 U.S.C. Section 1701q);

(IV) Section 101, Housing and Urban Development Act of 1965 (12 U.S.C. Section 1701s);

(V) the Section 8 Additional Assistance Program for housing developments with HUD-Insured and HUD-Held Mortgages administered by the United States Department of Housing and Urban Development as specified by 24 C.F.R. Part 886, Subpart A;

(VI) the Section 8 Housing Assistance Program for the Disposition of HUD-Owned Projects administered by the United States Department of Housing and Urban Development as specified by ~~24 C.F.R. Part 886, Subpart C;~~

C.F.R. Part 886, Subpart C;

(VII) Sections 514, 515, and 516, Housing Act of 1949 (42 U.S.C. Sections 1484, 1485, and 1486); or

(VIII) Section 42, Internal Revenue Code of 1986.

(ii) Any stipulation to maintain affordability in the contract granting the subsidy or any HUD-insured or HUD-held mortgage as described in §2306.6702(a)(5)(A)(ii)(a) will be considered to be nearing expiration or nearing the end of its term if the contract expiration will occur or the term will end within two years of July 31 of the year the Application is submitted. Developments with HUD-insured or HUD-held mortgages qualifying as At-Risk under §2306.6702(a)(5)(A)(ii)(b) will be considered eligible if the HUD-insured or HUD-held mortgage is eligible for prepayment.

(iii) Developments with existing Department LIHTC LURAs must have completed all applicable Right

of First Refusal procedures prior to the pre-application Final Delivery Date.

(C) An At-Risk Development qualifying under Tex. Gov't Code §2306.6702(a)(5)(B) must meet one of the requirements under clause (i) or (ii) or (iii) of this subparagraph:

(i) Units to be Rehabilitated or Reconstructed must be owned by a public housing authority or a public facility corporation created by a public housing authority under Chapter 303, Local Government Code and received assistance under §9, United States Housing Act of 1937 (42 U.S.C. section 1437g); or

(ii) Units to be Rehabilitated or Reconstructed must have been proposed to be disposed of or demolished, or already disposed or demolished, by a public housing authority or public facility corporation created by a public housing authority under Chapter 303, Local Government Code and received assistance under §9, United States Housing Act of 1937 (42 U.S.C. section 1437g) in the two-year period preceding the Application for housing tax credits; or

(iii) To the extent that an Application is eligible under Tex. Gov't Code §2306.6702(a)(5)(B)(iii), the Development must receive assistance through the Rental Assistance Demonstration (RAD) program administered by the United States Department of Housing and Urban Development (HUD). Applications must include evidence that RAD participation is included in the applicable public housing plan that was most recently approved by HUD, and evidence ~~(in the form of a Commitment to enter into a Housing Assistance Payment (CHAP))~~ that HUD has approved the Units proposed for Rehabilitation or Reconstruction for participation in the RAD program; and

(iv) Notwithstanding any other provision of law, an At-Risk Development described by Tex. Gov't Code §2306.6702(a)(5)(B) that was previously allocated housing tax credits set aside under Subsection (a) does not lose eligibility for those credits if the portion of Units reserved for public housing as a condition of eligibility for the credits under Tex. Gov't Code §2306.6714 (a-1)(2) are later converted under RAD.

(D) An Application for a Development that includes the demolition of the existing Units which have received the financial benefit described in Tex. Gov't Code §2306.6702(a)(5)(i) will not qualify as an At-Risk Development unless the redevelopment will include at least a portion of the same site. Alternatively, pursuant to Tex. Gov't Code §2306.6702(a)(5)(B), an Applicant may propose relocation of the existing Units in an otherwise qualifying At-Risk Development if:

(i) the affordability restrictions and any At-Risk eligible subsidies are approved to be transferred with the units proposed for Rehabilitation or Reconstruction prior to the tax credit Carryover deadline;

(ii) the Applicant seeking tax credits must propose the same number of restricted Units (the Applicant may, however, add market rate Units); and

(iii) the new Development Site must either qualify for points on the Opportunity Index under §11.9(c)(4) of this chapter (relating to Competitive HTC Selection Criteria); OR

(iv) the local Governing Body of the applicable municipality or county (if completely outside of a municipality) in which that Development is located must submit a resolution confirming that the proposed Development is supported by the municipality or county in order to carry out a previously adopted plan that meets the requirements of §11.9(d)(7). Development Sites that cross jurisdictional boundaries must provide such resolutions from both local governing bodies.

(E) If Developments at risk of losing affordability from the financial benefits available to the Development are able to retain, renew, or replace the existing financial benefits and affordability they must do so unless regulatory barriers necessitate elimination of all or a portion of that benefit for the Development.

(i) Evidence of the legal requirements that will unambiguously cause the loss of affordability and that this will occur within the two calendar years of July 31 of the year the Application is submitted, and must be included with the application.

(ii) For Developments qualifying under Tex. Gov't Code §2306.6702(a)(5)(B), only a portion of the subsidy

must be retained for the proposed Development, but no less than 25% of the proposed Units must be public housing units supported by public housing operating subsidy. (§2306.6714(a-1). If less than 100% of the public housing benefits are transferred to the proposed Development, an explanation of the disposition of the remaining public housing benefits must be included in the Application, as well as a copy of the HUD-approved plan for demolition and disposition.

(F) Nearing expiration on a requirement to maintain affordability includes Developments eligible to request a Qualified Contract under Code, §42. Evidence must be provided in the form of a copy of the recorded LURA, the first year's IRS Forms 8609 for all buildings showing Part II of the form completed and, if applicable, documentation from the original application regarding the Right of First Refusal. The Application must also include evidence that any applicable Right of First Refusal procedures have been completed prior to the pre-application Final Delivery Date.

(G) An amendment to any aspect of the existing tax credit property sought to enable the Development to qualify as an At-Risk Development, that is submitted to the Department after the Application has been filed and is under review will not be accepted.

§11.6- Competitive HTC Allocation Process-

This section identifies the general allocation process and the methodology by which awards are made.

(1) Regional Allocation Formula. The Department shall initially make available in each Rural Area and Urban Area of each Uniform State Service Region (subregion) Housing Tax Credits in an amount not less than \$600,000 in each Rural and Urban subregion, consistent with the Regional Allocation Formula developed in compliance with Tex. Gov't Code §2306.1115. As authorized by Tex. Gov't Code §2306.111(d-3), the Department will reserve \$600,000 in housing tax credits for Applications in rural areas in each uniform state service region. The process of awarding the funds made available within each subregion shall follow the process described in this section. Where a particular situation that is not contemplated and addressed explicitly by the process described herein, Department staff shall formulate a recommendation for the Board's consideration based on the objectives of the regional allocation formula together with other policies and purposes set out in Tex. Gov't Code, Chapter 2306 and the Department shall provide the public the opportunity to comment on and propose alternatives to such a recommendation. In general, such a recommendation shall not involve broad reductions in the funding request amounts solely to accommodate regional allocation and shall not involve rearranging the competitive ranking of Applications within a particular subregion or set-aside except as described herein. If the Department determines that an allocation recommendation would cause a violation of the \$3 million credit limit per Applicant, the Department will make its recommendation based on the criteria described in §11.4(a) of this chapter. The Department will publish on its website on or before December 1, ~~2019~~2020, initial estimates of Regional Allocation Formula percentages and limits of credits available, and the calculations periodically, if those calculations change, until the credits are fully allocated.

(2) Credits Returned and National Pool Allocated After January 1. For any credits returned after January 1 and eligible for reallocation (not including credit returned and reallocated under force majeure provisions), the Department shall first return the credits to the subregion or set-aside from which the original allocation was made. The credits will be treated in a manner consistent with the allocation process described in this section and may ultimately flow from the subregion and be awarded in the collapse process to an Application in another region, subregion or set-aside. For any credit received from the "national pool" after the initial approval of awards in late July, the credits will be added to any remaining

credits and awarded to the next Application on the waiting list for the state collapse, if sufficient credits are available to meet the requirements of the Application as may be amended after underwriting review.

(3) Award Recommendation Methodology. (§2306.6710(a) - (f); §2306.111) The Department will assign, as described herein, Developments for review by the program and underwriting divisions. In general, Applications reviews will be conducted in the order described in subparagraphs (A) through (F) of this paragraph based upon the Applicant self-score and an initial program review. The procedure identified in subparagraphs (A) - (F) of this paragraph will also be used in making recommendations to the Board.

(A) USDA Set-Aside Application Selection (Step 1). The first set of reviews will be those Applications with the highest scores in the USDA Set-Aside until the minimum requirements stated in §11.5(2) of this chapter (relating to Competitive HTC Set-Asides. (§2306.111(d))) are attained. The minimum requirement may be exceeded in order to award the full credit request or underwritten amount of the last Application selected to meet the USDA Set-Aside requirement.

(B) At-Risk Set-Aside Application Selection (Step 2). The second set of reviews will be those Applications with the highest scores in the At-Risk Set-Aside statewide until the minimum requirements stated in §11.5(3) of this chapter (relating to At-Risk Set-Aside) are attained. This may require the minimum requirement to be exceeded to award the full credit request or underwritten amount of the last Application selected to meet the At-Risk Set-Aside requirement. This step may leave less than originally anticipated in the 26 subregions to award under the remaining steps.

(C) Initial Application Selection in Each Subregion (Step 3). The highest scoring Applications within each of the 26 subregions will then be selected provided there are sufficient funds within the subregion to fully award the Application. Applications electing the At-Risk or USDA Set-Asides will not be eligible to receive an award from funds made generally available within each of the subregions.

(i) In Uniform State Service Regions containing a county with a population that exceeds one million, the Board may not allocate more than the maximum percentage of credits available for Elderly Developments, unless there are no other qualified Applications in the subregion. The Department will, for each such Urban subregion, calculate the maximum percentage in accordance with Tex. Gov't Code §2306.6711(h), and will publish such percentages on its website.

(ii) In accordance with Tex. Gov't Code, §2306.6711(g), in Uniform State Service Regions containing a county with a population that exceeds 1.7 million, the Board shall allocate competitive tax credits to the highest scoring development, if any, that is part of a concerted revitalization plan that meets the requirements of §11.9(d)(7) (except for §11.9(d)(7)(A)(ii)(III) and §11.9(d)(7)(B)(iii)), is located in an urban subregion, and is within the boundaries of a municipality with a population that exceeds 500,000.

(D) Rural Collapse (Step 4). If there are any tax credits set-aside for Developments in a Rural Area in a specific Uniform State Service Region (Rural subregion) that remain after award under subparagraph (C) of this paragraph, those tax credits shall be combined into one "pool" and then be made available in any other Rural Area in the state to the Application in the most underserved Rural subregion as compared to the subregion's allocation. This rural redistribution will continue until all of the tax credits in the "pool" are allocated to Rural Applications and at least 20% of the funds available to the State are allocated to Applications in Rural Areas. (§2306.111(d)(3)) In the event that more than one subregion is underserved by the same percentage, the priorities described in clauses (i) - (ii) of this subparagraph will be used to select the next most underserved subregion:

(i) the subregion with no recommended At-Risk Applications from the same Application Round; and

~~(i) the subregion with no recommended At Risk Applications from the same Application Round; and~~

(ii) the subregion that was the most underserved during the Application Round during the year immediately preceding the current Application Round.

(E) Statewide Collapse (Step 5). Any credits remaining after the Rural Collapse, including those in any subregion in the State, will be combined into one "pool." The funds will be used to award the highest scoring Application (not selected or eliminated in a prior step) in the most underserved subregion in the State compared to the amount originally made available in each subregion. In Uniform State Service Regions containing a county with a population that exceeds one million, the Board may not allocate more than the maximum percentage of credits available as calculated through the Regional Allocation Formula (RAF) for Elderly Developments within an urban subregion of that service region. Therefore, certain Applications for Elderly Developments may be excluded from receiving an award from the collapse. The Department will, for each such Urban subregion, calculate the maximum percentage in accordance with Tex. Gov't Code §2306.6711(h) and will publish such percentages on its website. This process will continue until the funds remaining are insufficient to award the next highest scoring Application that is not rendered ineligible through application of the elderly cap in the next most underserved subregion. At least seven calendar days prior to the July Board meeting of the Department at which final awards of credits are authorized, the Department will post on its website the most current 2020 State of Texas Competitive Housing Tax Credit Ceiling Accounting Summary which includes the Regional Allocation Formula percentages including the maximum funding request/award limits, the Elderly Development maximum percentages and limits of credits available, and the methodology used for the determination of the award determinations within the State Collapse. In the event that more than one subregion is underserved by the same degree, the priorities described in clauses (i) and (ii) of this subparagraph will be used to select the next most underserved subregion:

(i) the subregion with no recommended At-Risk Applications from the same Application Round; and
~~(i) the subregion with no recommended At Risk Applications from the same Application Round; and~~
(ii) the subregion that was the most underserved during the Application Round during the year immediately preceding the current Application Round.

(F) Contingent Qualified Nonprofit Set-aside Step (Step 6). If an insufficient number of Applications participating in the Nonprofit Set-Aside are selected after implementing the criteria described in subparagraphs (A) - (E) of this paragraph to meet the requirements of the 10% Nonprofit Set-Aside, action must be taken to modify the criteria described in subparagraphs (A) - (E) of this paragraph to ensure the Set-aside requirements are met. Therefore, the criteria described in subparagraphs (C) - (E) of this paragraph will be repeated after selection of the highest scoring Application(s) under the Nonprofit Set-aside statewide are selected to meet the minimum requirements of the Nonprofit Set- Aside. This step may cause some lower scoring Applications in a subregion to be selected instead of a higher scoring Application not participating in the Nonprofit Set-aside.

(4) Waiting List. The Applications that do not receive an award by July 31 and remain active and eligible will be recommended for placement on the waiting list. The waiting list is not static. The allocation process will be used in determining the next Application to award. If credits are returned through any process, those credits will first be made available in the set-aside or subregion from which they were originally awarded. The first Application on the waiting list is in part contingent on the nature of the credits that became available for award. The Department shall hold all credit available after the late-July awards until September 30 in order to collect credit that may become available when tax credit Commitments are submitted. Credit confirmed to be available, as of September 30, may be awarded to Applications on the

waiting list unless insufficient credits are available to fund the next Application on the waiting list. For credit returned after September 30, awards from the waiting list will be made when the remaining balance is sufficient to award the next Application as may be amended on the waiting list based on the date(s) of returned credit. Notwithstanding the foregoing, if decisions related to any returns or rescissions of tax credits are under appeal or are otherwise contested, the Department may delay awards until resolution of such issues. The Department will evaluate all waiting list awards for compliance with requested Set-asides. This may cause some lower scoring Applications to be selected instead of a higher scoring Application. Where sufficient credit becomes available to award an Application on the waiting list later in the calendar year, staff may allow flexibility in meeting the Carryover Allocation submission deadline and/or changes to the Application as necessary to ensure to the extent possible ~~so~~ that available resources are allocated by December 31. (§2306.6710(a) - (f); §2306.111)

(5) Credit Returns Resulting from Force Majeure Events. In the event that the Department receives a return of Competitive HTCs during the current program year from an Application that received a Competitive Housing Tax Credit award during any of the preceding three years, such returned credit will, if the Board determines that all of the requirements of this paragraph are met to its satisfaction, be allocated separately from the current year's tax credit allocation, and not be subject to the requirements of paragraph (2) of this section. The Board determination must indicate the year of the Multifamily Rules to be applied to the Development. ~~The Department's~~ Department's Governing Board may impose a deadline that is earlier than the Placed in Service Deadline and may impose conditions that were not placed on the original allocation. Requests to allocate returned credit separately where all of the requirements of this paragraph have not been met or requests for waivers of any part of this paragraph will not be considered. For purposes of this paragraph, credits returned after September 30 of the preceding program year may be considered to have been returned on January 1 of the current year in accordance with the treatment described in §(b)(2)(C)(iii) of Treasury Regulation 1.42-14. The Board may approve the execution of a current program year Carryover Agreement regarding the returned credits with the Development Owner that returned such credits only if:

(A) The credits were returned as a result of "Force Majeure" events that occurred before issuance of Forms 8609. Force Majeure events are the following sudden and unforeseen circumstances outside the control of the Development Owner: acts of God such as fire, tornado, flooding, significant and unusual rainfall or subfreezing temperatures, or loss of access to necessary water or utilities as a direct result of significant weather events; explosion; vandalism; orders or acts of military authority; unrelated party litigation; changes in law, rules, or regulations; national emergency or insurrection; riot; acts of terrorism; supplier failures; or materials or labor shortages. If a Force Majeure event is also a presidentially declared disaster, the Department may treat the matter under the applicable federal provisions. Force Majeure events must make construction activity impossible or materially impede its progress;

(B) Acts or events caused by the negligent or willful act or omission of the Development Owner, Affiliate or a Related Party shall under no circumstance be considered to be caused by Force Majeure. In order for rainfall, material shortages, or labor shortages to constitute Force Majeure, the Development Owner must clearly explain and document how such events could not have been reasonably foreseen and mitigated through appropriate planning and risk management. Staff may use Construction Status reports for the subject or other Developments in conducting their review and forming a recommendation to the Board.

(C) A Development Owner claiming Force Majeure must provide evidence of the type of event, as described in subparagraph (A) of this paragraph, when the event occurred, and that the loss was a direct result of the event;

(D) The Development Owner must prove that reasonable steps were taken to minimize or mitigate any delay or damages, that the Development Owner substantially fulfilled all obligations not impeded by the event, including timely closing of all financing and start of construction, that the Development and Development Owner was properly insured and that the Department was timely notified of the likelihood or actual occurrence of an event described in subparagraph (A) of this paragraph;

(E) The event prevents the Development Owner from meeting the placement in service requirements of the original allocation;

(F) The requested current year Carryover Agreement allocates the same amount of credit as that which was returned; and

(G) The ~~Department's~~Department's Real Estate Analysis Division determines that the Development continues to be financially viable in accordance with the ~~Department's~~Department's underwriting rules after taking into account any insurance proceeds related to the event.

§11.7- Tie Breaker Factors

In the event there are Competitive HTC Applications that receive the same number of points in any given set-aside category, rural regional allocation or urban regional allocation, or rural or statewide collapse, the Department will utilize the factors in this section, in the order they are presented, to determine which Development will receive preference in consideration for an award. For the purposes of this section, all measurements will include ingress/egress requirements and any easements regardless of how they will be held. The tie breaker factors are not intended to specifically address a tie between equally underserved subregions in the rural or statewide collapse.

(1) Applications proposed to be located in a census tract with a poverty rate below the average poverty rate for all awarded Competitive HTC Applications from the past three years (with Region 11 adding an additional 15% to that value and Region 13 adding an additional 5% to that value). The poverty rate for each census tract will come from the most recent American Community Survey data. If a tie still persists, then the Development in the census tract with the highest percentage of statewide rent burden for renter households at or below 80% Area Median Family Income (AMFI), as determined by the U.S. Department of Housing and Urban Development's Comprehensive Housing Affordability Strategy (CHAS) dataset and as reflected in the Department's current Site Demographic Characteristics Report.

(2) Applications proposed to be located the greatest linear distance from the nearest Housing Tax Credit assisted Development that serves the same Target Population and that was awarded less than 15 years ago according to the ~~Department's~~Department's property inventory tab of the Site Demographic Characteristics Report. Developments awarded Housing Tax Credits but do not yet have a Land Use Restriction Agreement in place will be considered Housing Tax Credit assisted Developments for purposes of this paragraph according to the property inventory included in the HTC Site Demographic Characteristics Report. The linear measurement will be performed from closest boundary to closest boundary of the Site presented at Pre-Application, if a pre-application is submitted, or the Site presented at full Application, whichever is closest.

§11.8- Pre-Application Requirements (Competitive HTC Only)-)

(a) General Submission Requirements. The pre-application process allows Applicants interested in pursuing an Application to assess potential competition across the 13 state service regions, subregions and set-asides. Based on an understanding of the potential competition they can make a more informed decision about whether they wish to proceed to prepare and submit an Application. A complete pre-application is a pre-application that meets all of the Department's criteria, as outlined in subsections (a) and (b) of this section.

(1) The pre-application must be submitted using the URL provided by the Department, as outlined in the Multifamily Programs Procedures Manual, along with the required pre-application fee as described in §11.901 of this chapter (relating to Fee Schedule), not later than the pre-application Final Delivery Date as identified in §11.2(a) of this chapter (relating to Competitive HTC Deadlines Program Calendar). If the pre-application and corresponding fee is not submitted on or before this deadline the Applicant will be deemed to have not made a pre-application.

(2) Only one pre-application may be submitted by an Applicant for each Development Site and for each Site Control document.

(3) Department review at this stage is limited, and not all issues of eligibility and threshold are reviewed or addressed at pre-application. Acceptance by staff of a pre-application does not ensure that an Applicant satisfies all Application eligibility, threshold or documentation requirements. While the pre-application is more limited in scope than the Application, pre-applications are subject to the same limitations, restrictions, or causes for disqualification or termination as Applications, and pre-applications will thus be subject to the same consequences for violation, including but not limited to loss of points and termination of the pre-application.

(4) The pre-application becomes part of the full Application if the full Application claims pre-application points.

(5) Regardless of whether a Full Application is submitted, a pre-application may not be withdrawn after the Full Application Delivery Date described in 10 TAC §11.2(a) relating to Competitive HTC Deadlines Program Calendar.

(b) Pre-Application Threshold Criteria. Pursuant to Tex. Gov't Code §2306.6704(c) pre-applications will be terminated unless they meet the threshold criteria described in subsection (a) of this section and paragraphs (1) and (2) of this subsection:

(1) Submission of the Competitive HTC pre-application in the form prescribed by the Department which identifies at a minimum:

(A) Site Control meeting the requirements of §11.204(10) of this title (relating to Required Documentation for Application Submission). For purposes of meeting this specific requirement related to pre-application threshold criteria, proof of consideration and any documentation required for identity of interest transactions is not required at the time of pre-application submission but will be required at the time of full application submission;

(B) Funding request;

(C) Target Population;

(D) Requested set-asides (At-Risk, USDA, Nonprofit, ~~and/or~~ Rural);

(E) Total Number of Units proposed;

(F) Census tract number in which the Development Site is located, and a map of that census tract with

an outline of the proposed Development Site;

(G) Expected score for each of the scoring items identified in the pre-application materials;

(H) Proposed name of ownership entity; and

(I) Disclosure of the following Neighborhood Risk Factors under ~~§11.101(a)(3)-:~~:

(i) The Development Site is located in a census tract (or for any adjacent census tract with a boundary less than 500 feet from the proposed Development Site that is not separated from the Development Site by a natural barrier such as a river or lake, or an intervening restricted area, such as a military installation) in an Urban Area and the rate of Part I violent crime is greater than 18 per 1,000 persons (annually) as reported on neighborhoodscout.com; and

(ii) The Development Site is located within the attendance zone of an elementary school, a middle school or a high school that has a ~~2019~~-TEA Accountability Rating of D for the most recent year available prior to Application and a ~~2018~~an Improvement Required Rating for the most recent available year preceding or a ~~2019~~-TEA Accountability Rating of F for the most recent year available prior to Application and a ~~2018~~-Met Standard Rating by the Texas Education Agency- for the most recent available year preceding.

(2) Evidence in the form of a certification provided in the pre-application, that all of the notifications required under this paragraph have been made and that a reasonable search for applicable entities has been conducted. (§2306.6704)

(A) The Applicant must list in the pre-application all Neighborhood Organizations on record with the county or state whose boundaries include the entire proposed Development Site as of the beginning of the Application Acceptance Period.

(B) Notification Recipients. No later than the date the pre-application is submitted, notification must be sent to all of the entities prescribed in clauses (i) - (viii) of this subparagraph. Developments located in an ETJ of a municipality are required to notify both municipal and county officials. The notifications may be sent by e-mail, fax or mail with registered return receipt or similar tracking mechanism in the format included in the Public Notification Template provided in the Uniform 2020 Multifamily Application Template or in an alternative format that meets the applicable requirements and achieves the intended purpose. The Applicant is required to retain proof of delivery in the event the Department requests proof of notification. Acceptable evidence of such delivery is demonstrated by signed receipt for mail or courier delivery and confirmation of delivery for fax and e-mail. Regardless of the method of delivery, the Applicant must provide an accurate mailing address in the Pre-application. Officials to be notified are those officials in office at the time the pre-application is submitted. Between the time of pre-application (if made) and full Application, the boundaries of an ~~official's~~ official's jurisdictions may change. If there is a change in jurisdiction between pre-application and the Full Application Delivery Date, additional notifications must be made at full Application to any entity that has not been previously notified by the Applicant. Meetings and discussions do not constitute notification. Only a timely and compliant written notification to the correct entity constitutes notification.

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

(ii) Superintendent of the school district in which the Development Site is located;

(iii) Presiding officer of the board of trustees of the school district in which the Development Site is located;

(iv) Mayor of the municipality (if the Development Site is within a municipality or its extraterritorial jurisdiction);

(v) All elected members of the Governing Body of the municipality (if the Development Site is within a

municipality or its extraterritorial jurisdiction);

(vi) Presiding officer of the Governing Body of the county in which the Development Site is located;

(vii) All elected members of the Governing Body of the county in which the Development Site is located;
and

(viii) State Senator and State Representative of the districts whose boundaries include the proposed Development Site.

(C) Contents of Notification.

(i) The notification must include, at a minimum, all of the information described in subclauses (I) - (VIII) of this clause.

(I) The Applicant's name, address, an individual contact name and phone number;

(II) The Development name, address, city, and county;

(III) A statement informing the entity or individual being notified that the Applicant is submitting a request for Housing Tax Credits with the Texas Department of Housing and Community Affairs;

(IV) Whether the Development proposes New Construction, Reconstruction, Adaptive Reuse, or Rehabilitation;

(V) The physical type of Development being proposed (e.g. single family homes, duplex, apartments, high-rise, etc.);

(VI) The approximate total number of Units and approximate total number of Low-Income Units;

(VII) The residential density of the Development, i.e., the number of Units per acre; and

(VIII) Information on how and when an interested party or Neighborhood Organization can provide input to the Department.

(ii) The notification may not contain any false or misleading statements. Without limiting the generality of the foregoing, the notification may not create the impression that the proposed Development will serve a population exclusively or as a preference unless such targeting or preference is documented in the Application and is in full compliance with all applicable state and federal laws, including state and federal fair housing laws; and

(iii) Notifications or any other communications may not contain any statement that violates Department rules, statute, code, or federal requirements.

(c) Pre-Application Results. Only pre-applications which have satisfied all of the pre-application requirements, including those in §11.9(e)(3) of this chapter, will be eligible for pre-application points. The order and scores of those Developments released on the pre-application Submission Log do not represent a Commitment on the part of the Department or the Board to allocate tax credits to any Development and the Department bears no liability for decisions made by Applicants based on the results of the pre-application Submission Log. Inclusion of a pre-application on the pre-application Submission Log does not ensure that an Applicant will receive points for a pre-application.

~~§11.9. Competitive HTC Selection Criteria.~~

(d) Applicants that may be requesting a Multifamily Direct Loan from the Department may submit a Request for Preliminary Determination with the Pre-Application. The results of evaluation of the Request may be used as evidence of review of the Development and the Principals for purposes of scoring under 10 TAC §11.9(e)(1)(E). Submission of a Request for Preliminary Determination does not obligate the Applicant to request Multifamily Direct Loan funds with their full Application.

§11.9 Competitive HTC Selection Criteria

(a) General Information. This section identifies the scoring criteria used in evaluating and ranking

Applications. The criteria identified in subsections (b) - (e) of this section include those items required under Tex. Gov't Code, Chapter 2306, Code §42, and other criteria established in a manner consistent with Chapter 2306 and Code §42. There is no rounding of numbers in this section for any of the calculations in order to achieve the desired requirement or limitation, unless rounding is explicitly stated as allowed for that particular calculation or criteria. The Application must include one or more maps indicating the location of the Development Site and the related distance to the applicable facility. Distances are to be measured from the nearest boundary of the Development Site to the nearest boundary of the property or easement containing the facility, unless otherwise noted. For the purposes of this section, all measurements will include ingress/egress requirements and any easements regardless of how they will be held. Due to the highly competitive nature of the program, Applicants that elect points where supporting documentation is required but fail to provide any supporting documentation will not be allowed to cure the issue through an Administrative Deficiency. However, Department staff may provide the Applicant an opportunity to explain how they believe the Application, as submitted, meets the requirements for points or otherwise satisfies the requirements.

(b) Criteria promoting development of high quality housing.

(1) Size and Quality of the Units. (§2306.6710(b)(1)(D); §42(m)(1)(C)(iii)) An Application may qualify for up to fifteen (15) points under subparagraphs (A) and (B) of this paragraph.

(A) Unit Sizes (6 points). The Development must meet the minimum requirements identified in this subparagraph to qualify for points. Points for this item will be automatically granted for Applications involving Rehabilitation (excluding Reconstruction), for Developments receiving funding from USDA, or for Supportive Housing Developments without meeting these square footage minimums only if requested in the Self Scoring Form. If the Development involves both Rehabilitation and Reconstruction or New Construction, the Reconstruction or New Construction Units must meet these requirements.

- (i) five-hundred fifty (550) square feet for an Efficiency Unit;
- (ii) six-hundred fifty (650) square feet for a one Bedroom Unit;
- (iii) eight-hundred fifty (850) square feet for a two Bedroom Unit;
- (iv) one-thousand fifty (1,050) square feet for a three Bedroom Unit; and
- (v) one-thousand two-hundred fifty (1,250) square feet for a four Bedroom Unit.

(B) Unit, Development Construction, and Energy and Water Efficiency Features (9 points). Applicants that elect in an Application to provide specific amenity and quality features in every Unit at no extra charge to the tenant will be awarded points based on the point structure provided in §11.101(b)(6)(B) of this title (relating to Unit, Development Construction, and Energy and Water Efficiency Features) and as certified to in the Application. The amenities will be required to be identified in the LURA. Rehabilitation Developments will start with a base score of five (5) points and Supportive Housing Developments will start with a base score of five (5) points.

(2) Sponsor Characteristics. (§42(m)(1)(C)(iv)) An Application may qualify to receive either one (1) or two (2) points if it meets one of the following conditions. Any Application that includes a HUB must include a narrative description of the ~~HUB's~~HUB's experience directly related to the housing industry.

(A) The ownership structure contains either a HUB certified by the Texas Comptroller of Public Accounts by the Full Application Delivery Date or it contains a Qualified Nonprofit Organization, provided the Application is under the Nonprofit Set-Aside. The HUB or Qualified Nonprofit Organization must have some combination of ownership interest in each of the General Partner of the Applicant, Cash Flow from

operations, and Developer Fee which taken together equal at least 50% and no less than 5% for any category. For HUD 202 Rehabilitation projects which prohibit for-profit ownership, ownership will not be required for a HUB or nonprofit, only for Cash Flow ~~and/or~~ Developer Fee; the total ownership percentage must still equal 50%, even if it is only attributable to one of the two categories.

(i) The HUB or Qualified Nonprofit Organization must materially participate in the Development and operation of the Development throughout the Compliance Period and must have experience directly related to the housing industry, which may include experience with property management, construction, development, financing, or compliance. Material participation means that the HUB or Qualified Nonprofit is regularly, continuously, and substantially involved in providing services integral to the Development Team; providing services as an independent contractor is not sufficient.

(ii) A Principal of the HUB or Qualified Nonprofit Organization cannot be a Related Party to or Affiliate, including the spouse, of any other Principal of the Applicant or, Developer or Guarantor (excluding another Principal of said HUB or Qualified Nonprofit Organization). (2 points)

(B) The HUB or ~~Nonprofit~~ nonprofit Organization must be involved with the Development Services or in the provision of on-site tenant services during the ~~Development's~~ Development's Affordability Period. A Principal of the HUB or ~~Nonprofit~~ nonprofit Organization cannot be a Related Party to or Affiliate, including the spouse of, any other Principal of the Applicant ~~or, Developer or Guarantor~~ (excluding another Principal of said HUB or Nonprofit Organization). Selecting this item because of the involvement of a ~~Nonprofit~~ nonprofit Organization does not make an Application eligible for the Nonprofit Set-Aside. (1 point)

(c) Criteria to serve and support Texans most in need.

(1) Income Levels of Residents. (§§2306.111(g)(3)(B) and (E); 2306.6710(b)(1)(C) and (e); and §42(m)(1)(B)(ii)(I)) An Application may qualify for up to sixteen (16) points for rent and income restricting a Development for the entire Affordability Period at the levels identified in subparagraph (A), (B), (C), or (D) of this paragraph.

(A) For any Development located within a non-Rural Area of the Dallas, Fort Worth, Houston, San Antonio, or Austin MSAs that propose to use either the 20-50 or 40-60 election under §42(g)(1)(A) or §42(g)(1)(B) of the Code, respectively:

- (i) At least 60% of all Low-Income Units at 50% or less of AMGI in a Supportive Housing Development proposed by a Qualified Nonprofit (16 points);
- (ii) At least 40 % of all Low-Income Units at 50% or less of AMGI (15 points);
- (iii) At least 30% of all Low-Income Units at 50% or less of AMGI (~~13 points~~ 13 points); or
- (iv) At least 20% of all Low-Income Units at 50 % or less of AMGI (11 points).

(B) For Developments proposed to be located in areas other than those listed in subparagraph (A) of this paragraph and that propose to use either the 20-50 or 40-60 election under §42(g)(1)(A) or §42(g)(1)(B) of the Code, respectively:

- (i) At least 60% of all Low-Income Units at 50% or less of AMGI in a Supportive Housing Development proposed by a Qualified Nonprofit (16 points);
- (ii) At least 20% of all Low-Income Units at 50% or less of AMGI (15 points);
- (iii) At least 15% of all Low-Income Units at 50% or less of AMGI (13 points); or
- (iv) At least 10% of all Low-Income Units at 50% or less of AMGI (11 points).

(C) For any Development located within a non-Rural Area of the Dallas, Fort Worth, Houston, San Antonio, or Austin MSAs that propose to use the Average Income election under §42(g)(1)(C) of the Code:

(i) The Average Income and Rent restriction for all Low-Income Units for the proposed Development will be 54% or lower (15 points);

(ii) The Average Income and Rent restriction for all Low-Income Units for the proposed Development will be 55% or lower (13 points); or

(iii) The average income and Rent restriction for all Low-Income Units for the proposed Development will be 56% or lower (11 points).

(D) For Developments proposed to be located in the areas other than those listed in subparagraph(C) of this paragraph and that propose to use the Average Income election under §42(g)(1)(C) of the Code:

(i) The Average Income and Rent restriction for all Low-Income Units for the proposed Development will be 55% or lower (15 points);

(ii) The Average Income and Rent restriction for all Low-Income Units for the proposed Development will be 56% or lower (13 points); or

(iii) The Average Income and Rent restriction for all Low-Income Units for the proposed Development will be 57% or lower (11 points).

(2) Rent Levels of Tenants. (§2306.6710(b)(1)(E)) An Application may qualify to receive up to thirteen (13) points for rent and income restricting a Development for the entire Affordability Period. If selecting points from §11.9(c)(1)(A) or §11.9(c)(1)(B), these levels are in addition to those committed under paragraph (1) of this subsection. If selecting points from §11.9(c)(1)(C) or §11.9(c)(1)(D), these levels are included in the income average calculation under paragraph (1) of this subsection. These units must be maintained at this rent level throughout the Affordability Period regardless of the Average Income calculation.

(A) At least 20% of all Low-Income Units at 30% or less of AMGI for Supportive Housing Developments proposed by a Qualified Nonprofit (13 points);

(B) At least 10% of all Low-Income Units at 30% or less of AMGI or, for a Development located in a Rural Area, 7.5% of all Low-Income Units at 30% or less of AMGI (11 points); or

(C) At least 5% of all Low-Income Units at 30% or less of AMGI (7 points).

(3) Resident Services. (§2306.6710(b)(1)(G) and §2306.6725(a)(1)) A Development may qualify to receive up to eleven (11) points.

(A) The Applicant certifies that the Development will provide a combination of supportive services, which are listed in §11.101(b)(7) of this chapter, appropriate for the proposed residents and that there is adequate space for the intended services. The provision and complete list of supportive services will be included in the LURA. The Owner may change, from time to time, the services offered; however, the overall points as selected at Application will remain the same. No fees may be charged to the residents for any of the services. Services must be provided on-site or transportation to those off-site services identified on the list must be provided. The same service may not be used for more than one scoring item. (10 points)

(B) The Applicant certifies that the Development will contact local nonprofit and governmental providers of services that would support the health and well-being of the ~~Department's~~ Department's residents, and will make Development community space available to them on a regularly-scheduled basis to provide outreach services and education to the tenants. Applicants may contact service providers on the Department list, or contact other providers that serve the general area in which the Development is located. (1 point)

(4) Opportunity Index. The Department may refer to locations qualifying for points under this scoring item as high opportunity areas in some materials. A Development is eligible for a maximum of seven (7) opportunity index points.

(A) A proposed Development is eligible for up to two (2) opportunity index points if it is located entirely within a census tract with a poverty rate of less than the greater of 20% or the median poverty rate for the region and meets the requirements in (i) or (ii) of this subparagraph.

(i) The Development Site is located entirely within a census tract that has a poverty rate of less than the greater of 20% or the median poverty rate for the region and a median household income rate in the two highest quartiles within the uniform service region. (2 points)

(ii) The Development Site is located entirely within a census tract that has a poverty rate of less than the greater of 20% or the median poverty rate for the region, with a median household income in the third quartile within the region, and is contiguous to a census tract in the first or second quartile, without physical barriers such as (but not limited to) highways or rivers between, and the Development Site is no more than 2 miles from the boundary between the census tracts. For purposes of this scoring item, a highway is a limited-access road with a speed limit of 50 miles per hour or more; and, (1 point)

(B) An Application that meets one of the foregoing criteria in subparagraph (A) of this paragraph may qualify for additional points for any one or more of the following factors. Each amenity may be used only once for scoring purposes, unless allowed within the scoring item, regardless of the number of categories it fits. All members of the Applicant or Affiliates cannot have had an ownership position in the amenity or served on the board or staff of a nonprofit that owned or managed that amenity within the year preceding the Pre-Application Final Delivery Date. All amenities must be operational or have started Site Work at the Pre-Application Final Delivery Date. Any age restrictions associated with an amenity must positively correspond to the Target Population of the proposed Development.

(i) For Developments located in an Urban Area (other than Applicants competing in the USDA Set- Aside), an Application may qualify to receive points through a combination of requirements in subclauses (I) through (XV) of this clause.

(I) The Development Site is located on a route, with sidewalks for pedestrians, that is 1/2 mile or less from the entrance to a public park with a playground or from a multiuse hike-bike trail. The entirety of the sidewalk route must consist of smooth hard surfaces, curb ramps, and marked pedestrian crossings when traversing a street. (1 point)

(II) The Development Site is located on a route, with sidewalks for pedestrians, that is within a specified distance from the entrance of a public transportation stop or station with a route schedule that provides regular service to employment and basic services. The entirety of the sidewalk route must consist of smooth hard surfaces, curb ramps, and marked pedestrian crossings when traversing a street. Only one of the following may be selected.

(-a-) The Development Site is 1/2 mile or less from the stop or station and the scheduled service is beyond 8 a.m. to 5 p.m., plus weekend service (both Saturday and Sunday). (1 point); or

(-b-) The Development Site is 1/2 mile or less from the stop or station and the scheduled service arrives every 15 minutes, on average, between 6 a.m. and 8 p.m., every day of the week. (2 points)

(III) The Development Site is located within ~~1 mile~~ 2 miles of a full-service grocery store. A full service grocery store is a store of sufficient size and volume to provide for the needs of the surrounding

neighborhood including the proposed Development; and the space of the store is dedicated primarily to offering a wide variety of fresh, frozen, canned and prepared foods, including but not limited to a variety of fresh meats, poultry, and seafood; a wide selection of fresh produce including a selection of different fruits and vegetables; a selection of baked goods and a wide array of dairy products including cheeses, and a wide variety of household goods, paper goods and toiletry items. (1 point)

(IV) The Development Site is located within ~~1-mile~~2 miles of a pharmacy. For the purposes of this menu item only, the pharmacy may be claimed if it is within the same building as a grocery store. (1 point)

(V) The Development Site is located within ~~34~~ miles of a health-related facility, such as a full service hospital, community health center, minor emergency center, emergency room or urgent care facility. Physician offices and physician specialty offices are not considered in this category. (1 point)

(VI) The Development Site is within ~~23~~ miles of a center that is licensed by the Department of Family and Protective Services (DFPS) specifically to provide a school-age program or to provide a child care program for infants, toddlers, ~~and/or~~ pre-kindergarten. The Application must include evidence from DFPS that the center meets the above requirements. (1 point)

(VII) The Development Site is located in a census tract with a property crime rate of 26 per 1,000 persons or less as defined by neighborhoodscout.com, or local law enforcement data sources. If employing the latter source, the formula for determining the crime rate will include only data relevant to the census tract in which the Development Site is located. (1 point)

(VIII) The development Site is located within ~~1-mile~~2 miles of a public library that has indoor meeting space, physical books that can be checked out and that are of a general and wide-ranging subject matter, computers and internet access, and that is open 50 hours or more per week. The library must not be age or subject-restricted and must be at least partially funded with government funding. (1 point)

(IX) The Development Site is located within ~~56~~ 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~~bachelor's degrees. Two-year colleges are considered community colleges, and to be considered for these purposes must confer at least ~~associate's~~associate's degrees. The university or community college must have a physical campus, where classes are regularly held for students pursuing their degrees, within the required distance; online-only institutions do not qualify under this item. (1 point)

(X) Development Site is located in a census tract where the percentage of adults age 25 and older with an Associate's Degree or higher is 27% or higher as tabulated by the most recent American Community Survey 5-year Estimate. (1 point)

(XI) Development Site is within ~~1-mile~~2 miles of an indoor recreation facility available to the public. Examples include, but are not limited to, a gym, health club, a bowling alley, a theater, or a municipal or county community center. ~~(1 point)~~ A facility that is primarily a restaurant or bar with recreational facilities is not eligible. (1 point)

(XII) Development Site is within ~~1-mile~~2 miles of an outdoor, dedicated, and permanent recreation facility available to the public. Examples include, but are not limited to, swimming pools or splash pads, tennis courts, golf courses, softball fields, or basketball courts. (1 point)

(XIII) Development Site is within ~~1 mile~~ 2 miles of community, civic or service organizations that provide regular and recurring substantive services, beyond exclusively congregational or member-affiliated activities, available to the entire community (this could include religious organizations or organizations like the Kiwanis or Rotary Club as long as they make services available without regard to affiliation or membership). (1 point)

(XIV) Development Site is in the current service area of Meals on Wheels or similar nonprofit service that provides regular visits and meals to individuals in their homes. (1 point)

(XV) Development Site is located in the attendance zone of a general enrollment public school rated A or B by TEA for the ~~past academic year~~ most recently available rating. (1 point)

(ii) For Developments located in a Rural Area and any Application qualifying under the USDA set-aside, an Application may qualify to receive points through a combination of requirements in subclauses (I) ~~through~~ (XIV) of this clause.

(I) The Development Site is located within 45 miles of a full-service grocery store. A full service grocery store is a store of sufficient size and volume to provide for the needs of the surrounding neighborhood including the proposed Development; and the space of the store is dedicated primarily to offering a wide variety of fresh, frozen, canned and prepared foods, including but not limited to a variety of fresh meats, poultry, and seafood; a wide selection of fresh produce including a selection of different fruits and vegetables; a selection of baked goods and a wide array of dairy products including cheeses, and a wide variety of household goods, paper goods and toiletry items. (1 point)

(II) The Development Site is located within 45 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 45 miles of health-related facility, such as a full service hospital, community health center, minor emergency center, or a doctor with a general practice that takes walk-in patients. Physician specialty offices are not considered in this category. (1 point)

(IV) The Development Site is located within 45 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 45 miles of a public library that has indoor meeting space, physical books that can be checked out and that are of a general and wide-ranging subject matter, computers and internet access, and that is open 40 hours or more per week. The library must not be age or subject-restricted and must be at least partially funded with government funding. (1 point)

(VII) The Development Site is located within 45 miles of a public park with a playground. (1 point)

(VIII) The Development Site is located within 15 miles of an accredited university or community college, as confirmed by the Texas Higher Education Coordination Board (THECB). To be considered a university for these purposes, the provider of higher education must have the authority to confer bachelor's degrees. Two-year colleges are considered community colleges, and to be considered for these purposes must confer at least associate's degrees. The university or community college must have a physical campus, where classes are regularly held for students pursuing their degrees, within the required distance; online-only institutions do not qualify under this item. (1 point)

(IX) Development Site is located in a census tract where the percentage of adults age 25 and older with an Associate's Degree or higher is 27% or higher. (1 point)

(X) Development Site is within ~~3~~4 miles of an indoor recreation facility available to the public. Examples include, but are not limited to, a gym, health club, a bowling alley, a theater, or a municipal or county community center. ~~(1 point)~~ A facility that is primarily a restaurant or bar with recreational facilities is not eligible. (1 point)

(XI) Development Site is within ~~3~~4 miles of an outdoor, dedicated, and permanent recreation facility available to the public. Examples include, but are not limited to, swimming pools or splash pads, tennis courts, golf courses, softball fields, or basketball courts. (1 point)

(XII) Development Site is within ~~3~~4 miles of community, civic or service organizations that provide regular and recurring substantive services, beyond exclusively congregational or member-affiliated activities, available to the entire community (this could include religious organizations or organizations like the Kiwanis or Rotary Club as long as they make services available without regard to affiliation or membership). (1 point)

(XIII) Development Site is in the current service area of Meals on Wheels or similar nonprofit service that provides regular visits and meals to individuals in their homes. (1 point)

(XIV) Development Site is located in the attendance zone of a general enrollment public school rated A or B by TEA for the ~~past academic year.~~ most recently available rating. (1 point)

(5) Underserved Area. (§§2306.6725(b)(2); 2306.127(3), 42(m)(1)(C)(ii)) An Application may qualify to receive up to five (5) points if the Development Site meets the criteria described in subparagraphs (A) - (H) of this paragraph. Points are not cumulative and an Applicant is therefore limited to selecting one subparagraph. If an Application qualifies for points under paragraph §11.9(c)(4) of this subsection, then the Application is not eligible for points under subparagraphs (A) and (B) of this paragraph. Years are measured by deducting the most recent year of award on the property inventory of the Site Demographic Characteristics Report from January 1 of the current year. The Application must include evidence that the Development Site meets the requirements.

(A) The Development Site is located wholly or partially within the boundaries of a colonia as such boundaries are determined by the Office of the Attorney General and within 150 miles of the Rio Grande River border. For purposes of this scoring item, the colonia must lack water, wastewater, or electricity provided to all residents of the colonia at a level commensurate with the quality and quantity expected of a municipality and the proposed Development must make available any such missing water, wastewater, and electricity supply infrastructure physically within the borders of the colonia in a manner that would

enable the current dwellings within the colonia to connect to such infrastructure (2 points);

(B) The Development Site is located entirely within the boundaries of an Economically Distressed Area that has been awarded funds by the Texas Water Development Board in the previous five years ending at the beginning of the Application Acceptance Period (1 point);

(C) The Development Site is located entirely within a census tract that does not have another Development that was awarded less than 30 years ago according to the Department's property inventory tab of the Site Demographic Characteristics Report (4 points);

(D) For areas not scoring points for subparagraph (C) ~~above~~, the Development Site is located entirely within a census tract that does not have another Development that was awarded less than 20 years ago according to the ~~Department's~~ Department's property inventory tab of the Site Demographic Characteristics Report (3 points);

(E) For areas not scoring points for subparagraphs (C) or (D) of this paragraph, the Development Site is located entirely within a census tract that does not have another Development that was awarded less than 15 years ago according to the ~~Department's~~ Department's property inventory tab of the Site Demographic Characteristics Report (2 points);

(F) The Development Site is located entirely within a census tract whose boundaries are wholly within an incorporated area and the census tract itself and all of its contiguous census tracts do not have another Development that was awarded less than 15 years ago according to the ~~Department's~~ Department's property inventory tab of the Site Demographic Characteristics Report. This item will apply in Places with a population of 100,000 or more, and will not apply in the At-Risk Set-Aside. (5 points)

(G) The Development Site is located entirely within a census tract where, according to American Community Survey 5-year Estimates, the population share of persons below 200% federal poverty level decreased by 10% or more and where the total number of persons at or above 200% federal poverty level had increased by 15% or more between the years 2010 and 2017. This measure is referred to as the Affordable Housing Needs Indicator in the Site Demographic Characteristics Report. (3 points); or

(H) An At-risk or USDA Development placed in service 25 or more years ago, that is still occupied, and that has not yet received federal funding, or LIHTC equity, for the purposes of Rehabilitation for the Development. If the Application involves multiple sites, the age of all sites will be averaged for the purposes of this scoring item. (3 points).

(6) Residents with Special Housing Needs. (§42(m)(1)(C)(v)) An Application may qualify to receive up to three (3) points by serving Residents with Special Housing Needs.

(A) The Development must commit at least 5% of the total Units to Persons with Special Housing Needs. The Units identified for this scoring item may not be the same Units identified previously for the Section 811 PRA Program. For purposes of this subparagraph, Persons with Special Housing Needs is defined as a household where one or more individuals have alcohol ~~and/or~~ drug addictions, is a Colonia resident, a Person with a Disability, has Violence Against Women Act Protections (domestic violence, dating violence, sexual assault, and stalking), HIV/AIDS, homeless, veterans, , and farmworkers. Throughout the Compliance Period, unless otherwise permitted by the Department, the Development Owner agrees to specifically market Units to Persons with Special Housing Needs. In addition, the Department will require

an initial minimum twelve-month period during which Units must either be occupied by Persons with Special Housing Needs or held vacant, unless the Units receive HOME funds from any source. After the initial twelve-month period, the Development Owner will no longer be required to hold Units vacant for Persons with Special Housing Needs, but will be required to continue to specifically market Units to Persons with Special Housing Needs. (2 points)

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

(7) Proximity to Job Areas. An Application may qualify to receive up to six (6) points if the Development Site is located in one of the areas described in subparagraphs (A) or (B) of this paragraph, and the Application contains evidence substantiating qualification for the points. Points are mutually exclusive and, therefore, an Applicant may only select points from subparagraph (A) or (B).

(A) Proximity to the Urban Core. A Development in a Place, as defined by the US Census Bureau, with a population over 190,000 may qualify for points under this item. The Development Site must be located within 4 miles of the main municipal government administration building if the population of the Place is 750,000 or more, or within 2 miles of the main municipal government administration building if the population of the city is 190,000 - 749,999. The main municipal government administration building will be determined by the location of regularly scheduled municipal Governing Body meetings. Distances are measured from the nearest property boundaries, not inclusive of non-contiguous parking areas. This scoring item will not apply to Applications under the At-Risk Set-Aside. (6 points)

(B) Proximity to Jobs. A Development may qualify for points under this subparagraph if it meets one of the criteria in clauses (i) ~~through~~ (vi) of this subparagraph. The data used will be based solely on that available through US ~~Census'~~ Census' OnTheMap tool. Jobs counted are limited to those based on the work area, all workers, and all primary jobs. Only the 2017 data set ~~(as of October 1 but before Pre-Application-Final-Delivery-Date)~~ will be used, unless a newer data set is posted to the US Census website on or before October 1, 2020. The Development will use ~~OnTheMap's~~ OnTheMap's function to import GPS coordinates that clearly fall within the Development Site, and the OnTheMap chart/map report submitted in the Application must include the report date. This scoring item will not apply to Applications under the At-Risk or USDA Set-Aside.

(i) The Development is located within 1 mile of 16,500 jobs. (6 points)

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

- (iii) The Development is located within 1 mile of 10,500 jobs. (4 points)
- (iv) The Development is located within 1 mile of 7,500 jobs. (3 points)
- (v) The Development is located within 1 mile of 4,500 jobs. (2 points)
- (vi) The Development is located within 1 mile of 2,000 jobs. (1 point)

(8) Readiness to proceed in disaster impacted counties. An Application for a proposed Development that is located in a county declared by the Federal Emergency Management Agency to be eligible for individual assistance, within ~~three~~four years preceding December 1, ~~2019~~2020. Federal Emergency Management Agency declarations that provides apply to the entire state at any point in time prior to Application do not apply. The Applicant must provide a certification that they will close all financing and fully execute the construction contract on or before the last business day of November or as otherwise permitted under subparagraph (C) of this paragraph. For the purposes of this paragraph only, an Application may be designated as "priority" (5 points)

(A) Applications must include evidence that appropriate zoning will be in place at award and acknowledgement from all lenders and the syndicator of the required closing date.

(B) The Board cannot and will not waive the deadline and will not consider waiver under its general rule regarding waivers. Failure to close all financing and provide evidence of an executed construction contract by the November deadline will result in penalty under 10 TAC §11.9(f), as determined solely by the Board.

(C) Applications seeking points under this paragraph will receive an extension of the November deadline equivalent to the period of time they were not indicated as a priority Application, if they ultimately receive an award. The period of the extension begins on the date the Department publishes a list or log showing an Application without a priority designation, and ends on the earlier of the date a log is posted that shows the Application with a priority designation, or the date of award.

(d) Criteria promoting community support and engagement.

(1) Local Government Support. (§2306.6710(b)(1)(B)) An Application may qualify for up to seventeen (17) points for a resolution or resolutions voted on and adopted by the bodies reflected in subparagraphs (A) - (C) of this paragraph, as applicable. The resolution(s) must be dated prior to Final Input from Elected Officials Delivery Date and must be submitted to the Department no later than the Final Input from Elected Officials Delivery Date as identified in §11.2(a) of this chapter, relating to Competitive HTC Deadlines. Such resolution(s) must specifically identify the Development whether by legal description, address, Development name, Application number or other verifiable method. A municipality or county should consult its own staff and legal counsel as to whether its handling of their actions regarding such resolution(s) are consistent with Fair Housing laws as they may apply, including, as applicable, consistency with any Fair Housing Activity Statement-Texas (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)) The source of the funding cannot be the Applicant, Developer, or an Affiliate of the Applicant. The commitment of Development funding must be reflected in the Application as a financial benefit to the Development, i.e. reported as a source of funds on the Sources and Uses Form ~~and/or~~ reflected in a lower cost in the Development Cost Schedule, such as notation of a reduction in building permits and related costs. Documentation must include a letter from an official of the municipality, county, or other instrumentality with jurisdiction over the proposed Development stating they will provide a loan, grant, reduced fees or contribution of other value that equals \$500 or more for Applications located in Urban subregions or \$250 or more for Applications located in Rural subregions for the benefit of the Development. The letter must describe the value of the contribution, the form of the contribution, e.g. reduced fees or gap funding, and any caveats to delivering the contribution. Once a letter is submitted to the Department it may not be changed or withdrawn. (1 point)

(3) Declared Disaster Area. (§2306.6710(b)(1)(H)) An Application may receive ten (10) points if at the time of Application submission or at any time within the two-year period preceding the date of submission, the Development Site is located in an area declared to be a disaster area under the Tex. Gov't Code §418.014.

(4) Quantifiable Community Participation. (§2306.6710(b)(1)(I); §2306.6725(a)(2)) An Application may qualify for up to nine (9) points for written statements from a Neighborhood Organization. In order for the statement to qualify for review, the Neighborhood Organization must have been in current, valid existence with boundaries that contain the entire Development Site 30 days prior to the beginning of the Application Acceptance Period. In addition, the Neighborhood Organization must be on record with the Secretary of State or county in which the Development Site is located as of the beginning of the Application Acceptance Period. Once a letter is submitted to the Department it may not be changed or withdrawn. The written statement must meet all of the requirements in subparagraph (A) of this paragraph. Letters received by the Department setting forth that the eligible Neighborhood Organization objects to or opposes the

Application or Development will be added to the Application posted on the Department's website. Written statements from the Neighborhood Organizations included in an Application and not received by the Department from the Neighborhood Organization will not be scored but will be counted as public comment.

(A) Statement Requirements. If an organization cannot make the following affirmative certifications or statements then the organization will not be considered a Neighborhood Organization for purposes of this paragraph.

(i) the Neighborhood Organization's name, a written description and map of the organization's boundaries, signatures and contact information (phone, email and mailing address) of at least two individual members with authority to sign on behalf of the organization;

(ii) certification that the boundaries of the Neighborhood Organization contain the entire Development Site and that the Neighborhood Organization meets the definition pursuant to Tex. Gov't Code §2306.004(23-a) and includes at least two separate residential households;

(iii) certification that no person required to be listed in accordance with Tex. Gov't Code §2306.6707 with respect to the Development to which the Application requiring their listing relates participated in any way in the deliberations of the Neighborhood Organization, including any votestaken;

(iv) certification that at least 80% of the current membership of the Neighborhood Organization consists of homeowners and/or tenants living within the boundaries of the Neighborhood Organization; and

(v) an explicit expression of support, opposition, or neutrality. Any expression of opposition must be accompanied with at least one reason forming the basis of that opposition. A Neighborhood Organization should be prepared to provide additional information with regard to opposition.

(B) Technical Assistance. For purposes of this paragraph, if and only if there is no Neighborhood Organization already in existence or on record, the Applicant, Development Owner, or Developer is allowed to provide technical assistance in the creation of ~~and~~ or placing on record of a Neighborhood Organization. Technical assistance is limited to:

(i) the use of a facsimile, copy machine/copying, email and accommodations at public meetings;

(ii) assistance in completing the QCP Neighborhood Information Packet, providing boundary maps and assisting in the Administrative Deficiency process;

(iii) presentation of information and response to questions at duly held meetings where such matter is considered; and

(iv) notification regarding deadlines for submission of responses to Administrative Deficiencies.

(C) Point Values for Quantifiable Community Participation. An Application may receive points based on the values in clauses (i) - (vi) of this subparagraph. Points will not be cumulative. Where more than one written statement is received for an Application, the average of all statements received in accordance with this subparagraph will be assessed and awarded.

(i) nine (9) points for explicit support from a Neighborhood Organization that, during at least one of the three prior Application Rounds, provided a written statement that qualified as Quantifiable Community Participation opposing any Competitive Housing Tax Credit Application and whose boundaries remain unchanged;

(ii) eight (8) points for explicitly stated support from a Neighborhood Organization;

(iii) six (6) points for explicit neutrality from a Neighborhood Organization that, during at least one of the three prior Application Rounds provided a written statement, that qualified as Quantifiable Community Participation opposing any Competitive Housing Tax Credit Application and whose boundaries remain unchanged;

(iv) four (4) points for statements of neutrality from a Neighborhood Organization or statements not explicitly stating support or opposition, or an existing Neighborhood Organization provides no statement of either support, opposition or neutrality, which will be viewed as the equivalent of neutrality or lack of objection;

(v) four (4) points for areas where no Neighborhood Organization is in existence, equating to neutrality or lack of objection, or where the Neighborhood Organization did not meet the explicit requirements of this section; or

(vi) zero (0) points for statements of opposition meeting the requirements of this subsection.

(D) Challenges to opposition. Any written statement from a Neighborhood Organization expressing opposition to an Application may be challenged if it is contrary to findings or determinations, including zoning determinations, of a municipality, county, school district, or other local Governmental Entity having jurisdiction or oversight over the finding or determination. If any such statement is challenged, the challenger must declare the basis for the challenge and submit such challenge by the Challenges to Neighborhood Organization Opposition Delivery Date May 1, 2020. The Neighborhood Organization expressing opposition will be given seven calendar days to provide any information related to the issue of whether their assertions are contrary to the findings or determinations of a local Governmental Entity. All such materials and the analysis of the Department's staff will be provided to a fact finder, chosen by the Department, for review and a determination of the issue presented by this subsection. The fact finder will not make determinations as to the accuracy of the statements presented, but only with regard to whether the statements are contrary to findings or determinations of a local Governmental Entity. The fact finder's determination will be final and may not be waived or appealed. Should the Neighborhood Organization's statements be found to be contrary to findings or determinations of a local Government Entity, or should the Neighborhood Organization not respond in seven calendar days, then the Application shall be eligible for four (4) points under subparagraph (C)(v) of this subsection.

(5) Community Support from State Representative. (§2306.6710(b)(1)(J); §2306.6725(a)(2); §2306.6710(g)) Applications may receive up to eight (8) points for express support, zero points for neutral statements, or have deducted up to eight (8) points for express opposition.

(A) Letter from a State Representative. To qualify under this subparagraph, letters must be on the State Representative's letterhead, be signed by the State Representative, identify the specific Development and express whether the letter conveys support, neutrality, or opposition. This documentation will be accepted with the Application or through delivery to the Department from the Applicant or the State Representative and must be submitted no later than the Final Input from Elected Officials Delivery Date as identified in §11.2(a) of this chapter, relating to Competitive HTC Deadlines. Letters received by the Department from State Representatives will be added to the Application posted on the Department's website. Once a letter is submitted to the Department it may not be changed or withdrawn. Therefore, it is encouraged that letters not be submitted well in advance of the specified deadline in order to facilitate consideration of all constituent comment and other relevant input on the proposed Development. State Representatives to be considered are those in office at the time the letter is submitted and whose district boundaries include the Development Site. If the office is vacant, the Application will be considered to have received a neutral letter. Neutral letters or letters that do not specifically refer to the Development will receive zero (0) points. A letter from a state representative expressing the level of community support may be expressly based on the representative's understanding or assessments of indications of support by others, such as local government officials, constituents, ~~and~~ or other applicable representatives of the community. In providing this letter, pursuant to Tex. Gov't Code §2306.6710(b)(1)(J), a representative may either express their position of support, opposition, or neutrality regarding the Application, which shall be presumed to

reflect their assessment of the views of their constituents, or they may provide a statement of the support, opposition, or neutrality of their constituents regarding the Application without expressing their personal views on the matter.

(B) No Letter from a State Representative. To qualify under this subparagraph, no written statement can be received for an Application from the State Representative who represents the geographic area in which the proposed Development is located, unless the sole content of the written statement is to convey to the Department that no written statement of support, neutrality, or opposition will be provided by the State Representative for a particular Development. Points available under this subparagraph will be based on how an Application scores under §11.9(d)(1), of this section, relating to Local Government Support. For an Application with a proposed Development Site that, at the time of the initial filing of the Application, is:

(i) Within a municipality, the Application will receive:

(I) Eight (8) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality supports the Application or Development; or

(II) Zero (0) points for no resolution or a resolution from the Governing Body of that municipality expressly setting forth that the municipality has no objection to the Application or Development; or

(III) Negative eight (-8) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality opposes the Application or Development.

(ii) Within the extraterritorial jurisdiction of a municipality, the Application will receive points under subclause (I) or (II) or (III) of this subparagraph and under subclause (IV) or (V) or (VI) of this subparagraph:

(I) Four (4) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality supports the Application or Development; or

(II) Zero (0) points for no resolution or a resolution from the Governing Body of that municipality expressly setting forth that the municipality has no objection to the Application or Development; or

(III) Negative four (-4) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality opposes the Application or Development; and

(IV) Four (4) points for a resolution from the Governing Body of that county expressly setting forth that the county supports the Application or Development; or

(V) Zero (0) points for no resolution or a resolution from the Governing Body of that county expressly setting forth that the county has no objection to the Application or Development; or

(VI) Negative four (-4) points for a resolution from the Governing Body of that county expressly setting forth that the county opposes the Application or Development.

(iii) Within a county and not within a municipality or the extraterritorial jurisdiction of a municipality:

(I) Eight (8) points for a resolution from the Governing Body of that county expressly setting forth that the county supports the Application or Development; or

(II) Zero (0) points for no resolution or a resolution from the Governing Body of that county expressly setting forth that the county has no objection to the Application or Development.

(III) Negative eight (-8) points for a resolution from the Governing Body of that county expressly setting forth that the county opposes the Application or Development.

(6) Input from Community Organizations. (§2306.6725(a)(2)) Where, at the time of Application, the Development Site does not fall within the boundaries of any qualifying Neighborhood Organization or there is a qualifying Neighborhood Organization that has given no statement or a statement of neutrality (as described in clauses (4)(C)(iv) or (v) of this subsection), then, in order to ascertain if there is community support, an Application may receive up to four (4) points for letters that qualify for points under

subparagraphs (A), (B), and/or (C) of this paragraph. No more than four (4) points will be awarded under this point item under any circumstances. All letters of support must be submitted within the Application. Once a letter is submitted to the Department it may not be changed or withdrawn. Should an Applicant elect this option and the Application receives letters in opposition, then one (1) point will be subtracted from the score under this paragraph for each letter in opposition, provided that the letter is from an organization that would otherwise qualify under this paragraph. However, at no time will the Application receive a score lower than zero (0) for this item. Letters received by the Department setting forth that the community organization objects to or opposes the Application or Development will be added to the Application posted on the Department's website.

(A) An Application may receive two (2) points for each letter of support submitted from a community or civic organization that serves the community in which the Development Site is located. Letters of support must identify the specific Development and must state support of the specific Development at the proposed location. To qualify, the organization must be qualified as tax exempt and have as a primary (not ancillary or secondary) purpose the overall betterment, development, or improvement of the community as a whole or of a major aspect of the community such as improvement of schools, fire protection, law enforcement, city-wide transit, flood mitigation, or the like. The Applicant must provide evidence that the community or civic organization remains in good standing by providing evidence from a federal or state government database confirming that the exempt status continues. An Organization must also provide evidence of its participation in the community in which the Development Site is located including, but not limited to, a listing of services and/or members, brochures, annual reports, etc. Letters of support from organizations that cannot provide reasonable evidence that they are active in the area that includes the location of the Development Site will not be awarded points. For purposes of this subparagraph, community and civic organizations do not include neighborhood organizations, governmental entities (excluding Special Management Districts as described in subparagraph C), or taxing entities.

(B) An Application may receive two (2) points for a letter of support from a property owners association created for a master planned community whose boundaries include the Development Site and that does not meet the requirements of a Neighborhood Organization for the purpose of awarding points under paragraph (4) of this subsection.

(C) An Application may receive two (2) points for a letter of support from a Special Management District formed under Tex. Local ~~Gov't~~ Gov't Code ~~ch. chapter~~ 375 whose boundaries, as of the Full Application Delivery Date as identified in §11.2(a) of this chapter, (relating to Competitive HTC Deadlines, Program Calendar for Competitive Housing Tax Credits), include the Development Site.

(D) Input that evidences unlawful discrimination against classes of persons protected by Fair Housing law or the scoring of which the Department determines to be contrary to the Department's efforts to affirmatively further fair housing will not be considered. If the Department receives input that could reasonably be suspected to implicate issues of non-compliance under the Fair Housing Act, staff will refer the matter to the Texas Workforce Commission for investigation, but such referral will not, standing alone, cause staff or the Department to terminate the Application. Staff will report all such referrals to the Board and summarize the status of any such referrals in any recommendations.

(7) Concerted Revitalization Plan. An Application may qualify for up to seven (7) points under this paragraph only if no points are elected under subsection (c)(4) of this section, related to Opportunity Index.

(A) For Developments located in an Urban Area:

(i) An Application may qualify to receive points if the Development Site is located in a distinct area that was once vital and has lapsed into a condition requiring concerted revitalization, and where a concerted revitalization plan (plan or CRP) has been developed and executed.

(ii) A plan may consist of one or two, but complementary, local planning documents that together create a cohesive agenda for the plan's specific area. The plan and supporting documentation must be submitted using the CRP Application Packet. No more than two local plans may be submitted for each proposed Development. A Consolidated Plan, One-year Action Plan or any other plan prepared to meet HUD requirements will not meet the requirements under this clause, unless evidence is presented that additional efforts have been undertaken to meet the requirements in clause (iii) of this subparagraph. The concerted revitalization plan may be a Tax Increment Reinvestment Zone (TIRZ) or Tax Increment Finance (TIF) or similar plan. A city- or county-wide comprehensive plan, by itself, does not equate to a concerted revitalization plan.

(iii) The area targeted for revitalization must be larger than the assisted housing footprint and should be a neighborhood or small group of contiguous neighborhoods with common attributes and problems. The Application must include a copy of the plan or a link to the online plan and a description of where specific information required below can be found in the plan. The plan must meet the criteria described in subclauses (I) - (IV) of this clause:

(I) The concerted revitalization plan, or each of the local planning documents that compose the plan, must have been adopted by the municipality or county in which the Development Site is located. The resolution adopting the plan, or if development of the plan and budget were delegated, the resolution of delegation and other evidence in the form of certifications by authorized persons confirming the adoption of the plan and budget, must be submitted with the application.

(II) The problems in the revitalization area must be identified through a process in which affected local residents had an opportunity to express their views on problems facing the area, and how those problems should be addressed and prioritized. Eligible problems that are appropriate for a concerted revitalization plan may include the following:

(-a-) long-term disinvestment, such as significant presence of residential ~~and/or~~ commercial blight, streets infrastructure neglect, ~~and/or~~ sidewalks in significant disrepair;

(-b-) declining quality of life for area residents, such as high levels of violent crime, property crime, gang activity, or other significant criminal matters such as the manufacture or distribution of illegal substances or overt illegal activities; or

(-c-) lack of a robust economy for that neighborhood area, or, if economic revitalization is already underway, lack of new affordable housing options for long-term residents.

(III) The goals of the adopted plan must have a history of sufficient, documented and committed funding to accomplish its purposes on its established timetable. This funding must be flowing in accordance with the plan, such that the problems identified within the plan are currently being or have been sufficiently addressed.

(IV) The plan must either be current at the time of Application and must officially continue for a minimum of three years thereafter OR the work to address the items in need of mitigation or rehabilitation has begun and, additionally, the Applicant must include confirmation from a public official who oversees the plan that accomplishment of those objectives is on schedule and there are no budgetary or other obstacles to accomplishing the purposes of the plan.

(iv) ~~Up~~ If the Application includes an acceptable Concerted Revitalization Plan, up to seven (7) points will be awarded based on:

(I) A letter from the appropriate local official for the municipality (or county if the Development Site is completely outside of a municipality) providing documentation of measurable improvements within the revitalization area based on the targeted efforts outlined in the plan and in reference to the requirements of 10 TAC §11.9(d)(7)(A)(iii)(I-IV). The letter must also discuss how the improvements will lead to an appropriate area for the placement of housing (4 points); and

(II) A resolution by the municipality (or county if the Development Site is completely outside of a municipality) that explicitly identifies the proposed Development as contributing more than any other to the concerted revitalization efforts of the municipality or county (as applicable). A municipality or county may only identify one Development per CRP area during each Application Round for the additional points under this subclause, unless the concerted revitalization plan includes more than one distinct area within the city or county, in which case a resolution may be provided for each Development in its respective area. The resolution from the Governing Body of the municipality or county that approved the plan is required to be submitted in the Application. If multiple Applications submit resolutions under this subclause from the same Governing Body for the same CRP area, none of the Applications shall be eligible for the additional points, unless the resolutions address the respective and distinct areas described in the plan (2 points); and

(III) ~~–~~ The development is in a location that would score at least five (5) points under Opportunity Index, §11.9(c)(4)(B), except for the criteria found in §11.9(c)(4)(A) and subparagraphs §11.9(c)(4)(A)(i) and §11.9(c)(4)(A)(ii). (1 point)

(B) For Developments located in a Rural Area:

(i) The Rehabilitation, or demolition and Reconstruction, of a Development in a rural area that has been leased and occupied at 85% or greater for the six months preceding Application by low income households and which was initially constructed 25 or more years prior to Application submission as either public housing or as affordable housing with support from USDA, HUD, the HOME program, or the CDBG program. The occupancy percentage will not include Units that cannot be occupied due to needed repairs, as confirmed by the SCR or CNA. Demolition and relocation of units must be determined locally to be necessary to comply with the Affirmatively Furthering Fair Housing Rule, or if necessary to create an acceptable distance form Undesirable Site Features or Neighborhood Risk Factors. (4 points)

(ii) The Development is explicitly identified in a resolution by the municipality (or county if the Development Site is completely outside of a city) as contributing more than any other to the concerted revitalization efforts of the municipality or county (as applicable). Where a Development Site crosses jurisdictional boundaries, resolutions from all applicable governing bodies must be submitted. A municipality or county may only identify one single Development during each Application Round for each specific area to be eligible for the additional points under this subclause. If multiple Applications submit resolutions under this subclause from the same Governing Body for a specific area described in the plan, none of the Applications shall be eligible for the additional points (2 points); and

(iii) The development is in a location that would score at least five (5) points under Opportunity Index, §11.9(c)(4)(B), except for the criteria found in §11.9(c)(4)(A) and subparagraphs §11.9(c)(4)(A)(i) and §11.9(c)(4)(A)(ii). (1 point)

(e) Criteria promoting the efficient use of limited resources and applicant accountability.

(1) Financial Feasibility. (§2306.6710(b)(1)(A)) To qualify for points, a 15-year pro forma itemizing all projected income including Unit rental rate assumptions, operating expenses and debt service, and specifying the underlying growth assumptions and reflecting a minimum must-pay debt coverage ratio of 1.15 for each year must be submitted. The pro forma must include the signature and contact information evidencing that it has been reviewed and found to be acceptable by an authorized representative of a proposed Third Party ~~construction or~~ permanent lender. In addition to the signed pro forma, a lender approval letter must be submitted. An acceptable form of lender approval letter may be obtained in the Uniform Multifamily Application Templates.

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

(B) If the letter is from the Third Party permanent lender ~~or if the Development is Supportive Housing and meets the requirements of 10 TAC §11.1(d)(122)(E)(i),~~ and evidences review of the Development and the Principals, it will receive twenty-six (26) points.

(C) If the Development is Supportive Housing and meets the requirements of 10 TAC §11.1(d)(122)(E)(i), it will receive twenty-six (26) points.

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

(E) If the Department is the only permanent lender, and the Application includes the evaluation of the Request for Preliminary Determination submitted under 10 TAC §11.8(d), it will receive twenty-six (26) points.

(2) Cost of Development per Square Foot. (§2306.6710(b)(1)(F); §42(m)(1)(C)(iii)) For the purposes of this scoring item, Eligible Building Costs will be defined as Building Costs voluntarily included in Eligible Basis for the purposes of determining a Housing Credit Allocation. Eligible Building Costs will exclude structured parking or commercial space that is not included in Eligible Basis, and voluntary Eligible Hard Costs will include general contractor overhead, profit, and general requirements. The square footage used will be the Net Rentable Area (NRA). The calculations will be based on the cost listed in the Development Cost Schedule and NRA shown in the Rent Schedule. If the proposed Development is a Supportive Housing Development, the NRA will include Common Area up to 75 square feet per Unit, of which at least 50 square feet will be conditioned.

(A) A high cost development is a Development that meets one or more of the following conditions:

(i) the Development is elevator served, meaning it is either an Elderly Development with an elevator or a Development with one or more buildings any of which have elevators serving four or more floors;

(ii) the Development is more than 75% single family design;

(iii) the Development is Supportive Housing; or

(iv) the Development Site qualifies for a minimum of five (5) points under subsection (c)(4) of this section, related to Opportunity Index, and is located in an Urban Area.

(B) Applications proposing New Construction or Reconstruction or Adaptive Reuse will be eligible for twelve (12) points if one of the following conditions is met:

(i) the voluntary Eligible Building Cost per square foot is less than ~~\$76.44~~78.73 per square foot;

(ii) the voluntary Eligible Building Cost per square foot is less than ~~\$81.90~~84.36 per square foot, and the Development meets the definition of a high cost development;

(iii) the voluntary Eligible Hard Cost per square foot is less than ~~\$98.28~~101.23 per square foot; or

(iv) the voluntary Eligible Hard Cost per square foot is less than ~~\$109.20~~112.48 per square foot, and

the Development meets the definition of high cost development.

(C) Applications proposing New Construction or Reconstruction will be eligible for eleven (11) points if one of the following conditions is met:

- (i) the voluntary Eligible Building Cost per square foot is less than ~~\$81.90~~84.36 per square foot;
- (ii) the voluntary Eligible Building Cost per square foot is less than ~~\$87.36~~89.98 per square foot, and the Development meets the definition of a high cost development;
- (iii) the voluntary Eligible Hard Cost per square foot is less than ~~\$103.74~~106.85 per square foot; or
- (iv) the voluntary Eligible Hard Cost per square foot is less than ~~\$114.66~~118.10 per square foot, and the Development meets the definition of high cost development.

(D) Applications proposing New Construction or Reconstruction will be eligible for ten (10) points if one of the following conditions is met:

- (i) the voluntary Eligible Building Cost is less than ~~\$98.28~~101.23 per square foot; or
- (ii) the voluntary Eligible Hard Cost is less than ~~\$120.12~~123.72 per square foot.

(E) Applications proposing Rehabilitation (excluding Reconstruction) will be eligible for points if one of the following conditions is met:

- (i) Twelve (12) points for Applications which include voluntary Eligible Hard Costs plus acquisition costs included in Eligible Basis that are less than ~~\$109.20~~112.48 per square foot;
- (ii) Twelve (12) points for Applications which include voluntary Eligible Hard Costs plus acquisition costs included in Eligible Basis that are less than ~~\$141.96~~146.22 per square foot, located in an Urban Area, and that qualify for 5 or more points under subsection (c)(4) of this section, related to Opportunity Index; or
- (iii) Eleven (11) points for Applications which include voluntary Eligible Hard Costs plus acquisition costs included in Eligible Basis that are less than ~~\$141.96~~146.22 per square foot.

(3) Pre-application Participation. (§2306.6704) An Application may qualify to receive up to six (6) points provided a pre-application was submitted by the Pre-Application Final Delivery Date. Applications that meet all of the requirements described in subparagraphs (A) - (H) of this paragraph will qualify for six (6) points:

- (A) The total number of Units does not increase by more than 10% from pre-application to Application;
- (B) The designation of the proposed Development as Rural or Urban remains the same;
- (C) The proposed Development serves the same Target Population;
- (D) The pre-application and Application are participating in the same set-asides (At-Risk, USDA, Non-Profit, ~~and/or~~ Rural);
- (E) The Application final score (inclusive of only scoring items reflected on the self score form) does not vary by more than four (4) points from what was reflected in the pre-application self score;
- (F) The Development Site at Application is at least in part the Development Site at pre-application, and the census tract number listed at pre-application is the same at Application. The site at full Application may not require notification to any person or entity not required to have been notified at pre-application; and
- (G) The Development Site does not have the following Neighborhood Risk Factors as described in 10 TAC §11.101(a)(3) that were not disclosed with the pre-application:
 - (i) the Development Site is located in a census tract (or for any adjacent census tract with a boundary less than 500 feet from the proposed Development Site that is not separated from the Development Site by a natural barrier such as a river or lake, or an intervening restricted area, such as a

military installation) in an Urban Area and the rate of Part I violent crime is greater than 18 per 1,000 persons (annually) as reported on neighborhoodscout.com.

(ii) The Development Site is located within the attendance zone of an elementary school, a middle school or a high school that has a 2019-TEA Accountability Rating of D for the most recent year available prior to Application and a 2018an Improvement Required Rating for the most recent available year preceding or a 2019-TEA Accountability Rating of F for the most recent year available prior to Application and a 2018-Met Standard Rating by the Texas Education Agency for the most recent available year preceding.

(H) The pre-application met all applicable requirements.

(4) Leveraging of Private, State, and Federal Resources. (§2306.6725(a)(3))

(A) An Application may qualify to receive up to three (3) points if at least 5% of the total Units are restricted to serve households at or below 30% of AMGI (restrictions elected under other point items may count) and the Housing Tax Credit funding request for the proposed Development meet one of the levels described in clauses (i) - (iv) of this subparagraph:

(i) the Development leverages CDBG Disaster Recovery, HOPE VI, RAD, or Choice Neighborhoods funding and the Housing Tax Credit Funding Request is less than 9% of the Total Housing Development Cost (3 points). The Application must include a commitment of such funding; or

(ii) if the Housing Tax Credit funding request is less than 9% of the Total Housing Development Cost (3 points); or

(iii) if the Housing Tax Credit funding request is less than 10% of the Total Housing Development Cost (2 points); or

(iv) if the Housing Tax Credit funding request is less than 11% of the Total Housing Development Cost (1 point).

(B) The calculation of the percentages stated in subparagraph (A) of this paragraph will be based strictly on the figures listed in the Funding Request and Development Cost Schedule. Should staff issue an Administrative Deficiency that requires a change in either form, then the calculation will be performed again and the score adjusted, as necessary. However, points may not increase based on changes to the Application. In order to be eligible for points, no more than 50% of the Developer Fee can be deferred. Where costs or financing change after completion of underwriting or award (whichever occurs later), the points attributed to an Application under this scoring item will not be reassessed unless there is clear evidence that the information in the Application was intentionally misleading or incorrect.

(5) Extended Affordability. (§§2306.6725(a)(5); 2306.111(g)(3)(C); 2306.185(a)(1) and (c); 2306.6710(e)(2); and 42(m)(1)(B)(ii)(II)) An Application may qualify to receive up to four (4) points for this item.

(A) Development Owners that agree to extend the Affordability Period for a Development to 45 years total. (4 points)

(B) Development Owners that agree to extend the Affordability Period for a Development to 40 years total. (3 points)

(C) Development Owners that agree to extend the Affordability Period for a Development to 35 years total. (2 points)

(6) Historic Preservation. (§2306.6725(a)(6)) An Application may qualify to receive five (5) points if at least 75% of the residential Units shall reside within the Certified Historic Structure. The Development must receive historic tax credits before or by the issuance of Forms 8609. The Application must include either

documentation from the Texas Historical Commission that the Property is currently a Certified Historic Structure, or documentation determining preliminary eligibility for Certified Historic Structure status and evidence that the Texas Historic Commission received the request for determination of preliminary eligibility and supporting information on or before February 1 of the current year (5 points).

(7) Right of First Refusal. (§2306.6725(b)(1); §42(m)(1)(C)(viii)) An Application may qualify to receive (1 point) for Development Owners that will agree to provide a right of first refusal to purchase the Development upon or following the end of the Compliance Period in accordance with Tex. Gov't Code, §2306.6726 and the Department's rules including §10.407 of this title (relating to Right of First Refusal) and §10.408 of this title (relating to Qualified Contract Requirements).

(8) Funding Request Amount. The Application requests no more than 100% of the amount of LIHTC available within the subregion or set-aside as determined by the regional allocation formula on or before December 1, ~~2019~~2020. (1 point)

(f) Factors Affecting Scoring and Eligibility in current and future Application Rounds. Staff may recommend to the Board and the Board may find that an Applicant or Affiliate should be ineligible to compete in the following year's competitive Application Round or that it should be assigned a penalty deduction in the following year's competitive Application Round of no more than two points for each submitted Application (Tex. Gov't Code §2306.6710(b)(2)) because it meets the conditions for any of the items listed in paragraphs (1) - (4) of this subsection. For those items pertaining to non-statutory deadlines, an exception to the penalty may be made if the Board or Executive Director, as applicable, makes an affirmative finding setting forth that the need for an extension of the deadline was beyond the reasonable control of the Applicant and could not have been reasonably anticipated. Any such matter to be presented for final determination of deduction by the Board must include notice from the Department to the affected party not less than 14 days prior to the scheduled Board meeting. The Executive Director may, but is not required, to issue a formal notice after disclosure if it is determined that the matter does not warrant point deductions. The Executive Director may make a determination that the matter does not warrant point deduction only for paragraph (1). (§2306.6710(b)(2)) Any deductions assessed by the Board for paragraphs (1), (2), (3), or (4) of this subsection based on a Housing Tax Credit Commitment from a preceding Application round will be attributable to the Applicant or Affiliate of an Application submitted in the Application round referenced above.

(1) If the Applicant or Affiliate failed to meet the original Carryover submission or 10% Test deadline(s) or has requested an extension of the Carryover submission deadline or the 10% Test deadline (relating to either submission or expenditure).

(2) If the Applicant or Affiliate failed to meet the commitment or expenditure requirements or benchmarks of their Contract with the Department for a HOME or National Housing Trust Fund award from the Department.

(3) If the Applicant or Affiliate, in the Competitive HTC round immediately preceding the current round, failed to meet the deadline to both close financing and provide evidence of an executed construction contract under 10 TAC §11.9(c)(8) related to construction in specific disaster counties.

(4) If the Developer or Principal of the Applicant has violated ~~and~~/or violates the Adherence to Obligations.

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

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The purpose of the Third Party Request for Administrative Deficiency (RFAD) process is to allow an unrelated person or entity to bring new, material information about an Application to staff's attention. Such Person may request staff to consider whether a matter in an Application in which the Person has no involvement should be the subject of an Administrative Deficiency. Staff will consider the request and proceed as it deems appropriate under the applicable rules including, if the Application in question has a noncompetitive score relative to other Applications in the same Set-Aside or subregion or will not be eligible for an award through the collapse as outlined in 10 TAC §11.6(3), not reviewing the matter further. If the assertion(s) in the RFAD have been addressed through the Application review process, and the RFAD does not contain new information, staff will not review or act on it. The RFAD may not be used to appeal staff decisions regarding competing Applications (§2306.6715(b)). Any RFAD that questions a staff decision regarding staff's scoring of an Application filed by another Applicant will be disregarded. Requestors must provide, at the time of filing the request, all briefings, documentation, and other information that the requestor offers in support of the deficiency. A copy of the request and supporting information must be provided by the requestor directly to the Applicant at the same time it is provided to the Department. Requestors must provide sufficient credible evidence that, if confirmed, would substantiate the deficiency request. Assertions not accompanied by supporting documentation susceptible to confirmation will not be considered.

Staff shall provide to the Board a written report summarizing each third party request for administrative deficiency and the manner in which it was addressed. Interested persons may provide testimony on this report before the Board takes any formal action to accept the report. The results of a RFAD may not be appealed by the Requestor. A scoring notice or termination notice that results from a RFAD may be appealed by the Applicant as further described in §11.902 of this chapter, relating to Appeals Process. Information received after the RFAD deadline will not be considered by staff or presented to the Board unless the information is of such a matter as to warrant a termination notice.

When the Board receives a report on the disposition of RFADs it may, for any staff disposition contained in the report, change the conclusion if it believes the change is necessary to bring the result into compliance with applicable laws and rules as construed by the Board; or if based on public testimony, it believes ~~staff's~~ staff's conclusion should be revisited, it may remand the RFAD to staff for further consideration, which may result in a reaffirmation, reversal, or modification.

SUBCHAPTER B –SITE AND DEVELOPMENT REQUIREMENTS AND RESTRICTIONS

§11.101 Site and Development Requirements and Restrictions

(a) Site Requirements and Restrictions. The purpose of this section is to identify specific requirements and restrictions related to a Development Site seeking multifamily funding or assistance from the Department.

(1) Floodplain. New Construction or Reconstruction Developments located within a 100 year floodplain as identified by the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps must develop the site in full compliance with the National Flood Protection Act and all applicable federal and state statutory and regulatory requirements. The Applicant will have to use floodplain maps and comply with regulation as they exist at the time of commencement of construction. Even if not required by such provisions, the Site must be developed so that all finished ground floor elevations are at least one foot above the floodplain and parking and drive areas are no lower than six inches below the floodplain. If there are more stringent federal or local requirements they must also be met. Applicants requesting NHTF funds from the ~~Supportive Housing/Soft Repayment set-aside~~Department must also meet the federal environmental provisions under 24 CFR §93.301(f)(1)(vi). Applicants requesting HOME or NSP1 PI funds from ~~all other direct loan set-asides,~~the Department must meet the federal environmental provisions under 24 CFR Part 58, as in effect at the time of execution of the Contract between the Department and the Owner. If no FEMA Flood Insurance Rate Maps are available for the proposed Development Site, flood zone documentation must be provided from the local government with jurisdiction identifying the 100 year floodplain. Rehabilitation (excluding Reconstruction) Developments with existing and ongoing federal funding assistance from HUD or USDA are exempt from this requirement, to the extent NHTF is not being requested from the Department, but must state in the Tenant Rights and Resource Guide that part or all of the Development Site is located in a floodplain, and that it is encouraged that they consider getting appropriate insurance or take necessary precautions. ~~Rehabilitation (excluding Reconstruction) Developments requesting funds in the Supportive Housing/Soft Repayment set-aside are not eligible for the exemption.~~ However, where existing and ongoing federal assistance is not applicable such Rehabilitation (excluding Reconstruction) Developments will be allowed in the 100 year floodplain provided the local government has undertaken and can substantiate sufficient mitigation efforts and such documentation is submitted in the Application or the existing structures meet the requirements that are applicable for New Construction or Reconstruction Developments, as certified to by a Third Party engineer.

(2) Undesirable Site Features. Rehabilitation (excluding Reconstruction) Developments with ongoing and existing federal assistance from HUD, USDA, or Veterans Affairs (VA) may be granted an exemption; however, depending on the undesirable site feature(s) staff may recommend mitigation still be provided as appropriate. Such an exemption must be requested at the time of or prior to the filing of an Application. Historic Developments that would otherwise qualify under §11.9(e)(6) of this chapter may be granted an exemption, and such exemption must be requested at the time of or prior to the filing of an Application. The distances are to be measured from the nearest boundary of the Development Site to the nearest boundary of the property or easement containing the undesirable feature, unless otherwise noted below. Where there is a local ordinance that specifies the proximity of such undesirable feature to a multifamily development that has smaller distances than the minimum distances noted below, then such smaller distances may be used and documentation such as a copy of the local ordinance identifying such distances relative to the Development Site must be included in the Application. Pre-existing zoning does not meet the requirement for a local ordinance. If a state or federal cognizant agency would require a new facility under its jurisdiction to have a minimum separation from housing, the Department will defer to that

agency and require the same separation for a new housing facility near an existing regulated or registered facility. In addition to these limitations, a Development Owner must ensure that the proposed Development Site and all construction thereon comply with all applicable state and federal requirements regarding separation for safety purposes. If Department staff identifies what it believes would constitute an undesirable site feature not listed in this paragraph or covered under subparagraph (K) of this paragraph, staff may issue a Deficiency. Requests for pre-determinations of Site eligibility prior to pre-application or Application submission will not be binding on full Applications submitted at a later date. For Tax-Exempt Bond Developments where the Department is the Issuer, the Applicant may submit a request for pre-determination at pre-application or for Tax-Exempt Bond Developments utilizing a local issuer such documentation may be submitted with the request for a pre-determination and staff may perform an assessment of the Development Site to determine Site eligibility. An Applicant should understand that any determination made by staff or the Board at that point in time regarding Site eligibility based on the documentation presented, is preliminary in nature. Should additional information related to any of the Undesirable Site Features become available while the Application is under review, or the information by which the original determination was made changes in a way that could affect eligibility, then such information will be re-evaluated by staff and may result in deficiency or termination.

(A) Development Sites located within 300 feet of junkyards. For purposes of this paragraph, a junkyard shall be defined as stated in Texas Transportation Code §396.001;

(B) Development Sites located within 300 feet of a solid waste facility or sanitary landfill facility or illegal dumping sites (as such dumping sites are identified by the local municipality);

(C) Development Sites located within 300 feet of a sexually-oriented business. For purposes of this paragraph, a sexually-oriented business shall be defined in Local Government Code §243.002, or as zoned, licensed and regulated as such by the local municipality;

(D) Development Sites in which any of the buildings or designated recreational areas (including pools), excluding parking areas, are to be located within 100 feet of the nearest line or structural element of any overhead high voltage transmission line, support structures for high voltage transmission lines, or other similar structures. This does not apply to local service electric lines and poles;

(E) Development Sites located within 500 feet of active railroad tracks, measured from the closest rail to the boundary of the Development Site, unless:

(i) the Applicant provides evidence that the city/community has adopted a Railroad Quiet Zone covering the area within 500 feet of the Development Site;

(ii) the Applicant has engaged a qualified Third Party to perform a noise assessment and the Applicant commits to perform sound mitigation in accordance with HUD standards as if they were directly applicable to the Development; or

(iii) the railroad in question is commuter or light rail;

(F) Development Sites located within 500 feet of heavy industry (i.e. facilities that require extensive use of land and machinery, produce high levels of external noise such as manufacturing plants, or maintains fuel storage facilities (excluding gas stations);

(G) Development Sites located within 10 miles of a nuclear plant;

(H) Development Sites in which the buildings are located within the accident potential zones or the runway

clear zones of any airport;

(I) Development Sites that contain one or more pipelines, situated underground or aboveground, which carry highly volatile liquids or Development Sites located adjacent to a pipeline easement (for a pipeline carrying highly volatile liquids), the Application must include a plan for developing near the pipeline(s) and mitigation, if any, in accordance with a report conforming to the Pipelines and Informed Planning Alliance (PIPA);

(J) Development Sites located within 2 miles of refineries capable of refining more than 100,000 barrels of oil daily; or

(K) Any other Site deemed unacceptable, which would include, without limitation, those with exposure to an environmental factor that may adversely affect the health and safety of the residents or render the Site inappropriate for housing use and which cannot be adequately mitigated. If staff believe that a Site should be deemed unacceptable under this provision due to information that was not included in the Application, it will provide the Applicant with written notice and an opportunity to respond.

(3) Neighborhood Risk Factors.

(A) If the Development Site has any of the characteristics described in subparagraph (B) of this paragraph, the Applicant must disclose the presence of such characteristics in the Application submitted to the Department. For Competitive HTC Applications, an Applicant must disclose at pre-application as required by §11.8(b) of this chapter. For all other Applications, an Applicant may choose to disclose the presence of such characteristics at the time the pre-application (if applicable) is submitted to the Department. Requests for pre-determinations of Site eligibility prior to pre-application or Application submission will not be binding on full Applications submitted at a later date. For Tax-Exempt Bond Developments where the Department is the Issuer, the Applicant may submit the documentation described under subparagraphs (C) and (D) of this paragraph at pre-application or for Tax-Exempt Bond Developments utilizing a local issuer such documentation may be submitted with the request for a pre-determination and staff may perform an assessment of the Development Site to determine Site eligibility. An Applicant should understand that any determination made by staff or the Board at that point in time regarding Site eligibility based on the documentation presented, is preliminary in nature. Should additional information related to any of the Neighborhood Risk Factors become available while the Tax- Exempt Bond Development or Direct Loan only Application is under review, or the information by which the original determination was made changes in a way that could affect eligibility, then such information will be re-evaluated by staff and may result in staff issuing a Deficiency. Should staff determine that the Development Site has any of the characteristics described in subparagraph (B) of this paragraph and such characteristics were not disclosed, staff will issue a Material Deficiency. An Applicant's own non-disclosure is not appealable as such appeal is in direct conflict with certifications made in the Application and within the control of the Applicant. The presence of any characteristics listed in subparagraph (B) of this paragraph will prompt staff to perform an assessment of the Development Site and neighborhood, which may include a site visit, and include, where applicable, a review as described in subparagraph (C) of this paragraph. ~~Additional mitigating factors~~ Mitigation to be considered by staff ~~besides, including~~ those allowed in subparagraph (C) of this paragraph, ~~despite the existence of the Neighborhood Risk Factors,~~ are identified in subparagraph (E) of this paragraph. Preservation of affordable units alone does not present a compelling reason to support a conclusion of eligibility.

(B) The Neighborhood Risk Factors include those noted in clauses (i) - (iv) of this subparagraph and

additional information as applicable to the neighborhood risk factor(s) disclosed as provided in subparagraphs (C) and (D) of this paragraph must be submitted in the Application. In order to be considered an eligible Site despite the presence of Neighborhood Risk Factors, an Applicant must demonstrate actions being taken that would lead staff to conclude that there is a high probability and reasonable expectation the risk factor will be sufficiently mitigated or significantly improved prior to placement in service and that the risk factor demonstrates a positive trend and continued improvement. Conclusions for such reasonable expectation may need to be affirmed by an industry professional, as appropriate, and may be dependent upon the severity of the Neighborhood Risk Factor disclosed.

(i) the Development Site is located within a census tract that has a poverty rate above 40% for individuals (or 55% for Developments in regions 11 and 13).

(ii) the Development Site is located in a census tract (or for any adjacent census tract with a boundary less than 500 feet from the proposed Development Site that is not separated from the Development Site by a natural barrier such as a river or lake, or an intervening restricted area, such as a military installation) in an Urban Area and the rate of Part I violent crime is greater than 18 per 1,000 persons (annually) as reported on neighborhoodscout.com.

(iii) the Development Site is located within 1,000 feet (measured from nearest boundary of the Site to the nearest boundary of blighted structure) of multiple vacant structures that have fallen into such significant disrepair, overgrowth, ~~and/or~~ vandalism that they would commonly be regarded as blighted or abandoned.

(iv) the Development Site is located within the attendance zone of an elementary school, a middle school or a high school that has a 2019-TEA Accountability Rating of D for the most recent year available prior to Application and a 2018-an Improvement Required Rating for the most recent available year preceding or a 2019-TEA Accountability Rating of F for the most recent year available prior to Application and a 2018-Met Standard Rating by the Texas Education Agency for the most recent available year preceding. In districts with district-wide enrollment or choice districts an Applicant shall use the rating of the closest elementary, middle and high school, respectively, which may possibly be attended by the tenants in determining whether or not disclosure is required. Schools with an application process for admittance, limited enrollment or other requirements that may prevent a child from attending will not be considered as the closest school or the school which attendance zone contains the site. ~~The applicable school rating will be the 2019 accountability rating assigned by the Texas Education Agency, unless the school is Not Rated because it meets the TEA Hurricane Harvey Provision, in which case the 2018 rating will apply.~~ School ratings will be determined by the school number, so that in the case where a new school is formed or named or consolidated with another school but is considered to have the same number that rating will be used. A school that has never been rated by the Texas Education Agency will use the district rating. If a school is configured to serve grades that do not align with the Texas Education Agency's conventions for defining elementary schools (typically grades K-5 or K-6), middle schools (typically grades 6-8 or 7-8) and high schools (typically grades 9-12), the school will be considered to have the lower of the ratings of the schools that would be combined to meet those conventions. In determining the ratings for all three levels of schools, ratings for all grades K-12 must be included, meaning that two or more schools' ratings may be combined. Sixth grade centers will be considered as part of the middle school rating. Elderly Developments, Developments encumbered by a TDHCA LURA on the first day of the Application Acceptance Period or date the pre-application is submitted (if applicable), and Supportive Housing SRO Developments or Supportive Housing Developments where all Units are Efficiency Units are exempt and are not required to provide mitigation for this subparagraph, but are still required to provide rating

information in the Application and disclose the presence of the Neighborhood Risk Factor.

(C) Should any of the neighborhood risk factors described in subparagraph (B)(ii)-(iv) of this paragraph exist, the Applicant must submit the Neighborhood Risk Factors Report that contains the information described in clauses (i) - (viii) of this subparagraph ~~and mitigation pursuant to subparagraph (D) of this paragraph,~~ if such information pertains to the Neighborhood Risk Factor(s) disclosed, and mitigation pursuant to subparagraph (D) of this paragraph so staff may conduct a further Development Site and neighborhood review. The Neighborhood Risk Factors Report cannot be supplemented or modified unless requested by staff through the deficiency process. Due to school closures as a result of COVID-19, mitigation for schools as described in subparagraphs (C) and (D) of this paragraph is not required for Applications submitted in 2021.

(i) a determination regarding neighborhood boundaries, which will be based on the review of a combination of natural and manmade physical features (rivers, highways, etc.), apparent changes in land use, the Primary Market Area as defined in the Market Analysis, census tract or municipal boundaries, and information obtained from any Site visits;

(ii) an assessment of general land use in the neighborhood, including comment on the prevalence of residential uses;

(iii) an assessment concerning any of the features reflected in paragraph (2) of this subsection if they are present in the neighborhood, regardless of whether they are within the specified distances referenced in paragraph (2) of this subsection;

(iv) an assessment of the number of existing affordable rental units (generally includes rental properties subject to TDHCA, HUD, or USDA restrictions) in the Primary Market Area, including comment on concentration based on the size of the Primary Market Area;

(v) an assessment of the percentage of households residing in the census tract that have household incomes equal to or greater than the median household income for the MSA or county where the Development Site is located;

(vi) an assessment of the number of market rate multifamily units in the neighborhood and their current rents and levels of occupancy;

(vii) A copy of the TEA Accountability Rating Report for each of the schools in the attendance zone containing the Development that ~~achieved~~ received a TEA Accountability Rating of D rating in 2019 for the most recent year available prior to Application and a 2018 an Improvement Required rating ~~Rating for the most recent available year preceding~~ or a ~~2019~~ TEA Accountability Rating of F for the most recent year available prior to Application and a 2018-Met Standard Rating by the Texas Education Agency for the most recent available year preceding, along with a discussion of performance indicators and what progress has been made over the prior year, and progress relating to the goals and objectives identified in the campus improvement plan or turnaround plan pursuant to §39.107 of the Texas Education Code in effect. The actual campus improvement plan does not need to be submitted unless there is an update to the plan or if such update is not available, information from a school official that speaks to progress made under the plan as further indicated under subparagraph (D)(iv) of this paragraph; and

(viii) Any additional information necessary to complete an assessment of the Development Site, as

requested by staff.

(D) Information regarding mitigation of neighborhood risk factors should be relevant to the risk factors that are present in the neighborhood. Mitigation must include documentation of efforts underway at the time of Application, and ~~may~~should include the measures described in clauses (i) - (iv) of this subparagraph or such other mitigation as the Applicant determines appropriate to support a finding of eligibility. If staff determines that the Development Site cannot be found eligible and the Applicant appeals that decision to the Board, the Applicant may not present new information at the Board meeting. In addition to those measures described herein, documentation from the local municipality may also be submitted stating the Development is consistent with their obligation to affirmatively further fair housing. Due to school closures as a result of COVID-19, mitigation for schools as described in subparagraphs (C) and (D) of this paragraph is not required for Applications submitted in 2021.

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

(ii) evidence by the most qualified person that the data and evidence establish that there is a reasonable basis to proceed on the belief that the crime data shows, or will show, a favorable trend such that within the next two years Part I violent crime for that location is expected to be less than 18 per 1,000 persons or the data and evidence reveal that the data reported on neighborhoodscout.com does not accurately reflect the true nature of what is occurring and what is actually occurring does not rise to the level to cause a concern to the Board over the level of Part I violent crime for the location. The data and evidence may be based on violent crime data from the ~~city's~~city's police department or county ~~sheriff's~~sheriff's department, as applicable based on the location of the Development, for the police beat or patrol area within which the Development Site is located, based on the population of the police beat or patrol area that yields a crime rate below the threshold indicated in this section or that would yield a crime rate below the threshold indicated in this section by the time the Development is placed into service. The instances of violent crimes within the police beat or patrol area that encompass the census tract, calculated based on the population of the census tract, may also be used. The data must include incidents reported during the entire ~~2018 and 2019~~ and 2020 calendar year. Violent crimes reported through the date of Application submission may be requested by staff as part of the assessment performed under subparagraph (C) of this paragraph. A written statement from the most qualified person (i.e. Chief of Police or Sheriff (as applicable) or the police officer/detective for the police beat or patrol area containing the proposed Development Site), including a description of efforts by such enforcement agency addressing issues of crime and the results of their efforts must be provided, and depending on the data provided by the Applicant, such written statement may be required, as determined by staff. It is expected that such written statement would also speak to whether there is a reasonable expectation that based on the efforts underway there is crime data that reflects a favorable downward trend in crime rates. For Rehabilitation or Reconstruction Developments, to the extent that the high level of criminal activity is concentrated at the Development Site, documentation may be submitted to indicate such issue(s) could be remedied by the proposed Development. Evidence of such remediation should go beyond what would be considered a typical scope of work and should include a security plan, partnerships with external agencies, or other efforts to be implemented that would deter criminal activity. Information on whether such security features have been successful at any of the ~~Applicant's~~Applicant's existing properties should also be submitted, if applicable.

(iii) evidence of mitigation efforts to address blight or abandonment may include new construction in the area already underway that evidences public and/or private investment. Acceptable mitigation to address extensive blight should include a plan, whereby it is contemplated such blight and/or infestation will have been remediated within no more than two years from the date of the award and that a responsible party will use the blighted property in a manner that complies with local ordinances. In instances where blight exists but may only include a few properties, mitigation efforts could include partnerships with local agencies to engage in community-wide clean-up efforts, or other efforts to address the overall condition of the neighborhood.

(iv) evidence of mitigation for each of the schools in the attendance zone that has a ~~2019~~-TEA Accountability Rating of D for the most recent year available prior to Application and ~~2018~~an Improvement Required Rating for the most recent available year preceding or a ~~2019~~-TEA Accountability Rating of F for the most recent year available prior to Application and a ~~2018~~-Met Standard Rating by the Texas Education Agency for the most recent available year preceding may include satisfying the requirements of subclauses (I) - (III) of this clause.

(I) Documentation from a person authorized to speak on behalf of the school district with oversight of the school in question that indicates the specific plans in place and current progress towards meeting the goals and performance objectives identified in the Campus Improvement Plan and in restoring the school(s) to an acceptable rating status. The documentation should include actual data from progress already made under such plan(s) to date demonstrating favorable trends and should speak to the authorized persons assessment that the plan(s) and the data supports a reasonable conclusion that the school(s) will have an acceptable rating by the time the proposed Development places into service. The letter may, to the extent applicable, identify the efforts that have been undertaken to increase student performance, decrease mobility rate, benchmarks for re-evaluation, increased parental involvement, plans for school expansion, plans to implement early childhood education, and long- term trends that would point toward their achieving an A, B, or C Rating by the time the Development is placed in service. The letter from such education professional should also speak to why they believe the staff tasked with carrying out the plan will be successful at making progress towards acceptable student performance considering that prior Campus Improvement Plans were unable to do so. Such assessment could include whether the team involved has employed similar strategies at prior schools and were successful.

(II) The Applicant provides evidence that it has entered into agreement with the applicable school district or elementary school that has not achieved a rating of A, B, or C, a Head Start provider with capacity in their charter, or a charter school provider to provide suitable and appropriately designed space on-site for the provision of an early childhood pre-K program at no cost to residents of the proposed Development. Suitable and appropriately designed space includes at a minimum a bathroom and large closet in the classroom space, appropriate design considerations made for the safety and security of the students, and satisfaction of the requirements of the applicable building code for school facilities. Such provision must be made available to the school or provider, as applicable, until the later of the elementary school that had not achieved a rating of A, B or C, or the school or provider electing to end the agreement. If a charter school or Head Start provider is the provider in the named agreement and that provider becomes defunct or no longer elects to participate in the agreement prior to the achievement of a rating of A, B or C, the Development Owner must document their attempt to identify an alternate agreement with one of the other acceptable provider choices. However if the contracted provider is the school district or the school who is lacking the A, B or C rating and they elect to end the agreement prior to the achievement of such rating, the Development will not be considered to be in violation of its commitment to the Department.

(III) The Applicant has committed that until such time the school(s) achieves a rating of A, B, or C it will operate an after school learning center that offers at a minimum 15 hours of weekly, organized, on-site educational services provided middle and high school children by a dedicated service coordinator or Third-Party entity which includes at a minimum: homework assistance, tutoring, test preparation, assessment of skill deficiencies and provision of assistance in remediation of those deficiencies (e.g., if reading below grade level is identified for a student, tutoring in reading skills is provided), research and writing skills, providing a consistent weekly schedule, provides for the ability to tailor assistance to the age and education levels of those in attendance, and other evidence-based approaches and activities that are designed to augment classroom performance. Up to 20% of the activities offered may also include other enrichment activities such as music, art, or technology.

(E) In order for the Development Site to be found eligible, including when mitigation described in subparagraph (D) of this paragraph is not provided in the Application, despite the existence of one or more Neighborhood Risk Factors, the Applicant must explain how the use of Department funds at the Development Site is consistent with the goals in clauses (i) - (iii) of this subparagraph. If the Board grants an Appeal of ~~staff's~~staff's determination of Site eligibility, the Board shall document the reasons for a determination of eligibility.

(i) preservation of existing occupied affordable housing units to ensure they are safe and suitable or the new construction of high quality affordable housing units that are subject to federal rent or income restrictions; and

(ii) determination that the risk factor(s) that has been disclosed are not of such a nature or severity that should render the Development Site ineligible based on the assessment and mitigation provided under subparagraphs (C) and (D) of this paragraph; or

(iii) no mitigation was provided, or in ~~staff's~~staff's determination the mitigation was considered unsatisfactory and the Applicant has requested a waiver of the presence of Neighborhood Risk Factors on the basis that the Development is necessary to enable the state, a participating jurisdiction, or an entitlement community to comply with its obligation to affirmatively further fair housing, a HUD approved Conciliation Agreement, or a final and non-appealable court order and such documentation is submitted with the disclosure.

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

(b) Development Requirements and Restrictions. The purpose of this section is to identify specific restrictions on a proposed Development requesting multifamily funding by the Department.

(1) Ineligible Developments. A Development shall be ineligible if any of the criteria in subparagraphs (A)–~~(C)~~–(C) of this paragraph apply.

(A) General Ineligibility Criteria.

(i) Developments such as hospitals, nursing homes, trailer parks, dormitories (or other buildings that will be predominantly occupied by students) or other facilities that are usually classified as transient housing (as provided in Code §42(i)(3)(B)(iii) and (iv));

- (ii) any Development with any building(s) with four or more stories that does not include an elevator;
- (iii) a Housing Tax Credit Development that provides on-site continual or frequent nursing, medical, or psychiatric services. Refer to IRS Revenue Ruling 98-47 for clarification of assisted living;
- (iv) a Development that proposes population limitations that violate §1.15 of this title (relating to Integrated Housing Rule);
- (v) a Development seeking Housing Tax Credits that will not meet the general public use requirement under Treasury Regulation, §1.42-9 or a documented exception thereto; or
- (vi) a Development utilizing a Direct Loan that is subject to the Housing and Community Development Act, 104(d) requirements and proposing Rehabilitation or Reconstruction, if the Applicant is not proposing at least the one-for-one replacement of the existing Unit mix. Adding additional units would not violate this provision.

(B) Ineligibility of Elderly Developments.

- (i) any Elderly Development of two stories or more that does not include elevator service for any Units or Common Areas above the ground floor;
- (ii) any Elderly Development with any Units having more than two Bedrooms with the exception of up to three employee Units reserved for the use of the manager, maintenance, and/or security officer. These employee Units must be specifically designated as such; or
- (iii) any Elderly Development (including Elderly in a Rural Area) proposing more than 70% two-Bedroom Units.

(C) Ineligibility of Developments within Certain School Attendance Zones. Any Development that falls within the attendance zone of a school that has a ~~2019~~ TEA Accountability Rating of F for the most recent year available prior to Application and a ~~2018~~ Improvement Required Rating for the most recent available year preceding is ineligible with no opportunity for mitigation. Developments that are encumbered by a TDHCA LURA on the first day of the Application Acceptance Period or at the time of Pre-application (if applicable), an Elderly Development, or a Supportive Housing SRO Development or Supportive Housing Development where all Units are Efficiency Units are exempt.

(2) Development Size Limitations. The minimum Development size is 16 Units. Competitive Housing Tax Credit or Multifamily Direct Loan-only Developments involving New Construction or Adaptive Reuse in Rural Areas are limited to a maximum of 80 total Units. Tax-Exempt Bond Developments involving New Construction or Adaptive Reuse in a Rural Area are limited to a maximum of 120 total Units. Rehabilitation Developments do not have a limitation as to the maximum number of Units.

(3) Rehabilitation Costs. Developments involving Rehabilitation must establish a scope of work that will substantially improve the interiors of all units and exterior deferred maintenance, and meet the minimum Rehabilitation amounts identified in subparagraphs (A) – (C) of this paragraph. Such amounts must be maintained through the issuance of IRS Forms 8609. For Developments with multiple buildings that have varying placed in service dates, the earliest date will be used for purposes of establishing the minimum Rehabilitation amounts. Applications must meet the ~~minimum standards and~~ Rehabilitation amounts identified in subparagraphs (A), (B) or (C) of this paragraph. For Tax-Exempt Bond Developments that include existing USDA funding that is continuing or new USDA funding, staff may consider the cost standard under subparagraph (A) of this paragraph on a case-by-case basis.

(A) For Housing Tax Credit Developments under the USDA Set-Aside the ~~minimum~~ Rehabilitation will involve at least \$25,000 per Unit in Building Costs and Site Work;

(B) For Tax-Exempt Bond Developments, less than 20 years old, based on the placed in service date, the ~~minimum~~ Rehabilitation will involve at least \$20,000 per Unit in Building Costs and Site Work. If such Developments are greater than 20 years old, based on the placed in service date, the ~~minimum~~ Rehabilitation will involve at least \$30,000 per Unit in Building Costs and Site Work; or

(C) For all other Developments, the ~~minimum~~ Rehabilitation will involve at least \$30,000 per Unit in Building Costs and Site Work—

(4) Mandatory Development Amenities. (§2306.187) New Construction, Reconstruction or Adaptive Reuse Units must include all of the amenities in subparagraphs (A) - (N) of this paragraph. Rehabilitation (excluding Reconstruction) Developments must provide the amenities in subparagraphs (D) - (N) of this paragraph unless stated otherwise. Supportive Housing Developments are not required to provide the amenities in subparagraph (B), (E), (F), (G), or (M) of this paragraph; however, access must be provided to a comparable amenity in a Common Area. All amenities listed below must be at no charge to the residents. Residents must be provided written notice of the applicable required amenities for the Development. The Board may waive one or more of the requirements of this paragraph for Developments that will include Historic Tax Credits, with evidence submitted with the request for amendment that the amenity has not been approved by the Texas Historical Commission or National Park Service, as applicable.

(A) All Bedrooms, the dining room and living room in Units must be wired with current cabling technology for data and phone;

(B) Laundry connections;

(C) Exhaust/vent fans (vented to the outside) in the bathrooms;

(D) Screens on all operable windows;

(E) Disposal and Energy-Star or equivalently rated dishwasher (not required for USDA; Rehabilitation Developments exempt from dishwasher if one was not originally in the Unit);

(F) Energy-Star or equivalently rated refrigerator;

(G) Oven/Range;

(H) Blinds or window coverings for all windows;

(I) At least one Energy-Star or equivalently rated ceiling fan per Unit;

(J) Energy-Star or equivalently rated lighting in all Units;

(K) All areas of the Unit (excluding exterior storage space on an outdoor patio/balcony) must have heating and air-conditioning;

(L) Adequate parking spaces consistent with local code, unless there is no local code, in which case the requirement would be one and a half spaces per Unit for non- Elderly Developments and one space per Unit for Elderly Developments. The minimum number of required spaces must be available to the tenants at no cost. If parking requirements under local code rely on car sharing or similar arrangements, the LURA will require the Owner to provide the service at no cost to the tenants throughout its term;

(M) Energy-Star or equivalently rated windows (for Rehabilitation Developments, only if windows are planned to be replaced as part of the scope of work); and

(N) Adequate accessible parking spaces consistent with the requirements of the 2010 ADA Standards with the exceptions listed in "Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities" 79 FR 29671, the Texas Accessibility Standards, and if covered by the Fair Housing Act, HUD's Fair Housing Act Design Manual.

(5) Common Amenities.

(A) All Developments must include sufficient common amenities as described in subparagraph (C) of this paragraph to qualify for at least the minimum number of points required in accordance with clauses (i) -

(vi) of this subparagraph.

- (i) Developments with 16 to 40 Units must qualify for four (4) points;
- (ii) Developments with 41 to 76 Units must qualify for seven (7) points;
- (iii) Developments with 77 to 99 Units must qualify for ten (10) points;
- (iv) Developments with 100 to 149 Units must qualify for fourteen (14) points;
- (v) Developments with 150 to 199 Units must qualify for eighteen (18) points; or
- (vi) Developments with 200 or more Units must qualify for twenty-two (22) points.

(B) These points are not associated with any selection criteria points. The amenities must be for the benefit of all residents and made available throughout normal business hours and maintained throughout the Affordability Period. Residents must be provided written notice of the elections made by the Development Owner. If fees or deposits in addition to rent are charged for amenities, then the amenity may not be included among those provided to satisfy the requirement. All amenities must meet all applicable accessibility standards, including those adopted by the Department, and where a specific space or size requirement for a listed amenity is not specified then the amenity must be reasonably adequate based on the Development size. Applications for non-contiguous scattered site housing, excluding non-contiguous single family sites, will have the test applied based on the number of Units per individual site and the amenities selected must be distributed proportionately across all sites. In the case of additional phases of a Development any amenities that are anticipated to be shared with the first phase development cannot be claimed for purposes of meeting this requirement for the second phase. The second phase must include enough points to meet this requirement that are provided on the Development Site. ~~For example, if a swimming pool exists on, regardless of resident access to the amenity in another phase one Property and it is anticipated that the second phase tenants will be allowed to use it, the swimming pool cannot be claimed for points for purposes of this requirement for the second phase Development.~~ All amenities must be available to all Units via an accessible route.

(C) The common amenities and respective point values are set out in clauses (i) - (v) of this subparagraph, which are grouped primarily for organizational purposes. Applicants are not required to select a specific number of amenities from each section. An Applicant can only count an amenity once; therefore combined functions (a library which is part of a community room) will only qualify for points under one category:

(i) Community Space for Resident Supportive Services

(I) Except in Applications where more than 10% of the units in the proposed Development are Supportive Housing SRO Units, an Application may qualify to receive half of the points required under 10 TAC §11.101(b)(5)(A)(i)-(vi) by electing to provide a High Quality Pre-Kindergarten (HQ Pre-K) program and associated educational space at the Development Site. To receive the points the Applicant must commit to all of items (-a-) ~~through~~ (-c-) of this subclause.

(-a-) Space and Design. The educational space for the HQ Pre-K program must be provided on the Development Site and must be a suitable and appropriately designed space for educating children that an independent school district or open-enrollment charter school can utilize to establish and operate a HQ Pre-K program. This space includes at a minimum a bathroom and large closet in the classroom space; appropriate design considerations made for the safety and security of the students; including limited and secure ingress and egress to the classroom space; and satisfaction of the requirements of all applicable building codes for school facilities. The Applicant must provide in the Application a copy of the current school facility code requirements applicable to the Development Site and Owner and Architect certifications that they understand the associated space and design requirements reflected in those code requirements. The Application must also include acknowledgement by all lenders, equity providers and

partners that the Application includes election of these points.

(-b-) Educational Provider. The Applicant must enter into an agreement, addressing all items as described in subitems (-1-) ~~through~~ (-5-) below, and provide evidence of such agreement to the Department on or before submission of the Cost Certification. Lack of evidence of such agreement by the deadline will be cause for rescission of the Carryover Agreement—or Determination Notice, as applicable.

(-1-) The agreement must be between the Owner and any one of the following: a school district; open-enrollment charter school; or Education Service Center. Private schools and private childcare providers, whether nonprofit or for profit, are not eligible parties, unless the private school or private childcare provider has entered into a partnership with a school district or open-enrollment charter school to provide a HQ Pre-K program in accordance with Texas Education Code Chapter 29, Subchapter E-1.

(-2-) The agreement must reflect that at the Development Site the educational provider will provide a HQ Pre-K program, in accordance with Texas Education Code Chapter 29, Subchapter E-1, at no cost to residents of the proposed Development and that is available for general public use, meaning students other than those residing at the Development may attend.

(-3-) Such agreement must reflect a provision that the option to operate the HQ Pre-K program in the space at the Development Site will continue to be made available to the school or provider until such time as the school or provider wishes to withdraw from the location. This provision will not limit the ~~Owner's~~Owner's right to terminate the agreement for good cause.

(-4-) Such agreement must set forth the responsibility of each party regarding payment of costs to use the space, utility charges, insurance costs, damage to the space or any other part of the Development, and any other costs that may arise as the result of the operation of the HQ Pre-K program.

(-5-) The agreement must include provision for annual renewal, unless terminated under the provisions of item (-c-).

(-c-) If an education provider who has entered into an agreement becomes defunct or elects to withdraw from the agreement and provision of services at the location, as provided for in subitem (-b-)(-3-) of this subclause, the Owner must notify the Texas Commissioner of Education at least 30 days prior to ending the agreement to seek out any other eligible parties listed in subitem (-b-)(-1-) of this subclause above. If another interested open-enrollment charter school or school district is identified by the Texas Commissioner of Education or the Owner, the Owner must enter into a subsequent agreement with the interested open-enrollment charter school or school district and continue to offer HQ Pre-K services. If another interested provider cannot be identified, and the withdrawing provider certifies to the Department that their reason for ending the agreement is not due to actions of the Owner, the Owner will not be considered to be in violation of its commitment to the Department. If the Owner is not able to find a provider, they must notify the Commissioner annually of the availability of the space.

(II) Multifunctional learning and care center(s) or conference room(s) with the appropriate furnishings to deliver the Resident Supportive Services pertaining to classes or care for children and selected by the Development Owner. The room(s) devoted to meeting this requirement must equal 15 square feet times the total number of Units, but need not exceed 2,000 square feet in total. This space must be separate from any other community space but may include a full kitchen. The room(s) must include storage space, such as closets ~~and~~/or cabinetry (4 points);

(III) Multifunctional learning and care center(s) or conference room(s) with the appropriate furnishings to deliver the Resident Supportive Services pertaining to classes or care for adults and selected by the Development Owner. The room(s) devoted to meeting this requirement must equal 10 square feet times the total number of Units, but need not exceed 1,000 square feet in total. This space must be separate from any other community space but may include a full kitchen. The room(s) must include storage space, such as closets ~~and~~/or cabinetry (2 points);

(IV) Service provider office in addition to leasing offices (1 point);

(ii) Safety

(I) Controlled gate access for entrance and exit areas, intended to provide access that is limited to the ~~Development's~~Development's tenancy (1 point);

(II) Secured Entry (applicable only if all Unit entries are within the building's interior) (1 point);

(III) Twenty-four hour, seven days a week monitored camera/security system in each building. Monitoring may be on-site or off-site (2 points);

(IV) Twenty-four hour, seven days a week recorded camera / security system in each building (1 point);

(V) The provision of a courtesy patrol service that, at a minimum, answers after-hour resident phone calls regarding noise and crime concerns or apartment rules violations and that can dispatch to the apartment community a courtesy patrol officer in a timely manner (3 points);

(iii) Health/ Fitness / Play

(I) Accessible walking/jogging path, equivalent to the perimeter of the Development or a length that reasonably achieves the same result, separate from a sidewalk and in addition to required accessible routes to Units or other amenities (1 point);

(II) Furnished fitness center. Equipped with a variety of fitness equipment (at least one item for every 40 Units). Choose from the following: stationary bicycle, elliptical trainer, treadmill, rowing machine, universal gym, multi-functional weight bench, stair-climber, dumbbell set, or other similar equipment. Equipment shall be commercial use grade or quality. Fitness center must be located indoors or be a designated room with climate control and allow for after-hours access. (1 point);

(III) Furnished fitness center. Equipped with a variety of fitness equipment (at least one item for every 20 Units). Choose from the following: stationary bicycle, elliptical trainer, treadmill, rowing machine, universal gym, multi-functional weight bench, stair-climber, dumbbell set, or other similar equipment. Equipment shall be commercial use grade or quality. Fitness center must be located indoors or be a designated room with climate control and allow for after-hours access. (2 points);

(IV) One Children's Playscape Equipped for five to 12 year olds, or one Tot Lot (2 points). Must be covered with a shade canopy or awning, intended to keep equipment cool, and provide shade and ultraviolet protection. This item can only be selected if clause (V) of this subparagraph is not selected; or

(V) Two Children's Playscapes Equipped for five to 12 year olds, two Tot Lots, or one of each (4 points). Must be covered with a shade canopy or awning, intended to keep equipment cool, and provide shade and ultraviolet protection. This item can only be selected if clause (IV) of this subparagraph is not selected;

(VI) Horseshoe pit; putting green; shuffleboard court; pool table; ~~or~~ ping pong table; or similar equipment in a dedicated location accessible to all residents to play such games (1 point);

(VII) Swimming pool (3 points);

(VIII) Splash pad/water feature play area (1 point);

(IX) Sport Court or field (including, but not limited to, Tennis, Basketball, Volleyball, Soccer or Baseball Field) (2 points);

(iv) Design / Landscaping

(I) Full perimeter fencing that ~~includes~~contains the parking areas and all amenities (excludes guest or general public parking areas) (2 points);

(II) Enclosed community sun porch or covered community porch/patio (1 point);

(III) Dog Park area that is fully enclosed (the perimeter fencing may be used for part of the enclosure)

and intended for tenant owned dogs to run off leash (requires that the Development allow dogs) (1 point);
(IV) Shaded rooftop or structural viewing deck of at least 500 square feet (2 points);
(V) Porte-cochere (1 point);
(VI) Lighted pathways along all accessible routes (1 point);
(VII) a resident-run community garden with annual soil preparation and mulch provided by the Owner and access to water (which may be subject to local water usage restrictions) (1 point);

(v) Community Resources

- (I) Gazebo ~~or~~, covered pavilion ~~w/~~, or pergola with sitting area (seating must be provided) (1 point);
- (II) Community laundry room with at least one washer and dryer for every 40 Units (2 points);
- (III) Barbecue grill and picnic table with at least one of each for every 50 Units (1 point). Grill must be permanently installed (no portable grills);
- (IV) Business center with workstations and seating internet access, 1 printer and at least one scanner which may be integrated with the printer, and either 2 desktop computers or laptops available to check-out upon request (2 points);
- (V) Furnished Community room (2 points);
- (VI) Library with an accessible sitting area (separate from the community room) (1 point);
- (VII) Activity Room stocked with supplies (Arts and Crafts, board games, etc.) (2 points);
- (VIII) Community Dining Room with full or warming kitchen furnished with adequate tables and seating (3 points);
- (IX) Community Theater Room equipped with a 52 inch or larger screen or projection with surround sound equipment; DVD player or a streaming service at no cost to residents; and seating (3 points);
- (X) High-speed Wi-Fi of 10 Mbps download speed or more with coverage throughout the clubhouse ~~and/or~~ community building (1 point);
- (XI) High-speed Wi-Fi of 10 Mbps download speed or more with coverage throughout the Development (2 points);
- (XII) Bicycle parking that allows for, at a minimum, one bicycle for every five Units, within reasonable proximity to each residential building that allows for bicycles to be secured with lock (lock not required to be provided to tenant) (1 point);
- (XIII) Package Lockers. Automated Package Lockers provided at a location within the complex that can be accessed by residents 24/7 and at no charge to the resident. To qualify, there would need to be at least one locker for every eight residential units (2 points);
- (XIV) Recycling Service (includes providing a storage location and service for pick-up) (1 point);
- (XV) Community car vacuum station (1 point).

(6) Unit Requirements.

(A) Unit Sizes. Developments proposing New Construction or Reconstruction will be required to meet the minimum sizes of Units as provided in clauses (i) - (v) of this subparagraph. These minimum requirements are not associated with any selection criteria. Developments proposing Rehabilitation (excluding Reconstruction) or Supportive Housing Developments will not be subject to the requirements of this subparagraph. If the Development involves both Rehabilitation and Reconstruction or New Construction, the Reconstruction or New Construction Units must meet these requirements.

- (i) five hundred (500) square feet for an Efficiency Unit;
- (ii) six hundred (600) square feet for a one Bedroom Unit;
- (iii) eight hundred (800) square feet for a two Bedroom Unit;
- (iv) one thousand (1,000) square feet for a three Bedroom Unit; and
- (v) one thousand, two-hundred (1,200) square feet for a four Bedroom Unit.

(B) Unit, Development Construction, and Energy and Water Efficiency Features. Housing Tax Credit Applicants may select amenities for the score of an Application under this section, but must maintain the points associated with those amenities by maintaining the amenity selected or providing substitute amenities with equal or higher point values. Tax-Exempt Bond Developments must include enough amenities to meet a minimum of nine (9) points. Direct Loan Applications not layered with Housing Tax Credits must include enough amenities to meet a minimum of four (4) points. The amenity shall be for every Unit at no extra charge to the tenant. The points selected at Application and corresponding list of amenities will be required to be identified in the LURA, and the points selected at Application must be maintained throughout the Affordability Period. Applications involving scattered site Developments must have a specific amenity located within each Unit to count for points. Rehabilitation Developments and Supportive Housing Developments will start with a base score of five (5) points. At least two (2) points must be selected from clause (iii), Energy and Water Efficiency Features, of this subparagraph (B).

(i) Unit Features

- (I) Covered entries (0.5 point);
- (II) Nine foot ceilings in living room and all Bedrooms (at minimum) (1 point);
- (III) Microwave ovens (0.5 point);
- (IV) Self-cleaning or continuous cleaning ovens (0.5 point);
- (V) Storage room or closet, of approximately 9 square feet or greater, separate from and in addition to Bedroom, entryway or linen closets and which does not need to be in the Unit but must be on the Property site (0.5 point);
- (VI) Covered patios or covered balconies (0.5 point);
- (VII) High Speed Internet service to all Units (can be wired or wireless; required equipment for either must be provided) (1 point);
- (VIII) Built-in (recessed into the wall) shelving unit (0.5 point);
- (IX) Breakfast Bar (a space, generally between the kitchen and dining area, that includes an area for seating although actual seating such as bar stools does not have to be provided) (0.5 point);
- (X) Walk-in closet in at least one Bedroom (0.5 point);
- (XI) 48"² upper kitchen cabinets (1 point);
- (XII) Kitchen island (0.5 points);
- (XIII) Kitchen pantry with shelving (may include the washer/dryer unit for Rehabilitation Developments only) (0.5 point);
- (XIV) Natural stone or quartz countertops in kitchen and bath (1 point);
- (XV) Double vanity in at least one bathroom (0.5 point); and
- (XVI) Hard floor surfaces in over 50% of unit NRA (0.5 point).

(ii) Development Construction Features

- (I) Covered parking (may be garages or carports, attached or freestanding) and include at least one covered space per Unit (1.5 points);
- (II) Thirty year roof (0.5 point);
- (III) Greater than 30% stucco or masonry (includes stone, cultured stone, and brick but excludes cementitious and metal siding) on all building exteriors; the percentage calculation may exclude exterior glass entirely (2 points);
- (IV) Electric Vehicle Charging Station (0.5 points);
- (V) An Impact Isolation Class (IIC) rating of at least 55 and a Sound Transmission Class (STC) rating of 60 or higher in all Units, as certified by the architect or engineer of record (3 points); and
- (VI) Green Building Features. Points under this item are intended to promote energy and water

conservation, operational savings and sustainable building practices. Four (4) points may be selected from only one of the categories described in items ~~(-a-)~~ through ~~(-)~~ ~~(-d-)~~ of this subclause. If the Development involves scattered sites, there must be green building features incorporated into each site in order to qualify for these points.

(-a-) Enterprise Green Communities. The Development must incorporate all mandatory and optional items applicable to the construction type (i.e. New Construction, Rehabilitation, etc.) as provided in the most recent version of the Enterprise Green Communities Criteria found at <http://www.greencommunitiesonline.org>.

(-b-) Leadership in Energy and Environmental Design (LEED). The Development must incorporate, at a minimum, all of the applicable criteria necessary to obtain a LEED Certification, regardless of the rating level achieved (i.e., Certified, Silver, Gold or Platinum).

(-c-) ICC/ASHRAE - 700 National Green Building Standard (NGBS). The Development must incorporate, at a minimum, all of the applicable criteria necessary to obtain a NGBS Green Certification, regardless of the rating level achieved (i.e. Bronze, Silver, Gold, or Emerald).

(-d-) 2018 International Green Construction Code.

(iii) Energy and Water Efficiency Features

(I) Energy-Star or equivalently rated refrigerator with icemaker (0.5 point);

(II) Energy-Star or equivalently rated laundry equipment (washers and dryers) for each individual Unit; must be front loading washer and dryer in required accessible Units (2 points);

(III) Recessed LED lighting or LED lighting fixtures in kitchen and living areas (1 point);

(IV) Energy-Star or equivalently rated ceiling fans in all Bedrooms (0.5 point);

(V) EPA WaterSense or equivalent qualified toilets in all bathrooms (0.5 point);

(VI) EPA WaterSense or equivalent qualified showerheads and faucets in all bathrooms (0.5 point);

(VII) 15 SEER HVAC, or in Region 13, an efficient evaporative cooling system. For Rehabilitation (excluding Reconstruction) where such systems are not being replaced as part of the scope of work, a radiant barrier in the attic is provided, (1 point);

(VIII) 16 SEER HVAC, for New Construction or Rehabilitation (1.5 points); and

(IX) A rainwater harvesting/collection system ~~and/or~~ locally approved greywater collection system (0.5 points) ~~and/or~~.

(7) Resident Supportive Services. The supportive services include those listed in subparagraphs (A) - (E) of this paragraph, which are grouped primarily for organizational purposes. Applicants are not required to select a specific number of services from each section. Tax Exempt Bond Developments must select a minimum of eight points; Direct Loan Applications not layered with Housing Tax Credits must include enough services to meet a minimum of four points. The points selected and complete list of supportive services will be included in the LURA and the timeframe by which services are offered must be in accordance with §10.619 of this title (relating to Monitoring for Social Services) and maintained throughout the Affordability Period. The Owner may change, from time to time, the services offered; however, the overall points as selected at Application must remain the same. A Development Owner may be required to substantiate such service(s) if requested by staff. Should the QAP in subsequent years provide different services than those listed in subparagraphs (A) – (E) of this paragraph, the Development Owner may request an Amendment as provided in 10TAC §10.405(a)(2). The services provided should be those that will directly benefit the Target Population of the Development. Residents must be provided written notice of the elections made by the Development Owner. No fees may be charged to the residents for any of the services, there must be adequate space for the intended services and services offered should be accessible to all (e.g. exercises classes must be offered in a manner that would enable a person with a disability to participate). Services must be provided on-site or transportation to those off-site services

identified on the list must be provided. The same service may not be used for more than one scoring item. These services are intended to be provided by a qualified and reputable provider in the specified industry such that the experience and background of the provider demonstrates sufficient knowledge to be providing the service. In general, on-site leasing staff or property maintenance staff would not be considered a qualified provider. Where applicable, the services must be documented by a written agreement with the provider. Unless otherwise noted in a particular clause, courses and services must be offered by an onsite instructor(s).

(A) Transportation Supportive Services

(i) shuttle, at least three days a week, to a grocery store and pharmacy ~~and/or~~ a major, big-box retailer that includes a grocery store and pharmacy, OR a daily shuttle, during the school year, to and from nearby schools not served by a school bus system for children who live at the Development (3.5 points);

(ii) monthly transportation to community/social events such as mall trips, community theatre, bowling, organized tours, etc. (1 point);

(B) Children Supportive Services

(i) provide a High Quality Pre-Kindergarten (HQ Pre-K) program and associated educational space at the Development Site meeting the requirements of 10 TAC §11.101(b)(5)(C)(i)(I). (Half of the points required under 10 TAC §11.101(b)(7));

(ii) Twelve hours of weekly, organized, on-site services provided to K-12 children by a dedicated service coordinator or third-party entity. Services include after-school and summer care and tutoring, recreational activities, character building programs, mentee opportunities, test preparation, and similar activities that promote the betterment and growth of children and young adults (3.5 points);

(C) Adult Supportive Services

(i) Four hours of weekly, organized, on-site classes provided to an adult audience by persons skilled or trained in the subject matter being presented, such as English as a second language classes, computer training, financial literacy courses, health education courses, certification courses, GED preparation classes, resume and interview preparatory classes, general presentations about community services and resources, and any other course, class, or presentation that may equip residents with new skills that they may wish to develop (3.5 points);

(ii) annual income tax preparation (offered by an income tax prep service) or IRS-certified VITA (Volunteer Income Tax Assistance) program (offered by a qualified individual) that also emphasizes how to claim the Earned Income Tax Credit (1 point);

(iii) contracted career training and placement partnerships with local worksource offices, culinary programs, or vocational counseling services; may include resident training programs that train and hire residents for job opportunities inside the development in areas like leasing, tenant services, maintenance, landscaping, or food and beverage operation (2 points);

(iv) external partnerships for provision of weekly substance abuse meetings at the Development Site (1 point);

(D) Health Supportive Services

(i) food pantry consisting of an assortment of non-perishable food items and common household items (i.e. laundry detergent, toiletries, etc.) accessible to residents at least on a monthly basis or upon request by a resident. While it is possible that transportation may be provided to a local food bank to meet the requirement of this resident service, the resident must not be required to pay for the items they receive at the food bank (2 points);

(ii) annual health fair provided by a health care professional (1 point);

(iii) weekly exercise classes (offered at times when most residents would be likely to attend) (2 points);

(iv) contracted onsite occupational or physical therapy services for Elderly Developments or Developments where the service is provided for Persons with Disabilities and documentation to that effect can be provided for monitoring purposes (2 points);

(E) Community Supportive Services

(i) partnership with local law enforcement ~~and~~/or local first responders to provide quarterly on-site social and interactive activities intended to foster relationships with residents (such activities could include playing sports, having a cook-out, swimming, card games, etc.) (2 points);

(ii) Notary Services during regular business hours (§2306.6710(b)(3)) (1 point);

(iii) twice monthly arts, crafts, and other recreational activities (e.g. Book Clubs and creative writing classes) (1 point);

(iv) twice monthly on-site social events (i.e. potluck dinners, game night, sing-a-longs, movie nights, birthday parties, holiday celebrations, etc.) (1 point);

(v) specific service coordination services offered by a qualified Owner or Developer, qualified provider or through external, contracted parties for seniors, Persons with Disabilities or Supportive Housing (3 points);

(vi) weekly home chore services (such as valet trash removal, assistance with recycling, furniture movement, etc., and quarterly preventative maintenance including light bulb replacement) for Elderly Developments or Developments where the service is provided for Persons with Disabilities and documentation to that effect can be provided for monitoring purposes (2 points);

(vii) any of the programs described under Title IV-A of the Social Security Act (42 U.S.C. §601, et seq.) which enables children to be cared for in their homes or the homes of relatives; ends the dependence of needy families on government benefits by promoting job preparation, work and marriage; prevents and reduces the incidence of unplanned pregnancies; and encourages the formation and maintenance of two-parent families (1 point);

(viii) a part-time resident services coordinator with a dedicated office space at the Development or a contract with a third-party to provide the equivalent of 15 hours or more of weekly resident supportive services at the Development (2 points);

(ix) provision, by either the Development Owner or a community partner, of an education tuition- or savings-match program or scholarships to residents who may attend college (2 points).

(8) Development Accessibility Requirements. All Developments must meet all specifications and accessibility requirements as identified in subparagraphs (A) - (F) of this paragraph and any other applicable state or federal rules and requirements. The accessibility requirements are further identified in the Certification of Development Owner as provided in the Application.

(A) The Development shall comply with the accessibility requirements under Federal law and as further defined in Chapter 1, Subchapter B of this title (relating to Accessibility Requirements). (§§2306.6722; 2306.6730)

(B) Regardless of building type, all Units accessed by the ground floor or by elevator (affected units) must comply with the visitability requirements in clauses (i) — (iii) of this subparagraph. Design specifications for each item must comply with the standards of the Fair Housing Act Design Manual. Buildings occupied for residential use on or before March 13, 1991 are exempt from this requirement. If the townhome Units of a Rehabilitation Development do not have a bathroom on the ground floor, the Applicant will not be required to add a bathroom to meet the requirements of clause (iii) of this subparagraph.

- (i) All common use facilities must be in compliance with the Fair Housing Design Act Manual;
- (ii) To the extent required by the Fair Housing Design Act Manual, there must be an accessible or exempt route from common use facilities to the affected units;
- (iii) Each affected unit must include the features in subclauses (I) - (V) of this clause.
 - (I) At least one zero-step, accessible entrance;
 - (II) At least one bathroom or half-bath with toilet and sink on the entry level. The layout of this bathroom or half-bath must comply with one of the specifications set forth in the Fair Housing Act Design Manual;
 - (III) The bathroom or half-bath must have the appropriate blocking relative to the toilet for the later installation of a grab bar, if ever requested by the tenant of that Unit;
 - (IV) There must be an accessible route from the entrance to the bathroom or half-bath, and the entrance and bathroom must provide usable width; and
 - (V) Light switches, electrical outlets, and thermostats on the entry level must be at accessible heights.

(C) The Development Owner is and will remain in compliance with state and federal laws, including but not limited to, fair housing laws, including Chapter 301, Property Code, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), the Fair Housing Amendments Act of 1988 (42 U.S.C. §§3601 et seq.); the Civil Rights Act of 1964 (42 U.S.C. §§2000a et seq.); the Americans with Disabilities Act of 1990 (42 U.S.C. §§12101 et seq.); the Rehabilitation Act of 1973 (29 U.S.C. §§701 et seq.); Fair Housing Accessibility; the Texas Fair Housing Act; and that the Development is designed consistent with the Fair Housing Act Design Manual produced by HUD, and the Texas Accessibility Standards. (§2306.257; §2306.6705(7))

(D) All Applications proposing Rehabilitation (including Reconstruction) will be treated as substantial alteration, in accordance with Chapter 1, Subchapter B of this title (relating to Section 504 of the Rehabilitation Act of 1973 and the Fair Housing Act).

(E) For all Developments other than Direct Loan Developments, for the purposes of determining the appropriate distribution of accessible Units across Unit Types, only the number of Bedrooms and full bathrooms will be used to define the Unit Type, but accessible Units must have an equal or greater square footage than the square footage offered in the smallest non-accessible Unit with the same number of Bedrooms and full bathrooms. For Direct Loan Developments, for purposes of determining the appropriate distribution of accessible Units across Unit Types, the definition of Unit Type will be used.

(F) Alternative methods of calculating the number of accessible Units required in a Development must be approved by the Department prior to award or allocation.

SUBCHAPTER C APPLICATION SUBMISSION REQUIREMENTS, INELIGIBILITY CRITERIA, BOARD DECISIONS AND WAIVER OF RULES

§11.201. Procedural Requirements for Application Submission

←This subchapter establishes the procedural requirements for Application submission. Only one Application may be submitted for a Development Site in an Application Round. While the Application Acceptance Period is open or prior to the Application deadline, an Applicant may withdraw an Application and subsequently file a new Application utilizing the original pre-application fee (as applicable) that was paid as long as no substantive evaluation was performed by the Department and the re-submitted Application relates to the same Development Site, consistent with §11.9(e)(3) regarding pre-application Site changes. Applicants are subject to the schedule of fees as set forth in ~~§11.901 of~~ §11.901 of this chapter (relating to Fee Schedule).

(1) General Requirements.

(A) An Applicant requesting funding from the Department must submit an Application in order to be considered for an award. An Application must be complete (including all required exhibits and supporting materials) and submitted by the required program deadline. If an Application, including the corresponding Application fee as described in §11.901 of this chapter, is not submitted to the Department on or before the applicable deadline, the Applicant will be deemed not to have made an Application; provided, however, that errors in the calculation of applicable fees may be cured via an Administrative Deficiency. The deficiency period for curing fee errors will be ~~three~~ 5:00 p.m. on the third business day from day following the date ~~the fee was originally required to be submitted,~~ of the deficiency notice and may not be extended. Failure to cure such an error timely will be grounds for termination.

(B) Applying for multifamily funds from the Department is a technical process that must be followed completely. As a result of the competitive nature of some funding sources, an Applicant should proceed on the assumption that deadlines are fixed and firm with respect to both date and time and cannot be waived except where authorized and for truly extraordinary circumstances, such as the occurrence of a significant natural disaster that makes timely adherence impossible. If checks or original Carryover Allocation Agreements are physically delivered to the Department, it is the Applicant's responsibility to be within the Department's doors by the appointed deadline. All Applications and all related materials are to be delivered electronically pursuant to the Multifamily Programs Procedures Manual. Applicants are strongly encouraged to submit the required items well in advance of established deadlines. Applicants must ensure that all documents are legible, properly organized and tabbed, and that materials are fully readable by the Department.

(C) The Applicant must timely upload a PDF copy and Excel copy of the complete Application to the ~~Department's~~ 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~~ Department's secure web transfer server was successful and to do so in advance of the deadline. Where there are instances of computer problems, mystery glitches, etc. that prevent the Application from being received by the Department prior to the deadline the Application may be terminated.

(D) Applications must include materials addressing each and all of the items enumerated in this chapter and other chapters as applicable. If an Applicant does not believe that a specific item should be applied, the Applicant must include, in its place, a statement identifying the required item, stating that it is not being supplied, and a statement as to why the Applicant does not believe it should be required.

(2) Filing of Application for Tax-Exempt Bond Developments. Applications must be submitted to the Department as described in either subparagraph (A) or (B) of this paragraph. Applications will be required to satisfy the requirements of this chapter and applicable Department rules that coincide with the year the Certificate of Reservation is issued. Those Applications that receive a Traditional Carryforward Designation will be subject to the QAP and applicable Department rules in place at the time the Application is received by the Department, unless determined otherwise by staff.

(A) Lottery Applications. ~~For Applicants participating in the TBRB lottery for private activity bond volume cap and advance notice is given regarding a~~ whose Certificate of Reservation will be issued in January, the Applicant must submit a Notice to Submit Lottery Application form to the Department no later than the Notice to Submit Lottery Application Delivery Date described in §11.2(b) of this chapter (relating to Tax-Exempt Bond and Multifamily Loan Development Dates and Deadlines). The complete Application, including all required Third Party Reports, accompanied by the Application Fee described in §11.901 of this chapter must be submitted no later than the Applications Associated with Lottery Delivery Date described in §11.2(b) of this chapter, as early as the beginning of December, to be tentatively scheduled for the March Board meeting. The Application must be submitted using the Draft Uniform Application released by the Department for the upcoming program year. Staff will require at least 90 days to review an Application, unless Department staff can complete its evaluation in sufficient time for an earlier Board consideration.

(B) Non-Lottery Applications.

(i) Applications designated as Priority 1 or 2 by the TBRB ~~and receiving advance notice of a Certificate of Reservation for private activity bond volume cap~~ must submit the Application Fee described in §11.901 of this chapter and the complete Application, with the exception of the Third Party Reports, prior to before the issuance of the Certificate of Reservation can be issued by the TBRB. The Third Party Reports must be submitted on the fifth day of the month and the Application may be scheduled for a Board meeting at which the decision to issue a Determination Notice would be made approximately 90 days following such submission deadline. If the fifth day falls on a weekend or holiday, the submission deadline shall be on the next business day.

(ii) An Application designated as Priority 3 will not be accepted until after the TBRB has issued a Certificate of Reservation and may be submitted on the fifth day of the month. Priority 3 Application submissions must be complete, including all Third Party Reports and the required Application Fee described in §11.901 of this chapter, before they will be considered accepted by the Department and meeting the submission deadline for the applicable Board meeting date.

(iii) If, as of November ~~15~~, an Applicant is unable to obtain a Certificate of Reservation from the current program year because there is no private activity bond volume cap, an Applicant may submit a complete Application without a bond reservation, provided that, a copy of the inducement resolution is included in the Application, and a Certificate of Reservation is issued as soon as possible by BRB staff in January 2021~~2022~~. The determination as to whether a 2020~~2021~~ Application can be submitted and supplemented with 2021~~2022~~ forms and certifications, will be at the discretion of staff. Applicants are encouraged to

communicate with staff any issues and timing considerations unique to a Development as early in the process as possible.

(C) The Department will require at least 90 days to review an Application, unless Department staff can complete its evaluation in sufficient time for an earlier Board consideration. Applicants should be aware that unusual financing structures, portfolio transactions, ~~and~~ the need to resolve Administrative Deficiencies and changes made by an Applicant after the Application has been reviewed by staff may require additional time to review and the prioritization of Applications will be subject to the review priority established in paragraph (6) of this subsection.

(D) Department staff may choose to delay presentation to the Board in instances where an Applicant is not expected to close within a reasonable timeframe following the issuance of a Determination Notice. Applications that receive a Traditional Carryforward Designation will be subject to closing within the same general timeframe as would be typical of the Certificate of Reservation. This will be a condition of the award and reflected in the Determination Notice.

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

(3) Certification of Tax Exempt Bond Applications with New Docket Numbers. Applications that receive an affirmative Board Determination, but for which closing on the bonds does not occur prior to the Certificate of Reservation expiration date, and which subsequently have that docket number withdrawn from the TBRB, may have their Determination Notice reinstated. ~~In~~ Upon the event that issuance of the Department's Board has not yet approved Certificate of Reservation and corresponding new docket number, the Applicant must submit the Application will continue to be processed and ultimately provided to the Board Request for consideration. Determination Notice Reinstatement form along with the Determination Notice Reinstatement Fee described in §11.901 of this chapter. The Applicant would need to receive a new docket number from the TBRB and should allow at least 30 days for staff review. The Application must meet the requirements described in subparagraphs (A) - (C) of this paragraph:

(A) The Application must remain unchanged with regard to: Site Control, total number of Units, unit mix (Bedroom sizes and income restrictions), design/site plan documents, financial structure including bond and Housing Tax Credit amounts, development costs, rent schedule, operating expenses, sources and uses, ad valorem tax exemption status, Target Population, scoring criteria (if TDHCA is bond issuer) and TBRB priority status including the effect on the inclusive capture rate. The entities involved in the Applicant entity and Developer cannot change; however, the certification can be submitted even if the lender,

syndicator or issuer changes, as long as the financing structure and terms remain unchanged. Should any of the aforementioned items have changed, but in ~~staff's~~staff's determination and review such change is determined not to be material or determined not to have an effect on the original underwriting conclusions or program review then the Applicant may be allowed to submit the certification and subsequently have the Determination Notice re-issued. Notifications under §11.203 of this chapter (relating to Public Notifications (§2306.6705(9))) are not required to be reissued. A revised Determination Notice will be issued once notice of the assignment of a new docket number has been provided to the Department and the Department has confirmed that the capture rate and market demand remain acceptable. ~~This certification must be submitted no later than 30 calendar days after the date the TBRB issues the new docket number; or~~

~~(B) the new docket number may not be issued more than four months from the date the original application was withdrawn from the TBRB.~~

(B) The new docket number must be from the same program year as the original docket number or, for Applications that receive a new docket number from the program year that is immediately succeeding the program year of the original docket number, the requirements in clauses (i) and (ii) of this subparagraph must be met:

(i) the Applicant must certify that the Development will meet all rules and requirements in effect at the time the new docket number is issued; and

(ii) the Department must determine that the changes in the rules applicable to the program(s) under which the Application was originally awarded are not of a material nature that would necessitate a new Application and that any new forms and clarifications to the Application are of a nature that can be resolved through the Administrative Deficiency process; or

(C) if there are changes to the Application as referenced in subparagraph (A) of this paragraph or if such changes in the rules pursuant to subparagraph (B)(ii) of this paragraph are of a material nature the Applicant will be required to submit a new Application in full, along with the applicable fees, to be reviewed and evaluated in its entirety for a new Determination Notice to be issued. If there is public opposition but the Application remains the same pursuant to subparagraph (A) of this paragraph, a new Application will not be required to be submitted; however, the Application must be presented before the Board for consideration of the re-issuance of the Determination Notice.

(4) Withdrawal of Application. An Applicant may withdraw an Application prior to or after receiving an award of funding by submitting to the Department written notice of the withdrawal. To the extent a Direct Loan award is returned after Board approval, penalties may be imposed on the Applicant and Affiliates in accordance with 10 TAC §13.11(a).

(5) Evaluation Process. Applications believed likely to be competitive will undergo a program review for compliance with submission requirements and selection criteria, as applicable. In general, Application reviews by the Department shall be conducted based upon the likelihood that an Application will be competitive for an award based upon the region, set-aside, self score, received date, or other ranking factors. Thus, non-competitive or lower scoring Applications may never be reviewed. The Director of Multifamily Finance will identify those Applications that will receive a full program review based upon a reasonable assessment of each Application and its relative position to other Applications, but no Application with a competitive ranking shall be skipped or otherwise overlooked. This initial assessment may be a high level assessment, not a full assessment. The Real Estate Analysis division shall underwrite Applications that received a full program review and remain competitive to determine financial feasibility and an appropriate funding amount. In making this determination, the Department will use §11.302 of this chapter (relating to Underwriting Rules and Guidelines) and §13.6 of this title (relating to Multifamily

Direct Loan Rule~~), as applicable.~~ The Department may have an external party perform all or part of the underwriting evaluation and components thereof to the extent it determines appropriate. The expense of any external underwriting shall be paid by the Applicant prior to the commencement of the aforementioned evaluation pursuant to §11.901(5) of this chapter (relating to Fee Schedule, Appeals and other Provisions). Applications will undergo a previous participation review in accordance with Chapter 1, Subchapter C of this title (relating to Previous Participation) and a Development Site may be evaluated by the Department or its agents through a physical site inspection or site visit, (which may include neighboring areas), independent of or concurrent with a site visit that may be performed in conjunction with §11.101(a)(3) (relating to Neighborhood Risk Factors). ~~The Department will, from time to time during the review process, publish an application log which shall include the self-score and any scoring adjustments made by staff. The posting of such scores on the application log may trigger appeal rights and corresponding deadlines pursuant to Tex. Gov't. Code §2306.6715 and §11.902 of this chapter (relating to Appeals Process); in such cases the corresponding deadlines are based on the date on which the log is posted to the Department's website. The Department may also~~ provide a scoring notice reflecting such score to the Applicant which will ~~also~~ trigger appeal rights and corresponding deadlines pursuant to Tex. Gov't. Code §2306.6715 and §11.902 of this chapter (relating to Appeals Process).

(6) Order of review of Applications under various Programs. This paragraph identifies how ties or other matters will be handled when dealing with de-concentration requirements, capture rate calculations, and general order of review of Applications submitted under different programs.

(A) De-concentration and Capture Rate. Priority will be established based on the earlier date associated with an Application. The dates that will be used to establish priority are as follows:

(i) for Tax-Exempt Bond Developments, the issuance date of the Certificate of Reservation issued by the TBRB; or in instances where there is a Traditional Carryforward Designation associated with an Application the Department will utilize the date the complete HTC Application associated with the Traditional Carryforward Designation is submitted to the Department; and

(ii) for all other Developments, the date the Application is considered received by the Department; and

(iii) notwithstanding the foregoing, after July 31 of the current program year, a Tax-Exempt Bond Development with a Certificate of Reservation from the TBRB will take precedence over any Housing Tax Credit Application from the current Application Round on the waiting list.

(B) General Review Priority. Order of reviews of Applications under various multifamily programs will be established based on Department staff's consideration of any statutory timeframes associated with a program or Application in relation to the volume of Applications being processed. ~~Those~~In general, 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,~~Due to the statutory constraints on the award and allocation of competitive tax credits, should any non-Competitive Housing Tax Credit Applications received during the competitive tax credit round ~~that~~ include a request to be placed on the May, June, or July Board agendas ~~may not~~, such Applications must be reviewed or underwritten due to the statutory constraints on complete, including Third Party Reports that meet the requirements under the award Underwriting and allocation Loan Policy Rules, and the Applicant must not have submitted (outside of competitive tax credits any request by staff via an Administrative Deficiency) revisions to the Application subsequent to its review by staff that would necessitate another review of the Application. Applicants are advised to keep this in consideration when planning the submission of an Application and issuance of the Certificate of Reservation. Should an Applicant submit an Application regardless of this provision, the Department is not obligated to include the Application on the requested Board meeting agenda and the Applicant should be prepared to be placed on a subsequent Board meeting agenda. In the event doing so

could jeopardize the Applicant's ability to obtain a Determination Notice prior to the expiration of the Certificate of Reservation, the Department assumes no liability.

(7) Deficiency Process. The purpose of the deficiency process is to allow an Applicant to provide clarification, explanation, or non-material missing information to resolve inconsistencies in the original Application or to assist staff in an efficient and effective review of the Application. Deficiencies may be Administrative or Material, in either case they will be treated similarly in that Applicants may receive a deficiency notice and have an opportunity to respond. Applicants are encouraged to utilize manuals or other materials produced by staff, as additional guidance in conjunction with the rules to provide appropriate support for each item substantiating a claim or representation, such as claims for points, qualification for set-asides, or meeting of threshold and eligibility requirements. Any Application that staff identifies as having insufficient support information will be directed to cure the matter via the deficiency process. ~~Applicants are reminded that this process may not be used to increase a scoring item's points or to change any aspect of the proposed Development, financing structure, or other element of the Application.~~ Because the review of an Application occurs in several phases, deficiency notices may be issued during any of these phases. Staff will send the deficiency notice via an e-mail to the Applicant and one other contact party if identified in the Application. It is the ~~Applicant's~~ Applicant's responsibility to ensure that e-mails sent from TDHCA staff to the Applicant or contact are not electronically blocked or redirected by a security feature as they will be considered to be received once they are sent. The time period for responding to a deficiency notice commences on the first business day following the deficiency notice date. Deficiency notices may be sent to an Applicant prior to or after the end of the Application Acceptance Period and may also be sent in response to reviews on post-award submissions. Responses are required to be submitted electronically as a PDF or multiple PDF files, and must be uploaded to the Application's ServU http file. Emailed responses will not be accepted. A review of the response provided by the Applicant may reveal that issues initially identified as an Administrative Deficiency are actually determined to be beyond the scope of an Administrative Deficiency process, meaning they are Material Deficiencies not susceptible to being resolved. Department staff may in good faith provide an Applicant confirmation that an Administrative Deficiency response has been received or that such response is satisfactory. Communications from staff that the response was satisfactory do not establish any entitlement to points, eligibility status, or to any presumption of having fulfilled any requirements. Final determinations regarding the sufficiency of documentation submitted to cure a Deficiency as well as the distinction between material and non-material missing information are reserved for the Director of Multifamily Finance, Executive Director, and Board.

(A) It is critical that the use of the deficiency process not unduly slow the review process, and since the process is intended to clarify or explain matters or obtain at the Department's request missing information, there is a reasonable expectation that a party responding to an Administrative Deficiency will be able to respond immediately. It is the responsibility of a person who receives a deficiency to address the matter in a timely manner so that staff has the ability to review the response by the close of business on the date by which resolution must be complete and the deficiency fully resolved. Merely submitting materials prior to that time places the responsibility on the responding party that if the materials do not fully resolve the matter there may be adverse consequences such as point deductions or termination. Extensions relating to Administrative Deficiency deadlines may only be extended up to five days if documentation needed to resolve the item is needed from a Third Party or the documentation involves Third Party signatures needed on certifications in the Application. A Deficiency response may not contain documentation that did not exist prior to submission of the pre- application or Full Application, as applicable.

(B) Deficiencies for Competitive HTC Applications. Unless an extension has been timely requested and

granted prior to the deadline, if a deficiency is not fully resolved to the satisfaction of the Department by 5:00 p.m. on the fifth business day following the date of the deficiency notice, then five (5) points shall be deducted from the selection criteria score for each additional day the deficiency remains unresolved. If deficiencies are not resolved by 5:00 p.m. on the seventh business day following the date of the deficiency notice, then the Application shall be terminated, subject to the ~~Applicant's~~ Applicant's right to appeal. An Applicant may not change or supplement any part of an Application in any manner after the filing deadline or while the Application is under consideration for an award, and may not add any set-asides, increase the requested credit amount, revise the Unit mix (both income levels and Bedroom mixes), or adjust their self-score except in response to a direct request from the Department to do so as a result of an Administrative Deficiency. ~~(§2306.6708(b); §2306.6708)~~ ~~(§2306.6708(b); §2306.6708)~~ Applicants may not use the Deficiency Process to increase a scoring item's points or to change any aspect of the proposed Development, financing structure, or other element of the Application. To the extent that the review of deficiency documentation or the imposing of point reductions for late responses alters the score assigned to the Application, such score will be reflected in the updated application log published on the ~~Department's~~ Department's website or a Scoring Notice may be issued.

(C) Deficiencies for Tax-Exempt Bond Developments. Unless an extension has been requested prior to the deadline, deficiencies must be resolved to the satisfaction of the Department by 5:00 p.m. on the fifth business day following the date of the deficiency notice. Applications with unresolved deficiencies after 5:00 p.m. on the fifth business day following the date of the deficiency notice will be suspended from further processing and the Applicant will be provided with notice to that effect. If, on the fifth business day following the date of the suspension notice, there are deficiencies that remain unresolved, the Application will be terminated and the Applicant will be provided notice to that effect. Should an Applicant still desire to move forward with the Development, staff will require a completely new Application be submitted, along with a new Application Fee pursuant to §11.901 of this chapter. All of the deficiencies noted in the original deficiency notice must be incorporated into the re-submitted Application. Staff will proceed with a new review of the Application, but it will not be prioritized over other Applications that are under review or were submitted prior to its re- submission.

(D) Deficiencies for Direct Loan only Applications. Deficiencies must be resolved to the satisfaction of the Department by 5:00 p.m. on the fifth business day following the date of the deficiency notice. Applications with unresolved deficiencies after 5:00 p.m. on the fifth business day following the date of the deficiency notice will be suspended from further processing and the Applicant will be provided with notice to that effect. If, during on the period fifth business day following the date of time when the the suspension notice, there are deficiencies that remain unresolved, the Application is suspended from review ~~Direct Loan funds in the set aside become oversubscribed, the may be terminated and the Applicant will be informed that unless the outstanding item(s) are resolved within one business day the Application will be terminated. provided notice to that effect.~~ For purposes of priority under the Direct Loan set-asides, if the outstanding item(s) are resolved within one business day during the suspension period, the date by which the final deficient item is submitted shall be the new received date pursuant to §13.5(c) of this chapter (relating to Multifamily Direct Loan Rule). Applicants should be prepared for additional time needed for completion of staff reviews as described in paragraph (2)(B) of this section. ~~If, on the fifth business day following the date of the suspension notice, there are deficiencies that remain unresolved and the Direct Loan funds are not oversubscribed, the Application will be terminated, and the Applicant will be provided notice to that effect.~~ Should an Applicant still desire to move forward with the Development, staff will require after Termination, a completely new Application must be submitted, along with a new Application Fee, as applicable, pursuant to rule. All of the deficiencies noted in the original deficiency notice must be incorporated into the re-submitted Application. ~~Staff, which will proceed with have a new review of the~~

~~Application, but it will not be prioritized over other Applications that are under review or were submitted prior to its re-submission, and will obtain a new received date pursuant to §13.5(c) of this chapter. Application Acceptance Date.~~

(8) Limited Reviews. If, after the submission of the Application, an Applicant identifies an error in the Application that could likely be the subject of a Deficiency, the Applicant may request a limited review of the specific and limited issues in need of clarification or correction. The issue may not relate to the score of an Application. This limited review may only cover the specific issue and not the entire Application. If the limited review results in the identification of an issue that requires correction or clarification, staff will request such through the Deficiency process as stated in paragraph (7) of this section, if deemed appropriate. A limited review is intended to address:

(A) Clarification of issues that Department staff would have difficulty identifying due to the omission of information that the Department may have access to only through Applicant disclosure, such as a prior removal from a tax credit transaction or participation in a Development that is not identified in the previous participation portion of the Application; or

(B) Technical correction of non-material information that would cause an Application deemed non-competitive to be deemed competitive and, therefore, subject to a staff review. For example, failure to mark the Nonprofit Set-Aside in an Application that otherwise included complete submission of documentation for participation in the Nonprofit Set-Aside.

(9) Challenges to Opposition. Any written statement from a Neighborhood Organization expressing opposition to an Application may be challenged if it is contrary to findings or determinations, including zoning determinations, of a municipality, county, school district, or other local Governmental Entity having jurisdiction or oversight over the finding or determination. If any such comment is challenged, the challenger must declare the basis for the challenge and submit such challenge by the Challenges to Neighborhood Organization Opposition Delivery Date as identified in §11.2 of this chapter and no later than May 1 of the current year for Competitive HTC Applications. The Neighborhood Organization expressing opposition will be given seven calendar days to provide any information related to the issue of whether their assertions are contrary to the findings or determinations of a local Governmental Entity. All such materials and the analysis by staff will be provided to a fact finder, chosen by the Department, for review and a determination. The fact finder will not make determinations as to the accuracy of the statements presented, but only regarding whether the statements are contrary to findings or determinations of a local Governmental Entity. The fact finder's determination will be final and may not be waived or appealed.

§11.202 Ineligible Applicants and Applications

—The purpose of this section is to identify those situations in which an Application or Applicant may be considered ineligible for Department funding and subsequently terminated. Such matters may be brought to the attention of staff by anyone, including members of the general public. The items listed in this section include those requirements in Code, §42, Tex. Gov't Code, Chapter 2306, and other criteria considered important by the Department, and does not represent an exhaustive list of ineligibility criteria that may otherwise be identified in applicable rules, federal statutes or regulations, or a specific program NOFA. The Application may include, or Department staff may request, documentation or verification of compliance with any requirements related to the eligibility of an Applicant, Application, Development Site, or Development. One or more of the matters enumerated in paragraph (1) of this section may also serve

as a basis for debarment, or the assessment of administrative penalties, and nothing herein shall limit the ~~Department's~~Department's ability to pursue any such matter. Failure to provide disclosure may be cause for termination.

(1) Applicants. An Applicant may be considered ineligible if any of the criteria in subparagraphs (A) - (N) of this paragraph apply to those identified on the organizational chart for the Applicant, Developer and Guarantor. An Applicant is ineligible if the Applicant, Developer, or Guarantor:

(A) Has been or is barred, suspended, or terminated from participation in a state or Federal program, including those listed in ~~HUD's~~the U.S. government's System for Award Management (SAM); (§2306.0504)

(B) Has been convicted of a state or federal felony crime involving fraud, bribery, theft, misrepresentation of material fact, misappropriation of funds, or other similar criminal offenses within 15 years preceding the received date of Application or Pre-Application submission (if applicable);

(C) Is, at the time of Application, subject to an order in connection with an enforcement or disciplinary action under state or federal securities law or by the NASD; subject to a federal tax lien (other than a contested lien for which provision has been made); or the subject of a proceeding in which a Governmental Entity has issued an order to impose penalties, suspend funding, or take adverse action based on an allegation of financial misconduct or uncured violation of material laws, rules, or other legal requirements governing activities considered relevant by the Governmental Entity;

(D) Has materially breached a contract with a public agency, and, if such breach is permitted to be cured under the contract, has been given notice of the breach and a reasonable opportunity to cure, and failed to cure that breach within the time specified in the notice of breach;

(E) Has misrepresented to a subcontractor the extent to which the Developer has benefited from contracts or financial assistance that has been awarded by a public agency, including the scope of the Developer's participation in contracts with the agency, and the amount of financial assistance awarded to the Developer by the agency;

(F) Has been found by the Board to be ineligible based on a previous participation review performed in accordance with Chapter 1 Subchapter C of this title (relating to Previous Participation and Executive Award Review and Advisory Committee);

(G) Is delinquent in any loan, fee, or escrow payments to the Department in accordance with the terms of the loan, as amended, or is otherwise in default with any provisions of such loans, and for which no repayment plan has been approved by the Department;

(H) Has failed to cure any past due fees owed to the Department within the time frame provided by notice from the Department and at least 10 days prior to the Board meeting at which the decision for an award is to be made;

(I) Would be prohibited by a state or federal revolving door or other standard of conduct or conflict of interest statute, including Tex. ~~Gov't~~Gov't Code, §2306.6733, or a provision of Tex. ~~Gov't~~Gov't Code, Chapter 572, from participating in the Application in the manner and capacity they are participating;

(J) Has, without prior approval from the Department, had previous Contracts or Commitments that have

been partially or fully Deobligated during the 12 months prior to the submission of the Application, and through the date of final allocation due to a failure to meet contractual obligations, and the Person is on notice that such Deobligation results in ineligibility under this chapter;

(K) Has provided false or misleading documentation or made other intentional or negligent material misrepresentations or omissions in or in connection with an Application (and certifications contained therein), Commitment, or Determination Notice for a Development;

(L) Was the Owner or Affiliate of the Owner of a Department assisted rental Development for which the federal affordability requirements were prematurely terminated and the affordability requirements have not been re-affirmed or Department funds repaid;

(M) Fails to disclose, in the Application, any Principal or any entity or Person in the Development ownership structure who was or is involved as a Principal in any other affordable housing transaction, that has terminated voluntarily or involuntarily within the past 10 years, or plans to or is negotiating to terminate, their relationship with any other affordable housing development. The disclosure must identify the person or persons and development involved, the identity of each other development, and contact information for the other Principals of each such development, a narrative description of the facts and circumstances of the termination or proposed termination, and any appropriate supporting documents. An Application may be referred to the Board for a determination of a ~~person's~~person's fitness to be involved as a Principal with respect to an Application, which may include a staff recommendation, using the factors described in clauses (i) – (v) of this subparagraph as considerations:

(i) the amount of resources in a Development and the amount of the benefit received from the Development;

(ii) the legal and practical ability to address issues that may have precipitated the termination or proposed termination of the relationship;

(iii) the role of the person in causing or materially contributing to any problems with the success of the development;

(iv) the person's compliance history, including compliance history on other developments; and

(v) any other facts or circumstances that have a material bearing on the question of the ~~person's~~person's ability to be a compliant and effective participant in their proposed role as described in the Application; or

(N) Fails to disclose in the Application any voluntary compliance agreement or similar agreement with any governmental agency that is the result of negotiation regarding noncompliance of any affordable housing Development with any requirements. Any such agreement impacting the proposed Development or any other affordable housing Development controlled by the Applicant must be disclosed.

(2) Applications. An Application shall be ineligible if any of the criteria in subparagraphs (A) - (C) of this paragraph apply to the Application:

(A) A violation of Tex. ~~Gov't~~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~~Gov't Code, §2306.1113(b). Such action is prohibited. For Applicants seeking funding after initial awards have been made, such as waiting list Applicants, the ex parte communication prohibition remains in effect so long as the Application remains eligible for funding. The ex parte provision does not prohibit the Board

from participating in social events at which a Person with whom communications are prohibited may, or will be present; provided that no matters related to any Application being considered by the Board may be discussed;

(B) The Application is submitted after the Application submission deadline (time or date); is missing multiple parts of the Application; or has a Material Deficiency; or

(C) For any Development utilizing Housing Tax Credits or Tax-Exempt Bonds:

(i) at the time of Application or at any time during the two-year period preceding the date the Application Round begins (or for Tax-Exempt Bond Developments any time during the two-year period preceding the date the Application is submitted to the Department), the Applicant or a Related Party is or has been a person covered by Tex. Gov't Code, §2306.6703(a)(1);

(ii) if the Application is represented or communicated about by a Person that would prompt the violations covered by Tex. Gov't Code §2306.6733; or

(iii) the Applicant proposes to replace in less than 15 years any private activity bond financing of the Development described by the Application, unless the exceptions in Tex. Gov't Code §2306.6703(a)(2) are met.

§11.203 Public Notifications. (§2306.6705(9))

A certification, as provided in the Application, that the Applicant met the requirements and deadlines identified in paragraphs (1) - (3) of this section must be submitted with the Application. For Applications utilizing Competitive Housing Tax Credits, notifications must not be older than three months from the first day of the Application Acceptance Period. For Tax-Exempt Bond Developments and Direct Loan Applications, notifications must not be older than three months prior to the date the complete Application is submitted. If notifications were made in order to satisfy requirements of pre-application submission (if applicable to the program) for the same Application, then no additional notification is required at Application. However, re-notification is required by all Applicants who have submitted a change from pre-application to Application that reflects a total Unit increase of greater than 10% or a 5% increase in density (calculated as units per acre) as a result of a change in the size of the Development Site. In addition, should the jurisdiction of the official holding any position or role described in paragraph (2) of this section change between the submission of a pre-application and the submission of an Application, Applicants are required to notify the new entity no later than the Full Application Delivery Date.

(1) Neighborhood Organization Notifications.

(A) The Applicant must identify and notify all Neighborhood Organizations on record with the county or the state as of 30 days prior to the beginning of the Application Acceptance Period and whose boundaries include the entire proposed Development Site. As used in this section, "on record with the state" means on record with the Secretary of State.

(B) The Applicant must list, in the certification form provided in the pre-application and Application, all Neighborhood Organizations on record with the county or state as of 30 days prior to the beginning of the Application Acceptance Period and whose boundaries include the proposed Development Site as of the submission of the Application, and the Applicant must certify that a reasonable search for applicable entities has been conducted.

(2) Notification Recipients. No later than the date the Application is submitted, notification must be sent

to all of the entities identified in subparagraphs (A) - (H) of this paragraph. Developments located in an Extra Territorial Jurisdiction (ETJ) of a city are required to notify both city and county officials. The notifications may be sent by e-mail, fax or mail with return receipt requested or similar tracking mechanism. A template for the notification is included in the Application Notification Template provided in the Application. Evidence of notification is required in the form of a certification provided in the Application. The Applicant is required to retain proof of delivery in the event it is requested by the Department. Evidence of proof of delivery is demonstrated by a signed receipt for mail or courier delivery and confirmation of receipt by recipient for fax and e-mail. Officials to be notified are those in office at the time the Application is submitted. Note that between the time of pre-application (if made) and full Application, the boundaries of their jurisdictions may change. Meetings and discussions do not constitute notification.

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

(B) Superintendent of the school district in which the Development Site is located;

(C) Presiding officer of the board of trustees of the school district in which the Development Site is located;

(D) Mayor of the municipality (if the Development Site is within a municipality or its extraterritorial jurisdiction);

(E) All elected members of the Governing Body of the municipality (if the Development Site is within a municipality or its extraterritorial jurisdiction);

(F) Presiding officer of the Governing Body of the county in which the Development Site is located;

(G) All elected members of the Governing Body of the county in which the Development Site is located; and

(H) State Senator and State Representative of the districts whose boundaries include the Development Site.

(3) Contents of Notification.

(A) The notification must include, at a minimum, all information described in clauses (i) - (viii) of this subparagraph.

(i) the Applicant's name, address, individual contact name, and phone number;

(ii) the Development name, address, city and county;

(iii) a statement indicating the program(s) to which the Applicant is applying with the Texas Department of Housing and Community Affairs;

(iv) whether the Development proposes New Construction, Reconstruction, Adaptive Reuse or Rehabilitation;

(v) the physical type of Development being proposed (e.g. single family homes, duplex, apartments, high-rise etc.);

(vi) the total number of Units proposed and total number of Low-Income Units proposed;

(vii) the residential density of the Development, i.e., the number of Units per acre; and

(viii) information on how and when an interested party or Neighborhood Organization can provide input to the Department.

(B) The notification may not contain any false or misleading statements. Without limiting the generality of the foregoing, the notification may not create the impression that the proposed Development will target, provide a preference, or serve a Target Population exclusively, unless such population limitation, targeting, or preference is documented in the Application, and is or will be in full compliance with all applicable state and federal laws, including state and federal fair housing laws; and

(C) Notifications or any other communications may not contain any statement that violates Department rules, statute, code, or federal requirements.

§11.204- Required Documentation for Application Submission

—The purpose of this section is to identify the threshold documentation that is required at the time of Application submission, unless specifically indicated or otherwise required by Department rule. Unless stated otherwise, all documentation identified in this section must not be dated more than six (6) months prior to the close of the Application Acceptance Period or the date of Application submission as applicable to the program.

(1) Certification, Acknowledgement and Consent of Development Owner. A certification of the information in this subchapter as well as Subchapter B of this chapter must be executed by the Development Owner and addresses the specific requirements associated with the Development. The Person executing the certification is responsible for ensuring all individuals referenced therein are in compliance with the certification and that they have given it with all required authority and with actual knowledge of the matters certified.

(A) The Development will adhere to the Texas Property Code relating to security devices and other applicable requirements for residential tenancies, and will adhere to local building codes or, if no local building codes are in place, then to the most recent version of the International Building Code.

(B) This Application and all materials submitted to the Department constitute records of the Department subject to Tex. ~~Gov't~~Gov't Code, Chapter 552. Any person signing the Certification acknowledges that they have the authority to release all materials for publication on the ~~Department's~~Department's website, that the Department may publish them on the ~~Department's~~Department's website and release them in response to a request for public information, and make other use of the information as authorized by law.

(C) All representations, undertakings and commitments made by Applicant in the Application process expressly constitute conditions to any Commitment, Determination Notice, Carryover Allocation, or Direct Loan Commitment for such Development which the Department may issue or award, and the violation of any such condition shall be sufficient cause for the cancellation and rescission of such Commitment, Determination Notice, Carryover Allocation, or Direct Loan Commitment by the Department. If any such representations, undertakings and commitments concern or relate to the ongoing features or operation of the Development, they shall be enforceable even if not reflected in the Land Use Restriction Agreement. All such representations, undertakings and commitments are also enforceable by the Department and the residents of the Development, including enforcement by administrative penalties for failure to perform (consistent with Chapter 2, Subchapter C of this title relating to Administrative Penalties), in accordance with the Land Use Restriction Agreement.

(D) The Development Owner has read and understands the Department's fair housing educational materials posted on the Department's website as of the beginning of the Application Acceptance Period.

(E) The Development Owner agrees to implement a plan to use Historically Underutilized Businesses (HUB) in the development process consistent with the Historically Underutilized Business Guidelines for contracting with the State of Texas. The Development Owner will be required to submit a report of the success of the plan as part of the cost certification documentation, in order to receive IRS Forms 8609 or,

if the Development does not have Housing Tax Credits, release of retainage.

(F) The Applicant will attempt to ensure that at least 30% of the construction and management businesses with which the Applicant contracts in connection with the Development are Minority Owned Businesses as further described in Tex. Gov't Code, §2306.6734.

(G) The Development Owner will specifically market to veterans through direct marketing or contracts with veteran's organizations. The Development Owner will be required to identify how they will specifically market to veterans and report to the Department in the annual housing report on the results of the marketing efforts to veterans. Exceptions to this requirement must be approved by the Department.

(H) The Development Owner will comply with any and all notices required by the Department.

(I) If the Development has an existing LURA with the Department, the Development Owner will comply with the existing restrictions.

(2) Applicant Eligibility Certification. A certification of the information in this subchapter as well as Subchapter B of this chapter must be executed by any individuals required to be listed on the organizational chart and also meeting the definition of Control. The certification must identify the various criteria relating to eligibility requirements associated with multifamily funding from the Department, including but not limited to the criteria identified under §11.202 of this chapter (relating to Ineligible Applicants and Applications).

(3) Engineer/Architect Certification Form. The certification, addressing all of the accessibility requirements applicable to the Development Site, must be executed by the Development engineer or accredited architect after careful review of the ~~Department's~~ Department's accessibility requirements, and including Tex. ~~Gov't~~ Gov't Code §2306.6722 and §2306.6730.

(4) Notice, Hearing, and Resolution for Tax-Exempt Bond Developments. In accordance with Tex. Gov't Code, §2306.67071, the following actions must take place with respect to the filing of an Application and any Department awards for a Tax-Exempt Bond Development.

(A) Prior to submission of an Application to the Department, an Applicant must provide notice of the intent to file the Application in accordance with §11.203 of this chapter (relating to Public Notifications (§2306.6705(9))).

(B) The Governing Body of a municipality must hold a hearing if the Development Site is located within a municipality or the extra territorial jurisdiction (ETJ) of a municipality. The Governing Body of a county must hold a hearing unless the Development Site is located within a municipality. For Development Sites located in an ETJ the county and municipality must hold hearings; however, the county and municipality may arrange for a joint hearing. The purpose of the hearing(s) must be to solicit public input concerning the Application or Development and the hearing(s) must provide the public with such an opportunity. The Applicant may be asked to substantively address the concerns of the public or local government officials.

(C) An Applicant must submit to the Department a resolution of no objection from the applicable Governing Body. Such resolution(s) must specifically identify the Development whether by legal description, address, Development name, Application number or other verifiable method. In providing a resolution, a municipality or county should consult its own staff and legal counsel as to whether such

resolution will be consistent with Fair Housing laws as they may apply, including, as applicable, consistency with any 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 §11.2(b) of this chapter (relating to Tax-Exempt Bond and Direct Loan Development Dates and Deadlines). An acceptable, but not required, form of resolution may be obtained in the Multifamily Programs Procedures Manual. Applicants should ensure that the resolutions all have the appropriate references and certifications or the resolution may be determined by staff to be invalid. The resolution(s) must certify that:

(i) notice has been provided to the Governing Body in accordance with Tex. Gov't Code, §2306.67071 (a);

(ii) the Governing Body has had sufficient opportunity to obtain a response from the Applicant regarding any questions or concerns about the proposed Development;

(iii) the Governing Body has held a hearing at which public comment may be made on the proposed Development in accordance with Tex. Gov't Code, §2306.67071(b); and

(iv) after due consideration of the information provided by the Applicant and public comment, the Governing Body does not object to the proposed Application.

(5) Designation as Rural or Urban.

(A) Each Application must identify whether the Development Site is located in an Urban Area or Rural Area of a Uniform State Service Region. The Department shall make available a list of Places meeting the requirements of Tex. ~~Gov't~~ Gov't Code, §2306.004(28-a)(A) and (B), for designation as a Rural Area and those that are an Urban Area in the Site Demographics Characteristics Report. Some Places are municipalities. For any Development Site located in the ETJ of a municipality and not in a Place, the Application shall have the Rural Area or Urban Area designation of the municipality whose ETJ within which the Development Site is located. For any Development Site not located within the boundaries of a Place or the ETJ of a municipality, the applicable designation is that of the closest Place.

(B) Certain areas located within the boundaries of a primary metropolitan statistical area or a metropolitan statistical area can request a Rural designation from the Department for purposes of receiving an allocation Housing Tax Credits (§2306.6740). In order to apply for such a designation, a letter must be submitted from a duly authorized official of the political subdivision or census designated place addressing the factors outlined in clauses (i) - (vi) of this subparagraph. Photographs and other supporting documentation are strongly encouraged. In order for the area to be designated Rural by the Department for the current Application Round, such requests must be made no later than December 15 of the previous year. If staff is able to confirm the findings outlined in the request, the Rural designation will be granted without further action and will remain in effect until such time that the population as described in clause (i) of this subparagraph exceeds 25,000. In the event that staff is unable to confirm the information

contained in the request, the Applicant will be given an opportunity to supplement their case. If, after receiving any supplemental information, staff still cannot confirm the rural nature of the Application, a recommendation for denial will be presented to the Board.

(i) the population of the political subdivision or census designated place does not exceed 25,000;

(ii) the characteristics of the political subdivision or census designated place and how those differ from the characteristics of the area(s) with which it shares a contiguous boundary;

(iii) the percentage of the total border of the political subdivision or census designated place that is contiguous with other political subdivisions or census designated places designated as urban. For purposes of this assessment, less than 50% contiguity with urban designated places is presumptively rural in nature;

(iv) the political subdivision or census designated place contains a significant number of unimproved roads or relies on unimproved roads to connect it to other places;

(v) the political subdivision or census designated place lacks major amenities commonly associated with urban or suburban areas; and

(vi) the boundaries of the political subdivision or census designated place contain, or are surrounded by, significant areas of undeveloped or agricultural land. For purposes of this assessment, significant being more than one-third of the total surface area of political subdivision/census designated place, or a minimum of 1,000 acres immediately contiguous to the border.

(6) Experience Requirement. Evidence that meets the criteria as stated in subparagraph (A) of this paragraph must be provided in the Application, unless an experience certificate was issued by the Department in the years 2014 through 2019-2020, which may be submitted as acceptable evidence of this requirement. Experience of multiple parties may not be aggregated to meet this requirement.

(A) A natural Person, with control of the Development who intends and has the ability to remain in control through placement in service, who is also a Principal of the Developer, Development Owner, or General Partner must establish that they have experience that has included the development and placement in service of 150 units or more. Applicants requesting Multifamily Direct Loan funds only may meet the alternative requirement at §13.25_5(h)(1) of this title (relating to Experience). Serving only as the HUB for a Development does not meet this requirement. Acceptable documentation to meet this requirement shall include any of the items in clauses (i) - (ix) of this subparagraph:

(i) American Institute of Architects (AIA) Document (A102) or (A103) 2007 - Standard Form of Agreement between Owner and Contractor;

(ii) AIA Document G704--Certificate of Substantial Completion;

(iii) AIA Document G702--Application and Certificate for Payment;

(iv) Certificate of Occupancy;

(v) IRS Form 8609 (only one per development is required);

(vi) HUD Form 9822;

(vii) Development agreements;

(viii) partnership agreements; or

(ix) other documentation satisfactory to the Department verifying that a Principal of the Development Owner, General Partner, or Developer has the required experience.

(B) The names on the forms and agreements in subparagraph (A)(i) - (ix) of this paragraph must reflect that the individual seeking to provide experience is a Principal of the Development Owner, General Partner, or Developer as listed in the Application. For purposes of this requirement any individual attempting to use the experience of another individual or entity must demonstrate they had the authority to act on their behalf that substantiates the minimum 150 unit requirement.

(C) For competitive HTC Applications, if a Principal is determined by the Department to not have the required experience, a replacement Principal will not be allowed.

(D) Notwithstanding the foregoing, no person may be used to establish such required experience if that Person or an Affiliate of that Person would not be eligible to be an Applicant themselves.

(7) Financing Requirements.

(A) Non-Department Debt Financing. Interim and permanent financing sufficient to fund the proposed Total Housing Development Cost less any other funds requested from the Department must be included in the Application. For any Development that is a part of a larger development plan on the same site, the Department may request and evaluate information related to the other components of the development plan in instances in which the financial viability of the Development is in whole or in part dependent upon the other portions of the development plan. Any local, state or federal financing identified in this section which restricts household incomes at any level that is lower than restrictions required or elected in accordance with this Chapter or Chapter 13 of this title (relating to Multifamily Direct Loan) must be identified in the rent schedule and the local, state or federal income restrictions must include corresponding rent levels in accordance with Code §42(g) if the Development will receive housing tax credits. The income and corresponding rent restrictions will be reflected in the LURA. Financing amounts must be consistent throughout the Application and acceptable documentation shall include those described in clauses (i) ~~through~~ (iv) of this subparagraph.

(i) financing is in place as evidenced by:

(I) A valid and binding loan agreement; and

(II) A valid recorded deed(s) of trust lien on the Development in the name of the Development Owner as grantor in favor of the party providing such financing; and

(ii) term sheets for interim and permanent loans issued by a lending institution or mortgage company must:

(I) Have been signed by the lender;

(II) Be addressed to the Development Owner or Affiliate;

(III) For a permanent loan, include a minimum loan term of 15 years with at least a 30 year amortization or for non-amortizing loan structures a term of not less than 30 years;

(IV) Include either a committed and locked interest rate, or the currently projected interest rate and the mechanism for determining the interest rate;

(V) Include all required Guarantors, if known;

(VI) Include the principal amount of the loan;

(VII) Include an acknowledgement of the amounts and terms of all other anticipated sources of funds and if the Application reflects an intent to elect income averaging there must be an acknowledgement to that effect in the term sheet; and

(VIII) Include and address any other material terms and conditions applicable to the financing. The term sheet may be conditional upon the completion of specified due diligence by the lender and upon the award of tax credits, if applicable.

(iii) For Developments proposing to refinance an existing USDA Section 514, 515, or 516 loan, a letter from the USDA confirming that it has been provided with the Preliminary Assessment Tool.

(iv) For Direct Loan Applications or Tax-Exempt Bond Development Applications utilizing FHA financing,

the Application shall include the applicable pages from the HUD Application for Multifamily Housing Project. If the HUD Application has not been submitted at the time the Application is submitted then a statement to that effect should be included in the Application along with an estimated date for submission. Applicants should be aware that staff's underwriting of an Application will not be finalized and presented to the Board until staff has evaluated the HUD Application relative to the Application.

(B) Gap Financing. Any anticipated federal, state, local or private gap financing, whether soft or hard debt, must be identified and described in the Application. Applicants must provide evidence that an application for such gap financing has been made. Acceptable documentation may include a letter from the funding entity confirming receipt of an application or a term sheet from the lending agency which clearly describes the amount and terms of the financing. Other Department funding requested with Housing Tax Credit Applications must be on a concurrent funding period with the Housing Tax Credit Application, and no term sheet is required for such a request. A term loan request must comply with the applicable terms of the NOFA under which an Applicant is applying.

(C) Owner Contributions. If the Development will be financed in part with a capital contribution or debt by the General Partner, Managing General Partner, any other partner or investor that is not a partner providing the syndication equity, a Guarantor or a Principal in an amount that exceeds 5% of the Total Housing Development Cost, a letter from a Third Party CPA must be submitted that verifies the capacity of the contributor to provide the capital from funds that are not otherwise committed or pledged. Additionally, a letter from the contributor's bank(s) or depository(ies) must be submitted confirming sufficient funds are readily available to the contributor. The contributor must certify that the funds are and will remain readily available at Commitment and until the required investment is completed. Regardless of the amount, all capital contributions other than syndication equity will be deemed to be a part of, and therefore added to, the Deferred Developer Fee for feasibility purposes under §11.302(i)(2) of this chapter (relating to Underwriting Rules and Guidelines) or where scoring is concerned, unless the contribution is a seller note equal to or less than the acquisition price of the subject Development, the Development is a Supportive Housing Development, the Development is not supported with Housing Tax Credits, or the ownership structure includes a nonprofit organization with a documented history of fundraising sufficient to support the development of affordable housing.

(D) Equity Financing. (§2306.6705(2) and (3)) If applicable to the program, the Application must include a term sheet from a syndicator that, at a minimum, includes:

- (i) an estimate of the amount of equity dollars expected to be raised for the Development;
- (ii) the amount of Housing Tax Credits requested for allocation to the Development Owner;
- (iii) pay-in schedules;
- (iv) syndicator consulting fees and other syndication costs. No syndication costs should be included in the Eligible Basis; and
- (v) include an acknowledgement of the amounts and terms of all other anticipated sources of funds and if the Application reflects an intent to elect income averaging there must be an acknowledgement to that effect in the term sheet.

(E) Financing Narrative. (§2306.6705(1)) A narrative must be submitted that describes all aspects of the financing plan for the Development, including as applicable the sources and uses of funds; construction, permanent and bridge loans, rents, operating subsidies, project-based assistance, and replacement reserves; and the status (dates and deadlines) for applications, approvals and closings, etc. associated with the term sheets for all funding sources. For Applicants requesting Direct Loan funds, Match, as applicable, must be documented with a letter from the anticipated provider of Match indicating the provider's

willingness and ability to make a financial commitment should the Development receive an award of Direct Loan funds. The information provided must be consistent with all other documentation in the Application.

(8) Operating and Development Cost Documentation.

(A) Fifteen-year Pro forma. All Applications must include a 15-year pro forma estimate of operating expenses, in the form provided by the Department. Any "other" debt service included in the pro forma must include a description.

(B) Utility Allowances. This exhibit, as provided in the Application, must be submitted along with documentation from the source of the utility allowance estimate used in completing the Rent Schedule provided in the Application. This exhibit must clearly indicate which utility costs are included in the estimate and must comply with the requirements of §10.614 of this title (relating to Utility Allowances), including deadlines for submission. Where the Applicant uses any method that requires Department review, documentation indicating that the requested method has been granted by the Department must be included in the Application.

(C) Operating Expenses. This exhibit, as provided in the Application, must be submitted indicating the anticipated operating expenses associated with the Development. Any expenses noted as "other" in any of the categories must include a description. "Miscellaneous" or other nondescript designations are not acceptable.

(D) Rent Schedule. This exhibit, as provided in the Application, must:

_____ (i) indicate the type of Unit designation based on the Unit's rent and income restrictions. ~~The _____~~
_____ (ii) reflect the rent and utility limits available at the time the Application is submitted ~~should be used to complete this exhibit. Gross;~~

_____ (iii) reflect gross rents ~~that~~ cannot exceed the maximum rent limits unless documentation of project-based rental assistance is provided and rents are consistent with such assistance and applicable legal requirements. ~~The _____~~

_____ (iv) have a Unit mix and net rentable square footages ~~must be that are~~ consistent with the site plan and architectural drawings. ~~For Units restricted in connection with;~~

_____ (v) if applying for Direct Loans, the Loan funds:

_____ (I) Direct Loan-restricted Units will generally be designated "floating" unless specifically disallowed under the program specific rules. ~~For Applications that propose utilizing Direct Loan funds;~~

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

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

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

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

_____ (vi) if proposing to elect income averaging, Units restricted by any fund source other than housing

tax credits must be specifically identified, and all restricted Units, regardless of fund source, must be included in the average calculation.

(E) Development Costs. This exhibit, as provided in the Application, must include the contact information for the person providing the cost estimate and must meet the requirements of clauses (i) and (ii) of this subparagraph.

(i) Applicants must provide a detailed cost breakdown of projected Site Work costs (excluding site amenities), if any, prepared by a Third Party engineer or cost estimator. If Site Work costs (excluding site amenities) exceed \$15,000 per Unit and are included in Eligible Basis, a letter must be provided from a certified public accountant allocating which portions of those site costs should be included in Eligible Basis.

(ii) If costs for Off-Site Construction are included in the budget as a line item, or embedded in the site acquisition contract, or referenced in the utility provider letters, then an Off-Site Cost Breakdown prepared by a Third Party engineer must be provided. The certification from a Third Party engineer must describe the necessity of the off-site improvements, including the relevant requirements of the local jurisdiction with authority over building codes, and the source of their cost estimate. If any Off-Site Construction costs are included in Eligible Basis, a letter must be provided from a certified public accountant allocating which portions of those costs should be included in Eligible Basis. If off-site costs are included in Eligible Basis based on PLR 200916007, a statement of findings from a CPA must be provided which describes the facts relevant to the Development and affirmatively certifies that the fact pattern of the Development matches the fact pattern in PLR 200916007.

(F) Rental Assistance/Subsidy. (§2306.6705(4)) If rental assistance, an operating subsidy, an annuity, or an interest rate reduction payment is proposed to exist or continue for the Development, any related contract or other agreement securing those funds ~~or proof of application for such funds must be provided.~~ Such documentation shall, at a minimum, identify the source and annual amount of the funds, the number of units receiving the funds, and the term and expiration date of the contract or other agreement.

(G) Occupied Developments. The items identified in clauses (i) - (vi) of this subparagraph must be submitted with any Application where any structure on the Development Site is occupied at any time after the Application Acceptance Period begins or if the Application proposes the demolition of any housing occupied at any time after the Application Acceptance Period begins. If the Application includes a request for Direct Loan funds, Applicants must follow the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 ~~(URA)~~ and other HUD requirements including Section 104(d) of the Housing and Community Development Act. HUD Handbook 1378 provides guidance and template documents. Failure to follow URA or 104(d) requirements will make the proposed Development ineligible for Direct Loan funds and may lead to penalty under §13.11(b) of this title (relating to Multifamily Direct Loan Rule). If one or more of the items described in clauses (i) - (vi) of this subparagraph is not applicable based upon the type of occupied structures on the Development Site, the Applicant must provide an explanation of such non- applicability. Applicant must submit:

(i) at least one of the items identified in subclauses (I) - (IV) of this clause:

(I) Historical monthly operating statements of the Existing Residential Development for 12 consecutive months ending not more than three months from the first day of the Application Acceptance Period;

(II) The two most recent consecutive annual operating statement summaries;

(III) The most recent consecutive six months of operating statements and the most recent available annual operating summary; or

(IV) All monthly or annual operating summaries available; and

(ii) a rent roll not more than six months old as of the first day the Application Acceptance Period that discloses the terms and rate of the lease, rental rates offered at the date of the rent roll, Unit mix, and any vacant units;

(iii) a written explanation of the process used to notify and consult with the tenants in preparing the Application; (§2306.6705(6))

(iv) a relocation plan outlining relocation requirements and a budget with an identified funding source; (§2306.6705(6))

(v) any documentation necessary for the Department to facilitate, or advise an Applicant with respect to or to ensure compliance with the Uniform Relocation Act and any other relocation laws or regulations as may be applicable; and

(vi) if applicable, evidence that the relocation plan has been submitted to all appropriate legal or governmental agencies or bodies. (§2306.6705(6))

(9) Architectural Drawings. All Applications must include the items identified in subparagraphs (A) – (D) of this paragraph, unless specifically stated otherwise, and must be consistent with all applicable exhibits throughout the Application. The drawings must have a legible scale and show the dimensions of each perimeter wall and floor heights.

(A) For all Developments a site plan must be submitted that includes the items identified in clauses (i) - (xii) of this subparagraph:

(i) states the size of the site on its face;

(ii) includes a Unit and building type table matrix that is consistent with the Rent Schedule and Building/Unit Configuration forms provided in the Application in labeling buildings and Units;

(iii) includes a table matrix specifying the square footage of Common Area space on a building by building basis;

(iv) identifies all residential and common buildings in place on the Development Site and labels them consistently with the Rent Schedule and Building/Unit Type Configuration forms provided in the Application;

(v) shows the locations (by Unit and floor) of mobility and hearing/visual accessible Units (unless included in residential building floor plans);

(vi) clearly delineates the flood plain boundary lines or states there is no floodplain;

(vii) indicates placement of detention/retention pond(s) or states there are no detention ponds;

(viii) describes, if applicable, how flood mitigation or other required mitigation will be accomplished;

(ix) indicates the location and number of parking spaces, garages, and carports;

(x) indicates the location and number of accessible parking spaces, garages, and carports, including van accessible spaces;

(xi) includes information regarding local parking requirements; and

(xii) indicates compliant accessible routes or if a route is not accessible a cite to the provision in the Fair Housing Design Manual providing for its exemption.

(B) Building floor plans must be submitted for each building type. Building floor plans must include the locations of the accessible Units and must also include square footage calculations for balconies, breezeways, corridors and any other areas not included in net rentable area;

(C) Unit floor plans for each type of Unit must be included in the Application and must include the square footage for each type of Unit. Unit floor plans must be submitted for the accessible Units. Applications for Adaptive Reuse are only required to include Unit floor plans for each distinct floor plan such as one-

Bedroom, or two-Bedroom, and for all floor plans that vary in Net Rentable Area by 10% from the typical floor plan; and

(D) Elevations must be submitted for each side of each building type (or include a statement that all other sides are of similar composition as the front) and include a percentage estimate of the exterior composition and proposed roof pitch. Applications for Rehabilitation and Adaptive Reuse may submit photographs if the Unit configurations are not being altered and post-renovation drawings must be submitted if Unit configurations are proposed to be altered.

(10) Site Control.

(A) Evidence that the Development Owner has Site Control must be submitted. If the evidence is not in the name of the Development Owner, then an Affiliate of the Development Owner must have Site Control that allows for an ability to assign the Site Control to the Development Owner. All of the sellers of the proposed Property for the 36 month period prior to the first day of the Application Acceptance Period and their relationship, if any, to members of the Development Team must be identified at the time of Application. The Department may request documentation at any time after submission of an Application of the Development Owner's ability to compel title of any Affiliated property acquisition(s) and the Development Owner must be able to promptly provide such documentation or the Application, award, or Commitment may be terminated. The Department acknowledges and understands that the Property may have one or more encumbrances at the time of Application submission and the Department will take into account whether any such encumbrance is reasonable within the legal and financial ability of the Development Owner to address without delaying development on the timeline contemplated in the Application. Tax-Exempt Bond Lottery Applications must have Site Control valid through December 1 of the prior program year with the option to extend through March 1 of the current program year.

(B) In order to establish Site Control, one of the items described in clauses (i) - (iii) of this subparagraph must be provided. In the case of land donations, Applicants must demonstrate that the entity donating the land has Site Control as evidenced through one of the items described in clauses (i) - (iii) of this subparagraph or other documentation acceptable to the Department.

(i) a recorded warranty deed vesting indefeasible title in the Development Owner or, if transferrable to the Development Owner, an Affiliate of the Owner, with corresponding executed settlement statement (or functional equivalent for an existing lease with at least 45 years remaining); or

(ii) a contract or option for lease with a minimum term of 45 years that includes a price; address ~~and~~/or legal description; proof of consideration in the form specified in the contract; and expiration date; or

(iii) a contract for sale or an option to purchase that includes a price; address ~~and~~/or legal description; proof of consideration in the form specified in the contract; and expiration date.

(C) If the acquisition can be characterized as an identity of interest transaction, as described in §11.302 of this chapter, regarding Underwriting Rules and Guidelines, then the documentation required as further described therein must be submitted in addition to that of subparagraph (B) of this paragraph.

(D) If ingress and egress to a public right of way are not part of the Property described in the site control documentation, the Applicant must provide evidence of an easement, leasehold, or similar documented access, along with evidence that the fee title owner of the property agrees that the LURA may extend to the access easement by the time of Commitment-, Determination Notice or Contract (as applicable).

(E) If control of the entire proposed Development Site requires that a plat or right of way be vacated to remove a right of way or similar dedication, evidence that the vacation/re-platting process has started must be included in the Application, and evidence of control of the entire Development Site must be provided by the time of Commitment-, Determination Notice or Contract (as applicable).

(11) Zoning. (§2306.6705(5)) Acceptable evidence of zoning for all Developments must include one of subparagraphs (A) - (D) of this paragraph. In instances where annexation of a Development Site occurs while the Application is under review, the Applicant must submit evidence of appropriate zoning with the Commitment or Determination Notice. Letters evidencing zoning status must be no more than 6-months old at Application submission, except where such evidence is for an area where there is no zoning and such letters must be updated annually by the political subdivision.

(A) No Zoning Ordinance in Effect. The Application must include a letter from a local government official with appropriate jurisdiction stating that the Development is located within the boundaries of a political subdivision that has no zoning; or

(B) Zoning Ordinance in Effect. The Application must include a letter from a local government official with appropriate jurisdiction stating the Development is permitted under the provisions of the zoning ordinance that applies to the location of the Development; or

(C) Requesting a Zoning Change. The Application must include evidence in the form of a letter from a local government official with jurisdiction over zoning matters that the Applicant or Affiliate has made formal application for a required zoning change and that the jurisdiction has received a release whereby the Applicant has agreed to hold the political subdivision and all other parties harmless in the event the appropriate zoning is not granted. Documentation of final approval of appropriate zoning must be submitted to the Department with the Commitment or Determination Notice; or

(D) Zoning for Rehabilitation Developments. In an area with zoning, the Application must include documentation of current zoning. If the Property is currently conforming but with an overlay that would make it a non-conforming use as presently zoned, the Application must include a letter from a local government official with appropriate jurisdiction which addresses the items in clauses (i) - (v) of this subparagraph:

- (i) a detailed narrative of the nature of non-conformance;
- (ii) the applicable destruction threshold;
- (iii) that it will allow the non-conformance;
- (iv) Owner's rights to reconstruct in the event of damage; and
- (v) penalties for noncompliance.

(12) Title Commitment/Policy. A title commitment or title policy must be submitted that includes a legal description that is consistent with the Site Control. If the title commitment or policy is dated more than six months prior to the date of Application submission or the first day of the Application Acceptance Period for Competitive HTC Applications, then a letter from the title company indicating that nothing further has transpired during the six-month period on the commitment or policy must be submitted.

(A) The title commitment must list the name of the Development Owner as the proposed insured and list the seller or lessor as the current owner of the Development Site.

(B) The title policy must show that the ownership (or leasehold) of the Development Site is vested in the

name of the Development Owner.

(13) Ownership Structure and Previous Participation.

(A) The Department assumes that the Applicant will be able to form any one or more business entities, such as a limited partnership, that are to be engaged in the ownership of a Development as represented in the Application, and that all necessary rights, powers, and privileges including, but not limited to, Site Control will be transferable to that entity. The formation of the ownership entity, qualification to do business (if needed), and transfer of any such rights, powers, and privileges must be accomplished as required in this chapter and 10 TAC Chapters 12 and 13, as applicable.

(B) Organizational Charts. A chart must be submitted that clearly illustrates the organizational structure of the proposed Development Owner and of any Developer and Guarantor, identifying all Principals thereof and providing the names and ownership percentages of all Persons having an ownership interest in the Development Owner, Developer and Guarantor, as applicable, whether directly or through one or more subsidiaries, whether or not they have Control. Persons having Control should be specifically identified on the Chart. Individual board members and executive directors of nonprofit entities, governmental bodies, and corporations, as applicable, must be included in this exhibit and trusts must list all beneficiaries that have the legal ability to control or direct activities of the trust and are not just financial beneficiaries. The List of Organizations form, as provided in the Application, must include all Persons identified on the organizational charts, and further identify which of those Persons listed exercise Control of the Development.

(C) Previous Participation. Evidence must be submitted that each individual and entity shown on the organizational charts described in subparagraph (A) of this paragraph has provided a copy of the completed previous participation information to the Department. Individual Principals of such entities identified on the organizational chart and on the List of Organizations form, must provide the previous participation information, unless excluded from such requirement pursuant to Chapter 1 Subchapter C of this title (relating to Previous Participation and Executive Award Review and Advisory Committee). The information must include a list of all Developments that are, or were, previously under ownership or Control of the Applicant and/or each Principal, including any Person providing the required experience. All participation in any Department funded or monitored activity, including non-housing activities, as well as Housing Tax Credit developments or other programs administered by other states using state or federal programs must be disclosed. The individuals providing previous participation information must authorize the parties overseeing such assistance to release compliance histories to the Department.

(D) Direct Loan. In addition to the information required in (B) and (C) of this subparagraph, if the Applicant is applying for Direct Loan funds then the Applicant must also include the definitions of Person, Affiliate, Principal, and Control found in 2 CFR Part 180, when completing the organizational chart and the Previous Participation information.

(14) Nonprofit Ownership. Applications that involve a §501(c)(3) or (4) nonprofit, housing finance corporation or public facility corporation as the General Partner or Owner shall submit the documentation identified in subparagraph (A) or (B) of this paragraph, as applicable. Additionally, a resolution approved at a regular meeting of the majority of the board of directors of the nonprofit, indicating their awareness of the ~~organization's~~ organization's participation in each specific Application, and naming all members of the board and employees who may act on its behalf, must be provided.

(A) Competitive HTC Applications for the Nonprofit Set-Aside. Applications for Competitive Housing Tax Credits involving a §501(c)(3) or (4) nonprofit General Partner and which meet the Nonprofit Set-Aside requirements, must submit all of the documents described in clauses (i) to (v) of this subparagraph and indicate the nonprofit status on the carryover documentation and IRS Forms 8609. (§2306.6706) Applications that include an affirmative election to not be treated under the Nonprofit Set-Aside and a certification that they do not expect to receive a benefit in the allocation of tax credits as a result of being Affiliated with a nonprofit, only need to submit the documentation in subparagraph (B) of this paragraph.

(i) An IRS determination letter which states that the nonprofit organization has been determined by the Internal Revenue Service to be tax-exempt under §501(c)(3) or (4) of the Code;

(ii) The Nonprofit Participation exhibit as provided in the Application, including a list of the names and contact information for all board members, directors, and officers;

(iii) A Third Party legal opinion stating:

(I) That the nonprofit organization is not Affiliated with or Controlled by a for-profit organization and the basis for that opinion;

(II) That the nonprofit organization is eligible, as further described, for a Housing Credit Allocation from the Nonprofit Set-Aside pursuant to Code, §42(h)(5) and the basis for that opinion;

(III) That one of the exempt purposes of the nonprofit organization is to provide low-income housing;

(IV) That the nonprofit organization prohibits a member of its board of directors, other than a chief staff member serving concurrently as a member of the board, from receiving material compensation for service on the board. If the Application includes a request for Community Housing Development Corporation (CHDO) funds, no member of the board may receive compensation, including the chief staff member;

(V) That the Qualified Nonprofit Development will have the nonprofit entity or its nonprofit Affiliate or subsidiary be the Developer or co-Developer as evidenced in the development agreement; and

(VI) That the nonprofit organization has the ability to do business as a nonprofit in Texas;

(iv) a copy of the nonprofit organization's most recent financial statement as prepared by a Certified Public Accountant; and

(v) evidence in the form of a certification that a majority of the members of the nonprofit organization's board of directors principally reside:

(I) in this state, if the Development is located in a Rural Area; or

(II) not more than ninety (90) miles from the Development, if the Development is not located in a Rural Area.

(B) All Other Applications. Applications that involve a §501(c)(3) or (4) nonprofit, housing finance corporation or public facility corporation as the General Partner or Owner must submit an IRS determination letter which states that the nonprofit organization has been determined by the Internal Revenue Service to be tax-exempt under §501(c)(3) or (4) of the Code; and the Nonprofit Participation exhibit as provided in the Application. If the Application involves a nonprofit that is not exempt from taxation under §501(c)(3) or (4) of the Code, then they must disclose in the Application the basis of their nonprofit status. Housing finance corporations or public facility corporations that do not have such IRS determination letter shall submit documentation evidencing creation under ~~Chapter 394~~their respective chapters of the Texas Local Government Code and corresponding citation for an exemption from taxation.

(15) Feasibility Report. This report, compiled by the Applicant or Third Party Consultant, and prepared in accordance with this paragraph, which reviews site conditions and development requirements of the Development and Development Site, is required and must meet all of the criteria provided in subparagraphs (A) to (F) of this paragraph.

(A) For all Applications, careful focus and attention should be made regarding any atypical items materially impacting costs or the successful and timely execution of the Development plan. The report must also include the following statement, “any person signing this Report acknowledges that the Department may publish the full report on the ~~Department’s~~Department's website, release the report in response to a request for public information and make other use of the report as authorized by law.”.

(B) An Executive Summary must provide a narrative overview of the Development in sufficient detail that would help a reviewer of the Application better understand the site, the site plan, off site requirements (including discussion of any seller contributions or reimbursements), any other unique development requirements, and their impact on Site Work and Off- Site Construction costs. It should specifically describe any atypical or unusual factors that will impact site design or costs.

(C) The Report should contain a general statement regarding the level of due diligence that has been done relating to site development (including discussions with local government development offices). Where ordinances or similar information is required, provide website links rather than copies of the ordinance. Additionally, it should contain:

- (i) a summary of zoning requirements,
- (ii) subdivision requirements,
- (iii) property identification number(s) and millage rates for all taxing jurisdictions,
- (iv) development ordinances,
- (v) fire department requirements,
- (vi) site ingress and egress requirements, and
- (vii) building codes, and local design requirements impacting the Development.

(D) Survey as defined by the Texas Society of Professional Surveyors in their Manual of Practice for Land Surveying in Texas (Category 1A - Land Title Survey or Category 1B - Standard Land Boundary Survey). ~~Surveys~~Surveys (excluding those for Rehabilitation Developments) may not be older than 24 months from the beginning of the Application Acceptance Period.

(E) Preliminary site plan for New Construction or Adaptive Reuse Developments prepared by the civil engineer with a statement that the plan materially adheres to all applicable zoning, site development, and building code ordinances. The site plan must identify all structures, site amenities, parking spaces and driveways, topography (using either existing seller topographic survey or U.S. Geological Survey (USGS)/other database topography), site drainage and detention, water and waste water utility tie-ins, general placement of retaining walls, set- back requirements, and any other typical or locally required items. Off-site improvements required for utilities, detention, access or other requirement must be shown on the site plan or ancillary drawings.

(F) Architect or civil engineer prepared statement describing the entitlement, site development permitting process and timing, building permitting process and timing, and an itemization specific to the Development of total anticipated impact, site development permit, building permit, and other required fees.

§11.205 Required Third Party Reports

The Environmental Site Assessment, Scope and Cost Review, Appraisal (if applicable), and the Market Analysis must be submitted no later than the Third Party Report Delivery Date as identified in §11.2(b) of this chapter (relating to Tax-Exempt Bond and Direct Loan Development Dates and Deadlines). For

Competitive HTC Applications, the Environmental Site Assessment, Scope and Cost Review, Appraisal (if applicable), and the Primary Market Area map (with definition based on census tracts, and site coordinates in decimal degrees, area of PMA in square miles, and list of census tracts included) must be submitted no later than the Full Application Delivery Date as identified in §11.2(a) of this title (relating to Competitive HTC Deadlines Program Calendar) and the Market Analysis must be submitted no later than the Market Analysis Delivery Date as identified in §11.2(a) of this chapter.

For Competitive HTC Applications, if the reports, in their entirety, are not received by the deadline, the Application will be terminated. An electronic copy of the report in the format of a single file containing all information and exhibits clearly labeled with the report type, Development name and Development location are required. All Third Party reports must be prepared in accordance with Subchapter D of this chapter (relating to Underwriting and Loan Policy). The Department may request additional information from the report provider or revisions to the report as needed. In instances of non-response by the report provider, the Department may substitute in-house analysis. The Department is not bound by any opinions expressed in the report.

(1) Environmental Site Assessment. This report, required for all Developments and prepared in accordance with the requirements of §11.305 of this chapter (relating to Environmental Site Assessment Rules and Guidelines), must not be dated more than 12 months prior to the date of Application submission for non-Competitive Applications, or the first day of the Application Acceptance Period for Competitive HTC Applications. If this timeframe is exceeded, then a letter or updated report must be submitted, dated not more than six months prior to the date of Application submission or the first day of the Application Acceptance Period for Competitive HTC Applications from the Person or organization which prepared the initial assessment confirming that the site has been re-inspected and reaffirming the conclusions of the initial report or identifying the changes since the initial report.

(A) Existing Developments funded by USDA will not be required to supply this information; however, it is the Applicant's responsibility to ensure that the Development is maintained in compliance with all state and federal environmental hazard requirements.

(B) If the report includes a recommendation that an additional assessment be performed, then a statement from the Applicant must be submitted with the Application indicating that those additional assessments and recommendations will be performed prior to closing. If the assessments require further mitigating recommendations, then evidence indicating that the mitigating recommendations have been carried out must be submitted at cost certification.

(2) Market Analysis. The Market Analysis, required for all Developments and prepared in accordance with the requirements of §11.303 of this chapter (relating to Market Analysis Rules and Guidelines), must not be dated more than six months prior to the date of Application submission or the first day of the Application Acceptance Period for Competitive HTC Applications. If the report is older than six months, but not more than 12 months prior to the date of Application submission or the first day of the Application Acceptance Period for Competitive HTC Applications, the Qualified Market Analyst that prepared the report may provide a statement that reaffirms the findings of the original Market Analysis. The statement may not be dated more than six months prior to the date of Application submission or the first day of the Application Acceptance Period for Competitive HTC Applications and must be accompanied by the original Market Analysis.

(A) The report must be prepared by a disinterested Qualified Market Analyst approved by the Department

in accordance with the approval process outlined in §11.303 of this chapter.

(B) Applications in the USDA Set-Aside proposing Rehabilitation with residential structures at or above 80% occupancy at the time of Application submission, the appraisal, required for Rehabilitation Developments and Identity of Interest transactions prepared in accordance with §11.304 of this chapter (relating to Appraisal Rules and Guidelines), will satisfy the requirement for a Market Analysis; however, the Department may request additional information as needed. (§2306.67055; §42(m)(1)(A)(iii))

(C) It is the responsibility of the Applicant to ensure that this analysis forms a sufficient basis for the Applicant to be able to use the information obtained to ensure that the Development will comply with fair housing laws.

(3) Scope and Cost Review (SCR). This report, required for Rehabilitation (excluding Reconstruction) and Adaptive Reuse Developments and prepared in accordance with the requirements of §11.306 of this chapter (relating to Scope and Cost Review Guidelines), must not be dated more than six months prior to the date of Application submission or the first day of the Application Acceptance Period for Competitive HTC Applications. If the report is older than six months, but not more than 12 months prior to the date of Application submission or the first day of the Application Acceptance Period for Competitive HTC Applications, the report provider may provide a statement that reaffirms the findings of the original SCR. The statement may not be dated more than six months prior to the date of Application submission or the first day of the Application Acceptance Period for Competitive HTC Applications and must be accompanied by the original SCR. For Developments which require a capital needs assessment from USDA the capital needs assessment may be substituted for the SCR and may be more than six months old, as long as USDA has confirmed in writing that the existing capital needs assessment is still acceptable and it meets the requirements of §11.306 of this chapter. All Rehabilitation Developments financed with Direct Loans must also submit a capital needs assessment estimating the useful life of each major system. This assessment must include a comparison between the local building code and the International Existing Building Code of the International Code Council. The report must be accompanied by the Department's SCR Supplement in the form of an excel workbook as published on the ~~Department's~~ Department's website.

(4) Appraisal. This report, required for all Rehabilitation and Adaptive Reuse Developments and prepared in accordance with the requirements of §11.304 of this chapter (relating to Appraisal Rules and Guidelines), is required for any Application claiming any portion of the building acquisition in Eligible Basis, and Identity of Interest transactions pursuant to Subchapter D of this chapter, must not be dated more than six months prior to the date of Application submission or the first day of the Application Acceptance Period for Competitive HTC Applications. For Developments that require an appraisal from USDA, the appraisal may be more than six months old, as long as USDA has confirmed in writing that the existing appraisal is still acceptable.

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

The Board's decisions regarding awards shall be based upon the Department's staff and the Board's evaluation of the proposed Developments' consistency with, and fulfillment of, the criteria and requirements set forth in this chapter, Chapter 13 of this title (relating to the Multifamily Direct Loan Rule) and other applicable Department rules and other applicable state, federal and local legal requirements, whether established in statute, rule, ordinance, NOFA, official finding, or court order. The Board shall document the reasons for each Application's selection, including any discretionary factors used in making its determination, including good cause, and the reasons for any decision that conflicts with the

recommendations made by Department staff. Good cause includes the Board's decision to apply discretionary factors where authorized. The Department reserves the right to reduce the amount of funds requested in an Application, condition the award recommendation or terminate the Application based on the Applicant's inability to demonstrate compliance with program requirements.

§11.207. Waiver of Rules-

An Applicant may request a waiver from the Board in writing at or prior to the submission of the pre-application (if applicable) or the Application or subsequent to an award. Waiver requests on Competitive HTC Applications will not be accepted between submission of the Application and any award for the Application. Staff may identify and initiate a waiver request as part of another Board action request. Where appropriate, the Applicant must submit with the requested waiver any plans for mitigation or alternative solutions. Any such request for waiver must be specific to the unique facts and circumstances of an actual proposed Development and must be submitted to the Department in the format required in the Multifamily Programs Procedures Manual. Any waiver, if granted, shall apply solely to the Application and shall not constitute a general modification or waiver of the rule involved. All waiver requests must meet the requirements of paragraphs (1) and (2) of this subsection.

(1) A waiver request made at or prior to pre-application or Application must establish that the need for the waiver is not within the control of the Applicant. In applicable circumstances, this may include limitations of local building or zoning codes, limitations of existing building structural elements for Adaptive Reuse or Rehabilitation (excluding Reconstruction) Developments, required amenities or design elements in buildings designated as historic structures that would conflict with retaining the historic nature of the building(s), or provisions of the design element or amenity that would not benefit the tenants due to limitations of the existing layout or design of the units for Adaptive Reuse or Rehabilitation (excluding Reconstruction) Developments. A recommendation for a waiver may be subject to the ~~Applicant's~~ Applicant's provision of alternative design elements or amenities of a similar nature or that serve a similar purpose. Waiver requests for items that were elected to meet scoring criteria or where the Applicant was provided a menu of options to meet the requirement will not be considered to satisfy this paragraph as such waiver request would be within the ~~Applicant's~~ Applicant's control.

(2) The waiver request must establish how, by granting the waiver, it better serves the policies and purposes articulated in Tex. ~~Gov't~~ Gov't Code, §§2306.001, 2306.002, 2306.359, and 2306.6701, (which are general in nature and apply to the role of the Department and its programs, including the Housing Tax Credit program) than not granting the waiver.

(3) The Board may not grant a waiver to provide directly or implicitly any forward commitments or to waive any requirement contained in statute. The Board may grant a waiver that is in response to a natural, federally declared disaster that occurs after the adoption of the Qualified Allocation Plan to the extent authorized by a governor declared disaster proclamation suspending regulatory requirements.

SUBCHAPTER D UNDERWRITING AND LOAN POLICY

§11.301- General Provisions

–This subchapter applies to the underwriting, Market Analysis, appraisal, Environmental Site Assessment, Direct Loan, and Scope and Cost Review standards employed by the Department. This subchapter provides rules for the underwriting review of an affordable housing Development's financial feasibility and economic viability that ensures the most efficient allocation of resources while promoting and preserving the public interest in ensuring the long-term health of an awarded Application and the Department's portfolio. In addition, this subchapter guides staff in making recommendations to the Executive Award and Review Advisory Committee (EARAC or the Committee), Executive Director, and the Board to help ensure procedural consistency in the determination of Development feasibility (Texas Government Code, §§2306.081(c), 2306.185, and 2306.6710(d)). Due to the unique characteristics of each Development, the interpretation of the rules and guidelines described in this subchapter is subject to the discretion of the Department and final determination by the Board.

§11.302- Underwriting Rules and Guidelines

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(a) General Provisions. Pursuant to Tex. ~~Gov't~~Gov't Code, §2306.148 and §2306.185(b), the Board is authorized to adopt underwriting standards as set forth in this section. Furthermore, for Housing Credit Allocation, Code §42(m)(2), requires the tax credits allocated to a Development not to exceed the amount necessary to assure feasibility. Additionally, 24 CFR Parts 92 and 93, as further described in CPD Notice 15-11 require the Department to adopt rules and standards to determine the appropriate Multifamily Direct Loan feasibility. The rules adopted pursuant to the Tex. ~~Gov't~~Gov't Code and the Code are developed to result in an Underwriting Report (Report) used by the Board in decision making with the goal of assisting as many Texans as possible by providing no more financing than necessary based on an independent analysis of Development feasibility. The Report generated in no way guarantees or purports to warrant the actual performance, feasibility, or viability of the Development.

(b) Report Contents. The Report provides a synopsis and reconciliation of the Application information submitted by the Applicant. For the purpose of this subchapter the term Application includes additional documentation submitted after the initial award of funds that is relevant to any subsequent reevaluation. The Report contents will be based upon information that is provided in accordance with and within the timeframes set forth in this chapter, 10 TAC Chapters 11, 12, or 13, or in a Notice of Funds Availability (NOFA), as applicable.

(c) Recommendations in the Report. The conclusion of the Report, if being recommended, includes a recommended award of funds or Housing Credit Allocation Amount and states any feasibility or other conditions to be placed on the award. The award amount is based on the lesser of the amounts determined using the methods in paragraphs (1) to (3) of this subsection:

(1) Program Limit Method. For Housing Credit Allocations, this method is based upon calculation of Eligible Basis after applying all cost verification measures and program limits as described in this section. The Applicable Percentage used is defined in §11.1(d) of this chapter (relating to Definitions). For Department programs other than Housing Tax Credits, this method is based upon calculation of the funding limit in current program rules or NOFA at the time of underwriting.

(2) Gap Method. This method evaluates the amount of funds needed to fill the gap created by Total

Housing Development Cost less total non-Department-sourced funds or Housing Tax Credits. In making this determination, the Underwriter resizes any anticipated Deferred Developer Fee downward (but not less than zero) before reducing the amount of Department funds or Housing Tax Credits. In the case of Housing Tax Credits, the syndication proceeds needed to fill the gap in permanent funds are divided by the syndication rate to determine the amount of Housing Tax Credits. In making this determination and based upon specific conditions set forth in the Report, the Underwriter may assume adjustments to the financing structure (including treatment of a Cash Flow loan as if fully amortizing over its term) or make adjustments to any Department financing, such that the cumulative Debt Coverage Ratio (DCR) conforms to the standards described in this section. For Housing Tax Credit Developments at cost certification, timing adjusters may be considered as a reduction to equity proceeds for this purpose. Timing adjusters must be consistent with and documented in the original partnership agreement (at admission of the equity partner) but relating to causes outside of the ~~Developer's~~Developer's or ~~Owner's~~Owner's control. The equity partner must provide a calculation of the amount of the adjuster to be used by the Underwriter.

(3) The Amount Requested. The amount of funds that is requested by the Applicant. For Housing Tax Credit Developments (exclusive of Tax-Exempt Bond Developments) this amount is limited to the amount requested in the original Application documentation.

(d) Operating Feasibility. The operating feasibility of a Development funded by the Department is tested by analyzing its Net Operating Income (NOI) to determine the ~~Development's~~Development's ability to pay debt service and meet other financial obligations throughout the Affordability Period. NOI is determined by subtracting operating expenses, including replacement reserves and taxes, from rental and other income sources.

(1) Income. In determining the first year stabilized pro forma, the Underwriter evaluates the reasonableness of the Applicant's income pro forma by determining the appropriate rental rate per unit based on subsidy contracts, program limitations including but not limited to Utility Allowances, actual rents supported by rent rolls and Market Rents and other market conditions. Miscellaneous income, vacancy and collection loss limits as set forth in subparagraphs (B) and (C) of this paragraph, respectively, are used unless well-documented support is provided and independently verified by the Underwriter.

(A) Rental Income. The Underwriter will review the Applicant's proposed rent schedule and determine if it is consistent with the representations made throughout the Application. The Underwriter will independently calculate a Pro Forma Rent for comparison to the Applicant's estimate in the Application.

(i) Market Rents. The Underwriter will use the Market Analyst's conclusion of Market Rent if reasonably justified and supported by the attribute adjustment matrix of Comparable Units as described in §11.303 of this chapter (relating to Market Analysis Rules and Guidelines). Independently determined Market Rents by the Underwriter may be used based on rent information gained from direct contact with comparable properties, whether or not used by the Market Analyst and other market data sources. For a Development that contains less than 15% unrestricted units, the Underwriter will limit the Pro Forma Rents to the lesser of Market Rent or the Gross Program Rent at 60% AMI, or 80% if the Applicant will make the Income Average election. As an alternative, if the Applicant submits Market Rents that are up to 30% higher than the Gross Program Rent at 60% AMGI gross rent, or Gross Program Rent at 80% AMGI gross rent and the Applicant will make the Income Average election, and the Applicant submits an investor commissioned market study with the application, the Underwriter has the discretion to use the market rents supported by the investor commissioned market study in consideration of the independently determined rents. The Applicant must also provide a statement by the investor indicating that they have reviewed the market

study and agree with its conclusions.

(ii) Gross Program Rent. The Underwriter will use the Gross Program Rents for the year that is most current at the time the underwriting begins. When underwriting for a simultaneously funded competitive round, all Applications are underwritten with the Gross Program Rents for the same year. If Gross Program Rents are adjusted by the Department after the close of the Application Acceptance Period, but prior to publication of the Report, the Underwriter may adjust the Effective Gross Income (EGI) to account for any increase or decrease in Gross Program Rents for the purposes of determining the reasonableness of the Applicant's EGI.

(iii) Contract Rents. The Underwriter will review rental assistance contracts to determine the Contract Rents currently applicable to the Development. Documentation supporting the likelihood of continued rental assistance is also reviewed. The Underwriter will take into consideration the Applicant's intent to request a Contract Rent increase. At the discretion of the Underwriter, the Applicant's proposed rents may be used as the Pro Forma Rent, with the recommendations of the Report conditioned upon receipt of final approval of such an increase. Tenant-based vouchers or tenant-based rental assistance are not included as Income.

(iv) Utility Allowances. The Utility Allowances used in underwriting must be in compliance with all applicable federal guidance, and §10.614 of this title (relating to Utility Allowances). Utility Allowances must be calculated for individually metered tenant paid utilities.

(v) Net Program Rents. Gross Program Rent less Utility Allowance.

(vi) Actual Rents for existing Developments will be reviewed as supported by a current rent roll. For Unstabilized Developments, actual rents will be based on the most recent units leased with occupancy and leasing velocity considered. Actual rents may be adjusted by the Underwriter to reflect lease-up concessions and other market considerations.

(vii) Collected Rent. Represents the monthly rent amount collected for each Unit Type. For rent- assisted units, the Contract Rent is used. In absence of a Contract Rent, the lesser of the Net Program Rent, Market Rent or actual rent is used.

(B) Miscellaneous Income. All ancillary fees and miscellaneous secondary income, including but not limited to, late fees, storage fees, laundry income, interest on deposits, carport and garage rent, washer and dryer rent, telecommunications fees, and other miscellaneous income, are anticipated to be included in a \$5 to \$20 per Unit per month range. Exceptions may be made at the discretion of the Underwriter and must be supported by either the normalized operating history of the Development or other existing comparable properties within the same market area.

(i) The Applicant must show that a tenant will not be required to pay the additional fee or charge as a condition of renting a Unit and must show that the tenant has a reasonable alternative.

(ii) The Applicant's operating expense schedule should reflect an itemized offsetting line-item associated with miscellaneous income derived from pass-through utility payments, pass-through water, sewer and trash payments, and cable fees.

(iii) Collection rates of exceptional fee items will generally be heavily discounted.

(iv) If an additional fee is charged for the optional use of an amenity, any cost associated with the construction, acquisition, or development of the hard assets needed to produce the amenity must be excluded from Eligible Basis.

(C) Vacancy and Collection Loss. The Underwriter generally uses a normalized vacancy rate of 7.5% (5% vacancy plus 2.5% for collection loss). The Underwriter may use other assumptions based on conditions in the immediate market area. 100% project-based rental subsidy developments and other well documented cases may be underwritten at a combined 5% vacancy rate at the discretion of the Underwriter if the immediate market ~~area's~~area's historical performance reflected in the Market Analysis is consistently higher than a 95% occupancy rate.

(D) Effective Gross Income (EGI). EGI is the total of Collected Rent for all Units plus Miscellaneous Income less Vacancy and Collection Loss. If the ~~Applicant's~~Applicant's pro forma EGI is within 5% of the EGI independently calculated by the Underwriter, the Applicant's EGI is characterized as reasonable in the Report; however, for purposes of calculating the underwritten DCR the Underwriter's pro forma will be used unless the Applicant's pro forma meets the requirements of paragraph (3) of this subsection.

(2) Expenses. In determining the first year stabilized operating expense pro forma, the Underwriter evaluates the reasonableness of the Applicant's expense estimate based upon the characteristics of each Development, including the location, utility structure, type, the size and number of Units, and the Applicant's management plan. Historical, stabilized and certified financial statements of an existing Development or Third Party quotes specific to a Development will reflect the strongest data points to predict future performance. The Underwriter may review actual operations on the ~~Applicant's~~Applicant's other properties monitored by the Department, if any, or review the proposed management ~~company's~~company's comparable properties. The ~~Department's~~Department's database of properties located in the same market area or region as the proposed Development also provides data points; expense data from the Department's database is available on the Department's website. Data from the Institute of Real Estate Management's (IREM) most recent Conventional Apartments-Income/Expense Analysis book for the proposed Development's property type and specific location or region may be referenced. In some cases local or project-specific data such as PHA Utility Allowances and property tax rates are also given significant weight in determining the appropriate line item expense estimate. Estimates of utility savings from green building components, including on-site renewable energy, must be documented by an unrelated contractor or component vendor.

(A) General and Administrative Expense. (G&A)--Accounting fees, legal fees, advertising and marketing expenses, office operation, supplies, and equipment expenses. G&A does not include partnership related expenses such as asset management, accounting or audit fees. Costs of tenant services are not included in G&A.

(B) Management Fee. Fee paid to the property management company to oversee the operation of the Property and is most often based upon a percentage of EGI as documented in an existing property management agreement or proposal. Typically, 5% of EGI is used, though higher percentages for rural transactions may be used. Percentages as low as 3% may be used if well documented.

(C) Payroll Expense. Compensation, insurance benefits, and payroll taxes for on-site office, leasing and maintenance staff. Payroll does not include Third-Party security or tenant services contracts. Staffing specific to tenant services, security or other staffing not related to customary property operations should be itemized and included in other expenses or tenant services expense.

(D) Repairs and Maintenance Expense. Materials and supplies for the repairs and maintenance of the Development including Third-Party maintenance contracts. This line-item does not include costs that are

customarily capitalized that would result from major replacements or renovations.

(E) Utilities Expense. Gas and electric energy expenses paid by the Development. Estimates of utility savings from green building components, including on-site renewable energy, must be documented by an unrelated contractor or component vendor.

(F) Water, Sewer, and Trash Expense (WST). Includes all water, sewer and trash expenses paid by the Development.

(G) Insurance Expense. Cost of Insurance coverage for the buildings, contents, and general liability, but not health or workman's compensation insurance.

(H) Property Tax. Includes real property and personal property taxes but not payroll taxes.

(i) An assessed value will be calculated based on the capitalization rate published by the county taxing authority. If the county taxing authority does not publish a capitalization rate, a capitalization rate of 10% or a comparable assessed value may be used.

(ii) Other assessed values or property tax estimates may be used based on development specific factors as determined by the Underwriter.

(iii) If the Applicant proposes a property tax exemption or Payment in Lieu of Taxes (PILOT) agreement the Applicant must provide documentation in accordance with §10.402(d) of this title (relating to Documentation Submission Requirements at Commitment of Funds). At the ~~underwriter's~~ underwriter's discretion, such documentation may be required prior to Commitment or Determination Notice if deemed necessary.

(I) Replacement Reserves. Periodic deposits to a reserve account to pay for the future replacement or major repair of building systems and components (generally items considered capitalized costs). The Underwriter will use a minimum reserve of \$250 per Unit for New Construction and Reconstruction Developments and \$300 per Unit for all other Developments. The Underwriter may require an amount above \$300 for the Development based on information provided in the Scope and Cost Review (SCR) or, for existing USDA developments, an amount approved by USDA. The Applicant's assumption for reserves may be adjusted by the Underwriter if the amount provided by the Applicant is insufficient to fund capital needs as documented by the SCR during the first fifteen (15) years of the long term pro forma. Higher reserves may be used if documented by a primary lender or syndicator.

(J) Other Operating Expenses. The Underwriter will include other reasonable, customary and documented property-level operating expenses such as audit fees, security expense, telecommunication expenses (tenant reimbursements must be reflected in EGI) and ~~TDHCA's~~ TDHCA's compliance fees. For Developments financed by USDA, a Return to Owner (RTO) may be included as an operating expense in an amount consistent with the maximum approved by USDA or an amount determined by the Underwriter. This category does not include depreciation, interest expense, lender or syndicator's asset management fees, or other ongoing partnership fees.

(K) Resident Services. Resident services are not included as an operating expense or included in the DCR calculation unless:

(i) There is a documented financial obligation on behalf of the Owner with a unit of state or local government to provide resident supportive services at a specified dollar amount. The financial obligation must be identified by the permanent lender in their term sheet and the dollar amount of the financial

obligation must be included in the DCR calculation on the permanent lender's 15-year pro forma at Application. At cost certification and as a minimum, the estimated expenses underwritten at Application will be included in the DCR calculation regardless if actually incurred; or,

(ii) The Applicant demonstrates a history of providing comparable supportive services and expenses at existing affiliated properties within the local area. Except for Supportive Housing Developments, the estimated expense of supportive services must be identified by the permanent lender in their term sheet and included in the DCR calculation on the 15-year pro forma. At cost certification and as a minimum, the estimated expenses underwritten at Application will be included in the DCR calculation regardless if actually incurred;

(iii) On-site staffing or pro ration of staffing for coordination of services only, and not the provision of services, can be included as a supportive services expense without permanent lender documentation.

(L) Total Operating Expenses. The total of expense items described in 10 TAC 11.302(d)(2) subparagraphs (A) – (K) of this paragraph. If the Applicant's total expense estimate is within 5% of the final total expense figure calculated by the Underwriter, the Applicant's figure is characterized as reasonable in the Report; however, for purposes of calculating DCR, the Underwriter's independent calculation will be used unless the Applicant's first year stabilized pro forma meets the requirements of paragraph (3) of this subsection.

(3) Net Operating Income (NOI). The difference between the EGI and total operating expenses. If the Applicant's first year stabilized NOI figure is within 5% of the NOI calculated by the Underwriter, the Applicant's NOI is characterized as reasonable in the Report; however, for purposes of calculating the first year stabilized pro forma DCR, the Underwriter's calculation of NOI will be used unless the Applicant's first year stabilized EGI, total operating expenses, and NOI are each within 5% of the Underwriter's estimates. For Housing Tax Credit Developments at cost certification, actual NOI will be used as adjusted for stabilization of rents and extraordinary lease-up expenses. Permanent lender and equity partner stabilization requirements documented in the loan and partnership agreements will be considered in determining the appropriate adjustments and the NOI used by the Underwriter.

(4) Debt Coverage Ratio. DCR is calculated by dividing NOI by the sum of ~~scheduled loan principal and interest~~ the debt service payments for on all permanent debt sources or foreclosable lien(s) with scheduled and periodic payment requirements, including any required debt service on a Direct Loan subject to the applicable Notice of Funds Availability (NOFA) or other program requirements, and any on-going loan related fees such as credit enhancement fees or loan servicing fees. If executed loan documents do not exist, loan terms including principal and ~~for~~ interest payments are calculated based on the terms indicated in the most current term sheet(s). Otherwise, actual terms indicated in the executed loan documents will be used. Term sheet(s) must indicate the minimum DCR required by the lender for initial underwriting as well as for stabilization purposes. Unusual or non-traditional financing structures may also be considered.

(A) Interest Rate. The rate documented in the term sheet(s) or loan document(s) will be used for debt service calculations. Term sheets indicating a variable interest rate must provide ~~a breakdown of the~~ the base rate index or methodology for determining the variable rate index and any component rates comprising an all-in interest rate. The term sheet(s) must state the lender's underwriting interest rate assumption, or the Applicant must submit a separate statement from the lender with an estimate of the interest rate as of the date of such statement. At initial underwriting, the Underwriter may adjust the underwritten interest rate assumption based on market data collected on similarly structured transactions

or rate index history. Private Mortgage Insurance premiums and similar fees are not included in the interest rate but calculated on outstanding principal balance and added to the total debt service payment.

(B) Amortization Period. For purposes of calculating DCR, the permanent ~~lender's~~ lender's amortization period will be used if not less than 30 years and not more than 40 years. Up to 50 years may be used for federally sourced or insured loans. For permanent lender debt with amortization periods less than 30 years, 30 years will be used. For permanent lender debt with amortization periods greater than 40 years, 40 years will be used. For non-Housing Tax Credit transactions a lesser amortization period may be used if the ~~Department's funds are~~ Direct Loans will be fully amortized over the same period as the ~~primary senior~~ permanent lender debt.

(C) Repayment Period. For purposes of projecting the DCR over a 30 year period for Developments with permanent financing structures with balloon payments in less than 30 years, the Underwriter will carry forward debt service based on a full amortization at the interest rate stated in the term sheet(s).

(D) Acceptable Debt Coverage Ratio Range. Except as set forth in clauses (i) or (ii) of this subparagraph, the acceptable first year stabilized pro forma DCR ~~for all priority or foreclosable lien financing plus the Department's proposed financing~~ must be between a minimum of 1.15 and a maximum of 1.35 (maximum of 1.50 for Housing Tax Credit Developments at cost certification).

(i) If the DCR is less than the minimum, the recommendations of the Report may be based on a reduction to debt service and the Underwriter will make adjustments to the financing structure in the priority order presented in subclauses (I) ~~—(III) (IV)~~ of this clause subject to a ~~Direct Loan NOFA~~ requirements and program rules:

(I) A reduction to the ~~principal amount of a Direct Loan;~~

~~(II) In the case where the amount of the Direct Loan determined in subclause (I) of this clause is insufficient to balance the sources and uses;~~

~~(a) a reduction to the interest rate; and/or of a Direct Loan;~~

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

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

(IV) An assumed reduction in the permanent loan amount for non-Department funded loans based upon the rates and terms in the permanent loan term sheet(s) as long as they are within the ranges in subparagraphs (A) and (B) of this paragraph.

(ii) Except for Developments financed with a Direct Loan as the senior debt and the DCR is greater than the maximum, the recommendations of the Report may be based on an increase to debt service and the Underwriter will make adjustments to the assumed financing structure in the priority order presented in subclauses (I) - (III) of this clause subject to a ~~Direct Loan NOFA~~ requirements and program rules:

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

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

(III) an assumed increase in the permanent loan amount for non-Department ~~funded loans~~ proposed financing based upon the rates and terms in the permanent loan term sheet as long as they are within the ranges in subparagraphs (A) and (B) of this paragraph.

(iii) For Housing Tax Credit Developments, a reduction in the recommended Housing Credit Allocation

Amount may be made based on the Gap Method described in subsection (c)(2) of this section as a result of an increased debt assumption, if any.

(iv) For Developments financed with a Direct Loan subordinate to FHA financing, DCR on the Direct Loan will be calculated using 75% of the Surplus Cash (as defined by the applicable FHA program).

(v) The Underwriter may limit total debt service that is senior to a Direct Loan to produce an acceptable DCR on the Direct Loan and may limit total debt service if the Direct Loan is the senior primary debt.

(5) Long Term Pro forma. The Underwriter will create a 30-year operating pro forma using the criteria provided in subparagraphs (A) to (C) of this paragraph:

(A) The Underwriter's or ~~Applicant's~~Applicant's first year stabilized pro forma as determined by paragraph (3) of this subsection.

(B) A 2% annual growth factor is utilized for income and a 3% annual growth factor is utilized for operating expenses except for management fees that are calculated based on a percentage of each ~~year's~~year's EGI.

(C) Adjustments may be made to the long term pro forma if satisfactory support documentation is provided by the Applicant or as independently determined by the Underwriter.

(e) Total Housing Development Costs. The Department's estimate of the Total Housing Development Cost will be based on the Applicant's Development cost schedule to the extent that costs can be verified to a reasonable degree of certainty with documentation from the Applicant and tools available to the Underwriter. For New Construction Developments, the Underwriter's total cost estimate will be used unless the Applicant's Total Housing Development Cost is within 5% of the Underwriter's estimate. The Department's estimate of the Total Housing Development Cost for Rehabilitation Developments or Adaptive Reuse Developments will be based on the estimated cost provided in the SCR for the scope of work as defined by the Applicant and §11.306(a)(5) of this chapter (relating to SCR Guidelines); the Underwriter may make adjustments to the SCR estimated costs. If the Applicant's cost estimate is utilized and the Applicant's line item costs are inconsistent with documentation provided in the Application or program rules, the Underwriter may make adjustments to the Applicant's Total Housing Development Cost.

(1) Acquisition Costs. The

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

~~(i) For a non-identity of interest acquisition of land, or a Reconstruction or Adaptive Reuse Development, the underwritten acquisition cost is verified with~~(i) For a non-identity of interest acquisition of land, or a Reconstruction or Adaptive Reuse Development, the underwritten acquisition cost will be the amount(s) reflected in the Site Control document(s) for the Property. At Cost Certification, the acquisition cost used will be the actual amount paid as verified by the settlement statement. For Identify of Interest acquisitions at cost certification, the cost will be limited to the underwritten acquisition cost at initial Underwriting, or for Developments financed by USDA, the transfer value approved by USDA.

~~(A) Excess Land Acquisition. In cases where more land is to~~(ii) For an identify of interest acquisition of land, or a Reconstruction or Adaptive Reuse Development, the underwritten acquisition cost will be the lesser of the amount reflected in the Site Control documents for the property or the appraised value as determined by an appraisal that meets the requirements of §11.304 of this chapter (relating to Appraisal Rules and Guidelines). An acquisition will be considered an identity of interest transaction when an Affiliate

of the seller is an Affiliate of, or a Related Party to, any Owner at any level of the Development Team or a Related Party lender; and

(I) is the current owner in whole or in part of the Property; or

(II) has or had within the prior 36 months the legal or beneficial ownership of the property or any portion thereof or interest therein regardless of ownership percentage, control or profit participation prior to the first day of the Application Acceptance Period or in the case of a tax-exempt bond or 4% tax credit application the Application Date.

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

(iv) In cases where more land will be acquired (by the Applicant or a Related Party) than will be utilized as the Development Site and the remainder acreage is not accessible for use by tenants or dedicated as permanent and maintained green space, the value ascribed acquisition cost that will be allocated to the proposed Development Site will be prorated based on acreage from the total cost reflected in the Site Control document(s). An appraisal containing segregated values for the total acreage to be acquired, the acreage for the Development Site and the remainder acreage, or tax assessment value may be used by the Underwriter in making a proration determination based on relative value; however, the Underwriter will not utilize a prorated value greater than the total amount in the Site Control document(s).

(B) Identity of Interest Acquisitions-

~~(i) An acquisition will be considered an identity of interest transaction when an Affiliate of the seller is an Affiliate of, a Related Party to, any Owner at any level of the Development Team or a Related Party lender; Acquisition and (I) is the current owner in whole or in part of the Property; or~~

~~(II) has or had within the prior 36 months legal or beneficial ownership of the property or any portion thereof or interest therein prior to the first day of the Application Acceptance Period.~~

~~(ii) In all identity of interest transactions the Applicant is required to provide:-~~

~~(I) the original Rehabilitation. The underwritten acquisition cost in the most recent non-identity of interest transaction evidenced by an executed settlement statement or, if a settlement statement is not available, the original asset value listed in the most current financial statement for the identity of interest owner; an Acquisition and~~

~~(II) if the original acquisition cost evidenced by subclause (I) of this clause is less than the acquisition cost stated in the application:-~~

~~(a) Rehabilitation Development will be the appraised value as determined by an appraisal that meets the requirements of §11.304 of this chapter (relating to Appraisal Rules and Guidelines); and~~

~~(b) any other verifiable costs of owning, holding, or improving the Property, excluding seller financing, that when added to the value from subclause (I) of this clause justifies the Applicant's proposed acquisition amount.~~

~~(1) For land only transactions, documentation of owning, holding or improving costs since the original acquisition date may include property taxes, interest expense to unrelated Third Party lender(s), capitalized costs of any physical improvements, the cost of zoning, platting, and any off site costs to provide utilities or improve access to the Property. All allowable holding and improvement costs must directly~~

benefit the proposed Development by a reduction to hard or soft costs. Additionally, an annual return of 10% may be applied to the original capital investment and documented holding and improvement costs; this return will be applied from the date the applicable cost is incurred until the date of the Department's Board meeting at which the Grant, Direct Loan and/or Housing Credit Allocation will be considered.

~~(2) For transactions which include existing residential or non-residential buildings that will be rehabilitated or otherwise retained as part of the Development, documentation of owning, holding, or improving costs since the original acquisition date may include capitalized costs of improvements to the Property, and in the case of USDA financed Developments the cost of exit taxes not to exceed an amount necessary to allow the sellers to be made whole in the original and subsequent investment in the Property and avoid foreclosure. Additionally, an annual return of 10% may be applied to the original capital investment and documented holding and improvement costs; this return will be applied from the date the applicable cost was incurred until the date of the Department's Board meeting at which the Grant, Direct Loan and/or Housing Credit Allocation will be considered. The annual return may not be applied for any period of time during which the existing residential or non-residential buildings are occupied or otherwise producing revenue.~~

~~(iii) For Identity of Interest transactions, the acquisition cost used for underwriting will be:~~

~~(I) the original acquisition cost evidenced by clause (B)(ii)(I) of this subparagraph plus costs identified in item (B)(ii)(II)(b) of this subparagraph; or,~~

~~(II) the "as-is" value conclusion evidenced by item (B)(ii)(II)(a) of this subparagraph if less than the value identified in subclause (I); or,~~

~~(III) if applicable, the transfer value approved by USDA; or,~~

~~(IV) if applicable, the appraised land value for transactions where all existing buildings will be demolished; or,~~

~~(V) if applicable, for Developments that will be financed using tax-exempt mortgage revenue bonds that currently have project-based rental assistance or currently have rent restrictions that will remain in place on the property after the acquisition and the current owner has owned the property for at least 60 months prior to the first day of the Application Acceptance Period, the Underwriter shall only restrict the acquisition costs if it exceeds the "as-is" value conclusion evidenced by item (B)(ii)(II)(a) of this subparagraph. The appraisal used for this purpose must be reviewed by a licensed or certified appraiser by the Texas Appraisal Licensing and Certification Board that is not related to the original appraiser or anyone on the Development Team and in accordance with USPAP Standard 3. If the reviewing appraiser disagrees with the appraised value determined by the appraiser, the Underwriter will determine the acquisition cost to be used in the analysis.~~

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

~~(D) Eligible Basis on Acquisition of Buildings. Building acquisition cost will be included in the underwritten-Eligible Basis if the Applicant provided an appraisal that meets the Department's Appraisal Rules and Guidelines as described in §11.304 of this chapter (relating to Appraisal Rules and Guidelines). The underwritten eligible building cost will be evaluated as described in clause (iv)~~

~~of this subparagraph and with the lowest of the values determined based on clauses (i)–(iv) of this subparagraph:~~

~~(i) the Applicant's stated eligible building acquisition cost;~~

~~(ii) the total acquisition cost reflected in the Site Control document(s), or the Adjusted Acquisition Cost (as defined in subparagraph (B)(iii) of this paragraph), prorated using the relative land and building values indicated by the applicable appraised value; or~~

~~(iii) the total acquisition cost reflected in the Site Control document(s), or the Adjusted Acquisition Cost (as defined in subparagraph (B)(iii) of this paragraph), less the appraised "as-vacant" land value; or~~

~~(iv) the Underwriter will use the value that best corresponds to the circumstances presently affecting the Development that will continue to affect the Development after transfer to the new owner in determining the building value. These circumstances include but are not is limited to operating subsidies, rental assistance, transfer values approved by USDA and/or property tax exemptions. Any value of existing favorable financing will be attributed prorata to the land and buildings. the appraised value of the buildings, exclusive of land value, as determined by the appraisal~~

(2) Off-Site Costs. The Underwriter will only consider costs of Off-Site Construction that are well documented and certified to by a Third Party engineer on the required Application forms with supporting documentation.

(3) Site Work Costs. The Underwriter will only consider costs of Site Work, including site amenities, that are well documented and certified to by a Third Party engineer on the required Application forms with supporting documentation.

(4) Building Costs.

(A) New Construction and Reconstruction. The Underwriter will use the Marshall and Swift Residential Cost Handbook, other comparable published Third-Party cost estimating data sources, historical final cost certifications of previous Housing Tax Credit developments and other acceptable cost data available to the Underwriter to estimate Building Cost. Generally, the "Average Quality" multiple, townhouse, or single family costs, as appropriate, from the Marshall and Swift Residential Cost Handbook or other comparable published Third-Party data source, will be used based upon details provided in the Application and particularly building plans and elevations. Costs for multi-level parking structures must be supported by a cost estimate from a Third Party contractor with demonstrated experience in structured parking construction. The Underwriter will consider amenities, specifications and development types not included in the Average Quality standard. The Underwriter may consider a sales tax exemption for nonprofit General Contractors.

(B) Rehabilitation and Adaptive Reuse.

(i) The Applicant must provide a scope of work and narrative description of the work to be completed. The narrative should speak to all Off-Site Construction, Site Work, building components including finishes and equipment, and development amenities. The narrative should be in sufficient detail so that the reader can understand the work and it must generally be arranged consistent with the line-items on the SCR Supplement and must also be consistent with the Development Cost Schedule of the Application.

(ii) The Underwriter will use cost data provided on the SCR Supplement if adequately described and substantiated in the SCR report as the basis for estimating Total Housing Development Costs.

(5) Contingency. Total contingency, including any soft cost contingency, will be limited to a maximum of 7% of Building Cost plus Site Work and Off-Site Construction for New Construction and Reconstruction Developments, and 10% of Building Cost plus Site Work and Off-Site Construction for Rehabilitation and Adaptive Reuse Developments. For Housing Tax Credit Developments, the percentage is applied to the sum of the eligible Building Cost, eligible Site Work costs and eligible Off-Site Construction costs in calculating the eligible contingency cost.

(6) General Contractor Fee. General Contractor fees include general requirements, contractor overhead, and contractor profit. General requirements include, but are not limited to, on-site supervision or construction management, off-site supervision and overhead, jobsite security, equipment rental, storage, temporary utilities, and other indirect costs. General Contractor fees are limited to a total of 14% on Developments with Hard Costs of \$3 million or greater, the lesser of \$420,000 or 16% on Developments with Hard Costs less than \$3 million and greater than \$2 million, and the lesser of \$320,000 or 18% on Developments with Hard Costs at \$2 million or less. Any contractor fees to Affiliates or Related Party subcontractors regardless of the percentage of the contract sum in the construction contract (s) will be treated collectively with the General Contractor Fee limitations. For Housing Tax Credit Developments, the percentages are applied to the sum of the Eligible Hard Costs in calculating the eligible contractor fees. For Developments also receiving financing from USDA, the combination of builder's general requirements, builder's overhead, and builder's profit should not exceed the lower of TDHCA or USDA requirements. Additional fees for ineligible costs will be limited to the same percentage of ineligible Hard Costs but will not be included in Eligible Basis.

(7) Developer Fee.

(A) For Housing Tax Credit Developments, the Developer Fee included in Eligible Basis cannot exceed 15% of the project's eligible costs, less Developer Fee, for Developments proposing 50 Units or more and 20% of the project's eligible costs, less Developer Fee, for Developments proposing 49 Units or less. If the Development is an additional phase, proposed by any Principal of the existing tax credit Development, the Developer Fee may not exceed 15%, regardless of the number of Units.

(B) For Housing Tax Credit Developments, any additional Developer Fee claimed for ineligible costs will be limited to the same percentage but applied only to ineligible Hard Costs (15% for Developments with 50 or more Units, or 20% for Developments with 49 or fewer Units). Any Developer Fee above this limit will be excluded from Total Housing Development Costs. All fees to Affiliates and/or Related Parties for work or guarantees determined by the Underwriter to be typically completed or provided by the Developer or Principal(s) of the Developer will be considered part of Developer Fee.

~~(C) In the case of a transaction requesting acquisition Housing Tax Credits:-~~

- ~~(i) the allocation of eligible Developer Fee in calculating Housing Tax Credits will not exceed 15% of the eligible costs less Developer Fee for Developments proposing 50 Units or more and 20% of the eligible costs less Developer Fee for Developments proposing 49 Units or less; and~~
- ~~(ii) no Developer Fee attributable to an identity of interest acquisition of the Development will~~

~~be included; or~~

~~(iii) for Developments meeting the requirements of 10 TAC §11.302(e)(1)(B)(iii)(V), the allocation of eligible Developer Fee in calculating Housing Tax Credits will not exceed 5 percent of the eligible costs less Developer Fee.~~

(D) For Housing Tax Credit Developments, Eligible Developer Fee is multiplied by the appropriate Applicable Percentage depending on whether it is attributable to acquisition or rehabilitation basis.

(E) For non-Housing Tax Credit Developments, the percentage can be up to 7.5%, but is based upon Total Housing Development Cost less the sum of the fee itself, land costs, the costs of permanent financing, excessive construction period financing described in paragraph (8) of this subsection, reserves, and any identity of interest acquisition cost.

(8) Financing Costs. All fees required by the construction lender, permanent lender and equity partner must be indicated in the term sheets. Eligible construction period interest is limited to the lesser of actual eligible construction period interest, or the interest on one year's fully drawn construction period loan funds at the construction period interest rate indicated in the term sheet(s). For tax-exempt bond transactions up to 24 months of interest may be included. Any excess over this amount will not be included in Eligible Basis. Construction period interest on Related Party or Affiliate construction loans is only included in Eligible Basis with documentation satisfactory to the Underwriter that the loan will be at a market interest rate, fees and loan terms and the Related Party lender can demonstrate that it is routinely engaged in construction financing to unrelated parties.

(9) Reserves. Except for the underwriting of a Housing Tax Credit Development at cost certification, the Underwriter will utilize the amount described in the Applicant's project cost schedule if it is within the range of two to six months of stabilized operating expenses plus debt service. Alternatively, the Underwriter may consider a greater amount proposed by the First Lien Lender or syndicator if the detail for such greater amount is found by the Underwriter to be both reasonable and well documented. Reserves do not include capitalized asset management fees, guaranty reserves, tenant services reserves or other similar costs. Lease up reserves, exclusive of initial start-up costs, funding of other reserves and interim interest, may be considered with documentation showing sizing assumptions acceptable to the Underwriter. In no instance at initial underwriting will total reserves exceed 12 months of stabilized operating expenses plus debt service (and only for USDA or HUD financed rehabilitation transactions the initial deposits to replacement reserves and transferred replacement reserves for USDA or HUD financed rehabilitation transactions). Pursuant to §10.404(c) of this title (relating to Operative Reserve Accounts), and for the underwriting of a Housing Tax Credit Development at cost certification, operating reserves that will be maintained for a minimum period of five years and documented in the ~~Owner's~~Owner's partnership agreement ~~and/or the permanent lender's~~lender's loan documents will be included as a development cost.

(10) Soft Costs. Eligible soft costs are generally costs that can be capitalized in the basis of the Development for tax purposes. The Underwriter will evaluate and apply the allocation of these soft costs in accordance with the Department's prevailing interpretation of the Code. Generally the ~~Applicant's~~Applicant's costs are used however the Underwriter will use comparative data and Third Party CPA certification as to the capitalization of the costs to determine the reasonableness of all soft costs.

(11) Additional Tenant Amenities. For Housing Tax Credit Developments and after submission of the cost certification package, the Underwriter may consider costs of additional building and site amenities (suitable for the Target Population being served) proposed by the Owner in an amount not to exceed 1.5%

of the originally underwritten Hard Costs. The additional amenities must be included in the LURA.

(12) Special Reserve Account. For Housing Tax Credit Developments at cost certification, the Underwriter may include a deposit of up to \$2,500 per Unit into a Special Reserve Account as a Development Cost.

(f) Development Team Capacity and Development Plan.

(1) The Underwriter will evaluate and report on the overall capacity of the Development Team by reviewing aspects, including but not limited to those identified in subparagraphs (A) - (D) of this paragraph:

(A) Personal credit reports for development sponsors, Developer Fee recipients and those individuals anticipated to provide guarantee(s) in cases when warranted. The Underwriter may evaluate the credit report and identify any bankruptcy, state or federal tax liens or other relevant credit risks for compliance with eligibility and debarment requirements as found in Chapter 2 of this title (relating to Enforcement);

(B) Quality of construction, Rehabilitation, and ongoing maintenance of previously awarded housing developments by review of construction inspection reports, compliance on-site visits, findings of UPCS violations and other information available to the Underwriter;

(C) For Housing Tax Credit Developments, repeated or ongoing failure to timely submit cost certifications, requests for and clearance of final inspections, and timely response to deficiencies in the cost certification process; and

(D) Adherence to obligations on existing or prior Department funded developments with respect to program rules and documentation.

(2) While all components of the Development plan may technically meet the other individual requirements of this section, a confluence of serious concerns and unmitigated risks identified during the underwriting process may result in an Application being determined to be infeasible by the Underwriter. Any recommendation made under this subsection to deny an Application for a Grant, Direct Loan ~~and/or~~ Housing Credit Allocation is subject to Appeal as further provided for in §11.902 of this chapter (relating to Appeals).

(g) Other Underwriting Considerations. The Underwriter will evaluate additional feasibility elements as described in paragraphs (1) - (4) of this subsection.

(1) Interim Operating Income. Interim operating income listed as a source of funds must be supported by a detailed lease-up schedule and analysis.

(2) Floodplains. The Underwriter evaluates the site plan, floodplain map, survey and other information provided to determine if any of the buildings, drives, or parking areas reside within the 100-year floodplain. If such a determination is made by the Underwriter, the Report will include a condition that:

(A) The Applicant must pursue and receive a Letter of Map Amendment (LOMA) or Letter of Map Revision (LOMR-F); or

(B) The Applicant must identify the cost of flood insurance for the buildings and for the tenant's contents for buildings within the 100-year floodplain and certify that the flood insurance will be obtained; and

(C) The Development must be proposed to be designed to comply with the QAP, Program Rules and NOFA, and applicable Federal or state requirements.

(3) Proximity to Other Developments. The Underwriter will identify in the Report any Developments funded or known and anticipated to be eligible for funding within one linear mile of the subject. Distance is measured in a straight line from nearest boundary point to nearest boundary point.

~~**(4) Supportive Housing.** The unique development and operating characteristics of Supportive Housing Developments may require special consideration in these areas:-~~

~~**(A) Operating Income.** The extremely low income tenant population typically targeted by a Supportive Housing Development may include deep skewing of rents to below the 50% AMGI level or other maximum rent limits established by the Department. The Underwriter will utilize the Applicant's proposed rents in the Report as long as such rents are at or below the maximum rent limit proposed for the Units or equal to any project based rental subsidy rent to be utilized for the Development if higher than the maximum rent limits;-~~

~~**(B) Operating Expenses.** A Supportive Housing Development may have significantly higher expenses for payroll, management fee, security, resident supportive services, or other items than typical affordable housing developments. The Underwriter will rely heavily upon the historical operating expenses of other Supportive Housing Developments Affiliated with the Applicant or otherwise available to the Underwriter. Expense estimates must be categorized as outlined in subsection (d)(2) of this section;-~~

~~**(C) DCR and Long Term Feasibility.** Supportive Housing Developments may be exempted from the DCR requirements of subsection (d)(4)(D) of this section if the Development is anticipated to operate without conventional or "must pay" debt. Applicants must provide evidence of sufficient financial resources to offset any projected 15 year cumulative negative Cash Flow. Such evidence will be evaluated by the Underwriter on a case by case basis to satisfy the Department's long term feasibility requirements and may take the form of one or a combination of: executed subsidy commitment(s); set aside of Applicant's financial resources to be substantiated by current financial statements evidencing sufficient resources; and/or proof of annual fundraising success sufficient to fill anticipated operating losses. If either a set aside of financial resources or annual fundraising are used to evidence the long term feasibility of a Supportive Housing Development, a resolution from the Applicant's governing board must be provided confirming their irrevocable commitment to the provision of these funds and activities; and/or~~

~~**(D) Total Housing Development Costs.** For Supportive Housing Developments designed with only Efficiency Units, the Underwriter may use "Average Quality" dormitory costs, or costs of other appropriate design styles from the Marshall & Swift Valuation Service, with adjustments for amenities and/or quality as evidenced in the Application, as a base cost in evaluating the reasonableness of the Applicant's Building Cost estimate for New Construction Developments.-~~

(4) Direct Loans. In accordance with the requirements of 24 CFR §§92.250 and 93.300(b), a request for a Direct Loan will not be recommended for approval if the first year stabilized pro forma Cash Flow, after deducting any payment due to the Developer on a deferred developer fee loan and scheduled payments on cash flow loans, divided by the Development Owner's equity exceeds 10%, or a higher amount not to exceed 12% may be approved by the underwriter for unique ownership capital structures or as allowed by a federally insured loan program. For this purpose, Cash Flow may be adjusted downward by the Applicant electing to commit any Cash Flow in excess of the limitation to a special reserve account, in

accordance with 10 TAC §10.404(d). For capital structures without Development Owner equity, a maximum of 75% of on-going Cash Flow, after deducting any payment due to the Developer on a deferred developer fee loan and scheduled payments on cash flow loans, may be distributed to the Development Owner and the remaining 25% must be deposited to a special reserve account, in accordance with 10 TAC §10.404(d). If the Direct Loan is not recommended for approval, the remaining feasibility considerations under this section will be based on a revised sources schedule that does not contain the Direct Loan.

(h) Work Out Development. As also described in §11.302(h), Developments that are underwritten subsequent to Board approval in order to refinance or gain relief from restrictions may be considered infeasible based on the guidelines in this section, but may be characterized as "the best available option" or "acceptable available option" depending on the circumstances and subject to the discretion of the Underwriter as long as the option analyzed and recommended is more likely to achieve a better financial outcome for the property and the Department than the status quo.

~~**(i) Feasibility Conclusion.** An infeasible Development will not be recommended for a Grant, Direct Loan or Housing Credit Allocation unless the Underwriter can determine an alternative structure and/or conditions the recommendations of the Report upon receipt of documentation supporting an alternative structure.~~

(i) Feasibility Conclusion. A Development will be characterized as infeasible if paragraph (1) or (2) of this subsection applies. The Development will be characterized as infeasible if one or more of paragraphs (3) - ~~(5)~~ (4) of this subsection applies unless paragraph (6)(B) of this subsection also applies.

(1) Gross Capture Rate, AMGI Band Capture Rates, and Individual Unit Capture Rate. The method for determining capture rates for a Development is defined in §11.303 of this chapter. The Underwriter will independently verify all components and conclusions of the capture rates and may, at their discretion, use independently acquired demographic data to calculate demand and may make a determination of the capture rates based upon an analysis of the Sub-market. The Development:

(A) Is characterized as an Elderly Development and the Gross Capture Rate or any AMGI band capture rate exceeds 10%; or

(B) Is outside a Rural Area and targets the general population, and the Gross Capture Rate or any AMGI band capture rate exceeds 10% (or 15% for Tax-Exempt Bond Developments located in an MSA (as defined in the HTC Site Demographics Characteristics Report) with a population greater than one million if the average physical occupancy is 92.5% or greater for all stabilized affordable housing developments located within a 20 minute drive time, as supported by the Market Analyst, from the subject Development); or

(C) Is in a Rural Area and targets the general population, and the Gross Capture Rate or any AMGI band capture rate exceeds 30%; or

(D) Is Supportive Housing and the Gross Capture Rate or any AMGI band capture rate exceeds 30%; or,

(E) Has an Individual Unit Capture Rate for any Unit Type greater than 65%.

(F) Developments meeting the requirements of subparagraph (A), (B), (C), (D) or (E) of this paragraph may avoid being characterized as infeasible if clause (i) or (ii) of this subparagraph apply.

(i) Replacement Housing. The proposed Development is comprised of affordable housing which replaces previously existing affordable housing within the Primary Market Area as defined in §11.303 of this chapter on a Unit for Unit basis, and gives the displaced tenants of the previously existing affordable

housing a leasing preference.

(ii) Existing Housing. The proposed Development is comprised of existing affordable housing, whether defined by an existing land use and rent restriction agreement or if the subject rents are at or below 50% AMGI rents, which is at least 50% occupied and gives displaced existing tenants a leasing preference as stated in a relocation plan.

(2) Deferred Developer Fee. Applicants requesting an allocation of tax credits where the estimated Deferred Developer Fee, based on the underwritten capitalization structure, is not repayable from Cash Flow within the first 15 years of the long term pro forma as described in subsection (d)(5) of this section.

~~**(3) Pro Forma Rent.** The Pro Forma Rent for Units with rents restricted at 60% of AMGI, or above if the Applicant will make the Income Average election, is less than the Net Program Rent for Units with rents restricted at or below 50% of AMGI unless the Applicant accepts the Underwriter's recommendation, if any, that all restricted units have rents and incomes restricted at or below the 50% of AMGI level.~~

~~**(4) Initial Feasibility.**~~

(3) Initial Feasibility.

____(A) Except when underwritten at cost certification, the first year stabilized pro forma operating expense divided by the first year stabilized pro forma Effective Gross Income is greater than 68% for Rural Developments 36 Units or less, and 65% for all other Developments.

(B) The first year DCR is below 1.15 (1.00 for USDA Developments).

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(4) Long Term Feasibility. The Long Term Pro forma at any time during years two through fifteen, as defined in subsection (d)(5) of this section, reflects:

(A) A Debt Coverage Ratio below 1.15; or,

(B) Negative Cash Flow (throughout the term of a Direct Loan).

~~6~~

(5) Exceptions. The infeasibility conclusions ~~may be excepted when:~~ will not apply if:

(A) ~~Waived by the~~ The Executive Director of the Department or by the EARAC if finds that documentation is submitted by the Applicant to at the request of the Underwriter will support unique circumstances that would will provide mitigation.

(B) Developments not meeting the requirements of one or more of paragraphs (3), ~~(4)(A) or (54)~~ of this subsection will be re-characterized as feasible if one or more of clauses (i) - (v) of this subparagraph apply. A Development financed with a Direct Loan will not be re-characterized as feasible with respect to ~~(54)(B)~~.

(i) the Development will receive Project-based Section 8 Rental Assistance or the HUD Rental Assistance Demonstration Program for at least 50% of the Units and a firm commitment, with terms including Contract Rent and number of Units, is submitted at Application,

(ii) the Development will receive rental assistance for at least 50% of the Units in association with USDA financing.

(iii) the Development will be characterized as public housing as defined by HUD for at least 50% of the Units.

~~(iv) the Development will be characterized as Supportive Housing that is not financed, except for construction financing, with any debt containing foreclosure provisions or debt that contains must pay repayment provisions (including cash flow debt) for all Units and evidence of adequate financial support for the long term viability of the Development is provided. Permanent foreclosable, cash flow debt provided by an Affiliate is permissible if originally~~

~~sourced from charitable contributions or pass through local government non-federal funds; or~~

(iv) the Development meets the requirements under §11.1(122)(E)(i) as Supportive Housing and there is an irrevocable commitment, as evidenced by resolution from the sponsor's governing board, to fund operating deficits over the entire Affordability Period; or

(v) the Development has other long term project based restrictions on rents for at least 50% of the Units that allow rents to increase based upon expenses and the Applicant's proposed rents are at least 10% lower than both the Net Program Rent and Market Rent.

§11.303 Market Analysis Rules and Guidelines

(a) General Provision. A Market Analysis prepared for the Department must evaluate the need for decent, safe, and sanitary housing at rental rates or sales prices that eligible tenants can afford. The analysis must determine the feasibility of the subject Development rental rates or sales price, and state conclusions as to the impact of the Development with respect to the determined housing needs. The Market Analysis must include a statement that the report preparer has read and understood the requirements of this section. The Market Analysis must also include a statement that the person or company preparing the Market Analysis is a disinterested party and will not materially benefit from the Development in any other way than receiving a fee for performing the Market Analysis, and that the fee is in no way contingent upon the outcome of the Market Analysis. The report must also include the following statement, "any person signing this Report acknowledges that the Department may publish the full report on the Department's Department's website, release the report in response to a request for public information and make other use of the report as authorized by law."

(b) Self-Contained. A Market Analysis prepared for the Department must allow the reader to understand the market data presented, the analysis of the data, and the conclusions derived from such data. All data presented should reflect the most current information available and the report must provide a parenthetical (in-text) citation or footnote describing the data source. The analysis must clearly lead the reader to the same or similar conclusions reached by the Market Analyst. All steps leading to a calculated figure must be presented in the body of the report.

(c) Market Analyst Qualifications. A Market Analysis submitted to the Department must be prepared and certified by an approved Qualified Market Analyst. (§2306.67055) The Department will maintain an approved Market Analyst list based on the guidelines set forth in paragraphs (1) - (2) of this subsection.

(1) The approved Qualified Market Analyst list will be updated and published annually on or about November 1st. If not listed as an approved Qualified Market Analyst by the Department, a Market Analyst may request approval by submitting items in subparagraphs (A) - (F) of this paragraph at least 30 calendar days prior to the first day of the competitive tax credit Application Acceptance Period or 30 calendar days prior to submission of any other application for funding for which the Market Analyst must be approved. An already approved Qualified Market Analyst will remain on the list so long as at least one (1) Market Analysis has been submitted to the Department in the previous 12 months or items (A), (B), (C) and (E) are submitted prior to October 1st. Otherwise, the Market Analyst will automatically be removed from the list.

(A) Franchise Tax Account Status from the Texas Comptroller of Public Accounts (not applicable for sole proprietorships);

(B) A current organization chart or list reflecting all members of the firm who may author or sign the Market Analysis. A firm with multiple offices or locations must indicate all members expected to be providing Market Analysis;

(C) Resumes for all members of the firm or subcontractors who may author or sign the Market

Analysis;

(D) General information regarding the firm's experience including references, the number of previous similar assignments and timeframes in which previous assignments were completed;

(E) Certification from an authorized representative of the firm that the services to be provided will conform to the Department's Market Analysis Rules and Guidelines, as described in this section, in effect for the Application Round in which each Market Analysis is submitted; and

(F) A sample Market Analysis that conforms to the Department's Market Analysis Rules and Guidelines, as described in this section, in effect for the year in which the sample Market Analysis is submitted.

(2) During the underwriting process each Market Analysis will be reviewed and any discrepancies with the rules and guidelines set forth in this section may be identified and require timely correction. Subsequent to the completion of the Application Round and as time permits, staff or a review appraiser will re-review a sample set of submitted market analyses to ensure that the Department's Market Analysis Rules and Guidelines are met. If it is found that a Market Analyst has not conformed to the Department's Market Analysis Rules and Guidelines, as certified to, the Market Analyst will be notified of the discrepancies in the Market Analysis and will be removed from the approved Qualified Market Analyst list.

(A) In and of itself, removal from the list of approved Market Analysts will not invalidate a Market Analysis commissioned prior to the removal date and at least 90 days prior to the first day of the applicable Application Acceptance Period.

(B) To be reinstated as an approved Qualified Market Analyst, the Market Analyst must amend the previous report to remove all discrepancies or submit a new sample Market Analysis that conforms to the Department's Market Analysis Rules and Guidelines, as described in this section, in effect for the year in which the updated or new sample Market Analysis is submitted.

(d) Market Analysis Contents. A Market Analysis for a rental Development prepared for the Department must be organized in a format that follows a logical progression and must include, at minimum, items addressed in paragraphs (1) - (13) of this subsection.

(1) Title Page. Include Development address or location, effective date of analysis, date report completed, name and address of person authorizing report, and name and address of Market Analyst.

(2) Letter of Transmittal. The date of the letter must be the date the report was completed. Include ~~Development's~~ Development's address or location, description of Development, statement as to purpose and scope of analysis, reference to accompanying Market Analysis report with effective date of analysis and summary of conclusions, date of Property inspection, name of persons inspecting subject Property, and signatures of all Market Analysts authorized to work on the assignment. Include a statement that the report preparer has read and understood the requirements of this section.

(3) Table of Contents. Number the exhibits included with the report for easy reference.

(4) Market Analysis Summary. Include the Department's Market Analysis Summary exhibit.

(5) Assumptions and Limiting Conditions. Include a description of all assumptions, both general and specific, made by the Market Analyst concerning the Property.

(6) Identification of the Real Estate. Provide a statement to acquaint the reader with the Development. Such information includes street address, tax assessor's parcel number(s), and Development characteristics.

(7) Statement of Ownership. Disclose the current owners of record and provide a three year history of ownership for the subject Development.

(8) Primary Market Area. A limited geographic area from which the Development is expected to draw most of its demand. The size and shape of the PMA should be reflective of proximity to employment centers, services and amenities and contain the most significant areas from which to draw demand. All of the Market Analyst's conclusions specific to the subject Development must be based on only one PMA definition. The Market Analyst must adhere to the methodology described in this paragraph when determining the market area. (§2306.67055)

(A) The PMA will be defined by the Market Analyst as:

- (i) geographic size based on a base year population no larger than necessary to provide sufficient demand but no more than 100,000 people;
- (ii) boundaries based on U.S. census tracts; and
- (iii) the population of the PMA may exceed 100,000 if the amount over the limit is contained within a single census tract.

(B) The Market Analyst's definition of the PMA must include:

(i) a detailed narrative specific to the PMA explaining:

(I) How the boundaries of the PMA were determined with respect to census tracts chosen and factors for including or excluding certain census tracts in proximity to the Development;

(II) Whether a more logical market area within the PMA exists but is not definable by census tracts and how this subsection of the PMA supports the rationale for the defined PMA;

(III) What are the specific attributes of the ~~Development's~~Development's location within the PMA that would draw prospective tenants from other areas of the PMA to relocate to the Development;

(IV) What are the specific attributes, if known, of the Development itself that would draw prospective tenants currently residing in other areas of the PMA to relocate to the Development;

(V) If the PMA crosses county lines, discuss the different income and rent limits in each county and how these differing amounts would affect the demand for the Development;

(VI) For rural Developments, discuss the relative draw (services, jobs, medical facilities, recreation, schools, etc.) of the ~~Development's~~Development's immediate local area (city or populous area if no city) in comparison to its neighboring local areas (cities, or populous areas if no cities), in and around the PMA. A rural PMA should not include significantly larger more populous areas unless the analyst can provide substantiation and rationale that the tenants would migrate to the ~~Development's~~Development's location from the larger cities;

(VII) Discuss and quantify current and planned single-family and non-residential construction (include permit data if available); and

(VIII) Other housing issues in general, if pertinent;

(ii) a complete demographic report for the defined PMA;

(iii) a scaled distance map indicating the PMA boundaries showing relevant U.S. census tracts with complete 11-digit identification numbers in numerical order with labels as well as the location of the

subject Development and all comparable Developments. The map must indicate the total square miles of PMA; and,

(iv) a proximity table indicating distance from the Development to employment centers, medical facilities, schools, entertainment and any other amenities relevant to the potential residents and include drive time estimates.

(C) Comparable Units. Identify developments in the PMA with Comparable Units. In PMAs lacking sufficient rent comparables, it may be necessary for the Market Analyst to collect data from markets with similar characteristics and make quantifiable and qualitative location adjustments. Provide a data sheet for each comparable development consisting of:

- (i) development name;
- (ii) address;
- (iii) year of construction and year of Rehabilitation, if applicable;
- (iv) property condition;
- (v) Target Population;
- (vi) unit mix specifying number of Bedrooms, number of baths, Net Rentable Area; and
 - (I) monthly rent and Utility Allowance; or
 - (II) sales price with terms, marketing period and date of sale;

- (vii) description of concessions;
- (viii) list of unit amenities;
- (ix) utility structure;
- (x) list of common amenities;
- (xi) narrative comparison of its proximity to employment centers and services relative to targeted tenant population of the subject property; and
- (xii) for rental developments only, the occupancy and turnover.

(9) Market Information.

(A) Identify the number of units for each of the categories in clauses (i) - (vi) of this subparagraph, if applicable:

- (i) total housing;
- (ii) all multi-family rental developments, including unrestricted and market-rate developments, whether existing, under construction or proposed;
- (iii) Affordable housing;
- (iv) Comparable Units;
- (v) Unstabilized Comparable Units; and
- (vi) proposed Comparable Units.

(B) Occupancy. The occupancy rate indicated in the Market Analysis may be used to support both the overall demand conclusion for the proposed Development and the vacancy rate assumption used in underwriting the Development described in §11.302(d)(1)(C) of this chapter (relating to Vacancy and Collection Loss). State the overall physical occupancy rate for the proposed housing tenure (renter or owner) within the defined market areas by:

- (i) number of Bedrooms;
- (ii) quality of construction (class);
- (iii) Target Population; and

(iv) Comparable Units.

(C) Absorption. State the absorption trends by quality of construction (class) and absorption rates for Comparable Units.

(D) Demographic Reports.

(i) All demographic reports must include population and household data for a five year period with the year of Application submission as the base year;

(ii) All demographic reports must provide sufficient data to enable calculation of income-eligible, age-, size-, and tenure-appropriate household populations;

(iii) For Elderly Developments, all demographic reports must provide a detailed breakdown of households by age and by income; and

(iv) A complete copy of all demographic reports relied upon for the demand analysis, including the reference index that indicates the census tracts on which the report is based.

(E) Demand. Provide a comprehensive evaluation of the need for the proposed housing for the Development as a whole and each Unit Type by number of Bedrooms proposed and rent restriction category within the defined market areas using the most current census and demographic data available. A complete demand and capture rate analysis is required in every Market Study, regardless of the current occupancy level of an existing Development.

(i) Demographics. The Market Analyst should use demographic data specific to the characteristics of the households that will be living in the proposed Development. For example, the Market Analyst should use demographic data specific to the elderly populations (and any other qualifying residents for Elderly Developments) to be served by an Elderly Development, if available, and should avoid making adjustments from more general demographic data. If adjustment rates are used based on more general data for any of the criteria described in subclauses (I) - (V) of this clause, they should be clearly identified and documented as to their source in the report.

(I) Population. Provide population and household figures, supported by actual demographics, for a five year period with the year of Application submission as the base year.

(II) Target. If applicable, adjust the household projections for the qualifying demographic characteristics such as the minimum age of the population to be served by the proposed Development.

(III) Household Size-Appropriate. Adjust the household projections or target household projections, as applicable, for the appropriate household size for the proposed Unit Type by number of Bedrooms proposed and rent restriction category based on 2 persons per Bedroom or one person for Efficiency Units.

(IV) Income Eligible. Adjust the household size appropriate projections for income eligibility based on the income bands for the proposed Unit Type by number of Bedrooms proposed and rent restriction category with:

(-a-) the lower end of each income band calculated based on the lowest gross rent proposed divided by 40% for the general population and 50% for elderly households; and

(-b-) the upper end of each income band equal to the applicable gross median income limit for the largest appropriate household size based on 2 persons per Bedroom (round up) or one person for Efficiency Units.

(V) Tenure-Appropriate. Adjust the income-eligible household projections for tenure (renter or owner). If tenure appropriate income eligible target household data is available, a tenure appropriate adjustment is not necessary.

(ii) Gross Demand. Gross Demand is defined as the sum of Potential Demand from the PMA, Demand from

Other Sources, and External Demand.

(iii) Potential Demand. Potential Demand is defined as the number of income-eligible, age-, size-, and tenure-appropriate target households in the designated market area at the proposed placed in service date.

(I) Maximum eligible income is equal to the applicable gross median income limit for the largest appropriate household size.

(II) For Developments targeting the general population:

(-a-) minimum eligible income is based on a 40% rent to income ratio;

(-b-) appropriate household size is defined as two persons per Bedroom (rounded up); and

(-c-) the tenure-appropriate population for a rental Development is limited to the population of renter households.

(III) For Developments consisting solely of single family residences on separate lots with all Units having three or more Bedrooms:

(-a-) minimum eligible income is based on a 40% rent to income ratio;

(-b-) appropriate household size is defined as two persons per Bedroom (rounded up); and

(-c-) Gross Demand includes both renter and owner households.

(IV) Elderly Developments:

(-a-) minimum eligible income is based on a 50% rent to income ratio; and

(-b-) Gross Demand includes all household sizes and both renter and owner households within the age range (and any other qualifying characteristics) to be served by the Elderly Development.

(V) Supportive Housing:

(-a-) minimum eligible income is \$1; and

(-b-) households meeting the occupancy qualifications of the Development (data to quantify this demand may be based on statistics beyond the defined PMA but not outside the historical service area of the Applicant).

(VI) For Developments with rent assisted units (Project Based Vouchers, Project-Based Rental Assistance, Public Housing Units):

(-a-) minimum eligible income for the assisted units is \$1; and

(-b-) maximum eligible income for the assisted units is the minimum eligible income of the corresponding affordable unit.

(iv) External Demand: Assume an additional 10% of Potential Demand from the PMA to represent demand coming from outside the PMA.

(v) Demand from Other Sources:

(I) the source of additional demand and the methodology used to calculate the additional demand must be clearly stated;

(II) consideration of Demand from Other Sources is at the discretion of the Underwriter;

(III) Demand from Other Sources must be limited to households that are not included in Potential Demand; and

(IV) if households with Section 8 vouchers are identified as a source of demand, the Market Study must include:

(-a-) documentation of the number of vouchers administered by the local Housing Authority; and

(-b-) a complete demographic report for the area in which the vouchers are distributed.

(F) Employment. Provide a comprehensive analysis of employment trends and forecasts in the Primary Market Area. Analysis must discuss existing or planned employment opportunities with qualifying income

ranges.

(10) Conclusions. Include a comprehensive evaluation of the subject Property, separately addressing each housing type and specific population to be served by the Development in terms of items in subparagraphs (A) - (J) of this paragraph. All conclusions must be consistent with the data and analysis presented throughout the Market Analysis.

(A) Unit Mix. Provide a best possible unit mix conclusion based on the occupancy rates by Bedroom type within the PMA and target, income-eligible, size-appropriate and tenure-appropriate household demand by Unit Type and income type within the PMA.

(B) Rents. Provide a separate Market Rent conclusion for each proposed Unit Type by number of Bedrooms and rent restriction category. Conclusions of Market Rent below the maximum Net Program Rent limit must be well documented as the conclusions may impact the feasibility of the Development under §11.302(i) of this chapter (relating to Feasibility Conclusion). In support of the Market Rent conclusions, provide a separate attribute adjustment matrix for each proposed Unit Type by number of Bedrooms and rental restriction category.

(i) The Department recommends use of HUD Form 92273.

(ii) A minimum of three developments must be represented on each attribute adjustment matrix.

(iii) Adjustments for concessions must be included, if applicable.

(iv) Adjustments for proximity and drive times to employment centers and services narrated in the Comparable Unit description, and the rationale for the amount of the adjustments must be included.

(v) Total adjustments in excess of 15% must be supported with additional narrative.

(vi) Total adjustments in excess of 25% indicate the Units are not comparable for the purposes of determining Market Rent conclusions.

(C) Effective Gross Income. Provide rental income, secondary income, and vacancy and collection loss projections for the subject derived independent of the Applicant's estimates.

(D) Demand:

(i) state the Gross Demand for each Unit Type by number of Bedrooms proposed and rent restriction category (e.g. one-Bedroom Units restricted at 50% of AMGI; two-Bedroom Units restricted at 60% of AMGI); and

(ii) state the Gross Demand for the proposed Development as a whole. If some households are eligible for more than one Unit Type due to overlapping eligible ranges for income or household size, Gross Demand should be adjusted to avoid including households more than once.

(iii) state the Gross Demand generated from each AMGI band. If some household incomes are included in more than one AMGI band, Gross Demand should be adjusted to avoid including households more than once.

(E) Relevant Supply. The Relevant Supply of proposed and Unstabilized Comparable Units includes:

(i) the proposed subject Units to be absorbed;

(ii) Comparable Units in an Application with priority over the subject pursuant to §11.201(6) of this chapter; ~~and~~

(iii) Comparable Units in previously approved Developments in the PMA that have not achieved 90% occupancy for a minimum of 90 days; ~~and~~

(iv) proposed and Unstabilized Comparable Units that are located in close proximity to the subject

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

(F) Gross Capture Rate. The Gross Capture Rate is defined as the Relevant Supply divided by the Gross Demand. Refer to §11.302(i) of this chapter for feasibility criteria.

(G) Individual Unit Capture Rate. For each Unit Type by number of Bedrooms and rent restriction categories, the individual unit capture rate is defined as the Relevant Supply of proposed and Unstabilized Comparable Units divided by the eligible demand for that Unit. Some households are eligible for multiple Unit Types. In order to calculate individual unit capture rates, each household is included in the capture rate for only one Unit Type.

(H) Capture Rate by AMGI Band. For each AMGI band (30%, 40%, 50%, 60%, and also 20%, 70%, and 80% if the Applicant will make the Income Average election), the capture rate by AMGI band is defined as Relevant Supply of proposed and Unstabilized Comparable Units divided by the eligible demand from that AMGI band. Some households are qualified for multiple income bands. In order to calculate AMGI band rates, each household is included in the capture rate for only one AMGI band.

(I) Absorption. Project an absorption period for the subject Development to achieve Breakeven Occupancy. State the absorption rate.

(J) Market Impact. Provide an assessment of the impact the subject Development, as completed, will have on existing Developments supported by Housing Tax Credits in the Primary Market. (§2306.67055)

(11) Photographs. Provide labeled color photographs of the subject Property, the neighborhood, street scenes, and comparables. An aerial photograph is desirable but not mandatory.

(12) Appendices. Any Third Party reports including demographics relied upon by the Market Analyst must be provided in appendix form. A list of works cited including personal communications also must be provided, and the Modern Language Association (MLA) format is suggested.

(13) Qualifications. Current Franchise Tax Account Status from the Texas Comptroller of Public Accounts (not applicable for sole proprietorships) and any changes to items listed in §11.303(c)(1)(B) and (C) of this chapter (relating to Market Analyst Qualifications).

(e) The Department reserves the right to require the Market Analyst to address such other issues as may be relevant to the Department's evaluation of the need for the subject Development and the provisions of the particular program guidelines.

(f) In the event that the PMA for a subject Development overlaps the PMA's of other proposed or Unstabilized comparable Developments, the Underwriter may perform an extended Sub-Market Analysis considering the combined PMA's and all proposed and Unstabilized Units in the extended Sub-Market Area; the Gross Capture Rate from such an extended Sub-Market Area analysis may be used by the Underwriter as the basis for a feasibility conclusion.

(g) All Applicants shall acknowledge, by virtue of filing an Application, that the Department shall not be

bound by any such opinion or Market Analysis, and may substitute its own analysis and underwriting conclusions for those submitted by the MarketAnalyst.

§11.304- Appraisal Rules and Guidelines-

(a) General Provision.

(1) An appraisal prepared for the Department must conform to the Uniform Standards of Professional Appraisal Practice (USPAP) as adopted by the Appraisal Standards Board of the Appraisal Foundation. The appraisal must be prepared by a general certified appraiser by the Texas Appraisal Licensing and Certification Board. The appraisal must include a statement that the report preparer has read and understood the requirements of this section. The appraisal must include a statement that the person or company preparing the appraisal, or reviewing the appraisal, is a disinterested party and will not materially benefit from the Development in any other way than receiving a fee for performing the appraisal and that the fee is in no way contingent upon the outcome of the appraisal.

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

(b) Self-Contained. An appraisal prepared for the Department must describe sufficient and adequate data and analyses to support the final opinion of value. The final value(s) must be reasonable, based on the information included. Any Third Party reports relied upon by the appraiser must be verified by the appraiser as to the validity of the data and the conclusions.

(c) Appraiser Qualifications. The appraiser and reviewing appraiser must be appropriately certified or licensed by the Texas Appraiser Licensing and Certification Board.

(d) Appraisal Contents. An appraisal prepared for the Department must be organized in a format that follows a logical progression. In addition to the contents described in USPAP Standards Rule 2, the appraisal must include items addressed in paragraphs (1) - (12) of this subsection.

(1) Title Page. Include a statement identifying the Department as the client, acknowledging that the Department is granted full authority to rely on the findings of the report, and name and address of person authorizing report. The title page must also include the following statement, "any person signing this Report acknowledges that the Department may publish the full report on the Department's Department's website, release the report in response to a request for public information and make other use of the report as authorized by law."

(2) Letter of Transmittal. Include reference to accompanying appraisal report, reference to all person(s) that provided significant assistance in the preparation of the report, date of report, effective date of appraisal, date of property inspection, name of person(s) inspecting the property, tax assessor's parcel number(s) of the site, estimate of marketing period, and signatures of all appraisers authorized to work on the assignment including the appraiser who inspected the property. Include a statement indicating the report preparer has read and understood the requirements of this section.

(3) Table of Contents. Number the exhibits included with the report for easy reference.

(4) Disclosure of Competency. Include appraiser's qualifications, detailing education and experience.

(5) Statement of Ownership of the Subject Property. Discuss all prior sales of the subject Property which occurred within the past three years. Any pending agreements of sale, options to buy, or listing of the subject Property must be disclosed in the appraisal report.

(6) Property Rights Appraised. Include a statement as to the property rights (e.g., fee simple interest, leased fee interest, leasehold, etc.) being considered. The appropriate interest must be defined in terms of current appraisal terminology with the source cited.

(7) Site/Improvement Description. Discuss the site characteristics including subparagraphs (A) - (E) of this paragraph.

(A) Physical Site Characteristics. Describe dimensions, size (square footage, acreage, etc.), shape, topography, corner influence, frontage, access, ingress-egress, etc. associated with the Development Site. Include a plat map ~~and~~/or survey.

(B) Floodplain. Discuss floodplain (including flood map panel number) and include a floodplain map with the subject Property clearly identified.

(C) Zoning. Report the current zoning and description of the zoning restrictions and ~~for~~ any deed restrictions, where applicable, and type of Development permitted. Any probability of change in zoning should be discussed. A statement as to whether or not the improvements conform to the current zoning should be included. A statement addressing whether or not the improvements could be rebuilt if damaged or destroyed, should be included. If current zoning is not consistent with the highest and best use, and zoning changes are reasonable to expect, time and expense associated with the proposed zoning change should be considered and documented. A zoning map should be included.

(D) Description of Improvements. Provide a thorough description and analysis of the improvements including size (Net Rentable Area, gross building area, etc.), use (whether vacant, occupied by owner, or being rented), number of residents, number of stories, number of buildings, type/quality of construction, condition, actual age, effective age, exterior and interior amenities, items of deferred maintenance, energy efficiency measures, etc. All applicable forms of depreciation should be addressed along with the remaining economic life.

(E) Environmental Hazards. It is recognized appraisers are not experts in such matters and the impact of such deficiencies may not be quantified; however, the report should disclose any potential environmental hazards (such as discolored vegetation, oil residue, asbestos-containing materials, lead-based paint etc.) noted during the inspection.

(8) Highest and Best Use. Market Analysis and feasibility study is required as part of the highest and best use. The highest and best use analysis should consider paragraph (7)(A) - (E) of this subsection as well as a supply and demand analysis.

(A) The appraisal must inform the reader of any positive or negative market trends which could influence the value of the appraised Property. Detailed data must be included to support the appraiser's estimate of stabilized income, absorption, and occupancy.

(B) The highest and best use section must contain a separate analysis "as if vacant" and "as improved" (or "as proposed to be improved/renovated"). All four elements (legally permissible, physically possible, feasible, and maximally productive) must be considered.

(9) Appraisal Process. It is mandatory that all three approaches, Cost Approach, Sales Comparison Approach and Income Approach, are considered in valuing the Property. If an approach is not applicable to a particular property an adequate explanation must be provided. A land value estimate must be provided if the Cost Approach is not applicable.

(A) Cost Approach. This approach should give a clear and concise estimate of the cost to construct the subject improvements. The source(s) of the cost data should be reported.

(i) Cost comparables are desirable; however, alternative cost information may be obtained from Marshall & Swift Valuation Service or similar publications. The section, class, page, etc. should be referenced. All soft costs and entrepreneurial profit must be addressed and documented.

(ii) All applicable forms of depreciation must be discussed and analyzed. Such discussion must be consistent with the description of the improvements.

(iii) The land value estimate should include a sufficient number of sales which are current, comparable, and similar to the subject in terms of highest and best use. Comparable sales information should include address, legal description, tax assessor's parcel number(s), sales price, date of sale, grantor, grantee, three year sales history, and adequate description of property transferred. The final value estimate should fall within the adjusted and unadjusted value ranges. Consideration and appropriate cash equivalent adjustments to the comparable sales price for subclauses (I) - (VII) of this clause should be made when applicable.

(I) Property rights conveyed;

(II) Financing terms;

(III) Conditions of sale;

(IV) Location;

(V) Highest and best use;

(VI) Physical characteristics (e.g., topography, size, shape, etc.); and

(VII) Other characteristics (e.g., existing/proposed entitlements, special assessments, etc.).

(B) Sales Comparison Approach. This section should contain an adequate number of sales to provide the Underwriter with a description of the current market conditions concerning this property type. Sales data should be recent and specific for the property type being appraised. The sales must be confirmed with buyer, seller, or an individual knowledgeable of the transaction.

(i) Sales information should include address, legal description, tax assessor's parcel number(s), sales price, financing considerations and adjustment for cash equivalency, date of sale, recordation of the instrument, parties to the transaction, three year sale history, complete description of the Property and property rights conveyed, and discussion of marketing time. A scaled distance map clearly identifying the subject and the comparable sales must be included.

(ii) The method(s) used in the Sales Comparison Approach must be reflective of actual market activity and market participants.

(I) Sale Price/Unit of Comparison. The analysis of the sale comparables must identify, relate, and evaluate the individual adjustments applicable for property rights, terms of sale, conditions of sale, market conditions, and physical features. Sufficient narrative must be included to permit the reader to understand the direction and magnitude of the individual adjustments, as well as a unit of comparison value indicator for each comparable.

(II) Net Operating Income/Unit of Comparison. The Net Operating Income statistics for the comparables must be calculated in the same manner. It should be disclosed if reserves for replacement have been included in this method of analysis. At least one other method should accompany this method of analysis.

(C) Income Approach. This section must contain an analysis of both the actual historical and projected income and expense aspects of the subject Property.

(i) Market Rent Estimate/Comparable Rental Analysis. This section of the report should include an adequate number of actual market transactions to inform the reader of current market conditions concerning rental Units. The comparables must indicate current research for this specific property type. The comparables must be confirmed with the landlord, tenant or agent and individual data sheets must be included. The individual data sheets should include property address, lease terms, description of the property (e.g., Unit Type, unit size, unit mix, interior amenities, exterior amenities, etc.), physical characteristics of the property, and location of the comparables. Analysis of the Market Rents should be sufficiently detailed to permit the reader to understand the appraiser's logic and rationale. Adjustment for lease rights, condition of the lease, location, physical characteristics of the property, etc. must be considered.

(ii) Comparison of Market Rent to Contract Rent. Actual income for the subject along with the owner's current budget projections must be reported, summarized, and analyzed. If such data is unavailable, a statement to this effect is required and appropriate assumptions and limiting conditions should be made. The Contract Rents should be compared to the market-derived rents. A determination should be made as to whether the Contract Rents are below, equal to, or in excess of market rates. If there is a difference, its impact on value must be qualified.

(iii) Vacancy/Collection Loss. Historical occupancy data and current occupancy level for the subject should be reported and compared to occupancy data from the rental comparables and overall occupancy data for the subject's Primary Market.

(iv) Expense Analysis. Actual expenses for the subject, along with the owner's projected budget, must be reported, summarized, and analyzed. If such data is unavailable, a statement to this effect is required and appropriate assumptions and limiting conditions should be made. Historical expenses should be compared to comparables expenses of similar property types or published survey data (such as IREM, BOMA, etc.). Any expense differences should be reconciled. Include historical data regarding the subject's assessment and tax rates and a statement as to whether or not any delinquent taxes exist.

(v) Capitalization. The appraiser should present the capitalization method(s) reflective of the subject market and explain the omission of any method not considered in the report.

(I) Direct Capitalization. The primary method of deriving an overall rate is through market extraction. If a band of investment or mortgage equity technique is utilized, the assumptions must be fully disclosed and discussed.

(II) Yield Capitalization (Discounted Cash Flow Analysis). This method of analysis should include a detailed and supportive discussion of the projected holding/investment period, income and income growth projections, occupancy projections, expense and expense growth projections, reversionary value and support for the discount rate.

(10) Value Estimates. Reconciliation of final value estimates is required. The Underwriter may request

additional valuation information based on unique existing circumstances that are relevant for deriving the market value of the Property.

(A) All appraisals shall contain a separate estimate of the "as vacant" market value of the underlying land, based upon current sales comparables. The "as vacant" value assumes that there are no improvements on the property and therefore demolition costs should not be considered. The appraiser should consider the fee simple or leased fee interest as appropriate.

(B) For existing Developments with any project-based rental assistance that will remain with the property after the acquisition, the appraisal must include an "as-is as-currently-restricted value at current contract rents." For public housing converting to project-based rental assistance, the appraiser must provide a value based on the future restricted rents. The value used in the analysis may be based on the unrestricted market rents if supported by an appraisal. ~~The Department may require that the appraisal be reviewed by a third-party appraiser acceptable to the Department but selected by the Applicant. Use of the restricted rents by the appraiser will not require an appraisal review.~~ the appraisal. Regardless of the rents used in the valuation, the appraiser must consider any other on-going restrictions that will remain in place even if not affecting rents. If the rental assistance has an impact on the value, such as use of a lower capitalization rate due to the lower risk associated with rental rates and/or occupancy rates on project-based developments, this must be fully explained and supported to the satisfaction of the Underwriter.

(C) For existing Developments with rent restrictions, the appraisal must include the "as-is as- restricted" value. In particular, the value must be based on the proposed restricted rents when deriving the value based on the income approach.

(D) For all other existing Developments, the appraisal must include the "as-is" value.

(E) For any Development with favorable financing (generally below market debt) that will remain in place and transfer to the new owner, the appraisal must include a separate value for the existing favorable financing with supporting information.

(F) If required the appraiser must include a separate assessment of personal property, furniture, fixtures, and equipment (FF&E) and/or intangible items. If personal property, FF&E, or intangible items are not part of the transaction or value estimate, a statement to such effect should be included.

(11) Marketing Time. Given property characteristics and current market conditions, the appraiser(s) should employ a reasonable marketing period. The report should detail existing market conditions and assumptions considered relevant.

(12) Photographs. Provide good quality color photographs of the subject Property (front, rear, and side elevations, on-site amenities, interior of typical Units if available). Photographs should be properly labeled. Photographs of the neighborhood, street scenes, and comparables should be included. An aerial photograph is desirable but not mandatory.

(e) Additional Appraisal Concerns. The appraiser(s) must be aware of the Department program rules and guidelines and the appraisal must include analysis of any impact to the subject's value.

§11.305- Environmental Site Assessment Rules and Guidelines

(a) General Provisions. The Environmental Site Assessments (ESA) prepared for the Department must be conducted and reported in conformity with the standards of the American Society for Testing and Materials (ASTM). The initial report must conform with the Standard Practice for Environmental Site Assessments: Phase I Assessment Process (ASTM Standard Designation: E1527-13 or any subsequent standards as published). Any subsequent reports should also conform to ASTM standards and such other recognized industry standards as a reasonable person would deem relevant in view of the Property's anticipated use for human habitation. The ESA shall be conducted by a Third Party environmental professional at the expense of the Applicant, and addressed to the Department as a User of the report (as defined by ASTM standards). Copies of reports provided to the Department which were commissioned by other financial institutions must either address Texas Department of Housing and Community Affairs as a co-recipient of the report or letters from both the provider and the recipient of the report may be submitted extending reliance on the report to the Department. The ESA report must also include a statement that the person or company preparing the ESA report will not materially benefit from the Development in any other way than receiving a fee for performing the ESA, and that the fee is in no way contingent upon the outcome of the assessment. The report must also include the following statement, ~~"any person signing this Report acknowledges that the Department may publish the full report on the Department's website, release the report in response to a request for public information and make other use of the report as authorized by law."~~ "any person signing this Report acknowledges that the Department may publish the full report on the Department's website, release the report in response to a request for public information and make other use of the report as authorized by law." The ESA report must contain a statement indicating the report preparer has read and understood the requirements of this section.

(b) In addition to ASTM requirements, the report must:

(1) State if a noise study is recommended for a property in accordance with current HUD guidelines and identify its proximity to industrial zones, major highways, active rail lines, civil and military airfields, or other potential sources of excessive noise;

(2) Provide a copy of a current survey, if available, or other drawing of the site reflecting the boundaries and adjacent streets, all improvements on the site, and any items of concern described in the body of the ESA or identified during the physical inspection;

(3) Provide a copy of the current FEMA Flood Insurance Rate Map showing the panel number and encompassing the site with the site boundaries precisely identified and superimposed on the map;

(4) If the subject Development Site includes any improvements or debris from pre-existing improvements, state if testing for Lead Based Paint ~~and/or~~ asbestos containing materials would be required pursuant to local, state, and federal laws, or recommended due to any other consideration;

(5) State if testing for lead in the drinking water would be required pursuant to local, state, and federal laws, or recommended due to any other consideration such as the age of pipes and solder in existing improvements. For all Rehabilitation Developments, the ESA provider must state whether the on-site plumbing is a potential source of lead in drinking water;

(6) Assess the potential for the presence of Radon on the Development Site, and recommend specific testing if necessary;

(7) Identify and assess the presence of oil, gas or chemical pipelines, processing facilities, storage facilities or other potentially hazardous explosive activities on-site or in the general area of the site that could potentially adversely impact the Development. Location of these items must be shown on a drawing or

map in relation to the Development Site and all existing or future improvements. The drawing must depict any blast zones (in accordance with HUD guidelines) and include HUD blast zone calculations; and

(8) Include a vapor encroachment screening in accordance with the ASTM “Standard Guide for Vapor Encroachment Screening on Property Involved in Real Estate Transactions” (E2600-10).

(c) If the report recommends further studies or establishes that environmental hazards currently exist on the Property, or are originating off-site, but would nonetheless affect the Property, the Development Owner must act on such a recommendation, or provide a plan for either the abatement or elimination of the hazard. Evidence of action or a plan for the abatement or elimination of the hazard must be presented upon Application submittal.

(d) For Developments in programs that allow a waiver of the Phase I ESA such as an existing USDA funded Development, the Development Owners are hereby notified that it is their responsibility to ensure that the Development is maintained in compliance with all state and federal environmental hazard requirements.

(e) Those Developments which have or are to receive first lien financing from HUD may submit HUD's environmental assessment report, provided that it conforms to the requirements of this section.

§11.306- Scope and Cost Review Guidelines

(a) General Provisions. The objective of the Scope and Cost Review Report (SCR) required for Rehabilitation Developments (excluding Reconstruction) and Adaptive Reuse Developments is to provide a self-contained report that provides a comprehensive description and evaluation of the current conditions of the Development and identifies a scope of work for the proposed repairs, replacements and improvements to an existing multifamily property or identifies a scope of work for the conversion of a non-multifamily property to multifamily use. The SCR author must evaluate the sufficiency of the ~~Applicant's~~ Applicant's scope of work and provide an independent review of the ~~Applicant's~~ Applicant's proposed costs. The report must be in sufficient detail for the Underwriter to fully understand all current conditions, scope of work and cost estimates. It is the responsibility of the Applicant to ensure that the scope of work and cost estimates submitted in the Application is provided to the author. The SCR must include a copy of the Development Cost Schedule submitted in the Application. The report must also include the following statement, “any person signing this Report acknowledges that the Department may publish the full report on the ~~Department's~~ Department's website, release the report in response to a request for public information and make other use of the report as authorized by law.”

(b) For Rehabilitation Developments, the SCR must include analysis in conformity with the ASTM "Standard Guide for Property Condition Assessments. Baseline Property Condition Assessment Process (ASTM Standard Designation: E 2018)" except as provided for in subsections (f) and (g) of this section.

(c) The SCR must include good quality color photographs of the subject Real Estate (front, rear, and side elevations, on-site amenities, interior of the structure). Photographs should be properly labeled. ~~Photographs of the neighborhood, street scenes, and comparables should be included.~~

(d) The SCR must also include discussion and analysis of:

(1) Description of Current Conditions. For both Rehabilitation and Adaptive Reuse, the SCR must contain

a detailed description with good quality photographs of the current conditions of all major systems and components of the Development regardless of whether the system or component will be removed, repaired or replaced. For historic structures, the SCR must contain a description with photographs of each aspect of the building(s) that qualifies it as historic and must include a narrative explaining how the scope of work relates to maintaining the historic designation of the Development. Replacement or relocation of systems and components must be described;

(2) Description of Scope of Work. The SCR must provide a narrative of the consolidated scope of work either as a stand-alone section of the report or included with the description of the current conditions for each major system and components. Any New Construction must be described. Plans or drawings (that are in addition to any plans or drawings otherwise required by rule) and that relate to any part of the scope of work should be included, if available;

(3) Useful Life Estimates. For each system and component of the property the SCR must estimate its remaining useful life, citing the basis or the source from which such estimate is derived;

(4) Code Compliance. The SCR must document any known violations of any applicable federal, state, or local codes. In developing the cost estimates specified herein, it is the responsibility of the Applicant to ensure that the SCR adequately considers any and all applicable federal, state, and local laws and regulations which are applicable and govern any work, and potentially impact costs. For Applications requesting Direct Loan funding from the Department, the SCR author must include a comparison between the local building code and the International Existing Building Code of the International Code Council.;

(5) Program Rules. The SCR must assess the extent to which any systems or components must be modified, repaired, or replaced in order to comply with any specific requirements of the housing program under which the Development is proposed to be financed, the Department's Uniform Physical Condition Standards, and any scoring criteria including amenities for which the Applicant may claim points. It is the responsibility of the Applicant to inform the report author of those requirements in the scope of work; for Direct Loan Developments this includes, but is not limited to the requirements in the Lead-Based Paint Poisoning Prevention Act (42 USC §§4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 USC §§4851-4856), and implementing regulations, Title X of the 1992 Housing and Community Development Act at 24 CFR Part 35 (including subparts A, B, J, K, and R), and the Lead: Renovation, Repair, and Painting Program Final Rule and Response to Children with Environmental Intervention Blood Lead Levels (40 CFR Part 745);

(6) Accessibility Requirements. The SCR report must include an analysis of compliance with the ~~Department's~~ Department's accessibility requirements pursuant to Chapter 1, Subchapter B and §11.101(b)(8) of this title (relating to Site and Development Requirements and Restrictions) and identify the specific items in the scope of work and costs needed to ensure that the Development will meet these requirements upon Rehabilitation (including conversion and Adaptive Reuse);

(7) Reconciliation of Scope of Work and Costs. The SCR report must include the ~~Department's~~ Department's Scope and Cost Review Supplement (SCR Supplement) with the signature of the SCR author. The SCR Supplement must reconcile the scope of work and costs of the immediate physical needs identified by the SCR author with the ~~Applicant's~~ Applicant's scope of work and costs. The costs presented on the SCR Supplement must be consistent with both the scope of work and immediate costs identified in the body of the SCR report and the ~~Applicant's~~ Applicant's scope of work and costs as presented in the Application. Variations between the costs listed on the SCR Supplement and the costs

listed in the body of the SCR report or on the ~~Applicant's~~ Applicant's Development Cost Schedule must be reconciled in a narrative analysis from the SCR provider. The consolidated scope of work and costs shown on the SCR Supplement will be used by the Underwriter in the analysis to the extent adequately supported in the report; and

(8) Cost Estimates. The Development Cost Schedule and SCR Supplement must include all costs identified below:

(A) Immediately Necessary Repairs and Replacement. For all Rehabilitation developments, and Adaptive Reuse developments if applicable, immediately necessary repair and replacement should be identified for systems or components which are expected to have a remaining useful life of less than one year, which are found to be in violation of any applicable codes, which must be modified, repaired or replaced in order to satisfy program rules, or which are otherwise in a state of deferred maintenance or pose health and safety hazards. The SCR must provide a separate estimate of the costs associated with the repair, replacement, or maintenance of each system or component which is identified as being an immediate need, citing the basis or the source from which such cost estimate is derived.

(B) Proposed Repair, Replacement, or New Construction. If the development plan calls for additional scope of work above and beyond the immediate repair and replacement items described in subparagraph (A) of this paragraph, the additional scope of work must be evaluated and either the nature or source of obsolescence to be cured or improvement to the operations of the Property discussed. The SCR must provide a separate estimate of the costs associated with the additional scope of work, citing the basis or the source from which such cost estimate is derived.

(C) Reconciliation of Costs. The combined costs described in subparagraphs (A) and (B) of this paragraph should be consistent with the costs presented on the ~~Applicant's~~ Applicant's Development Cost Schedule and the SCR Supplement.

(D) Expected Repair and Replacement Over Time. The term during which the SCR should estimate the cost of expected repair and replacement over time must equal the lesser of 30 years or the longest term of any land use or regulatory restrictions which are, or will be, associated with the provision of housing on the Property. The SCR must estimate the periodic costs which are expected to arise for repairing or replacing each system or component or the property, based on the estimated remaining useful life of such system or component as described in paragraph (1) of this subsection adjusted for completion of repair and replacement immediately necessary and proposed as described in subparagraphs (A) and (B) of this paragraph. The SCR must include a separate table of the estimated long term costs which identifies in each line the individual component of the property being examined, and in each column the year during the term in which the costs are estimated to be incurred for a period and no less than 30 years. The estimated costs for future years should be given in both present dollar values and anticipated future dollar values assuming a reasonable inflation factor of not less than 2.5% per annum.

(e) Any costs not identified and discussed in sufficient detail in the SCR as part of subsection (d)(6), (d)(8)(A) and (d)(8)(B) of this section will not be included in the underwritten Total Development Cost in the Report.

(f) If a copy of such standards or a sample report have been provided for the Department's review, if such standards are widely used, and if all other criteria and requirements described in this section are satisfied, the Department will also accept copies of reports commissioned or required by the primary lender for a proposed transaction, which have been prepared in accordance with:

- (1) Fannie Mae's criteria for Physical Needs Assessments;
- (2) Federal Housing Administration's criteria for Project Capital Needs Assessments;
- (3) Freddie Mac's guidelines for Engineering and Property Condition Reports;
- (4) USDA guidelines for Capital Needs Assessment.

(g) The Department may consider for acceptance reports prepared according to other standards which are not specifically named in subsection (g) of this section, if a copy of such standards or a sample report have been provided for the Department's review, if such standards are widely used, and if all other criteria and requirements described in this section are satisfied.

(h) The SCR shall be conducted by a Third Party at the expense of the Applicant, and addressed to Texas Department of Housing and Community Affairs as the client. Copies of reports provided to the Department which were commissioned by other financial institutions should address Texas Department of Housing and Community Affairs as a co-recipient of the report, or letters from both the provider and the recipient of the report should be submitted extending reliance on the report to Texas Department of Housing and Community Affairs.

(i) The SCR report must include a statement that the individual ~~and~~/or company preparing the SCR report will not materially benefit from the Development in any other way than receiving a fee for performing the SCR. Because of the ~~Department's~~Department's heavy reliance on the independent cost information, the provider must not be a Related Party to or an Affiliate of any other Development Team member. The SCR report must contain a statement indicating the report preparer has read and understood the requirements of this section.

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

SUBCHAPTER E – FEE SCHEDULE, APPEALS, AND OTHER PROVISIONS

§11.901 Fee Schedule, Appeals, and other Provisions

~~§11.901. Fee Schedule.~~ Any fees, as stated in this section, not paid will cause an Applicant to be ineligible to apply for Department funding, ineligible to receive additional Department funding associated with a Commitment, Determination Notice or Contract, and ineligible to submit extension requests, ownership transfers, and Application amendments until such time the Department receives payment. Payments of the fees shall be in the form of a check and to the extent there are insufficient funds available, it may cause the Application, Commitment, Determination Notice or Contract to be terminated or Allocation rescinded. Other forms of payment may be considered on a case-by-case basis. The Executive Director may extend the deadline for specific extenuating and extraordinary circumstances, provided the Applicant submits a written request for an extension to a fee deadline no later than five business days prior to the deadline associated with the particular fee.

(1) Competitive Housing Tax Credit Pre-Application Fee. A pre-application fee, in the amount of \$10 per Unit, based on the total number of Units reflected in the pre-application, must be submitted with the pre-application in order for the pre-application to be considered accepted by the Department. Pre-applications in which a Community Housing Development Corporation (CHDO) or a private Qualified Nonprofit Organization intends to serve as the Managing General Partner of the Development Owner, or Control the Managing General Partner of the Development Owner, may be eligible to receive a discount of 10% off the calculated pre-application fee provided such documentation is submitted with the fee. (§2306.6716(d))

(2) Refunds of Pre-application Fees. (§2306.6716(c)) Upon written request from the Applicant, the Department shall refund the balance of the pre-application fee for a pre-application that is withdrawn by the Applicant and that is not fully processed by the Department. The amount of refund will be commensurate with the level of review completed. Initial processing will constitute 50% of the review, threshold review prior to a deficiency being issued will constitute 30% of the review, and review after deficiencies are submitted and reviewed will constitute 20% of the review. In no instance will a refund of the pre-application fee be made after the Full Application Delivery Date.

(3) Application Fee. Each Application must be accompanied by an Application fee.

(A) Housing Tax Credit Applications. For Applicants having submitted a Competitive Housing Tax Credit pre-application which met the pre-application threshold requirements, and for which a pre-application fee was paid, the Application fee will be \$20 per Unit based on the total number of Units in the full Application. Otherwise, the Application fee will be \$30 per Unit based on the total number of Units in the full Application. Applications in which a CHDO or Qualified Nonprofit Organization intends to serve as the Managing General Partner of the Development Owner, or Control the Managing General Partner of the Development Owner, may be eligible to receive a discount of 10% off the calculated Application fee, provided such documentation is submitted with the fee. (§2306.6716(d))

(B) Direct Loan Applications. The fee will be \$1,000 per Application except for those Applications that are layered with Housing Tax Credits and submitted simultaneously with the Housing Tax Credit Application. Pursuant to Tex. ~~Gov't~~ Gov't Code §2306.147(b), the Department is required to waive Application fees for private nonprofit organizations that offer expanded services such as child care, nutrition programs, job training assistance, health services, or human services and if HOME funds are awarded. In lieu of the

Application fee, these organizations must include proof of their exempt status and a description of their supportive services as part of the Application. The Application fee is not a reimbursable cost under the HOME Program.

(4) Refunds of Application Fees. Upon written request from the Applicant, the Department shall refund the balance of the Application fee for an Application that is withdrawn by the Applicant and that is not fully processed by the Department. The withdrawal must occur prior to any Board action regarding eligibility or appeal. The amount of refund will be commensurate with the level of review completed. Initial processing will constitute 10% of the review, the site visit will constitute 10% of the review, program evaluation review will constitute 40% of the review, and the underwriting review will constitute 40% of the review. In no instance will a refund of the Application fee be made after final awards are made in July.

(5) Third Party Underwriting Fee. Applicants will be notified in writing prior to the evaluation in whole or in part of a Development by an independent external underwriter if such a review is required. The fee must be received by the Department prior to the engagement of the underwriter. The fees paid by the Development Owner to the Department for the external underwriting will be credited against the Commitment or Determination Notice Fee, as applicable, established in paragraphs (8) and (9) of this section, in the event that a Commitment or Determination Notice is issued by the Department to the Development Owner.

(6) Housing Tax Credit Commitment Fee. No later than the expiration date in the Commitment, a fee equal to 4% of the annual Housing Credit Allocation amount must be submitted; ~~however, this amount is reduced to 2% in 2020 only.~~ If the Development Owner has paid the fee and returns the credits by November 1 of the current Application Round, then a refund of 50% of the Commitment Fee may be issued upon request.

(7) Tax Exempt Bond Development Determination Notice Fee. No later than the expiration date in the Determination Notice, a fee equal to 4% of the annual Housing Credit Allocation amount, unless otherwise modified by a specific program NOFA, must be submitted; ~~however, this amount is reduced to 2% in 2020 only.~~ If the Development Owner has paid the fee and is not able close on the bonds, then a refund of 50% of the Determination Notice Fee may be issued upon request. The refund must be requested no later than 60 days after the bond closing date described in the Board action approving the Determination Notice.

(8) Tax-Exempt Bond Credit Increase Request Fee. Requests for increases to the credit amounts to be issued on IRS Forms 8609 for Tax-Exempt Bond Developments must be submitted with a request fee equal to 4% of the amount of the credit increase for one year.

~~(9)~~

(9) Extension Fees. All extension requests for deadlines relating to the Carryover, 10% Test (submission and expenditure), Construction Status Reports, or Cost Certification requirements submitted at least 30 calendar days in advance of the applicable original deadline will not be required to submit an extension fee. Any extension request submitted fewer than 30 days in advance or after the original deadline must be accompanied by an extension fee of \$2,500. Fees for each subsequent extension request on the same activity will increase by increments of \$500, regardless of whether the first request was submitted thirty (30) calendar days in advance of the applicable deadline. An extension fee will not be required for extensions requested on Developments that involve Rehabilitation when the Department or U.S. Department of Agriculture (USDA) is the primary lender, if USDA or the Department is the cause for the Applicant not meeting the deadline. For each Construction Status Report received after the applicable deadline, extension fees will be automatically due (regardless of whether an extension request is submitted). Unpaid extension fees related to Construction Status Reports will be accrued and must be paid

prior to issuance of IRS Forms 8609. For purposes of Construction Status Reports, each report will be considered a separate activity.

(10) Amendment Fees. An amendment request for a non-material change that has not been implemented will not be required to pay an amendment fee. Material amendment requests (whether implemented or not), or non-material amendment requests that have already been implemented will be required to submit an amendment fee of \$2,500 in order for the request to be processed. Fees for each subsequent amendment request related to the same Application will increase by increments of \$500. A subsequent request, related to the same Application, regardless of whether the first request was non-material and did not require a fee, must include a fee of \$3,000. Amendment fees and fee increases are not required for the Direct Loan programs.

(11) Right of First Refusal Fee. Requests for approval of the satisfaction of the Right of First Refusal provision of the Land Use Restriction Agreement (LURA) must be accompanied by a non-refundable fee of \$2,500.

(12) Qualified Contract Pre-Request Fee. A Development Owner must file a preliminary Qualified Contract Request to confirm eligibility to submit a Qualified Contract request. The Pre-Request must be accompanied by a non-refundable processing fee of \$250.

(13) Qualified Contract Fee. Upon eligibility approval of the Qualified Contract Pre-Request, the Development Owner may file a Qualified Contract Request. Such request must be accompanied by a non-refundable processing fee of \$3,000.

(14) Ownership Transfer Fee. Requests to approve an ownership transfer must be accompanied by a non-refundable processing fee of \$1,000.

(15) Unused Credit or Penalty Fee. Development Owners who have more tax credits allocated to them than they can substantiate through Cost Certification will return those excess tax credits prior to issuance of IRS Form 8609. For Competitive Housing Tax Credit Developments, a penalty fee equal to the one year credit amount of the lost credits (10% of the total unused tax credit amount) will be required to be paid by the Owner prior to the issuance of IRS Form 8609 if the tax credits are not returned, and 8609's issued, within 180 days of the end of the first year of the credit period. This penalty fee may be waived without further Board action if the Department recaptures and re-issues the returned tax credits in accordance with Code, §42. If an Applicant returns a full credit allocation after the Carryover Allocation deadline required for that allocation, the Executive Director may recommend to the Board the imposition of a penalty on the score for any Competitive Housing Tax Credit Applications submitted by that Applicant or any Affiliate for any Application in an Application Round occurring concurrent to the return of credits as further provided for in §11.9(f) of this chapter (relating to Factors Affecting Scoring and Eligibility in current and future Application Rounds), or if no Application Round is pending, the Application Round immediately following the return of credits. If any such point penalty is recommended to be assessed and presented for final determination by the Board, it must include notice from the Department to the affected party not less than 14 calendar days prior to the scheduled Board meeting. The Executive Director may, but is not required to, issue a formal notice after disclosure if it is determined that the matter does not warrant point penalties.

(16) Compliance Monitoring Fee. Upon receipt of the cost certification for HTC Developments or HTC Developments that are layered with Direct Loan funds, or upon the completion of the 24-month

development period and the beginning of the repayment period for Direct Loan only Developments, the Department will invoice the Development Owner for compliance monitoring fees. For HTC only the amount due will equal \$40 per low-income unit. For Direct Loan Only Developments the fee will be \$34 per Direct Loan Designated Units. Developments with both HTCs and Direct Loan will only pay one fee equal to \$40 per low income unit. Existing HTC developments with a Land Use Restriction Agreement that require payment of a compliance monitoring fee that receive a second allocation of credit will pay only one fee; the fee required by the original Land Use Restriction Agreement will be disregarded. For HTC Developments, the fee will be collected, retroactively if applicable, beginning with the first year of the credit period. For Direct Loan only Developments, the fee will be collected beginning with the first year of the repayment period. The invoice must be paid prior to the issuance of IRS Form 8609 for HTC properties. For Direct Loan only developments, the fee must be paid prior to the release of final retainage. Subsequent anniversary dates on which the compliance monitoring fee payments are due shall be determined by the month the first building is placed in service. Compliance fees may be adjusted from time to time by the Department.

(17) Public Information Request Fee. Public information requests are processed by the Department in accordance with the provisions of Tex. ~~Gov't~~Gov't Code, Chapter 552. The Department uses the guidelines promulgated by the Office of the Attorney General to determine the cost of copying and other costs of production.

(18) Adjustment of Fees by the Department and Notification of Fees. (§2306.6716(b)) All fees charged by the Department in the administration of the tax credit and Direct Loan programs may be revised by the Department from time to time as necessary to ensure that such fees compensate the Department for its administrative costs and expenses. Unless otherwise determined by the Department, all revised fees shall apply to all Applications in process and all Developments in operation at the time of such revisions.

(19) Determination Notice Reinstatement Fee. Applications that receive an affirmative Board Determination, but for which closing on the bonds does not occur prior to the Certificate of Reservation expiration date, and which subsequently have that docket number withdrawn from the TBRB, may have their Determination Notice reinstated. Prior to the re-issuance of the Determination Notice, the Applicant must submit a \$1,000 fee for staff review and processing of the Certification of Tax Exempt Bond Applications with New Docket Numbers in accordance with §11.201(2)(E) of this chapter.

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

§11.902- Appeals Process

(a) For Competitive HTC Applications, an Applicant or Development Owner may appeal decisions made by the Department pursuant to Tex. ~~Gov't~~Gov't Code §2306.0321 and §2306.6715 using the process identified in this section. For Tax-Exempt Bond Developments and Direct Loan Developments (not contemporaneously submitted with a Competitive HTC Application), an Applicant or Development Owner may appeal decisions made by the Department pursuant to §1.7 of this title (relating to Appeals). Matters that can be appealed include:

(1) A determination regarding the Application's satisfaction of applicable requirements, Subchapter B of this chapter (relating to Site and Development Requirements and Restrictions) and Subchapter C of this chapter (relating to Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules for Applications), pre-application threshold criteria, and underwriting criteria;

(2) The scoring of the Application under the applicable selection criteria;

(3) A recommendation as to the amount of Department funding to be allocated to the Application;

(4) Misplacement of an Application or parts of an Application, mathematical errors in scoring an Application, or procedural errors resulting in unequal consideration of the Applicant's proposal;

(5) Denial of a requested change to a Commitment or Determination Notice;

(6) Denial of a requested change to a loan agreement;

(7) Denial of a requested change to a LURA;

(8) Any Department decision that results in the termination or change in set-aside of an Application; and

(9) Any other matter for which an appeal is permitted under this chapter.

(b) An Applicant or Development Owner may not appeal a decision made regarding an Application filed by or an issue related to another Applicant or Development Owner.

(c) An Applicant or Development Owner must file its appeal in writing with the Department not later than the seventh calendar day after the date the Department publishes the results of any stage of the Application evaluation or otherwise notifies the Applicant or Development Owner of a decision subject to appeal. The appeal must be made by a Person designated to act on behalf of the Applicant or an attorney that represents the Applicant. For Application related appeals, the Applicant must specifically identify the Applicant's grounds for appeal, based on the original Application and additional documentation filed with the original Application as supplemented in accordance with the limitations and requirements of this chapter.

(d) The Executive Director may respond in writing not later than 14 calendar days after the date of actual receipt of the appeal by the Department. If the Applicant is not satisfied with the Executive Director's response to the appeal or the Executive Director does not respond, the Applicant may appeal directly in writing to the Board. While information can be provided in accordance with any rules related to public comment before the Board, full and complete explanation of the grounds for appeal and circumstances warranting the granting of an appeal must be disclosed in the appeal documentation filed with the Executive Director.

(e) An appeal filed with the Board must be received in accordance with Tex. ~~Gov't~~ Gov't Code §2306.6715 (d).

(f) Board review of an Application related appeal will be based on the original Application. A witness in an appeal may not present or refer to any document, instrument, or writing not already contained within the Application as reflected in the ~~Department's~~ Department's records.

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

(h) The Department will post to its website an appeal filed with the Department or Board and any other document relating to the processing of an Application related appeal. (§2306.6717(a)(5))

§11.903 Adherence to Obligations_ (§2306.6720)

Any Applicant, Development Owner, or other Person that fails to adhere to its obligations with regard to the programs of the Department, whether contractual or otherwise, made false or misleading representations to the Department with regard to an Application, request for funding, or compliance requirements, or otherwise violated a provision of Tex. Gov't Code, Chapter 2306 or a rule adopted under that chapter, may be subject to:

(1) Assessment of administrative penalties in accordance with Chapter 2, Subchapter C of this title (relating to Administrative Penalties) the ~~Department's~~Department's rules regarding the assessment of such penalties. Each day the violation continues or occurs is a separate violation for purposes of imposing a penalty; ~~and/or~~

(2) In the case of the competitive Low Income Housing Tax Credit Program, a point reduction for any Application involving that Applicant over the next two Application Rounds succeeding the date on which the Department first gives written notice of any such failure to adhere to obligations or false or misleading representations. Point reductions under this section may be appealed to the Board.

§11.904- Alternative Dispute Resolution (ADR) Policy

In accordance with Tex. ~~Gov't~~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~~Gov't Code, Chapter 2010, to assist in resolving disputes under the Department's jurisdiction, as provided for in §1.17 of this title (relating to Alternative Dispute Resolution).-

8c

BOARD ACTION ITEM
REAL ESTATE ANALYSIS DIVISION
SEPTEMBER 3, 2020

Presentation, discussion, and possible action on timely filed appeal under the Department's Real Estate Analysis Rules for Application #20116 Dian Street Villas, Houston

RECOMMENDED ACTION

WHEREAS, the appeal relates to Competitive Housing Tax Credit (HTC) Application #20116 Dian Street Villas, which was submitted to the Department by the Full Application Delivery Date;

WHEREAS, pursuant to 10 TAC §10.302(l)(4) relating to Initial Feasibility, the first year stabilized pro forma operating expense divided by the first year stabilized pro form Effective Gross Income ("Expense to Income Ratio") must not exceed 65%;

WHEREAS, the Applicant submitted the original Application with an Annual Operating Expenses exhibit indicating an Expense to income Ratio of 67.98%, exceeding the 65% feasibility limitation;

WHEREAS, in response to a separate Administrative Deficiency issued on April 29, 2020, the Applicant submitted a revised Annual Operating Expenses exhibit on May 5, 2020, that modified the Expense to Income Ratio to 67.69%, still exceeding the 65% feasibility limitation;

WHEREAS, an Underwriting Report was issued on July 27, 2020, by the Real Estate Analysis Division (REA) denying the Application without performing any analysis because the Applicant's stated Expense to Income Ratio, both as originally submitted and as revised, triggered infeasibility under the rule;

WHEREAS, the Applicant timely filed an appeal; and

WHEREAS, the Executive Director denied the appeal;

NOW, therefore, it is hereby

RESOLVED, that the underwriting appeal for 20116 Dian Street Villas is hereby denied.

BACKGROUND

The Application proposes the New Construction of 108 Units for the General population in Houston, of which 96 will be income and rent restricted and 12 will be market rate.

The sponsor of the Applicant is Texas Inter-Faith Housing Corporation (Russ Michaels, Executive Director) and is the Sole Member of both the General Partner as well as the Co-Developer. SuperUrban Realty Ventures, LLC, (Jervon Harris) is the other Co-Developer.

There are five feasibility criteria in the Underwriting rules. Two of these, the Expense to Income Ratio and the Debt Coverage Ratio (DCR), are tests related to operating the property and are calculated using a pro forma of operations for the property. It is the Expense to Income Ratio that is at issue on this appeal.

10 TAC 11.302(i)(4)(A) states the following proposed developments will be considered infeasible:

(4) Initial Feasibility.

(A) Except when underwritten at cost certification, the first year stabilized pro forma operating expense divided by the first year stabilized pro forma Effective Gross Income is greater than 68% for Rural Developments 36 Units or less, and 65% for all other Developments.

(B) The first year DCR is below 1.15 (1.00 for USDA Developments)

The Annual Operating Expenses exhibit in the Application calculates these ratios using the Applicant's entries for revenue, operating expenses and debt service. These entries are input into the Application form by the Applicant. The ratios self-calculate and will automatically recalculate with any changes made by the Applicant to their projections. Because the ratios are on the exhibit itself, the Applicant is able to see at any time whether their pro forma will satisfy these two feasibility tests (both the Expense to Income Ratio and DCR).

In this case, the Applicant submitted the original Application with an Expense to Income Ratio of 67.98%. This ratio exceeds the 65% maximum allowable ratio. Consequently, the Applicant submitted an infeasible Application under the rules.

On initial Application review, the Multifamily Finance Division issued an Administrative Deficiency on April 29, 2020. One of the eight deficiency items related to the Applicant's use of incorrect utility allowances. Review for the Expense to Income Ratio is not part of the initial Application review, as it is part of the underwriting process. The response to the Administrative Deficiency was timely received, and addressed the following items:

1. Tab 12, Escrow Receipts – the Application did not include escrow receipts
2. Tab 25, Utility Allowances – the Application included Utility Allowance from the Harris County Housing Authority, because the Development is within the City of Houston, the appropriate Allowance is from the Houston Housing Authority
3. Tab 30, Cost Estimator – the form was incomplete

4. Tab 31, City of Houston Commitment – the interest rate for the City of Houston loan was incorrect on the Application form
5. Tab 37, Guarantor – it was unclear who exercised control of the Guarantor
6. Tab 39, Name Spelling – a name was spelled two different ways
7. Tab 45, Credit Limit, Pt. 2 – forms were missing for two individuals
8. Feasibility Report – Fire Department requirements and a statement regarding publication of the report were missing.

On May 5, 2020, a representative of the Applicant emailed the Multifamily Program staff reviewer, who issued the Administrative Deficiency on April 29, 2020, asking for confirmation of which Application exhibits needed revisions because of correcting the utility allowances exhibit. The Applicant specifically mentions the Rent Schedule (Tab 24), Utility Allowance exhibit (Tab 25) and the 15 Year pro forma (Tab 27). The Applicant does not mention the Annual Operating Expenses exhibit (Tab 26) which is the exhibit that reports the ratio calculations.

That same day, staff replied to the Applicant stating that “wherever a change in income would have an effect, needs to be checked...” Staff goes on to suggest to the Applicant that they use “some system” as they are running different scenarios “to make sure you don’t miss anything.” Later that same day on May 5, 2020, the Applicant provided revisions to the Application including a revision to the Annual Operating Expenses exhibit (Tab 26).

The revised Annual Operating Expenses exhibit showed changes to the total expenses and net operating income stemming from correcting the utility allowances. The revised exhibit shows an Expense Ratio of 67.69%, which exceeded the 65% feasibility limitation. The Applicant had again submitted an infeasible Application under the rules after having the opportunity to determine an alternative structure whereby the Application was feasible under the rules.

The Application was transferred to REA on May 16, 2020. Because the Application was terminated and on appeal for unrelated reasons, the Underwriter did not start to review the Application until after the first appeal was granted by the Board on July 14, 2020. Subsequently upon review of the original Application and the revised Application exhibits, the Underwriter issued a report not recommending the award because the Application as submitted and as revised was infeasible under the rules.

APPLICANT’S APPEAL

The Applicant timely filed an appeal of the Underwriting Report to the Executive Director on August 3, 2020. The appeal asserts three arguments as reason to approve the appeal:

1. REA has a “duty to underwrite applications that have received a full program review” based on the language of 10 TAC §11.201(5), and must now conclude that the application is feasible;

2. REA should make its underwriting conclusions only to ensure the amount of credits than is necessary, per 10 TAC §11.302(a), and should not attempt to determine actual financial feasibility; and,
3. The language of 10 TAC §11.302(i)(4)(A) requires REA to consider an alternative structure and additional documents prior to finding a development infeasible.

The appeal generally requests the ability to “clarify” this ratio by submitting alternative documentation and an expense structure that conforms with the rule.

The Executive Director denied the appeal on August 14, 2020. His response is included herein.

For their appeal to the Board, the Applicant principally argues that this Application was treated by staff differently than other Applications in the 2020 allocation round. They have highlighted three applications where the Underwriter requested revised Annual Operating Expenses exhibits.

In the course of their appeals, the Applicant has submitted a third set of Application exhibits that seek to modify the Application as submitted. Because these revised exhibits were not requested by the Department, they are not considered part of the Application and cannot be reviewed by the Board. The Appeal also includes a Letter of Intent (LOI) with substantial changes to the loan terms from the City of Houston. This LOI was recently issued by the City, thus it cannot be considered as part of the submitted Application and the revised loan terms cannot be considered as mitigation for the Expense to Income ratio that does not meet the requirement in rule. Of note, the Applicant did not include the complete document in their Appeal.

The Appellant alleges that Underwriting treated their Application differently than three other applications in the 2020 round, and cites applications 20024, 20025 and 20027 as having received an opportunity to amend their application exhibits. The circumstances causing the Underwriter’s request for clarification of an inconsistency for these three 2020 Applications is due to the rounding of the Debt Coverage Ratio calculation on the Annual Operating Expenses exhibit. The DCR calculation on the exhibit is rounded to two decimal places. In each of these three referenced Applications, the DCR shown on the application exhibits rounded to 1.15, and would indicate to the Applicant that their Application was compliant with the rule.

Using the raw numbers, and without rounding, the debt coverage ratios were actually 1.149 (or .001 lower than the requirement). In circumstances like this involving rounding, the Underwriter will give an Applicant an opportunity to slightly adjust their pro forma such that the ratio as rounded by the Application form is consistent with the actual figures submitted on the Application exhibit.

In the Application at issue, though, there was no rounding by the application form that caused an inconsistency, and no minor adjustment to one figure. The Application, as submitted and substantiated, significantly exceeded the Expense to Income Ratio.

The Expense to Income Ratio to determine feasibility is figured by utilizing the following figures and Application exhibits:

Expense:

Total Annual Expenses (Tab 27 of the Application). The individual operating expense assumptions shown on this exhibit were input by the Applicant. The Total Annual Expenses on the original Tab 27 was \$585,322 annually and on the revised TAB 27 (as a result of the administrative deficiency) was \$585,517 annually. The only expense line-item that changed between the two exhibits was the management fee. The management fee percentage shown on each exhibit was 5% as input by the Applicant. The annual expense for the management fee is calculated by multiplying the Effective Gross Annual Income (found on Tab 24, Rent Schedule) by the 5% fee. Thus when the Effective Gross Annual Income changed, the dollar amount of the management fee expense changed. This change slightly changed the Total Annual Expenses on Tab 27. The Applicant did not change any of the other expense line-items on the revised exhibit.

Income:

The Effective Gross Annual Income is the sum of the total anticipated rents to be collected by the Applicant plus the sum of other income anticipated to be collected less the income lost by the Applicant due to vacancy of units.

Calculation of the anticipated rents is based on multiple factors. Generally, the rental rates on the restricted units are based on the maximum program rents less a utility allowance (the restricted rents). The maximum program rents are rents published by the Department. Rents for non-restricted units (market units) are determined by the Applicant. Utility allowances are not deducted from market units.

The vacancy factor of 7.5% was used by the Applicant on each exhibit which is consistent with the rules. The Applicant used \$18.06 per unit per month on each exhibit. No changes were made by the Applicant regarding these factors between the two exhibits.

During the Program review, staff determined that the Applicant had used incorrect utility allowances in the Application. Therefore the restricted unit rents shown on the rent schedule were incorrect. As a result, staff issued the Administrative Deficiency on April 29, 2020 as discussed above to correct which source of utility allowances that must be used.

The Expense to Income Ratio is calculated automatically by the Application form, itself, but the figures that determine the Ratio are set out in the above-described figures and exhibits. To adjust all of the exhibits and supporting documentation of this Application so that the Expense to Income Ratio was within the initial feasibility threshold, the Applicant would need to modify many assumptions used for income and expenses on one or more of the Application exhibits. The modifications would constitute a material change to the Application as originally submitted, and are too extensive to fit within the definition of an Administrative Deficiency. It is important to note that no other 2020 applicant submitted an application with an initial feasibility ratio that did not meet the rule requirements.

The language of 10 TAC §11.201(7) describes the parameters of the deficiency process:

(7) Deficiency Process. The purpose of the deficiency process is to allow an Applicant to provide clarification, explanation, or non-material missing information to resolve inconsistencies in the original Application or to assist staff in an efficient and effective review of the Application. Deficiencies may be Administrative or Material, in either case they will be treated similarly in that Applicants may receive a deficiency notice and have an opportunity to respond. Applicants are encouraged to utilize manuals or other materials produced by staff, as additional guidance in conjunction with the rules to provide appropriate support for each item substantiating a claim or representation, such as claims for points, qualification for set-asides, or meeting of threshold and eligibility requirements. Any Application that staff identifies as having insufficient support information will be directed to cure the matter via the deficiency process. Applicants are reminded that this process may not be used to increase a scoring item's points or to change any aspect of the proposed Development, financing structure, or other element of the Application. Because the review of an Application occurs in several phases, deficiency notices may be issued during any of these phases. . . . Final determinations regarding the sufficiency of documentation submitted to cure a Deficiency as well as the distinction between material and non-material missing information are reserved for the Director of Multifamily Finance, Executive Director, and Board.

(Emphasis added)

Staff recommends the Board deny the appeal.

20116 Dian Street Villas Underwriting Report



DEVELOPMENT IDENTIFICATION

TDHCA Application #: 20116 Program(s): 9% HTC

Dian Street Villas

Address/Location: 1433 Dian Street

City: Houston County: Harris Zip: 77008

Population: General Program Set-Aside: Non-Profit Area: Urban

Activity: New Construction Building Type: Elevator Served Region: 6

Analysis Purpose: New Application - Initial Underwriting

ALLOCATION

TDHCA Program	REQUEST				RECOMMENDATION				
	Amount	Interest Rate	Amort	Term	Amount	Interest Rate	Amort	Term	Lien
LIHTC (9% Credit)	\$1,500,000				\$0				

NOT RECOMMENDED DUE TO THE FOLLOWING:

§10.302(l)(4)(A) relating to Initial Feasibility requires that, except when underwritten at cost certification, the first year stabilized pro forma operating expense divided by the first year stabilized pro forma Effective Gross Income must not exceed 68% for Rural Developments with 36 Units or less, and must not exceed 65% for all other Developments.

The expense ratio for this development is 67.69% which exceeds the allowable ratio.

DISCUSSION

The subject property is 108 units. The maximum allowable expense ratio for this development based on the above rule is 65%.

In this case, the original Application was submitted with a first year stabilized pro forma operating expense of \$585,322 that when divided by the first year stabilized pro forma Effective Gross Annual Income of \$861,049, resulted in an expense ratio of 67.98% which is greater than 65%.

In response to an Administrated Deficiency on May 5, 2020, you submitted an updated rent schedule showing an Effective Gross Annual Income of \$864,934 and a first year stabilized pro forma operating expense of \$585,517. These revised numbers calculate an expense ratio of 67.69%.

In each case, the ratios are shown on both of the Annual Operating Expenses exhibits you submitted. As a result, the Application as you submitted and revised is infeasible under the rules.

Director of Real Estate Analysis: Brent Stewart

20116 Dian Street Villas
Appeal Documents
(Excerpt)

CSH DIAN STREET VILLAS, LTD.

3701 Kirby Drive, Suite 860
Houston, Texas 77098

August 3, 2020

Via Email

Mr. Bobby Wilkinson, Executive Director
Texas Department of Housing and Community Affairs (TDHCA)
221 East 11th Street
Austin, Texas 78701

Re: Underwriting Report / Appeal to Executive Director / 2020 Competitive Housing Tax Credit Application #20116 Dian Street Villas (the “Application”)

Dear Mr. Wilkinson,

On behalf of CSH Dian Street Villas, Ltd. (the “Applicant”) please accept this timely appeal of the Real Estate Analysis Division (REA) financial feasibility review and published Underwriting Report (the “Report”) dated July 27, 2020. The full purpose of this letter is to appeal that Report and provide in writing the grounds for appeal that support a determination by the Executive Director as per 10 TAC §11.902. We sincerely believe the following compelling evidence supports our position on appeal and kindly request that the Applicant’s appeal be granted.

GROUND FOR APPEAL

As per the Report, the issue centers on the expense ratio of Dian Street Villas (the “Development”) and REA characterizing the Development as infeasible. While the expense ratio calculated for the Development does exceed the allowable ratio, the underwriting rules allow for a Development that is characterized as infeasible to still be recommended for a Housing Credit Allocation based on a condition, whereby the Underwriter **conditions the recommendations of the Report upon receipt of documentation supporting an alternative structure.**

To that end, the grounds for this appeal are primarily procedural and secondly substantive. First, with a complete reading of the procedural rule, Dian Street Villas can and should receive a recommendation for Award conditioned upon receipt of documentation supporting an alternative structure. Second, upon reviewing the substantive supporting documentation for that alternative structure, Dian Street Villas should be found to be feasible.

Therefore, we respectfully request that the procedural rules outlined in the Evaluation Process section, §11.201(5), and Feasibility Determination section, §11.302(i), be followed fully to ensure fair and equitable due process of the Application, and secondly, we kindly request that Application #20116 be characterized as feasible upon review of the attached documents supporting an alternative structure and that REA Staff proceed with completing the underwriting report toward recommending an award of housing tax credit funds.

CONTEXT

Dian Street Villas is a unique circumstance where the Application has officially undergone a program review for compliance with submission requirements and scoring selection criteria; been identified by the Director of Multifamily Finance as a highly ranked application; received an extensive full program review from TDHCA staff that included in part an initial financial feasibility inspection (e.g., debt coverage ratio, itemized projected income, operating expenses, debt service, etc.); been reviewed and found acceptable by an authorized representative of a third party lender; been recommended by the City of Houston Housing and Community Development Department for CDBG-DR funds; and been recommended a conditional award of funds by TDHCA Board of Director vote at the July 23, 2020 TDHCA Board Meeting.

Most importantly, the Application has met the threshold and eligibility requirements with no conditions meeting the criteria for ineligibility. Thus, the Application has been through a full program review and remains competitive as defined under the Evaluation Process.

An initial infeasibility determination is not a requirement for meeting threshold, eligibility, or ineligibility. Furthermore, an infeasibility determination is “curable” based on a complete reading of the Underwriting Rules and Guidelines.

The following procedural analysis of the rules begins there and within that context for this appeal.

RULES & ANALYSIS

1. The Real Estate Analysis Division – according to the rules – has a duty to underwrite applications that have received a full program review and remains competitive in accordance with the Evaluation Process.

§11.201(5) Evaluation Process

As per §11.201(5) the Applications believed likely to be competitive will undergo a program review for compliance with submission requirements and selection criteria, as applicable. Those Applications will receive a *full program review* based upon a reasonable assessment. Furthermore,

the Real Estate Analysis division **shall** underwrite Applications that received a *full program review* and remain competitive to determine financial feasibility.

Black's Law Dictionary

The term **shall** is not defined in the QAP; however, Black's Law Dictionary defines **shall** as a verb, meaning "*has a duty to; more broadly, is required to*".

Conclusion: The Application received a full program review. Therefore, REA has a duty to underwrite the Application to determine financial feasibility. Upon review of the documentation of an alternate structure as allowed by the rules, the REA division can and should underwrite the Application in accordance with the Evaluation Process.

2. The Real Estate Analysis Division – according to the rules – underwrites applications for the purpose and intent of ensuring that applications are granted no more financing than necessary in accordance with the Underwriting Rules and Guidelines.

§11.302(a) Underwriting Rules & Guidelines – General Provisions

As per §11.302(a) the Underwriting Report is an independent analysis of Development feasibility whose goal is to provide no more financing than necessary to an Application. The Report generated in no way guarantees or purports to warrant the actual feasibility of the Development.

Conclusion: By evidence of the Application receiving an initial recommendation of award conditioned upon an underwriting report, all requirements to meet threshold and eligibility have been met and there are no conditions of ineligibility at this time. It is important to note that the intent of underwriting is not to establish or "revisit" whether the Application has met a threshold, an eligibility requirement, or an ineligibility criterion. In addition, the intent of underwriting is not to predict the actual feasibility of the Development. As stated in the Underwriting Rules and Guidelines, the intent of underwriting is to ensure the Application is granted no more financing than necessary. The granting of this appeal would be consistent with the rules and more specifically the goal and intent of underwriting since completing the underwriting based on the attached documents supporting an alternative structure does not result in the Application receiving any more financing than requested and/or necessary.

3. The Real Estate Analysis Division – according to the rules – has a duty to complete underwriting and complete the Feasibility Conclusion to the full extent of due process and

procedural rules according to the Evaluation Process and a complete reading of the Underwriting Rules and Guidelines.

§11.302(i) Feasibility Conclusion

As per §11.302(i) an **infeasible** Development will not be recommended for a Housing Credit Allocation **unless** the Underwriter can determine an alternative structure and/or **conditions** the recommendation of the Report upon receipt of documentation supporting an **alternative structure**. The Development will be **characterized as infeasible** if one or more of paragraphs (3) – (5) of this subsection applies unless paragraph (6)(B) of this subsection also applies.

§11.302(i)(4)(A) Initial Feasibility

As per §11.302(i)(4)(A) a Development will be **characterized infeasible** when the first year stabilized pro forma operating expense divided by the first year stabilized pro forma Effective Gross Income is greater than 68% for Rural Developments 36 Units or less, and **65%** for all other Developments.

§11.302(i)(6)(B)(i)-(iv) Exceptions

As per §11.302(i)(6)(B) a Development not meeting (4)(A) of this subsection will be **re-characterized as feasible** if a (i)-(iv) exception applies.

Conclusion: The Development is characterized infeasible because it currently has an expense ratio of 67.79% which exceeds the allowable ratio of 65%. See attached, **Exhibit A** – Underwriting Report. However, the due process procedure cannot stop there without further investigation of the rules. A thorough inspection of the (i)-(iv) exceptions concludes that no exception applies to the Development to warrant re-characterization as feasible. Therefore, Dian Street Villas remains characterized as infeasible. However again, the due process procedure cannot stop there without further investigation of the rules. A thorough inspection of the language of the Feasibility Conclusion section – §11.302(i) – provides that an **infeasible Development** will not be recommended for a Housing Credit Allocation **unless** the Underwriter can determine an alternative structure **and/or conditions** the recommendation of the Report upon receipt of documentation supporting an alternative structure. As applied, the Underwriter has a duty to follow through and complete procedural due process by underwriting the application because the unequivocal reading of the Feasibility Conclusion section, §11.302(i), holds that an infeasible Development will not be recommended **unless** some subsequent procedure still takes place and occurs. Put differently, something still has to occur procedurally to complete the reading of the word “unless”. If that something does not occur, then due process falls short.

Therefore, the Underwriter can resolve to “determine an alternative structure and condition the recommendation of the Report upon receipt of documentation supporting an alternative structure”

or the Underwriter can resolve to “condition the recommendation of the Report upon receipt of documentation supporting an alternative structure”, when the Development is characterized as infeasible. Under either scenario according to the reading of the rule, a recommendation can occur if one of those two things occur. Thus resolved, if the Underwriter can determine an alternative structure, then Dian Street Villas should go forward conditioned upon receipt of documentation supporting an alternative structure.

Importantly, the word “unless” is in the rule to keep eligible developments processing at this stage, and moreover, uphold the integrity of due process because the rules suggest an application that has received a full program review and remains competitive should proceed with underwriting and a feasibility conclusion based on documentation of an alternate structure. Furthermore, good public policy suggests that if a recommended high scoring Development has already gone through this much review and scrutiny by TDHCA, then it would be fair and equitable to allow it to proceed if it actually could indeed pass feasibility and underwriting muster. In the case of Dian Street Villas, we believe it can proceed with underwriting and for good measure, we have provided its alternative structure in this appeal. See attached, **Exhibit B** – Dian Street Villas Alternative Structure.

CONCLUSION

The initial characterization of infeasibility under Initial Feasibility section, clause §11.302(i)(4)(A), is not a threshold, eligibility or ineligibility item that precludes an applicant from receiving a reconciliation of the Application or curing the initial determination. In fact, due process defined by the Evaluation Process and Feasibility Conclusion sections, clauses §11.201(5) and §11.302(i), specifically supports an Underwriter completing the underwriting based on documentation supporting the alternative structure as submitted by the Applicant hereto. Granting the Appeal and completing the underwriting ensures procedural due diligence is completed and the application is reviewed to the fullest extent allowed and required under the Underwriting Rules and Guidelines as well as the Evaluation Process. Thus, ensuring the Application is not subject to a procedural error resulting in unequal consideration of the Application.

This appeal is consistent with matters that can be appealed under clause §11.902(1) and §11.902(4) to ensure procedural errors do not result in unequal consideration of the Applicant’s proposal. In addition, from a substantive standpoint adjusting an expense ratio on this Development does not materially change the Application. Furthermore, granting the appeal is consistent with goals and the intent of underwriting being to ensure the Application is granted no more financing than necessary as described in clause (§11.302(a) under the Underwriting Rules and Guidelines.

To further support our analysis and conclusions, we have included a pertinent letter from Locke Lord that bolsters this appeal, See, **Exhibit C** – Locke Lord Letter. Taken together, we believe that all the enclosed documentation, support evidence and discussion confirm that this appeal should be granted.

Again, we respectfully request that procedural rule 11.302(i) be followed fully to assure fair and equitable due process, and secondly, we kindly request that Application #20116 be characterized as feasible upon review of the attached documents supporting an alternative structure and that REA Staff proceed with completing the underwriting report toward recommending an award of housing tax credit funds.


We look forward to continuing to work with the Texas Department of Housing and Community Affairs staff, its board members, the Real Estate Analysis Division, and you, our Executive Director. Please do not hesitate to contact us or Locke Lord counsel at your earliest convenience. We wholeheartedly appreciate all that you and staff have been doing during Covid19. We acknowledge that really takes something, and we hope this appeal finds you both safe and well.

Kind Regards,

CSH Dian Street Villas, Ltd., a Texas limited partnership

By: CSH Dian Street Villas GP, LLC, its general partner

By: Texas Inter-Faith Housing Corp., a 501(c)3 non-profit, its sole member

By: 

Russ Michaels, Esq., its Executive Director
212-960-3913
rmichaels@interfaithgroup.org

&

SuperUrban Realty Ventures, LLC, a Texas limited liability company

By: 

Jervon Harris, its sole controlling member
713-503-447
JervonHarris@yahoo.com

Exhibit A – Underwriting Report



DEVELOPMENT IDENTIFICATION

TDHCA Application #: 20116 Program(s): 9% HTC

Dian Street Villas

Address/Location: 1433 Dian Street

City: Houston County: Harris Zip: 77008

Population: General Program Set-Aside: Non-Profit Area: Urban

Activity: New Construction Building Type: Elevator Served Region: 6

Analysis Purpose: New Application - Initial Underwriting

ALLOCATION

TDHCA Program	REQUEST				RECOMMENDATION				
	Amount	Interest Rate	Amort	Term	Amount	Interest Rate	Amort	Term	Lien
LIHTC (9% Credit)	\$1,500,000				\$0				

NOT RECOMMENDED DUE TO THE FOLLOWING:

\$10.302(l)(4)(A) relating to Initial Feasibility requires that, except when underwritten at cost certification, the first year stabilized pro forma operating expense divided by the first year stabilized pro forma Effective Gross Income must not exceed 68% for Rural Developments with 36 Units or less, and **must not exceed 65%** for all other Developments.

The expense ratio for this development is 67.69% which exceeds the allowable ratio.

DISCUSSION

The subject property is 108 units. The maximum allowable expense ratio for this development based on the above rule is 65%.

In this case, the original Application was submitted with a first year stabilized pro forma operating expense of \$585,322 that when divided by the first year stabilized pro forma Effective Gross Annual Income of \$861,049, resulted in an expense ratio of 67.98% which is greater than 65%.

In response to an Administrated Deficiency on May 5, 2020, you submitted an updated rent schedule showing an Effective Gross Annual Income of \$864,934 and a first year stabilized pro forma operating expense of \$585,517. These revised numbers calculate an expense ratio of 67.69%.

In each case, the ratios are shown on both of the Annual Operating Expenses exhibits you submitted. As a result, the **Application** as you submitted and revised is **infeasible under the rules.**

Rule Procedure is still incomplete and requires another step

Director of Real Estate Analysis: Brent Stewart

Exhibit C – Locke Lord Letter



August 3, 2020

Via Email

Mr. Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701

Re: Dian Street Villas, TDHCA No. 20116 - **Appeal for Infeasibility**

Dear Bobby:

We represent the Applicant¹ for the Development referenced above, which applied for 2020 Housing Tax Credits and received an award from the Board on July 23. This letter supports the Applicant's appeal of a notice of financial infeasibility from the Real Estate Analysis division.

I have reviewed the appeal from the Applicant and have found it to be firmly grounded in the rules of the Qualified Allocation Plan. An Application that presents an inconsistency must be reconciled, whether that be pursuant to an Administrative Deficiency or a Request for Information, regardless of the stage of review. The fact that this Application presented an expense-to-income ratio in excess of 65% is clearly inconsistent with the Applicant's intent to receive a Housing Tax Credit award. The QAP allows the underwriter to work with the Applicant to identify an alternative structure that would lead to a recommendation for award. Our clients regularly receive Requests for Information from the Real Estate Analysis team to clarify items in their Applications. There is nothing in the QAP to indicate that a clarification related to this feasibility conclusion should be treated any differently.

We respectfully request that you grant the Applicant's appeal so that an alternative structure can be presented and the Application can proceed.

Sincerely,

A handwritten signature in black ink that reads "Cynthia L. Bast".

Cynthia L. Bast

cc: Texas Inter-Faith Housing Corporation

¹ Capitalized terms used but not defined in this letter shall have the meanings given them in the 2020 QAP.

20116 Dian Street Villas
Executive Director
Appeal Response



TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

www.tdhca.state.tx.us

Greg Abbott
GOVERNOR

BOARD MEMBERS
Leslie Bingham, *Vice Chair*
Paul A. Braden, Member
Sharon Thomason, Member
Leo Vasquez, Member

August 14, 2020

Writer's direct dial: (512) 475-3296
Email: bobby.wilkinson@tdhca.state.tx.us

Jervon Harris
CSH Dian Street Villas, Ltd.
3701 Kirby Drive, Ste. 860
Houston, Texas 77098

RE: STATUS OF APPLICATION - 2020 COMPETITIVE HOUSING TAX CREDIT APPLICATION 20116 DIAN STREET VILLAS, HOUSTON

Dear Mr. Harris:

On July 23, 2020, the TDHCA Board approved the list of recommended Applications for Final Commitments of 2020 Housing Tax Credits, expressly conditioned upon the completion of underwriting by the Department's Real Estate Analysis (REA) division. For the above-named Application, the underwriting review revealed a critical flaw: that the application was submitted with an expense ratio that exceeded the 65% limit, which by rule rendered the development infeasible. The Applicant was informed of the REA conclusion of infeasibility, and timely made its appeal on August 3rd.

The appeal asserts three arguments: 1) REA has a "duty to underwrite applications that have received a full program review" based on the language of 10 TAC §11.201(5), and must now conclude that the application is feasible; 2) REA should make its underwriting conclusions only to ensure the amount of credits than is necessary, per 10 TAC §11.302(a), and should not attempt to determine actual financial feasibility; and, 3) the language of 10 TAC §11.302(i)(4)(A) requires REA consider an alternative structure and additional documents prior to finding a development infeasible. The appeal included proposed new or revised application exhibits, including a Rent Schedule, Annual Operating Expenses, 15 Year Rental Housing Operating Pro Forma, and a new Proposed Management and Staffing Plan for the proposed development.

Counsel for the Applicant summarized their argument this way: "[t]he fact that this Application presented an expense-to-income ratio in excess of 65% is clearly inconsistent with the Applicant's intent to receive a Housing Tax Credit Award." The appeal generally requests the ability to "clarify"



this ratio by submitting alternative documentation and an expense structure that conforms with the rule. For the reasons explained, below, I deny the appeal and affirm REA's conclusion of infeasibility.

Relevant Code (Rule and Statute)

10 TAC §11.201(5):

(5) Evaluation Process. Applications believed likely to be competitive will undergo a program review for compliance with submission requirements and selection criteria, as applicable. . . . The Director of Multifamily Finance will identify those Applications that will receive a full program review based upon a reasonable assessment of each Application and its relative position to other Applications, but no Application with a competitive ranking shall be skipped or otherwise overlooked. This initial assessment may be a high level assessment, not a full assessment. **The Real Estate Analysis division shall underwrite Applications that received a full program review and remain competitive to determine financial feasibility and an appropriate funding amount. In making this determination, the Department will use §11.302 of this chapter (relating to Underwriting Rules and Guidelines) and §13.6 of this title (relating to Multifamily Direct Loan Rule).** The Department may have an external party perform all or part of the underwriting evaluation and components thereof to the extent it determines appropriate. The expense of any external underwriting shall be paid by the Applicant prior to the commencement of the aforementioned evaluation pursuant to §11.901(5) of this chapter (relating to Fee Schedule, Appeals and other Provisions). . . . (Emphasis added)

10 TAC §11.302(a):

(a) General Provisions. Pursuant to Tex. Gov't Code §2306.148 and §2306.185(b), the Board is authorized to adopt underwriting standards as set forth in this section. Furthermore, for Housing Credit Allocation, Code §42(m)(2), requires the tax credits allocated to a Development not to exceed the amount necessary to assure feasibility. Additionally, 24 CFR Parts 92 and 93, as further described in CPD Notice 15-11 require the Department to adopt rules and standards to determine the appropriate Multifamily Direct Loan feasibility. The rules adopted pursuant to the Tex. Gov't Code and the Code are developed to result in an Underwriting Report (Report) used by the Board in decision making with the goal of assisting as many Texans as possible by providing no more financing than necessary based on an independent analysis of Development feasibility. The Report generated in no way guarantees or purports to warrant the actual performance, feasibility, or viability of the Development.

10 TAC §11.302(i): This subsection begins as follows:

(i) Feasibility Conclusion. An infeasible Development will not be recommended for a Grant, Direct Loan or Housing Credit Allocation unless the Underwriter can determine an alternative structure and/or conditions the recommendations of the Report upon receipt of documentation supporting an alternative structure. A Development will be characterized as infeasible if paragraph (1) or (2) of this subsection applies. The Development will be characterized as infeasible if one or more of paragraphs (3) - (5) of this subsection applies unless paragraph (6)(B) of this subsection also applies.

10 TAC 11.302(i)(4)(A):

(4) Initial Feasibility.

(A) Except when underwritten at cost certification, the first year stabilized pro forma operating expense divided by the first year stabilized pro forma Effective Gross Income is greater than 68% for Rural Developments 36 Units or less, and 65% for all other Developments.

Tex. Gov't Code §2306.6710 (b)(1)(A) requires the department score and rank applications on the basis of criteria regarding "financial feasibility of the development based on the supporting financial data required in the application that will include a project underwriting pro forma from the permanent or construction lender." Per the QAP at 10 TAC §11.9(e)(1), the 2020 application required the following supporting financial data for scoring purposes:

(1) Financial Feasibility. (§2306.6710(b)(1)(A)) To qualify for points, a 15-year pro forma itemizing all projected income including Unit rental rate assumptions, operating expenses and debt service, and specifying the underlying growth assumptions and reflecting a minimum must-pay debt coverage ratio of 1.15 for each year must be submitted. The pro forma must include the signature and contact information evidencing that it has been reviewed and found to be acceptable by an authorized representative of a proposed Third Party construction or permanent lender. In addition to the signed pro forma, a lender approval letter must be submitted. An acceptable form of lender approval letter may be obtained in the Uniform Multifamily Application Templates. If the letter evidences review of the Development alone it will receive twenty-four (24) points. If the letter is from the Third Party permanent lender, or if the Development is Supportive Housing and meets the requirements of 10 TAC §11.1(d)(122)(E)(i), and evidences review of the Development and the Principals, it will receive twenty-six (26) points.

Finally, Tex. Gov't Code §2306.6708 explicitly prohibits changing or supplementing an application after the filing deadline, unless it is to clarify information or correct administrative

deficiencies in the application “at the request of the department.” It is clear in this instance that REA did not request the documents that were submitted on August 3rd.

Analysis of Arguments Raised by Applicant

10 TAC §11.201(5): Appellant focuses on the first clause of the bolded language, above, regarding this rule: “The Real Estate Analysis division shall underwrite Applications that received a full program review and remain competitive . . .” and purports this supports their conclusion that since “[t]he Application received a full program review . . . REA has a duty to underwrite the Application to determine financial feasibility.” On the contrary, the full text of this section of the rule indicates that it is descriptive of the timing of when REA is to make their determination of financial feasibility (after Multifamily makes their full program review) and not the conclusion that REA must reach regarding financial feasibility.

10 TAC §11.302(a): Citing to the general provisions subsection of the underwriting rules, the appellant appears to argue that the intent of underwriting is not to establish whether the Application is eligible to receive an award, but only to ensure that no more financing than necessary is awarded. However, given that the statute requires financial data be provided with the Application, and the rule just discussed (§11.201(5)) makes clear that once the program has reviewed the application per its rules then REA is called upon to make its determination regarding financial feasibility using the financial data submitted with the Application and §11.302,¹ I find that that REA is performing its function of making its independent recommendation regarding financial feasibility as a key component and predicate to the award.²

10 TAC §11.302(i): Indeed, the language of this rule does appear to offer some flexibility to REA when making conclusions and recommendations regarding financial feasibility. However, it is important to note two things when considering the language of this underwriting rule: first, the rule is generally applicable to the underwriting procedure for all awards made by the Board where an underwriting assessment is called for. Accordingly, where the statute applicable to the Application for tax credits contains restrictions, they must be respected when interpreting the underwriting rule. Second, this rule states that the proposed development will be characterized infeasible unless the Underwriter “can determine an alternative structure [would be financially feasible] upon receipt of documentation supporting [such] an alternative structure.”

Here, the Application was submitted with an expense-to-income ratio of 67.69% -- a number derived from pro forma for operating expenses and the pro forma for Effective Gross Annual Income submitted with the Application. The rule (§11.302(i)(4)(A)) states that the maximum ratio is 65%, as derived from the documentation submitted with the Application. The mathematical conclusion by REA (that the rule-required ratio was exceeded) was straightforward, and appears to be uncontested by the Appellant.

¹ See Tex. Gov’t Code §2306.148(a)(2)(the Board has the duty to adopt underwriting standards for housing tax credits allocated by the Department)

² See Tex. Gov’t Code §2306.6710(d)(“ . . .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.”)(emphasis added)

To say that REA was required to provide further process to allow the applicant to propose and support an alternative structure is to say that the February Application data and exhibits that undergird the expense-to-income ratio are being “clarified” by their wholesale substitution in August. It also appears to shift responsibility away from the Applicant to submit an Application that conforms with the basic and mathematically verifiable underwriting criteria. Here, the Applicant has made an unsolicited submission of a revised rent schedule, annual operating expenses, a new 15 Year pro forma, and a new proposed management and staffing plan for the development, and asks that it join their Application as “clarification.” I am simply not prepared to say that this is something that REA “can determine” given the aforementioned statutory language of Tex. Gov’t Code §2306.6708. Moreover, to argue that these new exhibits represent an instance of clarification of application inconsistencies (*i.e.* that the “Application presented an expense-to-income ratio in excess of 65% is clearly inconsistent with the Applicant’s intent to receive a Housing Tax Credit Award”) stretches the bounds of reason. Yes, the deficiency process described in 10 TAC §11.201(7) does allow an applicant to “provide . . . information to resolve inconsistencies in the original Application,” but surely the most blatant, facial violation of the rules or statute are similarly inconsistent with an intent to receive an award, and would not transform foundational errors into correctable inconsistencies. Accordingly, I am denying your appeal.

If you are not satisfied with this decision, you may file a further appeal with the Board of Directors of the Texas Department of Housing and Community Affairs. Please review §11.902 of the 2020 QAP for full instruction on the appeals process. Please note that §11.902(f) of the 2020 QAP and Tex. Gov’t Code §2306.6715(c) limit Board review of an Application on appeal to the original Application and those documents contained within the Application.

Sincerely,

A handwritten signature in blue ink that reads "Bobby Wilkinson" with a stylized flourish at the end.

Bobby Wilkinson
Executive Director

Copy: Russ Michaels
Cynthia Bast

20116 Dian Street Villas Appeal to the Board



August 25, 2020

Via Email

Governing Board
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701

Re: Dian Street Villas, TDHCA No. 20116 - **Appeal for Infeasibility**

Lady and Gentlemen:

We represent the Applicant¹ for the Development referenced above, which applied for 2020 Housing Tax Credits and received an award from the Board on July 23. On July 27, the Department published an Underwriting Report, stating that the Application was not recommended for an award of Tax Credits under §11.302(i)(4)(A) of the QAP because the expense-to-income ratio exceeded 65%. The Applicant appealed the conclusion of the Underwriting Report to the Executive Director (the “**Original Appeal**”), providing a detailed explanation of how the QAP supports the Applicant’s assertion that staff can and should attempt to work with the Applicant to clarify the matter before disqualifying the Application. We respectfully request that the Original Appeal be included in the Board Book and available for your reference. The Executive Director denied the appeal.

The Applicant requests that the Governing Board grant this appeal and determine that the staff should attempt to work with the Applicant to clarify the matter before declaring that the Application is not recommended for an award. **Per §10.902 of the QAP, this appeal does not contain any new information not already found in the original Application. We refer the Governing Board solely to the QAP and information already in the Department’s possession.**

APPEAL

The basis of this appeal is simple:

- The staff has the authority and directive, in statute and rule, to work with an Applicant to request additional or clarifying information in the underwriting process.
- The staff did not make such an inquiry for this Application, which is contrary to its treatment of other Applications competing in Application Rounds from 2010 through 2020.

¹ Capitalized terms used but not defined in this letter shall have the meanings given them in the 2020 QAP.

- The Board can and should remand this matter to staff to seek clarifying information to determine whether the Application should be declared feasible under §11.302(i)(4)(A).

THE QAP

§11.302(i)(4) of the QAP states that a Development will be characterized as infeasible and not recommended for a Tax Credit Award under one of two conditions unless “the Underwriter can determine an alternative structure and/or conditions the recommendation of the Report upon receipt of documentation supporting an alternative structure”:

(A) Except when underwritten at cost certification, the first year stabilized pro forma operating expense divided by the first year stabilized pro forma Effective Gross Income is greater than 68% for Rural Developments 36 Units or less, and 65% for all other Developments.

(B) The first year DCR is below 1.15 (1.00 for USDA Developments).

In the Original Appeal, our client showed how statute and rule support a procedure for staff to request clarifying information to determine whether an alternative structure is possible to achieve an expense-to-income ratio below 65% for this Application. Had staff made the inquiry, our client is confident that information in the Application could have been clarified, and the expense-to-income ratio would have been less than 65%.² It was never given that opportunity. Other Applicants were given the opportunity to present clarifying information to resolve issues under §11.302(i)(4), both in the 2020 Application Round and in prior Application Rounds.

PROCEDURAL INCONSISTENCY

In the 2020 Application Round, three (3) Applications were presented with a first year DCR below 1.15. In the example provided at Exhibit A, the underwriting staff issued an Administrative Deficiency, saying “**As presented, your DCR is technically under the 1.15 threshold (by a very small fraction). Should you decide to change any of your rent or expense assumptions, please submit updated Application Schedules that reflect your revisions . . .**” Those Applicants did submit additional information with regard to maintenance salaries. As a result, the first year DCR exceeded 1.15 and the underwriting staff recommended the Applications for Tax Credits.

If other Applicants were allowed to change rent or expense assumptions to support a feasibility conclusion under §11.302(i)(4)(B), why wasn’t our client given the same opportunity for a feasibility conclusion under §11.302(i)(4)(A)? The staff’s action with regard to the Applications identified in Exhibit A reflects what all Applicants have come to expect from the

² In the Original Appeal, the Applicant provided appropriate schedules to the Application, revised to show that an expense-to-income ratio under 65% could be achieved if the staff would ask for clarification. The Applicant was not endeavoring to supplement its Application in a way that would violate Tex. Gov’t Code §2306.6708. Rather, the Applicant was trying to show the Department why this matter can and should be handled with an Administrative Deficiency.

underwriting process – an opportunity to address inconsistencies that need clarification in the Administrative Deficiency process.

For the last ten (10) years, the substantive requirements presented in §11.302(i)(4) have remained constant. Through that time, our client has found at least twenty-nine (29) instances in which an Applicant presented information in the initial Application that resulted in either an expense-to-income ratio in excess of the requirement or a debt service coverage ratio below the requirement. In all of those instances, the offending ratio was corrected or approved during the underwriting review. Please see Exhibit B. The flaw was not considered a fundamental violation that would preclude the Applicant from receiving a Tax Credit award without further inquiry.

Our client seeks the same procedural treatment that has been offered to other Applicants, in this Application Round and through the years.

REQUEST

For all of the reasons stated above, we request that the Governing Board grant this appeal and direct the underwriting staff to issue an Administrative Deficiency to the Applicant to present modifications to the expense structure that would result in an expense-to-income ratio below 65%. If the Applicant can successfully present a response that is otherwise consistent with the rules, the underwriter will be able to determine an “alternative structure” that would allow the Department to declare the Application to meet the initial feasibility requirement under §11.302(i)(4)(A). An “alternative structure” is not a wholesale change to the Application. It is not a change to the overall financing plan. Rather, it is a modification of data or assumptions to clarify the Applicant’s intent to present an Application that satisfies the initial feasibility requirement in §11.302(i)(4)(A).

We appreciate your consideration.

Sincerely,



Cynthia L. Bast

cc: Texas Inter-Faith Housing Corporation

EXHIBIT A

2020 / APPLICATION #20024 ---- AWARD GRANTED



Texas Department of Housing & Community Affairs
REAL ESTATE ANALYSIS

TDHCA #:

Development Name:

Underwriter:

Phone:

In the course of the Department's underwriting review of the above referenced application an Administrative Deficiency, as defined in 10 TAC §11.1(d)(2), has been identified. By this notice, the Department is requesting information to clarify or to correct inconsistencies found in the Application or to provide non-material missing information. All Administrative Deficiency requests will be treated in accordance with §11.201(7) of the Uniform Multifamily Rules.

All deficiencies must be satisfactorily corrected or clarified by 5:00 p.m. Central Time on (fifth business day following the date of this deficiency notice).

All documentation should be submitted as a whole using the Department's Serv-U HTTPs System. Once the documents are submitted to the Serv-U HTTPs system, please email the staff member issuing this notice. If you have questions regarding the Serv-U HTTPs submission process, contact Jason Burr at jason.burr@tdhca.state.tx.us or by phone at (512)475-3986. You may also contact Nicole Fisher at nicole.fisher@tdhca.state.tx.us or by phone at (512)475-2201.

NOTICE: Pursuant to §11.201(7) of the Uniform Multifamily Rules, revised Application exhibits not specifically requested by the Underwriter in an Administrative Deficiency WILL NOT be accepted.

1.

Response:

2.

Response:

3.

Response:

ANNUAL OPERATING EXPENSES

General & Administrative Expenses				
Accounting	\$	10,000		
Advertising	\$	18,906		
Legal fees	\$	4,181		
Leased equipment	\$	6,000		
Postage & office supplies	\$	6,875		
Telephone	\$	6,500		
Other		<i>Computer and Related</i>	\$	6,523
Other		<i>Compliance Consultant</i>	\$	7,308
Total General & Administrative Expenses:			\$	66,293
Management Fee:	Percent of Effective Gross Income:	5.00%	\$	43,805
Payroll, Payroll Tax & Employee Benefits				
Management	\$	78,236		
Maintenance	\$	84,749		
Other		<i>describe</i>	\$	
Other		<i>describe</i>	\$	
Total Payroll, Payroll Tax & Employee Benefits:			\$	162,985
Repairs & Maintenance				
Elevator	\$			
Exterminating	\$	1,063		
Grounds	\$	6,553		
Make-ready	\$	30,711		
Repairs	\$	21,327		
Pool	\$	1,771		
Other		<i>describe</i>	\$	
Other		<i>describe</i>	\$	
Total Repairs & Maintenance:			\$	61,425
Utilities (Enter Only Property Paid Expense)				
Electric		<i>Omnium Management</i>	\$	16,648
Natural gas			\$	
Trash		<i>Omnium Management</i>	\$	6,376
Water/Sewer		<i>Omnium Management</i>	\$	39,900
Other		<i>describe</i>	\$	
Other		<i>describe</i>	\$	
Total Utilities:			\$	62,924
Annual Property Insurance:	Rate per net rentable square foot:	\$	0.50	\$
				39,150
Property Taxes:				
Published Capitalization Rate:		Source:		
Annual Property Taxes	\$		87,000	
Payments in Lieu of Taxes	\$			
Total Property Taxes:			\$	87,000
Reserve for Replacements:	Annual reserves per unit:	\$	250	\$
				21,750
Other Expenses				
Cable TV	\$			
Supportive Services (Staffing/Contracted Services)	\$			
TDHCA Compliance fees (\$40/HTC unit)	\$	3,400		
TDHCA Direct Loan Compliance Fees (\$34/MDL unit)	\$			
TDHCA Bond Compliance Fees (TDHCA as Bond Issuer Only - \$25/MRB unit)	\$			
Bond Trustee Fees (ALL Tax-Exempt Bond Developments)	\$			
Security	\$			
Other		<i>Franchise Tax</i>	\$	1,646
Other		<i>describe</i>	\$	
Total Other Expenses:			\$	5,046
TOTAL ANNUAL EXPENSES		Expense per unit:	\$	6326
		Expense to Income Ratio:		62.82%
NET OPERATING INCOME (before debt service)			\$	325,723
Annual Debt Service				
	\$	<i>Regions Bank</i>	283,238	
	\$			
	\$			
	\$	<i>TDHCA Bond-Issuer Admin Fee (0.10%)</i>		
TOTAL ANNUAL DEBT SERVICE			\$	283,238
		Debt Coverage Ratio:		1.15
NET CASH FLOW			\$	42,485

#20024 FULL APPLICATION SUBMITTAL

If a revised form is submitted, date of submission:

SUBMISSION ACTUALLY CALCULATES TO 1.149 DCR AND UNDERWRITER CALLS IT OUT

2/27/2020

3. As presented, your DCR is technically under the 1.15 threshold (by a very small fraction). Should you decide to change any of your expense assumptions, please submit updated Application Schedules that reflect your revisions and include an

Response: In the process of reviewing our staffing plan we noticed a slight discrepancy in the maintenance salary. We have reduced the Payroll, Payroll Tax and Employee Benefits line item in the Annual Operating Expense Tab by \$3K

9% Underwriting RFI - TDHCA #: 20024 Development Name: Dallas Stemmons Apartments Questions Continued on Next Page

REA / 6/18/20 @ 7:47 PM / GK

UNDERWRITER ISSUES ADMIN DEFICIENCY FOR AN APPLICANT VIOLATING 11.302(i)(4) AND ALLOWS FOR ALTERNATIVE STRUCTURE TO CURE

OPERATING PRO FORMA

SUMMARY- AS UNDERWRITTEN (Applicant's Pro Forma)

NOI:	\$330,369	Avg. Rent:	\$880	Expense Ratio:	62.3%
Debt Service:	\$283,238	B/E Rent:	\$831	Controllable Expenses:	\$4,030
Net Cash Flow:	\$47,131	UW Occupancy:	92.5%	Property Taxes/Unit:	\$1,000
Aggregate DCR:	1.17	B/E Occupancy:	87.5%	Program Rent Year:	2019

**#20024 AFTER
UNDERWRITER
ISSUED DEFICIENCY
AND APPLICANT
CURED WITH
ALTERNATIVE
STRUCTURE**

It is anticipated that HTC units will achieve full p...
 The 2 market rate units are projected to achiev...
 Sponsor has projected monthly secondary inc...
 reported that their number is based off of actu...
 Fee for related party management company...
 underwriting standard.
 At \$160K (\$1,839/unit), Sponsor's budgeted pa...
 point used for comparison. However, a reasonable Staffing Plan was submitted to support their estimate.
 Sponsor's property taxes without any anticipated exemptions are budgeted at \$87K (\$1,000/unit) while TDHCA's
 underwritten taxes are \$93K (\$1,066/unit), a variance of only 6%. TDHCA's estimate is calculated using a fairly typical
 low income housing capitalization rate of 10%. It is noted that the Dallas CAD website indicates a 7.0% cap rate for
 Low Income Housing. However, Sponsor indicated that their budgeted number is based on an average of the taxes
 being paid on other HTC properties in their current North Texas portfolio.
 Franchise tax of \$1,646 was included by Sponsor as an operating expense. REA considers franchise tax to be a
 partnership expense and has therefore taken it out of operating expenses.
 Average rent with 1 month concession on both 60% and market rate units is only \$5 above break-even, but
 concessions are likely unnecessary with subject offering a combined 37% overall discount to market rents.
 Breakeven occupancy occurs with 11 units vacant (underwritten at 7).
 Pro Forma exhibits feasibility for 24 years at a permanent loan rate of 3.95% fixed plus an annual Mortgage Insurance
 Premium ("MIP") of 0.25%. However, all else equal, rate could only increase by 9 basis points (to 4.04%) before first year
 DCR would drop below the minimum 1.15 threshold.
 As underwritten, 15 year residual cash flow is \$381K after repayment of deferred developer fee.

Related-Party Property Management Company: Yes

Revisions to Rent Schedule:

0

Revisions to Annual Operating Expenses:

1

2020 / APPLICATION #20025 ---- AWARD GRANTED



Texas Department of Housing & Community Affairs
 REAL ESTATE ANALYSIS

TDHCA #:

Development Name:

Underwriter:

Phone:

In the course of the Department's underwriting review of the above referenced application an **Administrative Deficiency**, as defined in 10 TAC §11.1(d)(2), has been identified. By this notice, the Department is requesting information to clarify or to correct inconsistencies found in the Application or to provide non-material missing information. All **Administrative Deficiency** requests will be treated in accordance with §11.201(7) of the Uniform Multifamily Rules.

All deficiencies must be satisfactorily corrected or clarified by 5:00 p.m. Central Time on (fifth business day following the date of this deficiency notice).

All documentation should be submitted as a whole using the Department's Serv-U HTTPs System. Once the documents are submitted to the Serv-U HTTPs system, please email the staff member issuing this notice. If you have questions regarding the Serv-U HTTPs submission process, contact Jason Burr at jason.burr@tdhca.state.tx.us or by phone at (512)475-3986. You may also contact Nicole Fisher at nicole.fisher@tdhca.state.tx.us or by phone at (512)475-2201.

NOTICE: Pursuant to §11.201(7) of the Uniform Multifamily Rules, revised Application exhibits not specifically requested by the Underwriter in an Administrative Deficiency WILL NOT be accepted.

1.

Response:

2.

Response:

3.

Response:

ANNUAL OPERATING EXPENSES

General & Administrative Expenses				
Accounting	\$	10,000		
Advertising	\$	11,946		
Legal fees	\$	4,200		
Leased equipment	\$	3,000		
Postage & office supplies	\$	6,932		
Telephone	\$	6,500		
Other		<i>Computer and Related</i>	\$	4,576
Other		<i>Compliance Consultant</i>	\$	6,480
Total General & Administrative Expenses:			\$	53,634
Management Fee:	Percent of Effective Gross Income:	5.00%	\$	40,985
Payroll, Payroll Tax & Employee Benefits				
Management	\$	69,009		
Maintenance	\$	73,677		
Other		<i>describe</i>	\$	
Other		<i>describe</i>	\$	
Total Payroll, Payroll Tax & Employee Benefits:			\$	142,686
Repairs & Maintenance				
Elevator	\$			
Exterminating	\$	1,099		
Grounds	\$	5,615		
Make-ready	\$	28,981		
Repairs	\$	21,163		
Pool	\$	1,832		
Other		<i>describe</i>	\$	
Other		<i>describe</i>	\$	
Total Repairs & Maintenance:			\$	58,690
Utilities (Enter Only Property Paid Expense)				
Electric		<i>Omnium Management</i>	\$	17,222
Natural gas			\$	
Trash		<i>Omnium Management</i>	\$	6,596
Water/Sewer		<i>Omnium Management</i>	\$	37,924
Other		<i>describe</i>	\$	
Other		<i>describe</i>	\$	
Total Utilities:			\$	61,742
Annual Property Insurance:	Rate per net rentable square foot:	\$ 0.45	\$	36,000
Property Taxes:				
Published Capitalization Rate:		Source:		
Annual Property Taxes	\$	87,750		
Payments in Lieu of Taxes	\$			
Total Property Taxes:			\$	87,750
Reserve for Replacements:	Annual reserves per unit:	\$ 250	\$	22,500
Other Expenses				
Cable TV	\$			
Supportive Services (Staffing/Contracted Services)	\$			
TDHCA Compliance fees (\$40/HTC unit)	\$	3,240		
TDHCA Direct Loan Compliance Fees (\$34/MDL unit)	\$			
TDHCA Bond Compliance Fees (TDHCA as Bond Issuer Only - \$25/MRB unit)	\$			
Bond Trustee Fees (ALL Tax-Exempt Bond Developments)	\$			
Security	\$			
Other		<i>Franchise Tax</i>	\$	1,646
Other		<i>describe</i>	\$	
Total Other Expenses:			\$	4,886
TOTAL ANNUAL EXPENSES		Expense per unit:	\$ 5654	\$ 508,873
		Expense to Income Ratio:	62.08%	
NET OPERATING INCOME (before debt service)				\$ 310,829
Annual Debt Service				
	\$	<i>Regions Bank</i>	270,287	
	\$			
	\$			
	\$	<i>TDHCA Bond-Issuer Admin Fee (0.10%)</i>		
TOTAL ANNUAL DEBT SERVICE			\$	270,287
		Debt Coverage Ratio:	1.15	\$ 40,542
NET CASH FLOW				\$ 40,542

#2025 FULL APPLICATION SUBMITTAL

If a revised form is submitted, date of submission:

SUBMISSION ACTUALLY CALCULATES TO 1.149 DCR AND UNDERWRITER CALLS IT OUT

2/25/2020

3. As presented, your DCR is technically under the 1.15 threshold (by a very small fraction). Should you decide to change any of your expense assumptions, please submit updated Application Schedules that reflect your revisions and include an

Response: In the process of reviewing our staffing plan we noticed a slight discrepancy in the maintenance salary. We have reduced Payroll, Payroll Tax and Employee Benefits line item in the Annual Operating Expense Tab by \$3,000.

9% Underwriting RFI - TDHCA #: 20025 Development Name: Palladium Fain Street Apartments Questions Continued on Next Page

REA / 6-11-20 @ 10:40 am / GK

UNDERWRITER ISSUES ADMIN DEFICIENCY FOR AN APPLICANT VIOLATING 11.302(j)(4) AND ALLOWS FOR ALTERNATIVE STRUCTURE TO CURE

OPERATING PRO FORMA

SUMMARY- AS UNDERWRITTEN (Applicant's Pro Forma)

NOI:	\$315,475	Avg. Rent:	\$793	Expense Ratio:	61.5%
Debt Service:	\$270,287	B/E Rent:	\$748	Controllable Expenses:	\$3,486
Net Cash Flow:	\$45,188	UW Occupancy:	92.5%	Property Taxes/Unit:	\$975
Aggregate DCR:	1.17	B/E Occupancy:	87.4%	Program Rent Year:	2019

It is anticipated that HTC units will achieve full p...
 Market rate units are projected to achieve 60%...
 Sponsor has projected monthly secondary inc...
 reported that their number is based off of actu...
 Fee for related party management company...
 underwriting standard.
 At \$140K (\$1,552/unit), Sponsor's budgeted pa...
 point used for comparison. However, a reason...
 Franchise tax of \$1,646 was included by Sponsor as an operating expense. REA considers franchise tax to be a partnership expense and has therefore taken it out of operating expenses.
 Average rent with 1 month concession on both 60% and market rate units is only \$4 above break-even, but concessions are likely unnecessary with subject offering a combined 40% overall discount to market rents.
 Breakeven occupancy occurs with 11 units vacant (underwritten at 7).
 Pro Forma exhibits feasibility for 27 years at a permanent loan rate of 3.80% fixed plus an annual Mortgage Insurance Premium ("MIP") of 0.25%. However, all else equal, rate could only increase by 10 basis points (to 3.90%) before first year DCR would drop below the minimum 1.15 threshold.
 As underwritten, 15 year residual cash flow is \$166K after repayment of deferred developer fee.

**#20025 AFTER
 UNDERWRITER
 ISSUED DEFICIENCY
 AND APPLICANT
 CURED WITH
 ALTERNATIVE
 STRUCTURE**

Related-Party Property Management Company: Yes

Revisions to Rent Schedule:

	0
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Revisions to Annual Operating Expenses:

	1
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2020 / APPLICATION #20027 ---- AWARD GRANTED



Texas Department of Housing & Community Affairs
 REAL ESTATE ANALYSIS

TDHCA #:

Development Name:

Underwriter:

Phone:

In the course of the Department's underwriting review of the above referenced application an Administrative Deficiency, as defined in 10 TAC §11.1(d)(2), has been identified. By this notice, the Department is requesting information to clarify or to correct inconsistencies found in the Application or to provide non-material missing information. All Administrative Deficiency requests will be treated in accordance with §11.201(7) of the Uniform Multifamily Rules.

All deficiencies must be satisfactorily corrected or clarified by 5:00 p.m. Central Time on (fifth business day following the date of this deficiency notice).

All documentation should be submitted as a whole using the Department's Serv-U HTTPs System. Once the documents are submitted to the Serv-U HTTPs system, please email the staff member issuing this notice. If you have questions regarding the Serv-U HTTPs submission process, contact Jason Burr at jason.burr@tdhca.state.tx.us or by phone at (512)475-3986. You may also contact Nicole Fisher at nicole.fisher@tdhca.state.tx.us or by phone at (512)475-2201.

NOTICE: Pursuant to §11.201(7) of the Uniform Multifamily Rules, revised Application exhibits not specifically requested by the Underwriter in an Administrative Deficiency WILL NOT be accepted.

1.

Response:

2.

Response:

3.

Response:

ANNUAL OPERATING EXPENSES			
General & Administrative Expenses			
Accounting	\$	10,000	
Advertising	\$	14,486	
Legal fees	\$	4,395	
Leased equipment	\$	3,000	
Postage & office supplies	\$	7,544	
Telephone	\$	6,500	
Other		Computer and Related	\$ 5,135
Other		Compliance Consultant	\$ 8,784
Total General & Administrative Expenses:			\$ 59,844
Management Fee:	Percent of Effective Gross Income:	5.00%	\$ 64,174
Payroll, Payroll Tax & Employee Benefits			
Management	\$	93,006	
Maintenance	\$	102,474	
Other		describe	
Other		describe	
Total Payroll, Payroll Tax & Employee Benefits:			\$ 195,480
Repairs & Maintenance			
Elevator	\$	3,600	
Exterminating	\$	1,490	
Grounds	\$	6,931	
Make-ready	\$	36,604	
Repairs	\$	29,038	
Pool	\$	2,484	
Other		describe	
Other		describe	
Total Repairs & Maintenance:			\$ 80,147
Utilities (Enter Only Property Paid Expense)			
Electric		Omnium Management	\$ 23,346
Natural gas			
Trash		Omnium Management	\$ 8,941
Water/Sewer		Omnium Management	\$ 48,875
Other		describe	
Other		describe	
Total Utilities:			\$ 81,162
Annual Property Insurance:	Rate per net rentable square foot:	\$ 0.48	\$ 48,800
Property Taxes:			
Published Capitalization Rate:		Source:	
Annual Property Taxes	\$		134,200
Payments in Lieu of Taxes	\$		
Total Property Taxes:			\$ 134,200
Reserve for Replacements:	Annual reserves per unit:	\$ 250	\$ 30,500
Other Expenses			
Cable TV	\$		
Supportive Services (Staffing/Contracted Services)	\$		
TDHCA Compliance fees (\$40/HTC unit)	\$	3,680	
TDHCA Direct Loan Compliance Fees (\$34/MDL unit)	\$		
TDHCA Bond Compliance Fees (TDHCA as Bond Issuer Only - \$25/MRB unit)	\$		
Bond Trustee Fees (ALL Tax-Exempt Bond Developments)	\$		
Security	\$		
Other		Franchise Tax	\$ 1,646
Other		describe	
Total Other Expenses:			\$ 5,326
TOTAL ANNUAL EXPENSES		Expense per unit:	\$ 5735
		Expense to Income Ratio:	54.51%
NET OPERATING INCOME (before debt service)			\$ 583,838
Annual Debt Service			
		Regions Bank	\$ 507,687
		TDHCA Bond-Issuer Admin Fee (0.10%)	
TOTAL ANNUAL DEBT SERVICE			\$ 507,687
		Debt Coverage Ratio:	1.15
NET CASH FLOW			\$ 76,151

#20027 FULL APPLICATION SUBMITTAL

If a revised form is submitted, date of submission: _____

SUBMISSION ACTUALLY CALCULATES TO 1.149 DCR AND UNDERWRITER CALLS IT OUT

2/25/2020

9%

Underwriting RFI - TDHCA #: 20027

Development Name: Garland Senior Living

Questions Continued on Next Page

REA / 6-01-20 @ 4:08 PM / GK



Texas Department of Housing & Community Affairs
REAL ESTATE ANALYSIS

4. As presented, your DCR is technically under the 1.15 threshold (by a very small fraction). Should you decide to change any of your rent or expense assumptions, please submit updated Application Schedules that reflect your revisions and include an

Response: In the process of reviewing our staffing plan we noticed a slight discrepancy in the maintenance salary. We have reduced the Payroll, Payroll Tax and Employee Benefits line item in the Annual Operating Expense Tab by \$3K.

UNDERWRITER ISSUES ADMIN DEFICIENCY FOR AN APPLICANT VIOLATING 11.302(i)(4) AND ALLOWS FOR ALTERNATIVE STRUCTURE TO CURE

OPERATING PRO FORMA

SUMMARY- AS UNDERWRITTEN (Applicant's Pro Forma)

NOI:	\$588,484	Avg. Rent:	\$921	Expense Ratio:	54.1%
Debt Service:	\$507,687	B/E Rent:	\$861	Controllable Expenses:	\$3,390
Net Cash Flow:	\$80,797	UW Occupancy:	92.5%	Property Taxes/Unit:	\$1,100
Aggregate DCR:	1.16	B/E Occupancy:	86.7%	Program Rent Year:	2019

It is anticipated that HTC units will achieve full market rate units budgeted for those units were derived from the North Texas HTC portfolio. With market rate units comprising 25% of the units budgeted for those units were derived from the North Texas HTC portfolio. using a 10% discount on market unit rents being derived from the North Texas HTC portfolio. Sponsor has projected monthly secondary income of \$20/unit (TDHCA's \$20/unit underwriting standard). It was reported that their number is based off of actual performance of the North Texas portfolio of HTC properties. Fee for related party management compared to TDHCA's budgeted at 5%, which matches TDHCA's underwriting standard.

#20027 AFTER UNDERWRITER ISSUED DEFICIENCY AND APPLICANT CURED WITH ALTERNATIVE STRUCTURE

At \$192K (\$1,528/unit), Sponsor's budgeted payroll and payroll tax expense is 13% more than TDHCA's highest data point used for comparison. However, a reasonable Staffing Plan was submitted to support their estimate.

Sponsor's property taxes without any anticipated exemptions are budgeted at \$134K (\$1,100/unit) while TDHCA's underwritten taxes are \$165K (\$1,349/unit), a 13% variance. TDHCA's estimate is calculated using a fairly typical low income housing capitalization rate of 10%. It is noted that the Dallas CAD website indicates a 7.0% cap rate for Low Income Housing. However, Sponsor indicated that \$1,100/unit is an average of the taxes being paid on the HTC properties in their current North Texas portfolio.

Franchise tax of \$1,646 was included by Sponsor as an operating expense. REA considers franchise tax to be a partnership expense and has therefore taken it out of operating expenses.

Average rent with 1 month concession on both 60% and market rate units is only \$5 above break-even, but concessions are likely unnecessary with subject offering a combined 35% overall discount to market rents.

Breakeven occupancy occurs with 16 units vacant (underwritten at 9).

Pro Forma exhibits feasibility for the full 40 year term of the permanent loan at a rate of 4.00% fixed plus an annual Mortgage Insurance Premium ("MIP") of 0.25%. However, all else equal, rate could only increase by 5 basis points (to 4.05%) before first year DCR would drop below the minimum 1.15 threshold.

As presented, 15 year residual cash flow is \$582K after repayment of deferred developer fee.

Related-Party Property Management Company: Yes

Revisions to Rent Schedule:

0

Revisions to Annual Operating Expenses:

1

EXHIBIT B

NOTE: none of these applications qualified for 11.302(i) exceptions or waivers in the rule

App #	Full App Date	Applicant's Expense Ratio or Debt Coverage Ratio For Full Application	REA Report Date	Offending Ratio Approved or Corrected?	Resolved Expense Ratio or Debt Coverage Ratio For Initial Underwriting Report	Recommendation For Tax Credit Allocation Granted
10077	2/23/10	1.149	5/20/10	Yes	1.150	Yes
10094	2/19/10	65.82%	7/9/10	Yes	63.01%	Yes
10024	2/25/10	1.148	2/17/11	Yes	1.195	Yes
10135	2/26/10	66.40%	1/10/11	Yes	63.74%	Yes
10045	2/25/10	1.116	3/8/11	Yes	1.150	Yes
10200	3/1/10	1.149	7/18/11	Yes	1.251	Yes
10171	2/25/10	1.145	7/19/10	Yes	1.180	Yes
10153	2/28/10	1.149	7/26/10	Yes	1.172	Yes
11208	2/22/11	1.149	6/6/11	Yes	1.150	Yes
12332	2/21/12	1.149	7/9/12	Yes	1.150	Yes
12020	2/22/12	65.88%	9/10/12	Yes	64.98%	Yes
13046	2/8/13	65.46%	12/5/13	Yes	62.80%	Yes
13016	2/15/13	1.149	6/11/13	Yes	1.150	Yes
13109	2/27/13	1.147	8/12/13	Yes	1.150	Yes
13145	2/28/13	1.149	7/15/13	Yes	1.168	Yes
14037	2/25/14	68.93%	7/28/14	Yes	63.25%	Yes
14154	2/18/14	1.145	8/12/14	Yes	1.150	Yes
14158	2/10/14	1.147	6/16/14	Yes	1.150	Yes
14205	2/21/14	1.149	8/13/14	Yes	1.150	Yes
15232	2/23/15	65.81%	7/1/15	Yes	64.40%	Yes
15184	2/24/15	66.02%	9/8/15	Yes	64.97%	Yes
15093	2/18/15	69.25%	7/15/15	Yes	64.70%	Yes
16128	2/23/16	1.147	6/20/16	Yes	1.210	Yes
18067	2/19/18	1.149	7/25/18	Yes	1.153	Yes
18069	1/22/18	1.149	7/25/18	Yes	1.155	Yes
19011	2/4/19	1.149	9/25/19	Yes	1.153	Yes
20024	2/28/20	1.149	7/6/20	Yes	1.166	Yes
20025	2/24/20	1.149	6/23/20	Yes	1.167	Yes
20027	2/24/20	1.149	6/24/20	Yes	1.159	Yes
20116	2/24/20	67.98%	7/27/20	No	62.32%	No

2020
Same year and cycle.
If three other applications in the same cycle were granted this procedure, then it would be fair to grant the same consistent procedure to applicant #20116.

If applicant #20116 is allowed to cure in similar fashion as other applicants in 2020 and prior years, its alternative structure will indicate a compliant expense ratio.

EXPENSE RATIO APPLICATIONS

2010 / APPLICATION #10094 ---- AWARD GRANTED

Volume 1, Tab 2. ACTIVITY OVERVIEW

Part D. Annual Operating Expenses

Development Name: **Providence Town Square**

City: **Deer Park**

General & Administrative Expenses			
Accounting	\$	12,500.00	
Advertising	\$	12,000.00	
Legal fees	\$	8,000.00	
Leased equipment	\$	7,500.00	
Postage & office supplies	\$	5,000.00	
Telephone	\$	5,000.00	
Other <i>training, forms, and software</i>	\$	7,500.00	
Total General & Administrative Expenses:			\$ 57,500.00
Management Fee:	Percent of Effective Gross Income:	5.00%	\$ 71,971.00
Payroll, Payroll Tax & Employee Benefits			
Management	\$	100,000.00	
Maintenance	\$	65,000.00	
Other <i>Payroll Burden/health insurance</i>	\$	44,800.00	
Total Payroll, Payroll Tax & Employee Benefits:			\$ 209,800.00
Repairs & Maintenance			
Elevator	\$	12,000.00	
Exterminating	\$	7,800.00	
Grounds	\$	36,000.00	
Make-ready	\$	28,200.00	
Repairs	\$	28,200.00	
Pool	\$	5,000.00	
Other <i>painting & decorating</i>	\$	26,500.00	
Total Repairs & Maintenance:			\$ 143,700.00
Utilities (Enter development owner expense)			
Electric	\$	50,000.00	
Natural gas	\$	40,000.00	
Trash	\$	22,500.00	
Water & sewer	\$	40,000.00	
Other <i>Describe</i>	\$		
Total Utilities:			\$ 152,500.00
Annual Property Insurance:	Rate per net rentable square foot:	\$ 0.41	\$ 63,000.00
Property Taxes:			
Published Capitalization Rate:	9.00%	Source: HCAD	
Annual Property Taxes:	\$	161,868.00	
Payments in Lieu of Taxes:	\$		
Other Taxes <i>Describe</i>	\$		
Total Property Taxes:			\$ 161,868.00
Reserve for Replacements:	Annual reserves per unit:	\$ 250.08	\$ 47,015.04
Other Expenses			
Cable TV	\$	-	
Supportive service contract fees	\$	18,800.00	
TDHCA Compliance fees	\$	10,800.00	
Security	\$	8,000.00	
Other <i>misc petty cash expenses</i>	\$	2,500.00	
Total Other Expenses:			\$ 40,100.00
TOTAL ANNUAL EXPENSES	Expense per unit:	\$ 5039.65	\$ 947,454.04
	Expense to Income Ratio:	65.82%	
NET OPERATING INCOME (before debt service)			\$ 491,971.76
Annual Debt Service			
<i>Loan payment</i>	\$	396669	
<i>Describe Source</i>	\$		
<i>Describe Source</i>	\$		
TOTAL ANNUAL DEBT SERVICE	Debt Coverage Ratio:	1.24	\$ 396,669.00
NET CASH FLOW			\$ 95,302.76

#10094 FULL APPLICATION SUBMITTAL

PROFORMA ANALYSIS & DEVELOPMENT COSTS

Providence Town Square, Deer Park, 9% HTC #10094

INCOME

Total Net Rentable Sq Ft:

POTENTIAL GROSS RENT

Secondary Income: Laundry & Cable Per Unit Per Month: \$20.00
 Other Support Income: Garages & Storage Lockers

POTENTIAL GROSS INCOME

Vacancy & Collection Loss % of Potential Gross Income: -7.50%
 Employee or Other Non-Rental Units or Concessions

EFFECTIVE GROSS INCOME

EXPENSES

% OF EGI PER UNIT PER SQ FT

	% OF EGI	PER UNIT	PER SQ FT	TDHCA	APPLICANT	PER SQ FT	PER UNIT	% of TOTAL
General & Administrative	4.83%	\$365	0.45	\$68,638	\$60,000	\$0.39	\$319	4.17%
Management	5.00%	\$378	0.47	70,980	71,971	0.47	383	5.01%
Payroll & Payroll Tax	13.55%	\$1,023	1.26	192,368	209,800	1.38	1,116	14.59%
Repairs & Maintenance	7.96%	\$601	0.74	113,017	143,700	0.94	764	10.00%
Utilities	6.78%	\$512	0.63	96,313	90,000	0.59	479	6.26%
Water, Sewer, & Trash	4.79%	\$362	0.45	68,001	62,500	0.41	332	4.35%
Property Insurance	3.75%	\$283	0.35	53,285	63,000	0.41	335	4.38%
Property Tax 2.87853	10.67%	\$806	1.00	151,526	161,868	1.06	861	11.26%
Reserve for Replacements	3.31%	\$250	0.31	47,000	47,015	0.31	250	3.27%
TDHCA Compliance Fees	0.46%	\$35	0.04	6,600	10,800	0.07	57	0.75%
Other: Supp. Serv. & Security	1.89%	\$143	0.18	26,800	26,800	0.18	143	1.86%
TOTAL EXPENSES	63.01%	\$4,758	\$5.88	\$894,527	\$947,454	\$6.22	\$5,040	65.90%
NET OPERATING INC	36.99%	\$2,793	\$3.45	\$525,074	\$490,170	\$3.22	\$2,607	34.10%

#10094 OFFENDING RATIO CORRECTED OR APPROVED AT UNDERWRITING FOR AWARD RECOMMENDATION

DEBT SERVICE

Bank of America	\$396,669	\$396,669
Harris County HOME Funds	\$0	
Additional Financing	\$0	
Additional Financing	0	
Additional Financing	0	
TOTAL DEBT SERVICE	396,669	396,669
NET CASH FLOW	\$128,406	\$93,501
AGGREGATE DEBT COVERAGE RATIO	1.32	1.24
RECOMMENDED DEBT COVERAGE RATIO	1.32	

CONSTRUCTION COST

Description	Factor	% of TOTAL	PER UNIT	PER SQ FT	TDHCA	APPLICANT	PER SQ FT	PER UNIT	% of TOTAL
Acquisition Cost (site or bldg)		5.31%	\$5,660	\$6.99	\$1,064,000	\$1,064,000	\$6.99	\$5,660	5.51%
Off-Sites		1.66%	\$1,768	\$2.18	332,403	332,403	2.18	1,768	1.72%
Sitework		8.45%	\$9,000	\$11.11	1,692,000	1,692,000	11.11	9,000	8.77%
Direct Construction		49.01%	\$52,201	\$64.46	9,813,770	9,077,309	59.62	48,284	47.03%
Contingency	5.14%	2.96%	\$3,148	\$3.89	591,893	591,893	3.89	3,148	3.07%
Contractor's Fees	12.45%	7.52%	\$8,009	\$9.89	1,505,646	1,505,646	9.89	8,009	7.80%
Indirect Construction		4.42%	\$4,704	\$5.81	884,445	884,445	5.81	4,704	4.58%
Ineligible Costs		3.68%	\$3,921	\$4.84	737,091	751,576	4.94	3,998	3.89%
Developer's Fees	13.20%	10.23%	\$10,894	\$13.45	2,048,047	2,048,047	13.45	10,894	10.61%
Interim Financing		5.12%	\$5,458	\$6.74	1,026,024	1,026,024	6.74	5,458	5.32%
Reserves		1.63%	\$1,739	\$2.15	327,000	327,000	2.15	1,739	1.69%
TOTAL COST		100.00%	\$106,501.70	\$131.52	\$20,022,319	\$19,300,343	\$126.77	\$102,661	100.00%
Construction Cost Recap		67.94%	\$72,358	\$89.35	\$13,603,309	\$12,866,848	\$84.52	\$68,441	66.67%

SOURCES OF FUNDS

				TDHCA	APPLICANT	RECOMMENDED	
Bank of America	21.98%	\$23,404	\$28.90	\$4,400,000	\$4,400,000	\$4,400,000	Developer Fee Available
Harris County HOME Funds	10.79%	\$11,489	\$14.19	2,160,000	2,160,000	2,160,000	\$2,048,047
HTC Syndication Proceeds	61.89%	\$65,915	\$81.40	12,391,956	12,391,956	12,391,956	% of Dev. Fee Deferred
Deferred Developer Fees	0.97%	\$1,029	\$1.27	193,453	193,453	348,387	17%
Net Lease Up Income					44,094	0	
Additional (Excess) Funds Req'd	4.38%	\$4,664	\$5.76	876,910	110,840	0	15-Yr Cumulative Cash Flow
TOTAL SOURCES				\$20,022,319	\$19,300,343	\$19,300,343	\$2,055,160

2010 / APPLICATION #10135 ---- AWARD GRANTED

Volume 1, Tab 2. ACTIVITY OVERVIEW

Part D. Annual Operating Expenses

Development Name: Champion Homes at Canyon Creek City: Brownsville

<u>General & Administrative Expenses</u>			
Accounting	\$	7,500.00	
Advertising	\$	5,000.00	
Legal fees	\$	1,500.00	
Leased equipment	\$	3,000.00	
Postage & office supplies	\$	3,000.00	
Telephone	\$	5,000.00	
Other <i>Office expenses</i>	\$	2,000.00	
Total General & Administrative Expenses:			\$ 27,000.00
Management Fee:	Percent of Effective Gross Income:	5.00%	\$ 26,707.16
<u>Payroll, Payroll Tax & Employee Benefits</u>			
Management	\$	45,000.00	
Maintenance	\$	35,000.00	
Other <i>Employee Benefits and Taxes</i>	\$	12,000.00	
Total Payroll, Payroll Tax & Employee Benefits:			\$ 92,000.00
<u>Repairs & Maintenance</u>			
Elevator	\$		
Exterminating	\$	1,100.00	
Grounds	\$	6,200.00	
Make-ready	\$	15,000.00	
Repairs	\$	13,000.00	
Pool	\$	5,000.00	
Other <i>Describe</i>	\$		
Total Repairs & Maintenance:			\$ 40,300.00
<u>Utilities (Enter development owner expense)</u>			
Electric	\$	17,825.00	
Natural gas	\$		
Trash	\$	14,500.00	
Water & sewer	\$	35,000.00	
Other	\$		
Total Utilities:			\$ 67,325.00
Annual Property Insurance:	Rate per net rentable square foot:	\$ 0.25	\$ 27,000.00
<u>Property Taxes:</u>			
Published Capitalization Rate:	10.50%	Source:	Cameron County Appraisal
Annual Property Taxes:	\$	32,000.00	
Payments in Lieu of Taxes:	\$		
Other Taxes <i>Describe</i>	\$		
Total Property Taxes:			\$ 32,000.00
Reserve for Replacements:	Annual reserves per unit:	\$ 250	\$ 25,000.00
<u>Other Expenses</u>			
Cable TV	\$	1,328.15	
Supportive service contract fees	\$	6,000.00	
TDHCA Compliance fees	\$	4,000.00	
Security	\$	6,000.00	
Other <i>Describe</i>	\$		
Total Other Expenses:			\$ 17,328.15
TOTAL ANNUAL EXPENSES			\$ 354,660.31
	Expense per unit:	\$ 3,546.60	
	Expense to Income Ratio:	66.40%	
NET OPERATING INCOME (before debt service)			\$ 179,482.80
<u>Annual Debt Service</u>			
<i>Oak Grove 221 D 4 35 year amortization</i>	\$	155,966.00	
<i>Describe Source</i>	\$		
<i>Describe Source</i>	\$		
TOTAL ANNUAL DEBT SERVICE			\$ 155,966.00
	Debt Coverage Ratio:	1.15	
NET CASH FLOW			\$ 23,516.79

#10135 FULL APPLICATION SUBMITTAL

PROFORMA ANALYSIS & DEVELOPMENT COSTS

Champion Homes at Canyon Creek, Brownsville, 9% HTC #10135

INCOME

Total Net Rentable Sq Ft:

POTENTIAL GROSS RENT

laundry,vending,fees,deposits	Per Unit Per Month:	\$20.00
Other Support Income:		
Other Support Income:		

POTENTIAL GROSS INCOME

Vacancy & Collection Loss	% of Potential Gross Income:	-7.50%
Employee or Other Non-Rental Units or Concessions		

EFFECTIVE GROSS INCOME

EXPENSES

	% OF EGI	PER UNIT	PER SQ FT			PER SQ FT		
General & Administrative	5.66%	\$302	0.28	\$30,242	\$ 27,250	\$0.25	\$273	5.11%
Management	5.00%	\$267	0.24	26,707	21,811	0.20	218	4.09%
Payroll & Payroll Tax	13.70%	\$732	0.67	73,185	73,185	0.67	732	13.72%
Repairs & Maintenance	7.57%	\$404	0.37	40,433	39,260	0.36	393	7.36%
Utilities	5.66%	\$302	0.28	30,246	23,550	0.21	236	4.41%
Water, Sewer, & Trash	7.06%	\$377	0.34	37,729	46,634	0.43	466	8.74%
Property Insurance	4.45%	\$238	0.22	23,777	26,500	0.24	265	4.97%
Property Tax 2.404998	8.46%	\$452	0.41	45,214	44,000	0.40	440	8.25%
Reserve for Replacements	4.68%	\$250	0.23	25,000	25,000	0.23	250	4.69%
TDHCA Compliance Fees	0.75%	\$40	0.04	4,000	4,000	0.04	40	0.75%
Other:CTV, Sup Svcs, Security	1.67%	\$89	0.08	8,940	8,940	0.08	89	1.68%
TOTAL EXPENSES	64.68%	\$3,455	\$3.15	\$345,473	\$ 340,129	\$3.10	\$3,401	63.74%
NET OPERATING INC	35.32%	\$1,887	\$1.72	\$188,670	\$193,451	\$1.76	\$1,935	36.26%

#10135 OFFENDING RATIO CORRECTED OR APPROVED AT UNDERWRITING FOR AWARD RECOMMENDATION

DEBT SERVICE

Dougherty Mortgage HUD 221d4	\$3,805	\$173,935	173,986		
Additional Financing		\$0		\$2,099	22
Additional Financing		\$0			
Additional Financing	\$2,118	0			
Additional Financing		0			
TOTAL DEBT SERVICE		173,935	173,986		
NET CASH FLOW		\$14,735	\$19,465		
AGGREGATE DEBT COVERAGE RATIO		1.08	1.11		
RECOMMENDED DEBT COVERAGE RATIO			1.15		

CONSTRUCTION COST

Description	Factor	% of TOTAL	PER UNIT	PER SQ FT	TDHCA	APPLICANT	PER SQ FT	PER UNIT	% of TOTAL
Acquisition Cost (site or bldg)		5.12%	\$6,275	\$5.72	\$627,500	\$617,500	\$5.63	\$6,175	4.86%
Off-Sites		0.00%	\$0	\$0.00	0	0	0.00	0	0.00%
Sitework		8.82%	\$10,800	\$9.85	1,080,000	1,080,000	9.85	10,800	8.50%
Direct Construction		48.29%	\$59,165	\$53.94	5,916,526	6,317,999	57.60	63,180	49.73%
Contingency	5.29%	3.02%	\$3,699	\$3.37	369,900	369,900	3.37	3,699	2.91%
Contractor's Fees	14.00%	8.42%	\$10,313	\$9.40	1,031,300	1,035,720	9.44	10,357	8.15%
Indirect Construction		5.25%	\$6,430	\$5.86	643,000	643,000	5.86	6,430	5.06%
Ineligible Costs		2.74%	\$3,358	\$3.06	335,847	335,847	3.06	3,358	2.64%
Developer's Fees	15.00%	11.78%	\$14,431	\$13.16	1,443,117	1,501,000	13.68	15,010	11.81%
Interim Financing		4.73%	\$5,801	\$5.29	580,053	580,053	5.29	5,801	4.57%
Reserves		1.83%	\$2,244	\$2.05	224,400	224,400	2.05	2,244	1.77%
TOTAL COST		100.00%	\$122,516.42	\$111.69	\$12,251,642	\$12,705,419	\$115.83	\$127,054	100.00%
Construction Cost Recap		68.54%	\$83,977	\$76.56	\$8,397,726	\$8,803,619	\$80.26	\$88,036	69.29%

SOURCES OF FUNDS

						RECOMMENDED	
Dougherty Mortgage HUD 221d4	22.20%	\$27,200	\$24.80	\$2,720,000	\$2,720,000	\$2,629,486	Developer Fee Available
Additional Financing	0.00%	\$0	\$0.00	0	0	0	\$1,501,000
Additional Financing	0.00%	\$0	\$0.00	0	0	0	
Additional Financing	0.00%	\$0	\$0.00	0	0	0	
Additional Financing	0.00%	\$0	\$0.00	0	0	0	
HTC - First Sterling Financial, Inc.	79.05%	\$96,844	\$88.29	9,684,372	9,684,372	9,684,369	% of Dev. Fee Deferred
Deferred Developer Fees	2.46%	\$3,010	\$2.74	301,047	301,047	401,564	27%
Additional (Excess) Funds Req'd	-3.70%	(\$4,538)	(\$4.14)	(453,777)	0	0	15-Yr Cumulative Cash Flow
TOTAL SOURCES				\$12,251,642	\$12,705,419	\$12,715,419	\$408,309

2012 / APPLICATION #12020 ---- AWARD GRANTED

ANNUAL OPERATING EXPENSES

Development Name: **Palisades of Inwood**

City: **Houston**

General & Administrative Expenses			
Accounting	\$	10,000.00	
Advertising	\$	12,500.00	
Legal fees	\$	7,500.00	
Leased equipment	\$	5,200.00	
Postage & office supplies	\$	2,510.00	
Telephone	\$	2,200.00	
Other <u>Training/Computer Software</u>	\$	2,400.00	
Other <u>Describe</u>	\$		
Total General & Administrative Expenses:			\$ 42,310.00
Management Fee:	Percent of Effective Gross Income:	5.00%	\$ 43,196.00
Payroll, Payroll Tax & Employee Benefits			
Management	\$	75,000.00	
Maintenance	\$	30,000.00	
Other <u>Benefits and Incentives</u>	\$	21,000.00	
Other <u>Describe</u>	\$		
Total Payroll, Payroll Tax & Employee Benefits:			\$ 126,000.00
Repairs & Maintenance			
Elevator	\$	4,500.00	
Exterminating	\$	6,900.00	
Grounds	\$	15,200.00	
Make-ready	\$	9,000.00	
Repairs	\$	11,000.00	
Pool	\$		
Other <u>Describe</u>	\$		
Other <u>Describe</u>	\$		
Total Repairs & Maintenance:			\$ 46,600.00
Utilities (Enter development owner expense)			
Electric	\$	26,246.00	
Natural gas	\$	12,160.00	
Trash	\$	39,310.00	
Water & sewer	\$		
Other <u>Describe</u>	\$		
Other <u>Describe</u>	\$		
Total Utilities:			\$ 77,716.00
Annual Property Insurance:	Rate per net rentable square foot:	\$ 0.55	\$ 61,049.42
Property Taxes:			
Published Capitalization Rate: _____	Source: _____		
Annual Property Taxes:	\$	120,000.00	
Payments in Lieu of Taxes:	\$		
Other Taxes <u>Describe</u>	\$		
Other Taxes <u>Describe</u>	\$		
Total Property Taxes:			\$ 120,000.00
Reserve for Replacements:	Annual reserves per unit:	\$ 250.00	\$ 31,750.00
Other Expenses			
Cable TV	\$	2,400.00	
Supportive service contract fees	\$	10,000.00	
TDHCA Compliance fees	\$	5,080.00	
Security	\$	3,040.00	
Other <u>Describe</u>	\$		
Other <u>Describe</u>	\$		
Total Other Expenses:			\$ 20,520.00
TOTAL ANNUAL EXPENSES	Expense per unit:	\$ 4481.43	\$ 569,141.42
	Expense to Income Ratio:	65.88%	
NET OPERATING INCOME (before debt service)			\$ 294,782.68
Annual Debt Service			
<u>1st Lien</u>	\$	229,920.00	
<u>Describe Source</u>	\$		
<u>Describe Source</u>	\$		
<u>Describe Source</u>	\$		
TOTAL ANNUAL DEBT SERVICE	Debt Coverage Ratio:	1.28	\$ 229,920.00
NET CASH FLOW			\$ 64,862.68

#12020 FULL APPLICATION SUBMITTAL

Demand Analysis:

The Market Analyst does not use senior-specific demographic data as specified in the REA Rules. Instead, the Market Analyst estimates eligible senior households by applying broad national estimates about senior population trends. This results in understated Gross Demand for 3,090 units.

The Market Analyst's comparable supply only includes the 150 units at Chelsea Senior Community, failing to consider the 144 proposed units at Justice Park Senior Villas (located just outside the PMA. Based on understated demand and understated supply, the Market Analyst calculates a Gross Capture Rate of 8.96%.

The Market Analyst's calculations are based on demographic data from Claritas. The underwriting analysis is based on a more detailed breakdown of senior households from Ribbon Demographics HISTA data. The Underwriter calculates Gross Demand for 4,725 units, resulting in a Gross Capture Rate of 8.9% for the total Relevant Supply of 421 units (including Chelsea Senior Community and Justice Park Senior Villas).

The maximum Gross Capture Rate for urban developments targeting senior households is 10%; the analysis indicates sufficient demand to support the proposed development.

UNDERWRITING ANALYSIS of PMA DEMAND by UNIT TYPE								
Unit Type	Market Analyst				Underwriter			
	Demand	Subject Units	Comp Units	Unit Capture Rate	Demand	Subject Units	Comp Units	Unit Capture Rate
1 BR/30%	642	13	3	2%	605	13	13	4%
1 BR/50%	747	26	23	7%	628	26	53	13%
1 BR/60%	286	24	19	15%	614	24	64	14%
2 BR/30%	599	10	5	3%	416	10	11	5%
2 BR/50%	888	25	53	9%	518	25	73	19%
2 BR/60%	424	29	47	18%	633	29	80	17%

Primary Market Occupancy Rates:

The Market Analyst reports a total of 19 LIHTC developments in the market area with an average occupancy rate of 92%.

Absorption Projections:

Chelsea Senior began leasing in April 2011 and is currently absorbing 8.5 units per month. Another senior LIHTC development, began leasing in August 2011 and reported an absorption rate of 15 units per month. The Market Analyst projects an absorption rate of 7 to 15 units per month for the proposed development. (p 84)

Market Impact:

The Market Analyst believes that there will be minimal sustained negative impact from the proposed development on the high occupancy and low levels of recent construction in the primary market area. (p 84)

Comments:

The market analysis provides sufficient information on which to base a funding recommendation.

#12020 OFFENDING RATIO CORRECTED OR APPROVED AT UNDERWRITING FOR AWARD RECOMMENDATION

OPERATING PRO FORMA

SUMMARY- AS UNDERWRITTEN (Applicant's Pro forma)					
NOI:	\$298,555	Avg. Rent:	\$587	Expense Ratio:	64.98%
Debt Service:	\$235,129	B/E Rent:	\$551	Controllable Expenses:	\$2,304
Net Cash Flow:	\$63,425	Occupancy:	92.50%	Property Taxes/Unit:	\$866
Aggregate DCR:	1.27:1	B/E Occupancy:	85.62%	Program Rent Year:	2012

2013 / APPLICATION #13046 ---- AWARD GRANTED

ANNUAL OPERATING EXPENSES

General & Administrative Expenses			
Accounting	\$	8,500.00	
Advertising	\$	2,500.00	
Legal fees	\$	1,580.00	
Leased equipment	\$	500.00	
Postage & office supplies	\$	2,400.00	
Telephone	\$	2,400.00	
Other	\$	1,500.00	
Other	\$		
Total General & Administrative Expenses:			\$ 19,380.00
Management Fee:	Percent of Effective Gross Income:	5.00%	\$ 19,990.00
Payroll, Payroll Tax & Employee Benefits			
Management	\$	24,500.00	
Maintenance	\$	20,800.00	
Other	\$	9,371.00	
Other	\$		
Total Payroll, Payroll Tax & Employee Benefits:			\$ 54,671.00
Repairs & Maintenance			
Elevator	\$		
Exterminating	\$	3,000.00	
Grounds	\$	6,000.00	
Make-ready	\$	12,000.00	
Repairs	\$	13,500.00	
Pool	\$		
Other	\$		
Other	\$		
Total Repairs & Maintenance:			\$ 34,500.00
Utilities (Enter Development Owner expense)			
Electric	\$	15,840.00	
Natural gas	\$		
Trash	\$	6,000.00	
Water & sewer	\$	20,520.00	
Other	\$		
Other	\$		
Total Utilities:			\$ 42,360.00
Annual Property Insurance:	Rate per net rentable square foot:	\$ 0.40	\$ 23,832.00
Property Taxes:			
Published Capitalization Rate:	Source:	PE Pennington and Company	
Annual Property Taxes:	\$	43,632.00	
Payments in Lieu of Taxes:	\$		
Other Taxes	\$	2,299.00	
Other Taxes	\$		
Total Property Taxes:			\$ 45,931.00
Reserve for Replacements:	Annual reserves per unit:	\$ 250.00	\$ 15,000.00
Other Expenses			
Cable TV	\$		
Supportive service contract fees	\$	4,000.00	
TDHCA Compliance fees	\$	2,000.00	
TDHCA Bond Administration Fees (TDHCA as Bond Issuer Only)	\$		
Security	\$		
Other	\$		
Other	\$		
Total Other Expenses:			\$ 6,000.00
TOTAL ANNUAL EXPENSES			
		Expense per unit:	\$ 4361.07
		Expense to Income Ratio:	65.46%
NET OPERATING INCOME (before debt service)			\$ 138,058.10
Annual Debt Service			
Bonneville	\$	86,316.00	
HOME	\$	25,000.00	
Describe Source	\$		
Describe Source	\$		
TOTAL ANNUAL DEBT SERVICE			\$ 111,316.00
		Debt Coverage Ratio:	1.24
NET CASH FLOW			\$ 26,742.10

#13046 FULL APPLICATION SUBMITTAL

Villages of Penitas is located outside the PMA but would likely draw from some of the same demand. Factoring in the proposed units at Penitas, but only counting demand within the PMA, indicates a worst-case 14.5% Gross Capture Rate.

Maximum Gross Capture Rate for rural developments targeting family households is 30%; the analysis indicates sufficient demand to support the proposed development.

UNDERWRITING ANALYSIS of PMA DEMAND by UNIT TYPE								
Unit Type	Market Analyst				Underwriter			
	Demand	Subject Units	Comp Units	Unit Capture Rate	Demand	Subject Units	Comp Units	Unit Capture Rate
1 BR/30%	71	1	0	1%	58	1	2	5%
1 BR/50%	131	4	0	3%	72	4	10	19%
1 BR/60%	95	9	0	9%	79	9	20	37%
2 BR/30%	138	2	0	1%	91	2	3	6%
2 BR/50%	111	3	0	3%	65	3	5	12%
2 BR/60%	136	18	0	13%	123	18	32	41%
3 BR/30%	137	1	0	1%	123	1	1	2%
3 BR/50%	136	3	0	2%	82	3	1	5%
3 BR/60%	131	9	0	7%	92	9	6	16%

Primary Market Occupancy Rates:

"... stabilized affordable projects are 100% occupied." (p. 58) The Department's records show that the four senior LIHTC developments in the area are at 100% occupancy.

Absorption Projections:

"There have been no affordable family deals built in recent times." (p.12) Market Analyst reports absorption for all rental units (including unrestricted) has been 58 units per year from 2010 through 2013. (p. 11) Based on prior absorption rates, Market Analyst believes that subject would lease 5 units per month with 100% occupancy within one year of being built. (p. 53)

Market Impact:

"The analyst believes that there is a sufficient "income qualified" population, with significant support the pro forma rents of the project." (p. 15) The market impact will be minimal.

Comments:

If the subject and Royal Gardens are funded, unit capture rates for 1BR & 2BR 60% units are approximately 40% due to the high number of those units at Royal Garden.

"The subject would be newer in age than other existing projects in the area. The entire development would be fully landscaped, and feature an attractive design. The interior of the units would be designed more efficiently than comparable affordable projects in the area." (p. 24)

#13046 OFFENDING RATIO CORRECTED OR APPROVED AT UNDERWRITING FOR AWARD RECOMMENDATION

OPERATING PRO FORMA

SUMMARY- AS UNDERWRITTEN (Applicant's Pro forma)					
NOI:	\$148,513	Avg. Rent:	\$585	Expense Ratio:	62.8%
Debt Service:	\$111,316	B/E Rent:	\$548	Controllable Expenses:	\$2,515
Net Cash Flow:	\$37,197	Occupancy:	92.50%	Property Taxes/Unit:	\$591
Aggregate DCR:	1.33:1	B/E Occupancy:	83.89%	Program Rent Year:	2013

2014 / APPLICATION #14037 ---- AWARD GRANTED

ANNUAL OPERATING EXPENSES

General & Administrative Expenses			
Accounting	\$	7,500.00	
Advertising	\$	1,000.00	
Legal fees	\$	1,000.00	
Leased equipment	\$	0.00	
Postage & office supplies	\$	1,000.00	
Telephone	\$	4,025.00	
Other	\$	2,750.00	
Other	\$	600.00	
Total General & Administrative Expenses:			\$ 17,875.00
Management Fee:	Percent of Effective Gross Income:	6.00%	\$ 16,557.00
Payroll, Payroll Tax & Employee Benefits			
Management	\$	24,960.00	
Maintenance	\$	13,730.00	
Other	\$	3,360.00	
Other	\$		
Total Payroll, Payroll Tax & Employee Benefits:			\$ 42,050.00
Repairs & Maintenance			
Elevator	\$	3,600.00	
Exterminating	\$	1,800.00	
Grounds	\$	4,800.00	
Make-ready	\$	7,200.00	
Repairs	\$	4,320.00	
Pool	\$	0.00	
Other	\$	3,930.00	
Other	\$	2,400.00	
Total Repairs & Maintenance:			\$ 28,050.00
Utilities (Enter Development Owner expense)			
Electric	\$	11,985.00	
Natural gas	\$		
Trash	\$	6,000.00	
Water & sewer	\$	14,400.00	
Other	\$		
Other	\$		
Total Utilities:			\$ 32,385.00
Annual Property Insurance:	Rate per net rentable square foot:	\$ 0.28	\$ 14,535.00
Property Taxes:			
Published Capitalization Rate:	Source:		
Annual Property Taxes:	\$	23,970.00	
Payments in Lieu of Taxes:	\$		
Other Taxes	\$		
Other Taxes	\$		
Total Property Taxes:			\$ 23,970.00
Reserve for Replacements:	Annual reserves per unit:	\$ 250.00	\$ 12,750.00
Other Expenses			
Cable TV	\$		
Supportive service contract fees	\$		
TDHCA Compliance fees	\$	2,040.00	
TDHCA Bond Administration Fees (TDHCA as Bond Issuer Only)	\$		
Security	\$		
Other	\$		
Other	\$		
Total Other Expenses:			\$ 2,040.00
TOTAL ANNUAL EXPENSES			\$ 190,212.00
Expense per unit:			\$ 3729.65
Expense to Income Ratio:			68.93%
NET OPERATING INCOME (before debt service)			\$ 85,745.10
Annual Debt Service			
Wells Fargo	\$	53,590.00	
City of El Paso HOME Loan	\$	16,667.00	
Describe Source	\$		
Describe Source	\$		
TOTAL ANNUAL DEBT SERVICE			\$ 70,257.00
Debt Coverage Ratio:			1.22
NET CASH FLOW			\$ 15,488.10

#14037 FULL APPLICATION SUBMITTAL

The Market Study cites that "The arts/entertainment/recreation sector comprises 1.7 percent of total employment or 531 total jobs, a significant population. It should also be noted that this sector increased by 14.3 percent from 2000 to 2010 and by 18.8 percent from 2010 to 2013." Beyond that, the Market Analyst states "There is little empirical data to support the demand for housing for artists i

The Market Analyst included as an addendum to the Study "a February 2010 report title Space Needs and Preferences, prepared by Swan Research and Consulting for the indicates artists within the El Paso community exhibited significant interest and demand We [the Market Analyst] have not conducted an official review of the document and accuracy or quality."

The demand analysis is based on income-eligible households from the general population regard to artistic qualifications. It is assumed that if unable to achieve stabilized occupancy from the artist community, leasing will be opened up to the general population.

Low GCR and individual unit capture rates indicative of strong potential demand from the market in general.

#14037 OFFENDING RATIO CORRECTED OR APPROVED AT UNDERWRITING FOR AWARD RECOMMENDATION

OPERATING PRO FORMA

SUMMARY- AS UNDERWRITTEN (Applicant's Pro forma)					
NOI:	\$104,146	Avg. Rent:	\$467	Expense Ratio:	63.25%
Debt Service:	\$77,146	B/E Rent:	\$420	Controllable Expenses:	\$2,229
Net Cash Flow:	\$27,000	UW Occupancy:	92.5%	Property Taxes/Unit:	\$441
Aggregate DCR:	1.35	B/E Occupancy:	83.4%	Program Rent Year:	2013

Retail component underwritten at 35% vacancy on \$3.35/SF rents (triple net leases which includes maintenance).

Average Rent is \$47 above break-even rent; project falls below break-even with 9 vacant units (underwritten at 4 units).

\$550/unit repairs & maintenance expense for residential component only. Retail maintenance is embedded in the Net Retail income figure. Total building maintenance would be about \$1,040 per residential unit. Electric utility expense estimate provided by management company.

Median income in El Paso produces low 60% rents (\$565-\$783 per unit). No economies of scale on expenses. As a result, expense ratio high but property generates sufficient net cash flow over the long-term pro forma.

Permanent debt increased \$56K to achieve a DCR at or below 1.35:1.

As structured, feasibility indicators are good (break-evens and DCR).

SITE CONTROL

Type: Agreement with Respect to Real Property (donation agreement) Acreage: 0.709
 Acquisition Cost: \$0 Contract Expiration: 3/15/2015
 Cost Per Unit: \$0

Seller: La Frontera Conservation Fund, a supporting organization to the El Paso Community Foundation

Buyer: Artspace Projects, Inc.

Related-Party Seller/Identity of Interest: No

Comments:

Agreement also typically known as Economic Development Grant Agreement. Donative transfer of the property to occur following completion of certain predevelopment activities and prior to commencement of construction.

2015 / APPLICATION #15232 ---- AWARD GRANTED

#15232 FULL APPLICATION SUBMITTAL

<u>Other Expenses</u>				
Cable TV		\$		
Supportive Services (Staffing/Contracted Services)		\$	10,000	
TDHCA Compliance fees		\$	4,800	
TDHCA Bond Administration Fees (TDHCA as Bond Issuer <u>Only</u>)		\$		
Security		\$		
Other		\$		
Other		\$		
Total Other Expenses:				\$ 14,800
TOTAL ANNUAL EXPENSES	Expense per unit:	\$	4802	\$ 576,297
	Expense to Income Ratio:		65.81%	
NET OPERATING INCOME (before debt service)				\$ 299,438
<u>Annual Debt Service</u>				
	<i>Permanent Loan</i>	\$	247,469	
		\$		
		\$		
		\$		
TOTAL ANNUAL DEBT SERVICE	Debt Coverage Ratio:		1.21	\$ 247,469
NET CASH FLOW				\$ 51,969

UNDERWRITING ANALYSIS of PMA DEMAND by UNIT TYPE								
Unit Type	Market Analyst				Underwriter			
	Demand	Subject Units	Comp Units	Unit Capture Rate	Demand	Subject Units	Comp Units	Unit Capture Rate
1 BR/30%	294	5	0	2%	147	5	3	5%
1 BR/50%	186	27	0	15%	383	27	10	10%
1 BR/60%	1,208	22	0	2%	675	22	11	5%
2 BR/30%	177	5	0	3%	102	5	6	11%
2 BR/50%	643	24	0	4%	256	24	26	20%
2 BR/60%	827	19	0	2%	527	19	32	10%
3 BR/30%	114	2	0	2%	63	2	3	8%
3 BR/50%	47	9	0	19%	101	9	12	21%
3 BR/60%	224	7	0	3%	143	7	17	17%

Market Analyst Comments:

With average rental rates in all projects at \$1.56 PSF, and occupancy rates averaging 90%, it is reasonable to project that a new affordable housing project with very competitive rents and an average rent of ±\$0.676 per square foot per month would perform favorably in this market.

Since competing projects within the subject's PMA have high occupancy rates, and the HTC projects also have high occupancy rates, it appears there is a shortage of affordable units. Subject should be highly competitive in this market, and should achieve stabilized occupancy within 4 to 6 months after completion. (p. 83)

Underwriter Comments:

Department's data shows two affordable housing developments in the PMA. The newest development, Cypress Creek at Lakeline, received an award in 2003, and is currently at 99% occupancy.

#15232 OFFENDING RATIO CORRECTED OR APPROVED AT UNDERWRITING FOR AWARD RECOMMENDATION

OPERATING PRO FORMA

SUMMARY- AS UNDERWRITTEN (Applicant's Pro forma)					
NOI:	\$312,162	Avg. Rent:	\$641	Expense Ratio:	64.4%
Debt Service:	\$247,469	B/E Rent:	\$592	Controllable Expenses:	\$3,292
Net Cash Flow:	\$64,693	UW Occupancy:	92.5%	Property Taxes/Unit:	\$410
Aggregate DCR:	1.26	B/E Occupancy:	85.7%	Program Rent Year:	2014

Half of the units are 50% AMI with rents that average \$350/unit below current market rents. Rents on 60% units average \$170/unit below market. Being at maximum restricted rents, rents will increase with AMI increases.

45% of the units are one bedroom units. While higher than typical, unit capture rates on these units are low.

Austin MSA median income increased 2% from 2014 to 2015. Analysis uses 2014 pursuant to rule.

Elevated expense ratio is mitigated by controllable expenses being higher than typical (staffing). Owner qualifies for 50% property tax exemption. Without the exemption, DCR falls below 1.10 times. Owner of general partner has historically received exemption.

At an average 34% discount to market, maximum program rents should be readily achieved. But even with one month concession on 60% units, average rent would exceed breakeven by \$23/unit.

At maximum program rent, breakeven occupancy occurs with 17 units vacant (underwritten at 9).

Feasibility is demonstrated throughout and beyond 18 year term of permanent loan.

2015 / APPLICATION #15184 ---- AWARD GRANTED

ANNUAL OPERATING EXPENSES

General & Administrative Expenses			
Accounting	\$	12,000	
Advertising	\$	8,000	
Legal fees	\$	6,000	
Leased equipment	\$	5,000	
Postage & office supplies	\$	5,000	
Telephone	\$	5,600	
Other	\$		
Other	\$		
Total General & Administrative Expenses:			\$ 41,600
Management Fee:	Percent of Effective Gross Income:	5.00%	\$ 43,605
Payroll, Payroll Tax & Employee Benefits			
Management	\$	65,000	
Maintenance	\$	40,000	
Other	\$	24,150	
Other	\$		
Total Payroll, Payroll Tax & Employee Benefits:			\$ 129,150
Repairs & Maintenance			
Elevator	\$	12,000	
Exterminating	\$	10,000	
Grounds	\$	12,000	
Make-ready	\$	12,000	
Repairs	\$	15,000	
Pool	\$	5,000	
Other	\$	5,000	
Other	\$		
Total Repairs & Maintenance:			\$ 71,000
Utilities (Enter Only Property Paid Expense)			
Electric	\$	32,000	
Natural gas	\$		
Trash	\$	12,000	
Water/Sewer	\$	62,000	
Other	\$		
Other	\$		
Total Utilities:			\$ 106,000
Annual Property Insurance:	Rate per net rentable square foot:	\$ 0.34	\$ 35,750
Property Taxes:			
Published Capitalization Rate:		Source:	
Annual Property Taxes	\$	90,750	
Payments in Lieu of Taxes	\$		
Total Property Taxes:			\$ 90,750
Reserve for Replacements:	Annual reserves per unit:	\$ 250	\$ 27,500
Other Expenses			
Cable TV	\$		
Supportive Services (Staffing/Contracted Services)	\$	16,000	
TDHCA Compliance fees	\$	4,400	
TDHCA Bond Administration Fees (TDHCA as Bond Issuer <u>Only</u>)	\$		
Security	\$	10,000	
Other	\$		
Other	\$		
Total Other Expenses:			\$ 30,400
TOTAL ANNUAL EXPENSES	Expense per unit:	\$ 5234	\$ 575,755
	Expense to Income Ratio:	66.02%	
NET OPERATING INCOME (before debt service)			\$ 296,350
Annual Debt Service			
Bank of America	\$	230,232.00	
	\$		
	\$		
	\$		
TOTAL ANNUAL DEBT SERVICE	Debt Coverage Ratio:	1.29	\$ 230,232
NET CASH FLOW			\$ 66,118

#15184 FULL APPLICATION SUBMITTAL

Underwriter Comments:

Two other senior developments in the PMA are built, leased and stabilized at an average of 97%. TDHCA 09193 Sierra Meadows, a 2009 tax credit 90 unit seniors development, located at the far south end of the PMA, is 98% occupied and is the most recently built seniors development. TDHCA 07300 Wentworth Pines is a 2007 awarded senior development located one-half mile north (across Atascocita Rd) whose 90 units are currently 96% occupied.

Demand is sufficient to support two new senior developments in the area. Both are located within one mile of FM 1960.

Absorption for Sierra Meadows was 13 units per month with initial lease date in June, 2011 reaching 94% in late December, 2011.

Two relatively new senior developments: 12118 Spring Trace, a 2012 new senior development (180 units) and 11238 The Sunningdale, a 2011 new senior development (130 units) are located 12 and 19 miles west and northwest from subject site. Absorption for Spring Trace has been 13 units per month while The Sunningdale leased 12 units per month. Using this historical data, the subject site may average 12 units per month with stabilization occurring within 8 months of first lease-up.

OPERATING PRO FORMA

SUMMARY- AS UNDERWRITTEN (Applicant's Pro forma)					
NOI:	\$310,578	Avg. Rent:	\$711	Expense Ratio:	64.97%
Debt Service:	\$230,227	B/E Rent:	\$645	Controllable Expenses:	\$3,161
Net Cash Flow:	\$80,350	UW Occupancy:	92.5%	Property Taxes/Unit:	\$825
Aggregate DCR:	1.35	B/E Occupancy:	84.1%	Program Rent Year:	2014

All HTC units are projected at maximum HTC program rents.

The Market Analyst reports market rents that are \$328 and \$386 higher than the HTC 60% rents (representing average market premiums of 32%). The Applicant's pro forma reflects lower market rents (representing average market premiums of 21%) over HTC 60% rents. Based on recently underwritten development review of the Market Analyst's comparable rent analysis, the Underwriter concludes conservative market rents are reasonable.

Underwriter's estimates for operating expenses are based on 15 senior properties in the area. Applicant's expenses for G&A and property tax are lower than Underwriter's estimate; A maintenance and utilities are higher. Overall, Applicant's income, expenses and NOI are in line with the analysis uses the Applicant's pro forma.

One-month concession on market-rate units produces an average rent \$56/unit above breakeven. If the market units only achieve the 60% HTC rents, the DCR drops to 1.28 and breakeven occupancy increases to 86%; however, the expense ratio will exceed the Department maximum of 65% .

Underwritten occupancy assumes 9 vacant units (7.5%), while break-even is at 18 units (15.9%).

Pro forma shows debt coverage above 1.32 through year 30.

#15184 OFFENDING RATIO CORRECTED OR APPROVED AT UNDERWRITING FOR AWARD RECOMMENDATION

ACQUISITION INFORMATION

SITE CONTROL

Type:	Commercial Land Purchase & Sale Agreement		Acreage:	5.16
Acquisition Cost:	\$899,078	Contract Expiration:	8/31/2015	
Cost Per Unit:	\$8,173			

2015 / APPLICATION #15093 ---- AWARD GRANTED

ANNUAL OPERATING EXPENSES

General & Administrative Expenses			
Accounting	\$	8,100	
Advertising	\$	2,400	
Legal fees	\$	2,400	
Leased equipment	\$	1,800	
Postage & office supplies	\$	2,700	
Telephone	\$	4,200	
Other	\$		
Other	\$		
Total General & Administrative Expenses:			\$ 21,600
Management Fee:	Percent of Effective Gross Income:	5.00%	\$ 15,859
Payroll, Payroll Tax & Employee Benefits			
Management	\$	30,000	
Maintenance	\$	17,500	
Other	\$	14,000	
Other	\$		
Total Payroll, Payroll Tax & Employee Benefits:			\$ 61,500
Repairs & Maintenance			
Elevator	\$	0	
Exterminating	\$	3,600	
Grounds	\$	9,000	
Make-ready	\$	2,400	
Repairs	\$	13,200	
Pool	\$	0	
Other	\$		
Other	\$		
Total Repairs & Maintenance:			\$ 28,200
Utilities (Enter Only Property Paid Expense)			
Electric	\$	6,624	
Natural gas	\$	0	
Trash	\$	3,840	
Water/Sewer	\$	24,720	
Other	\$		
Other	\$		
Total Utilities:			\$ 35,184
Annual Property Insurance:	Rate per net rentable square foot:	\$ 0.30	\$ 13,694
Property Taxes:			
Published Capitalization Rate:		Source:	
Annual Property Taxes	\$	25,200	
Payments in Lieu of Taxes	\$		
Total Property Taxes:			\$ 25,200
Reserve for Replacements:	Annual reserves per unit:	\$ 250	\$ 12,000
Other Expenses			
Cable TV	\$		
Supportive Services (Staffing/Contracted Services)	\$	4,500	
TDHCA Compliance fees	\$	1,920	
TDHCA Bond Administration Fees (TDHCA as Bond Issuer Only)	\$		
Security	\$		
Other	\$		
Other	\$		
Total Other Expenses:			\$ 6,420
TOTAL ANNUAL EXPENSES	Expense per unit:	\$ 4576	\$ 219,656
NET OPERATING INCOME (before debt service)	Expense to Income Ratio:	69.25%	\$ 97,515
Annual Debt Service			
1st mortgage - RD 538	\$	52,077	
TDHCA HOME	\$	18,750	
Childress EDC	\$	1,933	
	\$		
TOTAL ANNUAL DEBT SERVICE	Debt Coverage Ratio:	1.34	\$ 72,760
NET CASH FLOW			\$ 24,755

#15093 FULL APPLICATION SUBMITTAL

OPERATING PRO FORMA

SUMMARY- AS UNDERWRITTEN (Applicant's Pro forma)

NOI:	\$111,338	Avg. Rent:	\$577	Expense Ratio:	64.7%
Debt Service:	\$82,499	B/E Rent:	\$523	Controllable Expenses:	\$2,748
Net Cash Flow:	\$28,839	UW Occupancy:	92.5%	Property Taxes/Unit:	\$500
Aggregate DCR:	1.35	B/E Occupancy:	84.0%	Program Rent Year:	2014

Pro forma underwritten without the HOME loan award consistent with the recommendation. With out the HOME loan, overall pro forma feasibility indicators are strong except for expense ratio which is of concern (however typical of rural markets because of overall low rents). Removing HOME units does not change potential gross rents.

All HTC units are projected at maximum HTC program rents. Two market rate unit rents su study (although immaterial impact). Underwriter's pro forma assumes no premium. Ave above break-even.

One-month concession on the 60% and market-rate units produces an average re breakeven.

Underwritten occupancy assumes 4 vacant units (7.5%), while break-even is at 7 units (16%

Without the HOME loan, the DCR becomes 2.02 times which is over the 1.35 times threshold. Therefore, \$510K of additional senior debt is assumed to lower the DCR to 1.35 times (at the senior debt terms). DCR remains positive over the long-term pro forma.

Structured with the HOME loan request pursuant to the terms in the NOFA, the feasibility factors show a DCR of 1.20 times, a break-even rent \$35/unit below average rent, break-even occupancy of 87% and the expense ratio remains at 64.7%.

A one-month concession puts average rents at break-even.

Under this scenario and in addition to the market concerns, the break-even rents are concerning even without consideration of break-even rents.

#15093 OFFENDING
RATIO CORRECTED
OR APPROVED AT
UNDERWRITING FOR
AWARD
RECOMMENDATION

ACQUISITION INFORMATION

SITE CONTROL

Type: Commercial Contract for Unimproved Property Acreage: 5

Acquisition Cost: \$420,000 Cost Per Unit: \$8,750 Expiration: 1/12/2016

Seller: PAMCO Partnership

Buyer: State Street Housing Development, LP

Assignee: GS Childress, LP

Related-Party Seller/Identity of Interest: No