2009 Rule Cycle
Comments

2009 Rule Cycle Proposed Rules:	1.31-1.37 Underwriting Rules (REA) Ch. 5 Community Affairs Programs (CAP) Ch. 6. Energy Assistance Programs (Repeal) Ch. 7 First-Time Homeowner Ch. 8. Project Access Program (Repeal) Ch. 35 2009 MF Bond Rules (Bond) Ch. 49 2009 QAP Ch. 51 Housing Trust Fund (HTF) Ch. 53 HOME Ch. 90. Migrant Labor Housing Facilities In additon, comment on the Consolidated Plan and Regional Allocation Formula		
# Assigned	**COMMENTER (INCLUDES Public Hearing Testimony, Emails, & letters received; DOES NOT INCLUDE Staff Comments)**	**Rule**	**Format received**
1	Stella Rodriguez, Executive Director, Texas Association of Community Action Agencies, Inc. (TACAA)	CAP	email, letter
2	Jan McMullen, Human Services Coordinator, Fort Worth Community Action Partners	CAP (CEAP)	email
3	Joe Rangel, City of Lubbock, Community Development, Contract Coordinator	CAP (CEAP)	email
4	A.R. Kampschafer, Community Services, Incorporated, in Corsicana	CAP (WAP)	PC, email
5	David A. Baker, Vice President, Public Management, Inc.	HOME	email
6	David Diaz, Midland Community Development Corporation	HOME	PC
7	Judy Langford and Robin Sisco, Langford Community Management Services	HOME	email, letter
8	Michael Hunter, president, Hunter and Hunter Consultants	HOME	PC, letter
9	Randy Malouf, Builder	HOME	email
10	Robin Sisco, Langford Community Management Services	HOME	email, letter
11	Sylvester Cantu, Community Development Administrator, City of Midland	HOME	PC
12	Steven Schnee, ED, MHMRA, Harris County	HOME, CAP (ESG), ConPlan	letter
13	Barry Halla, Life Rebuilders, Inc.	HOME, ConPlan	email
14	Noel Poyo, Executive Director, NALCAB - The National Association for Latino Community Asset Builders	HOME, ConPlan	email, letter
15	Kathy Tyler, Housing Services Director, Motivation Education & Training, Inc.	HOME, HTF, QAP, General	email, letter
16	Cyrus Reed, PhD, Conservation Director, Lone Star Chapter of Sierra Club	HOME, QAP, Bond, REA, HTF, CAP (WAP)	email, letter
17	Dennis Hoover	HOME, REA	PC

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18	Matt Hull, Executive Director, Habitat Texas	HTF	email, letter
19	Albert Joseph, Ysleta del Sur Pueblo	QAP	fax, letter
20	Apolonio (Nono) Flores, Flores Residential, LC	QAP	email
21	Bryan C. Schuler, Travois, Inc.	QAP	email, letter, fax
22	Charles Holcomb	QAP	email
23	Charlie Price, Housing Program Manager, City of Fort Worth	QAP	PC
24	Christopher C Finlay, President/CEO, Finlay Development,LLC	QAP	email
25	Cynthia L. Bast, Partner, Locke Lord Bissell & Liddell LLP	QAP	email
26	David Mark Koogler, President, Mark-Dana Corporation	QAP	email, letter
27	Debra Guerrero, NRP Group	QAP	PC
28	Elizabeth Julian, Inclusive Communities Project	QAP	email, letter
29	Fei Dai, Catellus Development Group	QAP	PC
30	J. Fernando Lopez, Interim Executive Director, Pharr Housing Authority	QAP	email
31	Jack D. Burleson, Regional Manager, Government Relations, International Code Council - Texas Field Office	QAP	email
32	Jennifer Daughtrey Hicks, Development Project Manager, Foundation Communities	QAP	email, letter
33	Jim Johnson, Development Director, Downtown Fort Worth, Inc.	QAP	PC
34	Joe Saenz, McAllen Housing Authority	QAP	email, letter
35	Joseph W. Bishop, Capital Consultants	QAP	email, letter
36	Joy Horack Brown, executive director, New Hope Housing	QAP	PC
37	Linda Bryant, Executive Director, Texas Housing Association	QAP	email
38	Mary Lawler, Executive Director, Avenue Community Development Corporation	QAP	PC, email, letter
39	Mary Luévano, Policy and Legislative Affairs Director, Global Green USA	QAP	email, letter
40	Matt Whelan, Sr. VP, Catellus Development Group	QAP	email, letter
41	Michael A. Hartman, Roundstone Development, LLC	QAP	email
42	Ramon Guajardo, consultant Fort Worth Housing Authority	QAP	PC
43	Representatve Lon Burnam	QAP	letter, PH
44	Richard Franco, CEO, Corpus Christi Housing Authority	QAP	email, letter
45	Richard Herrington, Jr., Executive Director, Housing Authority of the City of Texarkana	QAP	email, letter
46	Robert H. (Bob) Sherman, SBG Development Services, L.P.	QAP	email, fax
47	Robert Waggoner, SAHA	QAP	email
48	Ronnie Linden, Port Arthur Housing Authority	QAP	fax
49	Scott Marks, Coats/Rose	QAP	PC, letter
50	Senator Chris Harris	QAP	letter
51	Steve Shorts and Richard Herrington, NAHRO	QAP	email, fax
52	Tamea A. Dula, Esq., Coats | Rose	QAP	email, letter
53	V.A. Stephens, Global Green USA	QAP	PC

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54	Walter Moreau, executive director of Foundation Communities	QAP	PC, letter
55	Esiquio (Zeke) Luna, HA of the City of Brownsville	QAP	letter, fax
56	Demetrio Jimenez, Tropicana Properties	Compliance	PC
57	Bobby Bowling	QAP, RAF	PC
58	Frank Fernandez, Executive Director, Community Partnership for the Homeless	QAP, REA	email, letter
59	Eric Christophe, EFC Builders Ltd. Co.	HOME	email, letter
60	Sarah Andre, S2A Development Consulting	QAP, REA	email, letter
61	Barry Kahn	REA	email
62	Jill Moody, Gonzalez Newell Bender, Inc. Architects	QAP	email
63	Dennis Barnes	QAP	PC
64	Jack Drake, Greenspoint	QAP	letter
65	Doak Brown, Campbell & Riggs	QAP	letter
66	Sarah Anderson, S. Anderson Consulting	QAP	letter
67	Mike Sugrue, TAAHP	QAP	letter
68	Gilbert M. Piette, Housing and Community Services, Inc.	QAP	letter
69	Thelma Vasquez	CAP (CEAP)	email

CAP (1)

Michele Atkins

From: Stella Rodriguez [stella@tacaa.org]
Sent: Thursday, October 16, 2008 7:48 PM
To: tdhcarulecomments@tdhca.state.tx.us
Cc: Amy Oehler ; Al Almaguer; Michael DeYoung; Vicki Smith
Subject: TAC Recommendations

Attached are recommendations to proposed rules under Title 10, Part 1, Chapter 5, Texas Department of Housing and Community Affairs.

Please confirm receipt of this communication.

Thank you.

Stella Rodriguez
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October 16, 2008

Texas Department of Housing and Community Affairs
2009 Rule Comments
P.O. Box 13941
Austin, Texas 78711-3941

Via E-mail: tdhcarulecomments@tdhca.state.tx.us

Re: Title 10, Part 1, Chapter 5 TAC Proposed Rules

The Board of Directors of the Texas Association of Community Action Agencies, meeting in official session on October 9-10, 2008 adopted the following recommendations to the proposed rules under Title 10, Part 1, Chapter 5 of the Texas Administrative Code relating to the Texas Department of Housing and Community Affairs.

§5.3.Definitions (b)(7)

(7) Community Action Agencies (CAAs)--Local private and public non-profit organizations that carry out the Community Action Program (CAP), which was founded by the 1964 Economic Opportunity Act to fight poverty by empowering the poor in the United States. Each CAA must have a board consisting of ~~at least one-third low-income community members, one-third public officials, and up to one-third private sector leaders~~one-third elected public officials, not fewer than one-third representatives of low-income individuals and families, and the remainder are members of business, industry, labor, religious, law enforcement, education, or other major groups and interests in the community.

Rationale: Revised language is consistent with the CSBG Act.

§5.3.Definitions (b)(20)

(20) Eligible Entity--Those local organizations ~~in existence and~~ designated by the federal government to administer programs created under the federal Economic Opportunity Act of 1964. This included community action agencies, limited-purpose agencies, and units of local government. The CSBG Act defines an eligible entity as an organization that was an eligible entity~~in effect~~ on the day before the enactment of the Coats Human Services Reauthorization Act of 1998 (October 27, 1998) or is designated by the Governor to serve a given area of the State and that has a tripartite board or other mechanism for local governance.

Rationale: (1) Local organizations did not exist prior to the Economic Opportunity Act. (2) Clarification purposes.

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§5.3.Definitions (b)(25)

(25) USDHHS--U.S. Department of Health and Human Services.

Rationale: Typo.

§5.3.Definitions (b)(44)

(44) Private Nonprofit Organization--An organization which has status as a §501(c)(3) tax-exempt entity. Private nonprofit organizations applying for ESGP funds must be established for charitable purposes and have activities that include, but are not limited to, the promotion of social welfare and the prevention or elimination of homelessness. The entity's net earnings may not inure to the benefit of any individual(s).

Rationale: Private nonprofit organizations are designated 501(c)(3) status as defined by the Internal Revenue Code.

§5.3.Definitions (b)(64)

(64) U.S.C.--United States Code~~, of Regulations~~

Rationale: Clarification, the U.S.C. is the codification of laws passed by Congress; the C.F.R. is the codification of regulations promulgated by executive agencies such as the USDHHS.

§5.4.Prohibitions (a)

~~(a) Lobbying activity is prohibited. The Hatch Act, 5 U.S.C., Chapter 15 and the amendments to the Hatch Act and the repeal of §675(c) and §675(C)(6) of the Community Services Block Grant (CSBG) Act do not affect §675(C)(7) of the CSBG Act.~~

Rationale: This language is inconsistent with federal law. CAAs are not prohibited from lobbying. The CSBG Act does not prohibit or mention lobbying. And, OMB Circular A-122 only restricts the use of federal funds for lobbying, it does not prohibit a federal grantee from using other funds to do so; there are a number of exceptions.

§5.5.Certificate and Disclosure Regarding Certain Lobbying Activities

Rationale: Clarification.

§5.5.Certificate and Disclosure Regarding Certain Lobbying Activities (b)

(b) A §501(c)(3) nonprofit organization which pays any person funds from any source (even non-federal funds) to lobby Congress in connection with the awarding or modifying of a federal contract, loan, cooperative agreement, or grant or which pays an employee of any federal agency in connection with ~~the~~is ~~grant~~ same, must complete the "Disclosure of Lobbying Activities" form available on the Office of Management and Budget (OMB) website. The subrecipient must also file quarterly updates about its employment of lobbyists for the above activities if material changes occur in the organization's use of lobbyists.

Rationale: Clarification in accordance with federal law.

§5.5.Certificate and Disclosure Regarding Certain Lobbying Activities (c)

(c) For each contract, grant, cooperative agreement, or loan in excess of $100,000, the subrecipient must complete the "Certification Regarding Lobbying" form and return it to the Department. This form is located on the Department's website. By completing the certification, the subrecipient verifies that no federally appropriated funds have been used to lobby the United States Congress in connection with the awarding or modifying of a federal contract, loan, cooperative agreement or grant.

Rationale: Clarification in accordance with federal law.

§5.10.Procurement Standard (a)

(a) Procurement procedures must meet minimum guidelines, according to Office of Management and Budget (OMB) Circulars A-87, A-102, A-110, A-122 (as applicable), the Uniform Grant Management Common Rule, and Texas Government Code, Chapter 783, ~~and 10 CFR, Part 600 (Financial Assistance Rule)~~ as applicable.

Rationale: 10 CFR, Part 600 is not pertinent to subrecipients; rather it applies to decisions made by the federal Department of Energy in awarding financial assistance.

§5.10.Procurement Standards (b)

(b) All subrecipients including non-profits must comply with all of the referenced statutes and regulations listed in subsection (a) of this section. In case of any conflict between the OMB Circulars or federal laws and state laws involving federal funds, the federal law or OMB Circulars will prevail.

Rationale: Clarification.

§5.10.Procurement Standards (c)(5)(E)(ii)

(ii) Subrecipient shall give Department ~~complete~~ access to ~~all of it~~those records, employees, and agents that relate to the Department-funded programs for the purpose of monitoring or investigating the program. Subrecipient shall fully cooperate with Department's reasonable efforts to detect, investigate, and prevent waste, fraud, and abuse in Department-funded programs. Subrecipient shall immediately notify the Department of any identified instances of waste, fraud, or abuse in connection with Department-funded programs.

Rationale: Clarification purposes. It is anticipated that the Department will continue to focus on its funded programs.

§5.14.Subrecipient Contract (a)

(a) Upon Board approval, the Department's Executive Director and subrecipients shall enter into and execute an agreement for the receipt of funds. The Department, acting by and through its Executive Director or his/her designee, may authorize, execute, and deliver modifications and/or amendments to the contract if agreed to by the subrecipient, as additional funds become available.

Rationale: If modifications and/or amendments are related to lack of performance or reduction of funds, the Department allows due process through steps outlined under corrective action, sanctions and/or termination sections of the TAC.

§5.16.Monitoring of Subrecipients (a)(1)

(1) CAD employs a subrecipient monitoring procedure that is based upon an assessment of associated risks. The factors may include but are not limited to the status of the most recent monitoring report, timeliness of grant reporting, results of the last on-site monitoring review, number and funding amount of Department funded contracts, final expenditure rate, and single audit status or other factors. Ranking of subrecipients will determine whether an on-site review or a desk review is completed unless Department management determines an on-site review is needed. CAD may conduct unannounced on-site monitoring reviews of subrecipients identified as high risk, if deficiencies identified from prior monitoring activities persist or remain unresolved for an unreasonable period of time. In the event of reports of fraud and abuse or other extenuating circumstances the Department may make an unannounced on-site monitoring review.

Recommendation: (1) Define "high risk." In some instances the term has implied a subrecipient with severe management and/or fiscal deficiencies and in other instances the term has implied a subrecipient with multiple and high dollar contracts with the Department. (2) The TAC should state that the Department will notify a subrecipient when it is declared "high risk" and an explanation for the designation should be provided. (3) The TAC should state what the subrecipient needs to do to lift the designation, if the designation is based on deficiencies. (4) The TAC should state consequences other than being subject to unannounced visits, e.g. cost reimbursement rather than advances,

§5.16.Monitoring of Subrecipients (a)(3)

(3) A mMonitoring instruments will be posted on the Department's website and will be is used to perform monitoring reviews. Support documentation is retained by the Department to verify: the achievement of performance goals; conduct of eligible activities; and compliance with other contractual regulatory provisions and financial accountability. Monitoring reviews of subrecipients also include reviewing annual financial reports and any related management letters and financial documents.

Rationale: Disclosure of the 'monitoring instrument' via the Department's website will allow transparency and the Department's expectations of the subrecipients.

§5.16.Monitoring of Subrecipients (a)(4)

(4) Following the onsite monitoring review, a monitoring report is prepared and submitted to the subrecipients within ninety (90) days outlining any administrative, program, and financial deficiencies. The monitoring report also includes notes, recommend improvements, corrective actions or a corrective action plan.

Rationale: To encourage timely resolutions.

Recommendation: Appeals process regarding monitoring of programs should be established in this section.

§5.16.Monitoring of Subrecipients (a)(4)(A)

(A) Finding--The written description of a clearly deficient condition which is significantly substandard according to the monitoring standards. Findings may also be deficiencies found with regard to compliance with program rules, required cost principles, federal, state and/or local laws, and generally accepted accounting procedures or Generally Accepted Accounting Principles. In general, findings require corrective action to create an acceptable level of risk for disbursement of funds. The description of a finding might include the cause and effect of the deficient condition.

Rationale: Clarification.

§5.16.Monitoring of Subrecipients (a)(4)(B)

(B) Recommended Improvement--~~A necessary improvement to~~ Suggested best practice(s) to enhance program, operational, financial or administrative practices~~ that may or may not be related to a substandard condition but through its application will lower risk factors and bring the affected area into a relatively improved condition. A recommended improvement will be made if a condition might lead to a finding but is itself not significant or sustained in nature. Recommended Improvements will be made to improve a weakness but not to request corrective actions~~.

Rationale: Clarify and simplify language to avoid misinterpretation between a 'recommended' improvement and 'corrective action' as required under a "finding."

§5.16.Monitoring of Subrecipients (b)

(b) Subrecipients not exempt from the single audit requirements are responsible for submitting their Single Audit Report within thirty (30) days of completion of their audit and no later than nine (9) months after the end of the audit period (fiscal year end) to the Department's Portfolio Management and Compliance Division as well as to the CA Division. Refer to 31 U.S.C. §7502.

Rationale: Subrecipients exempt from the single audit requirements will not have such an audit to submit.

§5.16.Monitoring of Subrecipients (d)

(d) If a subrecipient fails to comply with the requirements, rules, and regulations of the CSBG, CEAP, WAP, or ESGP programs, and in the event monitoring or other reliable sources reveal material deficiencies in performance, or if the subrecipient fails to correct any deficiency within the time allowed by federal or state law, the Department will apply one or more of the following sanctions assuring due process, unless otherwise required:

Rationale: Clarification purposes.

§5.17.Corrective Action and Contract Termination (a)

(a) Subrecipients that have entered into contract with the Department to administer programs are required to follow state and federal laws and regulations and rules governing these programs.

Rationale: Clarification.

§5.17.Corrective Action and Contract Termination (c)

(c) Adhering to the requirements governing each specific program administered by the Department, as needed, the Department may determine to proceed with the termination of a contract, in whole or in part, at any time the Department establishes there is good cause for termination, as referenced in §5.17(f) Contract Termination.

Rationale: For consistency purposes.

§5.17.Corrective Action and Contract Termination (d)(3)

(3) Follow-up visits may be conducted to review and assess the efforts the subrecipient has made to correct previously noted deficiencies. Provide t~~T~~echnical assistance and training ~~may be provided~~ to the subrecipient to address program deficiencies.

Rationale: Revision is consistent with Sec 678C of the CSBG Act.

§5.17.Corrective Action and Contract Termination (g)(3)

(3) No later than thirty (30) days after the contract is terminated, the Department will take a physical inventory of client files, including case management files, and will submit to the Department an inventory of equipment with a unit acquisition cost of $5,000 or greater for Comprehensive Energy Assistance Program (CEAP), Weatherization Assistance Program (WAP) and CSBG or a unit acquisition cost of $500 or greater for ESGP.

Comment: Possible typo - "the Department will take physical inventory...and will submit to the Department..." Should the sentence read: Subrecipient will take physical inventory and submit to the Department or Department will take inventory and submit to the USDHHS, or another scenario?

§5.20.Determining Income Eligibility

(a) The U.S. Department of Health and Human Services (USDHHS) annually provides poverty income guidelines for use in determining client eligibility. Community Affairs Division programs are required to follow these guidelines.

Rationale: Typo.

Subchapter B. COMMUNITY SERVICES BLOCK GRANT (CSBG)

§5.201.Background (a)

(a) In addition to the following rules for the Community Services Block Grant (CSBG) program, the rules established in Subchapter A of this chapter also apply to the CSBG program, except those that relate to the suspension, reduction, withholding or termination of funding. The CSBG Act was amended by the "Community Services Block Grant Amendments of 1994" and the Coats Human Services Reauthorization Act of 1998. The Secretary is authorized to establish a community services block grant program and make grants available through the program to states to ameliorate the causes of poverty in communities within the states.

Rationale: To ensure consistency with and avoid violation of the CSBG Act.

§5.203.Distribution of CSBG Funds (a)

(a) The CSBG Act requires that no less than 90% of the state's allocation be allocated to eligible entities. The Department currently utilizes a multi-factor fund distribution formula to equitably provide CSBG funds throughout the state's 254 counties to the CSBG eligible entities. The formula incorporates the ~~2000~~most current U.S. Census figures at 125% of poverty; a $50,000 base; a $150,000 floor (the minimum funding level); a 98% weighted factor for poverty population; and, a 2% weighted factor for the inverse ratio of population density.

Rationale: Remove the date to prevent from having to change the TAC when a new U.S. Census is released.

§5.206.Termination and Reduction of Funding (a)(6)(A)

(A) Pursuant to the CSBG Act, the Department will provide notice and an opportunity for a hearing on the record.

Rationale: Clarification in accordance with federal law.

§5.206.Termination and Reduction of Funding (a)(6)(B)

(B) The Department will select an Administrative Law Judge (ALJ) to oversee the proceedings of the hearing. The Department will coordinate establishing a date, time and hearing location with the ALJ and will provide adequate notice to the subrecipient. The ALJ will determine whether there is cause, as defined by the CSBG Act, U.S.C. 9908(c), to terminate or reduce funding to the subrecipient.

Rationale: Clarification in accordance with federal law.

§5.206.Termination and Reduction of Funding (a)(6)(C)

(C) If the ALJ determines that there is cause to terminate or reduce funding ~~Upon receiving a favorable ruling from the ALJ,~~ pursuant to 42 U.S.C. §9915, the Department will notify the subrecipient that it has the right under 42 U.S.C. 9915 to seek review of the decision by the USDHHS ~~prepare correspondence to the U.S. Secretary of Health and Human Services (HHS) requesting the termination of the subrecipient as a CSBG eligible entity~~. If the USDHHS does not overturn the decision, or if the subrecipient does not seek USDHHS review, ~~Upon receiving a favorable ruling from HHS,~~ the Department will initiate proceedings to terminate and close-out the contract.

Rationale: Clarification in accordance with federal law.

§5.207.Subrecipient Performance (b)

~~(b) Unexpended Funds. The Department reserves the right to deobligate funds.~~

Rationale: Deobligation of funds is inconsistent with the right of an agency to carry over funds into the next year and the due process accorded for reduction or termination of funds.

§5.207.Subrecipient Performance (b)(2)

(2) The Coats Human Services Reauthorization Act of 1998, allows states to recapture unexpended CSBG funds in excess of 20% of the CSBG funds obligated to an eligible entity. All recaptured funds will be distributed to all eligible entities using the approved formula allocation. This may be superseded by Congressional action in the appropriation process or by the terms and conditions issued by U.S. Department of Health and Human Services in the CSBG award letter.

Rationale: (1) The edit to the first sentence ensures usage of the funds as originally intended. (2) Correction of the federal agency name.

§5.213.Board Structure (a)

(a) Private nonprofit entities only, shall administer the CSBG program through a tripartite board that fully participates in the development, planning, implementation, and evaluation of the program to serve low-income communities. Some of ~~T~~the members of the board shall be selected by the private nonprofit entity and others through a democratic process; the board shall be composed so as to assure that the requirements of §676B(a)(2) of the CSBG Act are followed and are composed as follows:

Rationale: Clarification to reflect actual process which is consistent with (a)(2) of this section.

§5.213.Board Structure (d)(2)(A)

(A) An essential objective of community action is participation by low-income individuals in the programs which affect their lives; therefore, the CSBG Act and its amendments require representation of low-income individuals on boards or state-specified governing bodies. The CSBG statute requires that not fewer than one-third of the members shall be ~~are~~ representatives of low-income individuals and families and that they shall be chosen in accordance with democratic selection procedures adequate to assure that these members are representative of low-income individuals and families in the neighborhoods served; and that each representative of low-income individuals and families selected to represent a specific neighborhood within a community resides in the neighborhood represented by the member or;

Rationale: Typo.

§5.215.Board--Size)(a)

~~(a) The board size shall be divisible by three (3).~~

Rationale: In accordance with SEC.676B. Tripartite Boards of the CSBG Act, the board does not need to be divisible by three. Rather, the board shall be comprised of three sectors. The 'divisible by three' could create an unnecessary burden to a subrecipient. For example, if a subrecipient has a board divisible by three and a new funding source requires a representative reflective of a new program, then the subrecipient will need to add more members in order to comply with the 'divisible by three' requirement as opposed to one more member to comply with the new funding source.

§5.217.Board Meeting Requirements (a)

(a) The Board must follow the Texas Open Meetings Act, meet at least ~~every 10 weeks~~ once per calendar quarter and at minimum five (5) times per year and, must give each member a notice of meeting five (5) days in advance of the meeting.

Rationale: Sometimes it is difficult to meet every 10 weeks. The change does not reduce the number of times a Board would meet per year; however, it would allow subrecipients the opportunity to meet on a more structured time frame of the month, such as the 4th Thursday or the 2nd Tuesday of a given month.

Subchapter D. COMPREHENSIVE ENERGY ASSISTANCE PROGRAM

§5.422.General Assistance and Benefit Levels (d)(2)(D)

(D) The Heating and Cooling System Replacement, Repair, and/or Retrofit Component maximum household benefit limit is $4,000~~0~~5,000.

Rationale: Increased cost with fuel and copper makes it difficult to address all the appliances with $4,000, which justifies the reason to increase the benefit limit.

§5.422.General Assistance and Benefit Levels (f)

(f) Total maximum possible annual household benefit (all components combined) equals $~~7~~8,600.

Rationale: Adjustment to reflect recommendation in 5.422(d)(2)(D).

§5.422.General Assistance and Benefit Levels (h)(1)

(1) Payment to vendors and suppliers of fuel/utilities, goods, and other services, such as electrical wiring, butane tanks and lines, etc. for past due or current bills related to the procurement of energy for heating and cooling needs of the residence, not to include security lights and other items unrelated to energy assistance;

Rationale: Clarifies allowable other services.

§5.423.Energy Crisis Component (g)

(g) Time Limits for Assistance--Subrecipients ensure that for clients who have already lost service or are in immediate danger of losing service, some form of assistance to resolve the energy crisis shall be provided within a 48 business hours time limit (18 business hours in life-threatening situations). The time limit commences upon completion of the application process. The application process is considered to be complete when an agency representative accepts an application and completes the eligibility process.

Rationale: Affords a much more feasible time frame.

§5.425.Elderly and Disabled Component (a)

(a) Elderly households include at least one member age 60 or above. Disabled households include at least one member living with a disability. Documentation of disability, (i.e. Social Security, Supplemental Security Income statement, doctor's letter) kept in client file will validate eligibility.

Rationale: Edit.

§5.426.Heating and Cooling Component (g)

(g) Heating and cooling assessments may be charged to the Heating and Cooling Component ~~on a per household basis~~. If the assessment cost is charged to the Heating and Cooling Component, the cost must be counted toward the household benefit of $~~4,000~~5,000.

Rationale: (1) It is very difficult to separate and record the time and travel assessment costs on a per unit basis in a timely manner. (2) The benefit level is increased to reflect increased costs.

Subchapter E. WEATHERIZATION ASSISTANCE PROGRAM GENERAL

§5.503.Distribution of WAP Funds (b)(5)(C)

(C) The five factors carry the following weights in the allocation formula: number of non-elderly poverty households (40~~35~~%), number of poverty households with at least one member who is 65 years of age or older (40%), household density as an inverse ratio (~~5~~10%), the median income of the county (5%), and a weather factor based on Heating Degree Days and Cooling Degree Days (10%). All demographic factors are based on the most current~~2000~~ U.S. Census. The formula is as follows:

Rationale: (1) Reduce the non-elderly poverty household factor to 35% to reflect the increased number of higher priority population 65 years of age or older. (2) Increase the inverse density ratio to 10% due to increased travel costs, including fuel and other vehicle expenses and labor. (3) Remove the date to prevent from having to change the TAC when a new U.S. Census is released.

§5.503.Distribution of WAP Funds (b)(5)(C)(i)

(i) County Non-elderly Poverty Household Factor (0.40~~35~~) plus;

Rationale: To reflect the increased number of higher priority population 65 years of age or older.

§5.503.Distribution of WAP Funds (b)(5)(C)(iii)

(iii) County Inverse Poverty Household Density Factor (0.~~05~~10) plus;

Rationale: To reflect increased travel costs, including fuel and other vehicle expenses and labor.

§5.524.Lead Safe Work Practices

The Department will ~~Subrecipients must~~ provide ~~a one-day~~ Lead Safe Weatherization (LSW) training, an LSW Manual, and an LSW Jobsite Handbook to their subrecipients and subcontractors. Subrecipients must obtain a signed Worker Verification of LSW Training form from the subcontractor indicating that the subcontractor received the LSW training, manual, and jobsite handbook. Subcontractors must follow Lead Safe Weatherization Work Practices as outlined by the U.S. Department of Energy.

Rationale: Subrecipients do not have credentials or available funds to fulfill this requirement. Furthermore, it is not cost effective to have the 30-plus weatherization subrecipients each fulfill this requirement.

§5.528.Health and Safety (a)

~~(a) Health and Safety funds will have a maximum of 10% of the materials, Labor and Program Support budgets.~~

Rationale: The limit should be removed because the requirement for use of vented heaters is three times more expensive than unvented space heaters.

§5.532.Training Funds for Conferences

The Department provides financial assistance to subrecipients for training and technical activities for State sponsored, ~~and~~ DOE sponsored and other workshops and conferences. Subrecipients may use WAP training funds to attend conferences provided the conference agenda includes topics directly related to administering WAP. Costs to attend the conference must be prorated by program for the appropriate portion. Only staff actually working on the WAP program may charge any of their travel costs to the program.

Rationale: Proposed revision allows flexibility to attend other training sessions which address WAP topics.

General Recommendations:

The TAC contains many references to state or federal citations, acts, codes, etc. in which general reference is made but not specific enough to easily locate the information. Example: §5.3 Definitions (58) Supplies refers to 'subject inventions,' as referenced in 37 CFR Part 401; however, 401.8 is the actual reference to 'subject inventions.' Similarly, reference to web pages versus website is more helpful. Example: §5.18 Information and Technology Security Practices refers to guidelines at www.tdhca.state.tx.us; however, /security.guidelines.htm after the website directs traffic to the specific web page. It is recommended that more specific information be provided to find citations, acts, codes, web pages, etc.

Agencies contracting with TDHCA should be recognized as contractors, not subrecipients. There is no other program of TDHCA recognizing contractors as subrecipients. Agencies enter into a contract with TDHCA for which funds are provided for a service with performance measures and the agency is subject to liabilities and responsibilities. It is recommended that the term 'subrecipient' be replaced with 'contractor.'

Favorable review of these recommendations is greatly appreciated. Should questions arise, please do not hesitate to contact me at (512) 462-2555, ext. 204 or via e-mail at stella@tacaa.org.

Respectfully,

Stella Rodriguez

Stella Rodriguez
Executive Director

cc: TACAA Board of Directors
Amy Oehler, TDHCA

CAP (CEAP) (2)

Michele Atkins

From: McMullen, Jan [Jan.McMullen@fortworthgov.org]
Sent: Friday, September 26, 2008 2:44 PM
To: 'tdhcarulecomments@tdhca.state.tx.us'
Cc: 'stella@tacaa.org'
Subject: Comments on Proposed CEAP Rules

I would like to make the following recommendations and need clarification on a couple of sections:

5.422 (d) (2) (D) General Assistance and Benefit Levels: The Heating and Cooling System Replacement, Repair, and/or Retrofit Component maximum benefit limit **$5,000.** *Rationale: dramatic increases in fuel and copper have impacted the HVAC industry and it is becoming more difficult to address all the appliances for $4,000.*

5.423 (d) (3) Energy Crisis Component: Portable air conditioning and heating units may be purchased only in situations that threaten the life of the client.
Do I interpret this correctly? A medical statement is no longer necessary? If I write in my SDP that person 70+ or age 5 or younger are vulnerable they do not need a medical statement? It is often very difficult for them to get to the Dr to get the statement in a reasonable amount of time.

5.423 (f) When natural disasters **or terrorist attack** result in energy supply shortages or other energy-related emergencies LIHEAP will allow home energy related expenditures for the following:

5.423 (g) Time Limits for Assistance—Sub recipients ensure that clients who have already lost service or are in immediate danger of losing service, some form of assistance to resolve the energy crisis shall be provided within 48 **business** hours (18 **business** hours in a life-threatening situation)

5.425 (a) Is a 12 month disability statement no longer necessary? We often have people who are temporarily disabled and need assistance but the physician is reluctant to estimate they will be disabled for 12 months. Will we now be able to assist them as long as we can document the disability?

Thanks,

Jan

Jan McMullen
Human Services Coordinator
Fort Worth Community Action Partners
817-392-1650

jan.mcmullen@fortworthgov.org

CAP (3)

Michele Atkins

From: Joe Rangel [JRangel@mail.ci.lubbock.tx.us]
Sent: Thursday, October 16, 2008 5:00 PM
To: tdhcarulecomments@tdhca.state.tx.us
Subject: CEAP Rule

Comment regarding Comprehensive Energy Assistance Program section 5.425 Elderly and Disabled Component: a.....Disabled households include at least one member living with a disability.

Their is no age requirement for the household member living with a disability.

Is a household member under the age of 18 receiving SSI due to Attention Deficit Disorder (ADD) fall in the category of disabled, eventhou the child engages in substantial gainful activity.

Joe Rangel
City of Lubbock
Community Development
Contract Coordinator
1625 13th Street
P. O. Box 2000
Lubbock, TX 79457
806-775-2309 Office
806-775-3917 Fax

CAP (4)

Michele Atkins

From: Patsy Lytle [prlytle@sbcglobal.net]
Sent: Sunday, October 19, 2008 7:33 PM
To: tdhcarulecomments@tdhca.state.tx.us
Subject: 4 - TDHCA 2009 Rule Comments

The followingcomments regarding TDHCA Proposed Rules, as published in the 9/19/2008 Texas Register, are submitted, in addition to the comments I presented at the 9/26/2008 Public Hearing in Ft. Worth:

Chapter 5., Subchapter B.

Section 5.203. Distribution of CSBG Funds
Para. (a)- Revise the 98% and 2% factors to agree with the revised weighted factors as proposed in my Public Hearing comments regarding distribution of WAP funds under Chapter 5, Subchapter E. Section 5.503. Para. 5.C and (iii) and corresponding comments regarding distribution of CEAP, DOE-WAP and LIHEAP funds presented below under Chapter 5, Para 5.403. and Chapter 6, Para. 6.3 and 6.103, respectively. This would provide consistency throughout all Community Affairs Assistance programs.

Section 5.206. Termination and Reduction of Funding
Para. (a)(C)- What happens in the event of an unfavorable ruling from the ALJ ? Does TDHCA presume all rulings will be favorable to them ?

Section 5.213. Board Structure.
Para. (a)- Delete "only" in first sentence. Word is unnecessary, inasmuch as entire paragraph just affects private nonprofit entities.

Chapter 5. Subchapter D. and Chapter 6. Subchapters A and B

Section 5.403.Distribution of CEAP Funds, Para. (b) (1) and (3):
Chapter 6. Subchapter A., Section 6.3. Distribution of Funds Formula, Para. (B) (c) (1) and(3); and Subchapter B, Section 6.103 Distribution of Funds Formula, Para. (B) (c) (1) and (3).

Because of the significant increase in travel cocts, including fuel and other vehicle expenses and labor, CSI believes that the inverse density ratio should be increased from 5% to 10% and the number of non-elderly poverty households reduced to 35%, to reflect the increased number of higher priority population 65 years of age or older.

Chapter 5. Subchapter D.

Section 5.422. General Assistance and Benefit Levels.
Para. (d)(2)(D) and (f)- The maximum household benefit limit should be increased to $5000 because of the significant increases in equipment and labor costs (a 14 SEER, 3.5 Ton HVAC system costs almost $4000, which would not permit replacement of a leaking water heater if needed), and the total maximum benefit should be increased to $9000 to allow for the additional increases in utility costs

Section 5.426. Heating and Cooling Component

Para. (g)- Delete "on a per househol basis" and increase the benefit to $5000. Several assessments may be made on the same day in different locations, and labor and travel costs are not only not available until later but would be difficult to assign to a particular household. CSI suggests that 10% of the Heating and Cooling Component Budget be allowable to use for assessment costs. The benefit level should be increased as noted above. (This comment is in addition to my previous Public Hearing comment erroneously attributed to Subchapter C, Section 5.426, Para. G.)

Section 5.524. Lead Safe Work Practices
Change the first sentence to read "The Department will provide Lead Safe Weatherization training .....to their subrecipients and their subcontractors." WAP program operators do not have the knowledge or resources to provide this training.

Chapter 6. Subchapter A

Section 6.3- See above.

Section 6.5. Para. (d)- Add "except as noted in (e) below" at the end of the first sentence, to eliminate a contridiction between (d) and (e).

Section 6.6.Para. (g) (5) - Some guidelines or definite % or minimum $ should be provided to eliminate variations between subrecipients.

Section 6.7. Para. (e) and (h) - Change "shall" to "may", to allow for special situations.

Section 6.8. Para. (b) - Provision for a first response from staff level should be included to account for excess income or any reasons due to State or Federal rules which cannot be waived by the subrecipient, and a committee meeting would be a waste of time and money.

Section 6.20 State Contract Purchases, and Subchapter B, Sections 6.119 -
These sections should all be revised to agree with the wording of Subchapter B, Section 6.212 to provide consistency.

Finally, this is the worst example of improper or wrong punctuation I've ever read in a public agency puplished document. Even if it is only a proposal subject to comments, it should not contain too many of the following types of errors to enumerate or reference:
unnecessary, misleading and impropre use of commas; inconsistent use of commas and semi-colons to separate listings; and numerous erroneous acronyms for Federal departments and agencies. The entire document should be reviewed and corrected by someone with a basic knowledge of propergrammer and punctuation.

Respectfully submitted,

A R. Kampschafer
Contract Manager
Community Services, Inc.

CAP (4)

MR. KAMPSCHAFER: Yes. My name is Art Kampschafer. I'm here representing Community Services, Incorporated, in Corsicana, which is a DOE/LIHEAP/SEAP subgrantee for TDHCA programs. And I'm going to be making more complete written comments before the October 20 deadline. But I have -- I wanted to speak on three -- what I consider most important rule changes that we would like to have you all consider.

First one is under the Weatherization Assistance Program under subchapter 5.503, the distribution of WAP funds, paragraph 5(c) and (iii).

Because of the significant increase in travel costs including fuel and other vehicle expenses and labor, CSI believes that the inverse density population ratio should be increased from 5 percent to 10 percent and the number of non-elderly poverty households reduced to 35 percent to reflect the increasing number of higher-priority population 65 years of age or older.

Then under Section 5.528, Health and Safety, this is a particular concern. CSI believes that the 10 percent limit should be eliminated for DOE units because of the requirement for use of vented heaters which cost more than three times as much as unvented space heaters.

This program year the original CSI/DOE contract budget included $228,000 for materials plus labor plus program, which are usually referred to as HOUSE funds, equivalent to 77 units.

Through August CSI has completed and contracted 51 units. Twenty-nine of those units had existing vented central heaters, an

unusually high ratio because we chose to make them DOE units because they had existing vented heaters. Even if this ratio could be maintained, approximately 44 of the 77 units must have vented heaters installed at a cost of approximately $1,000 plus each.

Under the proposed 10 percent maximum rules the health and safety budget would have been 22,800 instead of the 44,000 which would be required just for vented heaters. And this does not allow for other needed health and safety measures such as replacing leaking or dangerous water heaters.

True, in ten of our 15 counties where CSI has the SEAP program funds, we can have and will depend on them for assistance. But it is unrealistic to expect SEAP programs agencies in the other five counties to use their SEAP funds to help us. And other WAP programs have this same problem.

To complicate this situation a footnote to Attachment A of the contract states that the only categories that can be reduced are the administrative, insurance, fiscal audit and health and safety categories. So we can't reduce material, labor and program support to assist with the health and safety problem.

Every subgrantee knows that administrative, insurance and audit amounts are already insufficient. Something has to give.

I believe some time in the recent past I heard a DOE federal official say at a national conference the health and safety expenditures, allowable expenditures per unit, could equal the maximum per unit cost. And that was when it was 2,744 per unit. But that

benevolence was never passed through to TDHCA's subrecipients.

If we are expected to comply with the vented heater rules, the 10 percent limit and the prohibition against transferring HOUSE money to health and safety must be removed from DOE contracts. And DOE and TDHCA should get us more health and safety money.

Under the LIHEAP/SEAP Program, subchapter C, Section 5.426, paragraph G -- and this may be wrong -- it has several sections and it may be the wrong one. But CSI applauds TDHCA for allowing assessment expenses to be included as a specific part of the retrofit category. We had intended to request this.

However, because of the complexity of accounting for all the costs involved, as noted below, on a specific unit basis and because replacement costs of central HVAC systems are already approaching or exceeding the $4,000 limit we feel it be more beneficial to the client to allow 10 percent of the retrofit budget to be used for related staff expenses, including travel and not accounted for on a per-unit basis.

In order to perform proper assessments of replacement requirements for components such as refrigerators, water heaters, window air conditions and space heater units and especially central HVAC units, a home visit by a staff member with specific knowledge and experience is required.

In all cases existing equipment data must be recorded and in most cases measurements must be made to ensure that replacement units will fit. For some refrigerators and AC units specific energy

consumption tests are required.

And for central heater and AC units complete system tests, including blower door and/or pressure pan tests to determine the integrity of the duct systems are an absolute necessity. And space measurements are needed to determine proper replacement equipment specifications.

Most CAAs have and use weatherization staff to do this work. Then bid notices or work orders must be written, quotes analyzed and installation inspections made, involving another trip to the home, before payment is authorized.

These are not routine client-contact home visits. They're a necessary, time-consuming, travel cost and related tasks specifically related to the retrofit component and should not have to be paid from direct service funds.

Thank you for consideration.

HPC

CS

CAP (WAP)

AR Kampschafer

(4)

Community Services, Inc. Comments Relating to TDHCA Proposed Rules, as published in the 9/19/2008 Texas Register

Subchapter E. Weatherization Assistance Program General

Subchapter 5.503. Distribution of WAP Funds

Para. 5. C and (iii) - Because of the significant increase in travel costs, including fuel and other vehicle expenses and labor, CSI believes that the inverse density ratio should be increased from 5% to 10% and the number of non-elderly poverty households reduced to 35%, to reflect the increased number of higher priority population 65 years of age or older.

Section 5.528. Health & Safety

Para. (a) - CSI believes that the 10% limit should be eliminated for DOE units because of the requirement for use of vented heaters, which cost more than three times as much as unvented space heaters.

This PY, the original CSI DOE contract budget included $228,000 for Material + Labor + Program Support (house) funds, equivalent to 77 units. Thru August, CSI has completed and contracted 51 units; 29 of those had existing vented central heaters, an unusually high ratio because we chose to make them DOE units because they had existing vented heaters. Even if this ratio can be maintained, approximately 44 of the 77 units must have vented heaters installed, at a cost of approximately $1,000 each. Under the proposed 10% maximum rules, the Health and Safety budget would have been $22,800, instead of the $44,000 which would be required just for vented heaters, and this does not allow for other needed health and safety measures, such as replacing leaking or dangerous water heaters. True, in ten of our fifteen counties where CSI has the CEAP Program funds, we can, have and will depend on them for assistance, but it is unrealistic to expect CEAP program agencies in the other five counties to use their CEAP funds to help us, and other WAP programs have this same problem.

To complicate this situation, a Footnote to Attachment A of the contract states that "The only categories that can be reduced are the Administration, Insurance, Fiscal Audit, and /or in the Health & Safety categories", so we can't reduce M, L, & PS to assist with the Health & Safety problem. (Every subgrantee knows that admin, insurance, and audit amounts are already insufficient). Something has to give.

I believe sometime in the recent past I heard a DOE Federal Official say, at a national conference, that H&S expenditures per unit could equal the maximum per unit cost (when it was $2744 per unit ?), but that benevolence was never passed thru to TDHCA sub-recipients.

If we are expected to comply with the vented heater rules, the 10% limit and the

prohibition against transferring house money to health and safety must be removed from DOE contracts, and DOE or TDHCA should give us more H&S money.

Subchapter C., Section 5.426, Para. G.

CSI applauds TDHCA for allowing assessment expenses to be included as a specific part of the Retrofit category. We had intended to request this. However, because of the complexity of accounting for all the costs involved, as noted below, on a specific unit basis, and because replacement costs of central HVAC systems are already approaching or exceeding the $4000 limit, we feel it would be more beneficial to the client to allow at least 10% of the Retrofit budget to be used for related staff expenses, including travel.

In order to perform proper assessments of replacement requirements for components such as refrigerators, water heaters, window A/C and space heater units, and ,especially, central HVAC units, a home visit by a staff member with specific knowledge and experience is required. In all cases, existing equipment data must be recorded, and in most cases, measurements must be made to insure that replacement units will fit. For some refrigerators and A/C units, specific energy consumption tests are required, and for central heaters and A/C units, complete system tests including blower door and/or pressure-pan tests to determine the integrity of the duct systems are an absolute necessity, and space measurements are needed to determine proper replacement equipment specifications. Most CAA's have and use Weatherization staff to do this work. Then bid notices or work orders must written, quotes analyzed, and installation inspections made (involving another trip to the home), before payment is authorized.

These are not routine client-contact home visits. These are necessary time-consuming and travel cost-involved tasks specifically related to the Retrofit component, and should not have to be paid from Direct Services funds.

Michele Atkins HOME (5)

From: Jeannie Arellano
Sent: Friday, August 29, 2008 10:59 AM
To: Michele Atkins
Subject: FW: HOME OCC program procedures

This is the other public comment I've received so far based on the posting of the book.

Jeannie Arellano
Director of HOME Division
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701
512-463-6164
www.tdhca.state.tx.us

-----Original Message-----
From: David Baker [mailto:dbaker@publicmgt.com]
Sent: Thursday, August 28, 2008 11:07 AM
To: 'Jeannie Arellano'; lora.lange@tdhca.state.tx.us
Cc: 'J. Andrew Rice'
Subject:

Jeannie and Lora,

I understand that you are recommending to the TDHCA Board changes in the HOME OCC program procedures. I want to thank you for your efforts, especially the increase in the maximum allowable cost per home. This change is badly needed.

However, I am concerned with the amount of increase you are requesting for the maximum cost per home for the OCC program. The construction costs in this program are increasing rapidly. The $60,000 existing maximum for the 1-4 person household has been insufficient for some time now. While a $5,000 increase is a start, it will still not meet the cost of home reconstruction in this program. To document this, I have attached bids from construction contractors on a simple two bedroom floor plan. This house plan is less than 900 sq ft. These contractors are experienced state approved and registered contractors and have been working with HOME related projects for several years. As you can see, the costs are far above the $65,000 amount.

I understand that some communities can assist with these costs through local match, but many of the smaller, more poverty stricken communities or communities impacted by disasters will not be able to assist. These communities, in most cases, are the most in need of this assistance.

If you feel that this request of the TDHCA Board is the best you can ask for at this time and that further increases are planned, then I will defer to your judgment. Just please be aware that we will still have problems getting this construction completed at the increased amounts you are now proposing.

David A. Baker, Vice President
Public Management, Inc.
2318 Center Street, Suite 111
Deer Park, Texas 77536
281 479-1030 office
281 479-1323 fax
713 598-7733 cell

Estimates for Buiding Floor Plan B (888 sq. ft)

	RANDY MALOUF BUILDERS	KEVIN WEDERGREN CONTRACTING	JW TURNER CONSTRUCTION	
Construction Cost (Hard Cost)	78000	64600		
Survey Cost/Elevation Cert.($800, $400) (Soft Cost)	900	900	900	
Apraisals (2) (Soft Cost)	800	800	800	
Estimates Closing Cost (Soft Cost)	1070	1070	1070	
Administration Soft Cost (Soft Cost)	6000	6000	6000	
Total Soft Cost	8770	8770	8770	
Total Per House	$ 86,770.00	$ 73,370.00	$ 8,770.00	

BID PROPOSAL

Construction Design Plan B
General Contractor to fill in the Total Bid Amount only.
(Supporting Bid Amounts to be filled out)

ITEM	Bid Amount-in $
Demolition and dirt pad (898 sqf to 1200 sqf)	$ 6000
Foundation	$ 17300
Flat Work	$ N/A
Plumbing	$ 6000.
Electrical	$ 5500
Framing	$ 7000
Doors & Windows	$ 2800
Insulation	$ 1500
Exterior Surface (Siding and Trim must be Hardy Plank)	$ 6500
Interior Surface	$ 4800
Mechanical	$ 5800
Finish Carpentry	$ 3500
Cabinets	$ 2100
Applicances	$ 1500
Flooring	$ 2000
Paint	$ 2700
Roofing	$ 1500
Finish Details	$ 1000
Driveway	$ 2500
Aerobic Septic System	$ 8000
Miscellaneous*	$
Total Bid	
	$ 78,000

Identify any miscellaneous item _____

_____

_____

Contrator Notes: Cost are increasing all the time and TRec has new inspection requirement that are going to increase the cost of Construction. House requiring pier & beam foundation or additional Fill to raise house will an additional cost. These price assume no house or in the Flood plain

Date 8-22-08

Respectfully Submitted

Randy Malouf
Legal Name of Bidder (printed or typed)

By _____

Title owner

BID PROPOSAL

Construction Design Plan B
General Contractor to fill in the Total Bid Amount only.
(Supporting Bid Amounts to be filled out)

ITEM	Bid Amount-in $
Demolition and dirt pad (898 sqf to 1200 sqf)	$ 5,000
Foundation	$ 9,000
Flat Work	$ 100
Plumbing	$ 6,000
Electrical	$ 4,000
Framing	$ 4,000
Doors & Windows	$ 2,500
Insulation	$ 2,000
Exterior Surface (Siding and Trim must be Hardy Plank)	$ 3,000
Interior Surface	$ 3,500
Mechanical	$ 2,500
Finish Carpentry	$ 2,000
Cabinets	$ 2,000
Applicances	$ 1,000
Flooring	$ 2,500
Paint	$ 3,000
Roofing	$ 2,500
Finish Details	$ 1,000
Driveway	$ 3,000
Aerobic Septic System	$ 6,000
Miscellaneous*	$
Total Bid	
	$ 64,600.00

**Identify any miscellaneous item*

Contrator Notes: AS OF 9/1/08 THIRD PARTY INSPECTIONS REQUIRED BY TCEQ LABOR PRICES HAVE INCREASED DUE TO HIGHER GASOLINE (TRAVELING EXPENSES)

9/15/08
Date

Respectfully Submitted
KEVIN WEDERGREN CONTRACTING
Legal Name of Bidder (printed or typed)
By Kevin Wederg
Title OWNER

WASHBURN & COMPANY

Land Surveyors
P.O. Box 460
Cleveland Texas 77328

JUNE 05, 2006

PUBLIC MANAGEMENT **INVOICE NO. 4470**
P.O. Box 1827
Cleveland, Texas
77328-1827

207 South Bonham
Cleveland, Texas
77327

ATTENTION: Rick Valdez, Project Manager.

Phone: (281) 592-0439
FAX: (281) 592-1734
E-mail: rvaldez@publicmgt.com

RE: Gertha Norman
1727 Lilley Avenue/809 Beach
Lot 21 in Block 5
Holt Addition, Section One
City of Cleveland
Liberty County, Texas

Boundary Survey of Lot 21 in Block 5 of the Holt Addition, Section One, in the City of Cleveland, being a vacant lot at 1727 Lilley Avenue, Cleveland, Texas 77327, in Liberty County, Texas.

FEE.....$800.00

Thank you for this assignment.

for JAMES M. WASHBURN
Registered Professional
Land Surveyor No. 1653

WASHBURN & COMPANY

Land Surveyors
P.O. Box 460
Cleveland Texas 77328

MAY 25, 2006

PUBLIC MANAGEMENT
P.O. Box 1827
Cleveland, Texas
77328-1827

INVOICE NO. 4467

207 South Bonham
Cleveland, Texas
77327

ATTENTION: Rick Valdez, Project Manager

Phone: (281) 592-0439
FAX: (281) 592-1734
E-mail: rvaldez@publicmgt.com

RE: ELEVATION CERTIFICATE
Gertha Norman
1727 Lilley Street/809 Beach
Lot 21 in Block 5
Holt Addition, Section One
City of Cleveland
Liberty County, Texas

Elevation Certificate on Lot 21 in Block 5 of the Holt Addition, Section One, in the City of Cleveland, being a vacant lot at 1727 Lilley Street, Cleveland, Texas 77327, in Liberty County, Texas.

FEE.....$400.00

Thank you for this assignment.

for JAMES M. WASHBURN
Registered Professional
Land Surveyor No. 1653

FEE SCHEDULE

Price Schedule	URAR 1004	1004-REO	2055- Ext	2055- Int	2000 Review	2000 Enchanced Review	Land Report	Multi- Family	Completion 442 Certificate	Desk Review	1004C- Mobilehome	Desktop Appraisal
Angelina	$425	$450	$400	$425	$425	$425	$425	$750	$200	$200	$450	$200
Brazos	$425	$450	$400	$425	$425	$425	$425	$750	$200	$200	$450	$200
Burleson	$425	$450	$400	$425	$425	$425	$400	$750	$200	$200	$450	$200
Chambers	$400	$450	$375	$400	$400	$400	$450	$750	$200	$200	$425	$200
Ft. Bend	$425	$450	$400	$425	$425	$425	$400	$750	$200	$200	$450	$200
Grimes	$425	$450	$400	$425	$425	$425	$400	$750	$200	$200	$450	$200
Hardin	$400	$450	$375	$400	$400	$400	$450	$750	$200	$200	$425	$200
Harris	$375	$425	$350	$375	$375	$375	$450	$750	$200	$200	$400	$200
Houston	$450	$475	$425	$450	$450	$450	$450	$750	$200	$200	$475	$200
Jasper	$425	$450	$400	$425	$425	$425	$425	$750	$200	$200	$450	$200
Jefferson	$400	$425	$375	$400	$400	$400	$450	$750	$200	$200	$425	$200
Leon	$600	$650	$575	$600	$600	$600	$600	$750	$250	$200	$625	$200
Liberty	$400	$450	$375	$400	$400	$400	$450	$750	$200	$200	$425	$200
Madison	$425	$450	$400	$425	$425	$425	$400	$750	$200	$200	$450	$200
Montgomery	$375	$425	$350	$375	$375	$375	$450	$750	$200	$200	$400	$200
Nacogdoches	$450	$475	$425	$450	$450	$450	$450	$750	$200	$200	$475	$200
Newton	$450	$475	$425	$450	$450	$450	$450	$750	$200	$200	$475	$200
Orange	$400	$450	$375	$400	$400	$400	$450	$750	$200	$200	$425	$200
Polk	$400	$450	$375	$400	$400	$400	$450	$750	$200	$200	$425	$200
Robertson	$425	$450	$400	$425	$425	$425	$400	$750	$200	$200	$450	$200
Sabine	$600	$650	$575	$600	$600	$600	$600	$750	$250	$200	$625	$200
San Augustine	$600	$650	$575	$600	$600	$600	$600	$750	$250	$200	$625	$200
San Jacinto	$400	$450	$375	$400	$400	$400	$450	$750	$200	$200	$425	$200
Trinity	$425	$450	$400	$425	$425	$425	$450	$750	$200	$200	$450	$200
Tyler	$425	$450	$400	$425	$425	$425	$450	$750	$200	$200	$450	$200
Walker	$425	$450	$400	$425	$425	$425	$450	$750	$200	$200	$450	$200
Washington	$425	$450	$400	$425	$425	$425	$400	$750	$200	$200	$450	$200

From: Cmercer@TarverAbstract.com [mailto:Cmercer@TarverAbstract.com]
Sent: Friday, August 15, 2008 10:25 AM
To: rvaldez@publicmgt.com
Subject: RE: Closing cost estimates

An Owner's Title Policy would be $640.00
Mortgagee's Title Policy would be $100.00 plus any required endorsements
Escrow fee is $225.00
Tax Certificates $54.13
Recording is $16.00 for the 1st page and $4.00 each page thereafter per document
Express Mail fees are $15.00 per package

These are the basics let me know if you need anything else. Thanks.

HOME (6)

MR. DIAZ: Good morning. My name is David Diaz. I'm with the Midland Community Development Corporation in Midland, Texas, a 501(c)(3) nonprofit. We are also a state CHDO designated by TDHCA.

My comments will be under the HOME Program commentary and the lack of mention of anything or programs related to the CHDO. MCCD has been a CHDO for the last five years. We were one of the CHDOs that were part of the state's restructure program of the CHDO Program. Consequently, it was a learning process, a very difficult learning process, for both sides. But we worked through it. TDHCA staff was great in helping us learn and vice versa they learned from us.

So it was a learning process for both of us during those five years. The initial contract was amended more than once to continue our CHDO contract with TDHCA. And things went well for a while so long as we didn't have to amend our contract. And everything was hunky-dory when we were in continuous operation.

And my board of directors at one time said we need to go back to TDHCA and find out who else besides Midland CDC is doing single-family housing development because we want to be able to do more. So I asked TDHCA staff, Can you send us to another CHDO around the state that is doing well, so that we can mirror what they're doing in order to be able to create more housing?

TDHCA staff in a couple of weeks returned with an answer and they said, Midland CDC is one of the top CHDOs in the state, so whatever you're doing, keep doing it. The problem that we now are in is that there is no plan, at this point, for any CHDO NOFA for 2009. And for us that's a serious dilemma in that we depend on our development to be able to sustain ourselves. For an organization to be successful, such as ours, we primarily focus on one thing and one thing only; we do one thing and we do it well, and that is single-family housing development.

If there is no CHDO money for single-family housing development, then basically we could cease to exist. TDHCA in the past has had problems expending their CHDO funds, so it's not under -- I can't understand why they would not open up a CHDO cycle for NOFA for single-family development for 2009 and skip maybe, perhaps, until 2010.

An organization needs to continue doing what it does. You can't -- we're in construction; we're in development. We hire good people. In order to retain those people we have to keep them busy. If we have to send them home and say, Well, sorry, guys. We have to send you home for a six-month period because we don't have any CHDO monies to continue to operate development. Consequently,

you know, we can lose those people and to get them back it's very hard after you've trained them. You know, they're out and about in the community and seek employment elsewhere.

Not only have we done well for ourselves, but once TDHCA identified us as one of their most successful CHDOs, TDHCA also sent other folks our way for us to help them, sort of train-the-trainer-type thing. We've helped -- people from the San Angelo Council of Governments have been to our offices, the City of Eaton, Texas, Fort Stockton, Texas. All those cities have sent city council people, city mayors and city managers for us to share with them how it is that we operate.

So we have obliged TDHCA. Now we're asking TDHCA to reciprocate and upon a CHDO NOFA for 2009 as soon as possible. That's it. Thank you very much.

HOME 7

Michele Atkins

From: Jeannie Arellano
Sent: Friday, October 10, 2008 1:19 AM
To: Michele Atkins
Subject: FW: Comments on 2009 Proposed HOME Rules

Jeannie Arellano
Director of HOME Division
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701
Phone: 512-463-6164 Fax: 512-475-0220

-----Original Message-----
From: Robin Sisco [mailto:robin@lcmsinc.com]
Sent: Thursday, October 09, 2008 1:51 PM
To: michael.gerber@tdhca.state.tx.us
Cc: 'Jeannie Arellano'; Sandy Garcia; Lora Lange; Donna Chatham
Subject: Comments on 2009 Proposed HOME Rules

Please see attached comments on the 2009 Proposed HOME Rules. The .pdf file contains a 3-page letter from myself and Judy Langford, plus 2 letters from construction contractors and a spreadsheet for a total of 6 pages.

If you cannot open the attachment, please let me know. Thank you! –Robin Sisco

Robin Sisco
Langford Community Management Services
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HOME (7)

LANGFORD

COMMUNITY MANAGEMENT SERVICES
Serving Texas Cities and Counties

Judy Langford, President
Billy D. Langford, Vice President
Margaret J. Hardin, Secretary/Treasurer

October 9, 2008

Mr. Michael Gerber
Executive Director
Texas Department of Housing & Community Affairs
P.O. Box 13941
Austin, TX 78711-3941

RE: Comments to the Proposed 2009 HOME OCC Rules

Dear Mr. Gerber:

First we would like to express our great appreciation for the time and effort that your HOME Division staff spent on preparation of the 2009 proposed rules. We are particularly pleased with several positive changes:

- The proposed rule of retroactively applying loan forgiveness upon death of the homeowner to all open contracts is very important, so we are pleased to see it included here.

- The elimination of appraisals and title insurance will allow these HOME OCC funds to be used for construction costs (which is very important, as will be made clear later in our comments.)

- The extension of contract terms to 24 months will allow the adequate time necessary to complete these programs without the need for extensions.

- Allowing you as Executive Director the authority to approve some amendments without board approval will streamline the implementation process considerably.

There are some revisions we would like to see made in the proposed rules based on the following comments:

Even though staff has worked diligently to set appropriate funding levels for reconstruction of houses, with the cost of construction skyrocketing, this has been very difficult to do. We have not taken bids on reconstruction since February of this year. At that time the base cost of a basic 860 s.f. house was approximately $54,000 – up from $48,000 the year before. We requested

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Phone: (512) 452-0432 Fax: (512) 452-5380

updated bid prices from the construction companies that bid our projects previously. (Please see attached letters.) As you can see, these bid prices show a significant increase in the price of construction. It is also important to keep in mind that homes built under these new rules will not go to bid until late 2009 when prices will likely be even higher.

Per the attached HOME OCC Scenarios, you can see that even though the staff has recommended a $5,000 increase in the maximum cost per home – to $65,000, the total amount per house still does not cover the cost of managing these projects. (Please note: Our figures do not take into account the need for new septic tanks in some homes, as we have only worked with cities that have sewer lines available. However, this is an additional cost when new septic systems are needed.)

An increase in maximum cost per house is needed not only to accommodate rising construction prices but to also, increase the soft costs that are necessary to manage these projects properly. A total of 12% of the total grant needs to be available in administrative and soft costs combined. That means that on a $375,000 grant, approximately $45,000 should be available in combined soft costs and administrative cost. Once again, per the attached HOME OCC Scenarios, only approximately $39,200 is available per grant of $375,000. The way we arrived at these numbers is based on the amounts in the proposed rules and is clearly shown on the attached scenarios. Increasing the administration costs (from 2% to 4% as has been proposed) helps, but there are still two problems: (1) The proposed cost per house of $65,000 does not leave enough room for adequate soft costs after the hard costs are deducted, and (2) The line item list of soft costs and administrative costs are still not high enough to provide funds to adequately manage these projects.

Finally, as stated previously, there are many good, significant changes in these proposed rules. However, we have been told by staff that these new rules will not govern the 2008 HOME OCC applications that have just been submitted in September and October because the 2009 rules will not be considered for approval by the board until November 13, 2008. This is a big problem that needs to be resolved. There is no good reason to withhold the positive changes in the 2009 rules from the 2008 applications, especially since the submission of those applications and the approval of the new rules will only be a few weeks apart. In addition, it contracts written for the applications currently being submitted will be written after passage of the new rules – another reason to apply the 2009 rules retroactively to all 2008 HOME OCC applications.

Recommendations:

- Allow for the price per house to be set at the time of the NOFA, not as part of the rules-making process. This will allow staff latitude to make changes as necessary due to rising construction costs.

- Raise the maximum cost per home to at least $75,000 per house to take into account increased construction costs and to allow adequate funds for soft costs.

- Increase the line items amounts in the administrative and soft costs lists to allow for adequate funds in those two categories to manage these projects. And overall increase of approximately $5,000 per grant is needed.

- Make these proposed 2009 rules retroactive so that they govern the 2008 contracts that will be written on these 2008 HOME applications that are currently being submitted to TDHCA.

Thank you for your consideration. Please feel free to contact either one of us at (512) 452-0432 or judyl@austin.rr.com, or robinsisco@austin.rr.com.

Sincerely,

Judy Langford, President

Robin Sisco, Consultant

Cc: Jeannie Arellano, HOME Division Director, TDHCA
Sandy Garcia, HOME Division Production Manager, TDHCA
Lora Lange, HOME Division Performance Manager, TDHCA

HOME (8)

Hunter & Hunter Consultants, Inc.
220 W. Quail Run Road, Rockwall, Texas 75087
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Email: michael@hunter-hunter.com

October 19, 2008

Ms. Jeannie Arellano
Director
Texas Department of Housing and Community Affairs
HOME Division
221 East 11th Street
Austin, Texas 78701-2410

Dear Ms. Arellano:

The following are comments on the proposed rules for the HOME Program. Each comment is identified by section and paragraph number.

Sec 53.32; Para (b): Clarification: Currently TDHCA does not allow Homebuyer Assistance funds to be spent to assist a first-time homebuyer in purchasing an existing mobile home unit (MHU), yet the proposed rule does not address this issue either pro or con. It simply states that that an MHU is not an eligible property for rehabilitation. Does this mean that HOME funds can be used to enable a first time homebuyer to acquire an existing MHU?

Recommendation: HOME funds should be allowed to be used to assist first time home buyers acquire an existing MHU if no repairs are required and the unit passes TDHCA's inspection requirements as evidenced by a final inspection performed by an approved inspector. In today's housing market we are seeing many properties being sold to avoid foreclosure. MHUs are traditionally less expensive than stick built homes. MHUs are prevalent in rural Texas. Often homes that are one, two or three years old are the ones being sold. If the property passes inspection and presuming the HOME eligible borrower can obtain a mortgage loan on the property, it does not make sense to withhold HOME funded downpayment assistance. The key is whether the property passes the required inspection. If it does, then the property should be eligible for assistance. The proposed rule is not clear on this issue.

Sec 53.32; Para (e): General Comment: In today's market, the critical element in the success of an acquisition only Homebuyer Assistance Program is the availability of mortgage lending for the low income first time homebuyers. Because of the recent upheaval in the market, both the general availability of mortgage funding and the ability of low income families to qualify for mortgage loans have been significantly reduced.

For the Homebuyer Assistance Program to be successful, then, the Program needs to be attractive to and encourage the participation of mortgage lenders. To accomplish this, the Program needs to be simple to understand, market and use. The proposed rules do not meet this need.

In the Homebuyer Assistance Program, contract administrators apply for funds based upon a general understanding of their market. Having a variety of different downpayment amounts that could be awarded depending upon the specific circumstances of each low income households who applies, not only makes it very difficult to estimate how much funding is needed overall in the application process, but makes it difficult to explain to an applicant or complainant why one family got one amount of money while another received more or less. It makes the program more difficult to manage and harder to monitor.

Para (e)(1) Recommendation: Eliminate separate award amount for persons with disabilities. Downpayment assistance is an effort to reduce the out of pocket financial requirement related to the purchase of a home. Having a disability does not equate to any financial status or need. If a particular property needs to be retrofitted to address ease of accommodation, it is eligible under Para (f) as an acquisition and rehabilitation.

Para (e)(2) through (5) Recommendation: Replace the bureaucratic and overly complicated division of amount of maximum amount of funds to be awarded based on family size, percent of AMFI and number of bedrooms. Institute a maximum amount of assistance to an eligible household at $15,000 for areas within an MSA and at $20,000 for areas outside an MSA. This division is simpler to understand and market and it recognizes and responds to the differences in purchasing power inherent in HUDs AMFI designations. For example, take two abutting counties: Delta and Lamar. Delta is located within the Dallas MSA and Lamar outside. 80% of AMFI for a family of three in Delta is $35,940 while in Lamar it is $24,600, a difference of $11,340, yet the cost of existing housing as well as new construction is the same. Programs in Lamar County are more difficult to complete than in Delta County because the pool of potential mortgage eligible applicants is smaller while the potential for default is higher because of the requirement for monthly mortgage insurance payments. Currently, a $15,000 downpayment would eliminate the mortgage insurance requirement for loans less than $75,000 and $20,000 would eliminate the need for loans less than $100,000. This would provide a real benefit to the low income homebuyer by reducing their monthly costs. The higher amount in the rural (non-MSA) areas would also act to generate activity in those areas and would help attract rural lenders who typically offer only 80% loan to value loans.

Eliminate tying the amount of maximum assistance to number of bedrooms. There are few four bedroom houses available at prices that low income households can afford and the extra $5,000 allowed does not make them affordable. Most towns in Texas already have overcrowding regulations that address the issue of number of bedrooms per household size. In many cases, homebuyers will convert a den or media room to an extra bedroom to respond to this requirement, which is within their rights and is perfectly legal.

However an appraisal would not reflect this change and TDHCA monitors will undoubtedly use the appraisal to verify the number of bedrooms in a house. The end result is that a household might find a three bedroom house that they could afford and that could work in their circumstances, but would be precluded from purchasing it. The above recommended changes in maximum award amounts section will make the Program easier to manage, easier to monitor and will have greater impact on the success of the Program.

Sec 53.32; Para (m): Add "No 3-2-1 or 2-1 interest rate buydowns are allowed."

Comment: Discount points are used to write down the interest rate of a mortgage. Often the rates are on a 3-2-1 or 2-1 formula to assist the homebuyer in obtaining the mortgage loan and are predicated on the belief that the homeowner's income will increase over time allowing them to afford the increased interest rate. In today's economy, all the effect a 3-2-1- or 2-1 interest rate buydown will have will be to delay by one or two years the potential default on a loan because of inability to pay monthly mortgage payments due to the increased interest rate. Conversely, permanent interest rate buydowns should be encouraged, however the cap recommended on mortgage loan fees may prevent that.

Sec 53.32; Para (m)(4): Current: "An origination fee and any other fees associated with the mortgage loan may not exceed 2% of the loan amount;" Change to read: "An origination fee and any other non-pass through fees associated with the mortgage loan may not exceed 2% of the mortgage loan amount for origination and discount fees and 1% of the mortgage loan amount for other non-pass through fees;"

Comment: Mortgage lenders typically pay for some items on behalf of the borrower and then recapture those costs at closing (example: appraisals). By identifying fees as non-pass through, we are identifying fees paid directly to and for the benefit of the mortgage lender. Increasing the limit allows for discount fees to reduce interest rates. Consideration should also be given to increasing the fees to be earned by lenders participating in mortgage bond issues that include downpayment assistance.

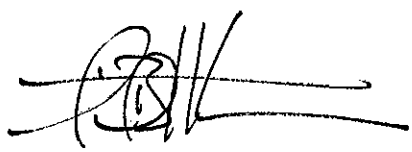
The following are comments on other items not included in the proposed rules.

Recent contract extensions agreements have included language that prohibits contract administrator from initiating project set-ups within 90 days of the end of the contract term. While this may be considered some what reasonable for Owner Occupied projects, it severely limits the Homebuyer Assistance contracts. Homebuyer assistance relies on program marketing to generate applicants. Current experience indicates that only one out of twenty households that respond to the marketing effort and will qualify as eligible household, obtain a mortgage loan, find an eligible property to purchase and close on the loan. Until the recent change in document preparation responsibilities, an application could be taken, approved, environmentally cleared, set up and closed within two weeks. By requiring all set ups to be entered no later than 90 days prior to the contract end date, the department has artificially reduced the effective term of the contract. Currently, the department is preparing the closing documents and is asking for a minimum of 30 days to

prepare same. It seems reasonable that changing the contracts to state that no set ups will be allowed within 30 days of the end of the contract term would be more appropriate for Homebuyer Assistances contracts. Further, I believe that TDHCA staff should be given the authority to allow set ups beyond that date if they feel confident that the loan can close on or before the contract end date. For example, if the closing date is set for one week before the contract end date and TDHCA document preparation staff asserts that they can make that deadline, why not allow the loan to close. This should also apply to Owner Occupied contracts. For example if a stick built house is being replaced by a MHU, the closing could occur, the MHU ordered, delivered, set up and inspected within 90 days.

Thank you for considering my suggestions. If you have any questions or desire further comment, please contact me.

Sincerely,



Michael Hunter

Cc: Raymond Cisneros, President, Cameron County Housing Finance Corporation
Nick Mitchell, Executive Director, Community Development Corporation of Brownsville
Richard Anderson, County Judge, Harrison County; and Manager, East Texas Housing Finance Corporation
Mark Allen, County Judge, Jasper County
Mark Milum, City Administrator, City of Los Fresnos
Clifton Fendley, President, Paris Living-A Community Development Corporation
Jeanne Telerico, Executive Director, Texas Association of Local Housing Finance Agencies
Traci Wickett, Executive Director, United Way of Southern Cameron County
Lora Lange, Texas Department of Housing and Community Affairs
Lisa Wright, Community Development Director, City of Paris

MR. HUNTER: Good morning. My name is Michael Hunter. I'm president of Hunter and Hunter Consultants. We've been involved in particularly the Homebuyer Program since -- well, for the past 18 years throughout Texas for the State of Texas and for local participating jurisdictions and entitlement communities. And we've helped thousands of low-income families become first-time homebuyers.

That being said, I want to address an issue about Owner-Occupied for a moment. One is I'm glad to see you've raised the limits. Anybody look at the last two hurricanes and what's happening with construction prices, the $60,000 limit just is not high enough anymore. It's unfortunate that's the case, but it is the case.

Also, I have -- I applaud you for removing the two-appraisal requirement. Quite frankly, that requirement only added expense to the program and didn't provide any benefit.

Now, to Homebuyer. As you may be aware, in the past couple of years we've had a problem with Homebuyer programs in the State of Texas and across the country. Primarily, that problem's not caused by down payment assistance, it's caused by the mortgage lending industry and the type of lending that they did.

However, the Down Payment Program by the state does have an impact on how those mortgage lenders will

participate with your program.

In looking at your rule changes on Homebuyer Assistance it appears that these rule changes do not -- are not designed to entice the participation of the mortgage lenders who are still in business to participate in the state program. In fact, in a couple of cases they provided disincentive. And I'd like to point those out.

First, I think that requirement for down payment for a program, for a house, is primarily financially directed. That is, it's primarily created by the cost of the house and how much it requires to get a loan for that house and the down payment that's required by the mortgage lender.

Very rarely do we get into an issue when we take a project or a client to a mortgage lender about their income level vis-a-vis the down payment size. Okay? That just doesn't happen. We have other problems with lower-income folks. But a $10,000 down payment assistance primarily is okay in most of the areas we're being able to assist people to buy a home.

That being said, I'd like to point out a couple of things. I'm not opposed to doing a variety of down payment assistant levels to various clients throughout the state. I do think, however, that there's a better approach to take than tying it to income levels of the clients.

One way is to look at where the assistance is

being provided now and then to provide more assistance to those areas which are not using it to encourage more homebuyer assistance out there.

For example, if you look at the AMFI in Dallas, 80 percent of AMFI in Dallas -- or 60 percent of AMFI in Dallas. Quite frankly, 60 percent is about the same dollar figure as 80 percent AMFI in Lamar County. And Lamar County is not one of your poorer counties.

So the further you go away from the metropolitan areas the more difficult it is for us to find people who can qualify for a mortgage loan. Okay?

So if you wanted to make an impact and drive your program out to the rural areas which you've said many times you'd like to do, then one of the things you could do is to say, We're going to provide $10,000 worth of assistance in the urban/exurban areas and in the rural areas of the state we'll go to $20,000. Okay? And that would help lenders turn and look to the rural areas to help us restart their programs.

The other thing you could do is -- and I would recommend this -- is if you have a base $10,000 homebuyer assistance award, down payment award, make that for existing housing. And then provide $20,000 for new construction.

We all know that new construction's more expensive than existing housing if you go out and price it. The cost of construction's gone up considerably here

in the last few years. So by providing more assistance for new construction you could help housing development corporations in areas develop new housing.

The last thing I would like to say is that one of the things we have to do is we have to figure out a way to encourage mortgage lenders to participate in your program. And right now we have a problem with that. Our problem is at 60 percent of median income we can't get people qualified for a mortgage loan. It's difficult to get people at 80 percent income to get them qualified for a mortgage loan.

Two years ago you provided 15 contracts on a double funding cycle to do Homebuyer Assistance and that was supposed to create 375 closings. As of a month ago, it only created 69. It's not your problem. It's not your fault. It is a direct result of what's happening in the mortgage market.

One of the things we've got to do is try to figure out how we can use our down payment assistance to help solve that problem. In looking at your rules for mortgage lenders to participate in this program I noticed a couple of things that I would just recommend a different approach on.

One is is that you're capping the fees that a mortgage lender can charge at 2 percent. And at least in these rules you don't qualify what those fees are. In other words, does that include pass-through fees or just

fees of the mortgage lender themselves that they're going to collect?

Right now you have 1 percent origination fee and generally you have a 1 percent or maybe a 2 percent discount fee to discount the interest rate for the homebuyer. Well, they can't participate. So if you're trying to get them to participate and to help your low-income folks, somehow we got to give them an incentive to come to your table.

My suggestion would be is to increase at least the minimum of that to a 3 percent total and provide putting more leeway for the mortgage lender to provide discount points to lower the interest rate. And in that right I would say that there's something you're missing on the negative side. And that is, rightly so, you're saying, We shouldn't have any adjustable rate mortgages, shouldn't have any subprime mortgages.

I would like to add this, as well. We should take a hard look at two-one and three-two-one buy-ins. Okay? If they're going to provide a discount rate and a discounted interest rate then it should be for the life of the loan, not for two or three years in which case all we're doing is delaying the default for two or three years.

So I would suggest that we also say we cannot do two-one buy-downs or three-two-one buy-downs in this program, at least until the market turns around. And

that's my comment. Thank you very much.

HOME (9)

Randy Malouf - Builder

P.O. Box 813
Conroe, Texas 77305
Office (936)588-6331
Fax (936)588-7644

August 29, 2008

Mr. Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
P.O. Box 13941
Austin, Texas 78711-3941

RE: Hard costs for Building Houses Under the HOME OCC Program

Dear Mr. Gerber:

My construction company has worked extensively with TDHCA's HOME Owner Occupied Program over the past several years. I have been asked to provide information regarding the cost to build a home at this time. Currently, we are building the following for several HOME OCC contracts: a 860 s.f. home, four sides brick, three bedrooms, one bathroom. If my company were to bid this house today, we would bid approximately $70,000.00 per home to build this home one time. If we were to bid on a project with five to six homes together, we would bid approximately $63,000.00 per home because economies of scale would allow a cost savings. (These base bid costs do not include demolition of existing structure.)

It is our belief that the cost per home allowed under the HOME Program Rule should reflect the actual hard costs necessary to complete a home construction project at this time. Thank you for your consideration of these comments.

Sincerely,

Randy Malouf
Owner

HOME (10)

Michele Atkins

From: Jeannie Arellano
Sent: Friday, October 10, 2008 1:19 AM
To: Michele Atkins
Subject: FW: Comments on 2009 Proposed HOME Rules

Jeannie Arellano
Director of HOME Division
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701
Phone: 512-463-6164 Fax: 512-475-0220

-----Original Message-----
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Sent: Thursday, October 09, 2008 1:51 PM
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LANGFORD

COMMUNITY MANAGEMENT SERVICES
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Judy Langford, President
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October 9, 2008

Mr. Michael Gerber
Executive Director
Texas Department of Housing & Community Affairs
P.O. Box 13941
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- Increase the line items amounts in the administrative and soft costs lists to allow for adequate funds in those two categories to manage these projects. And overall increase of approximately $5,000 per grant is needed.

- Make these proposed 2009 rules retroactive so that they govern the 2008 contracts that will be written on these 2008 HOME applications that are currently being submitted to TDHCA.

Thank you for your consideration. Please feel free to contact either one of us at (512) 452-0432 or judyl@austin.rr.com, or robinsisco@austin.rr.com.

Sincerely,

Judy Langford, President

Robin Sisco, Consultant

Cc: Jeannie Arellano, HOME Division Director, TDHCA
Sandy Garcia, HOME Division Production Manager, TDHCA
Lora Lange, HOME Division Performance Manager, TDHCA

Randy Malouf - Builder

P.O. Box 813
Conroe, Texas 77305
Office (936)588-6331
Fax (936)588-7644

August 29, 2008

Mr. Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
P.O. Box 13941
Austin, Texas 78711-3941

RE: Hard costs for Building Houses Under the HOME OCC Program

Dear Mr. Gerber:

My construction company has worked extensively with TDHCA's HOME Owner Occupied Program over the past several years. I have been asked to provide information regarding the cost to build a home at this time. Currently, we are building the following for several HOME OCC contracts: a 880 s.f. home, four sides brick, three bedrooms, one bathroom. If my company were to bid this house today, we would bid approximately $70,000.00 per home to build this home one time. If we were to bid on a project with five to six homes together, we would bid approximately $63,000.00 per home because economies of scale would allow a cost savings. (These base bid costs do not include demolition of existing structure.)

It is our belief that the cost per home allowed under the HOME Program Rule should reflect the actual hard costs necessary to complete a home construction project at this time. Thank you for your consideration of these comments.

Sincerely,

Randy Malouf
Owner

EFC
Builders, Ltd. Co.
P.O. Box 628 Cedar Creek, TX 78612 Phone: 512/601-2316 Fax: 866/525-6638

August 29, 2008

Mr. Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
P.O. Box 13941
Austin, Texas 78711-3941

RE: Hard costs for Building Houses Under the HOME OCC Program

Dear Mr. Gerber:

My construction company is currently working with TDHCA's HOME Owner Occupied Program and has done so previously. I have been asked to provide information regarding the cost to build a home at this time. Currently, we are building the following for a number of HOME OCC contracts: a 860 s.f. home, four sides brick, three bedrooms, one bathroom. If my company were to bid this house today, we would bid between $59,000 and $64,500 per home to build this home one time. If we were to bid on a project with five to six homes together, we would bid between $57,000 and $62,000 per home because economies of scale would allow a cost savings. (These base bid costs do not include demolition of existing structure.)

It is our belief that the cost per home allowed under the HOME Program Rule should reflect the actual hard costs necessary to complete a home construction project at this time. Thank you for your consideration of these comments.

Sincerely,

Eric Christophe
Pres. Member, EFC Builders, Ltd. Co.

2009 HOME Rules Scenarios for Reconstruction of 6 houses:
(All amounts in tables below taken from Figure 10 TAC 53.85(a)(4) in 2009 Proposed HOME Rule.

Two tables below equal: $	**39,198.00**

	Soft (project) Costs	**(per activity)**
plans & specs ($2,000/6 houses)	333	
initial inspection	500	
work write-up/cost estimate	400	
schedule of values	100	
project document prep	100	
procurement of contractor	300	
preconstruction conference	300	
progress inspections (7 X 300)	2100	
final inspection	300	
punchlist verification inspection	300	
construction & disbursement docs	250	
TOTAL PER HOUSE	4983	
X6 HOUSES = TOTAL PER CONTRACT	**29898**	

Under a $65,000 per house limit, only $5,000 per house is available for soft costs because the house will cost at least $60,000.

3rd party costs (per activity)	
tax certs	20
lien search	250
legal office for closing	300
recording fees	200
house insurance	500
TOTAL	**1270**
X6 HOUSES	**7620**

These costs add $1,270 per house, but there are no funds left in a $65,000 house limit to cover this, see table and note to the left.

	Administrative costs	**(per contract)**
affirmative marketing plan	200	
financial management	200	
procurement of consultant	300	
recordkeeping	800	
application intake & processing	3600	(600X6 houses)
credit report	300	(50X6 houses)
environmental review	2400	(400X6 houses)
exempt administrative enviro	300	(50X6 houses)
information services	1200	(200X6 houses)
TOTAL PER CONTRACT	**9300**	

Under a $375,000 contract, approximately $15,000 is available for admin at a 4% level, but in the table above, you can only reach $9,300.

HOME (10)

Michele Atkins

From: Jeannie Arellano
Sent: Friday, October 17, 2008 10:33 AM
To: Michele Atkins
Cc: Veronica Chapa
Subject: FW: additional written comments to 2008 Proposed HOME Rule

Jeannie Arellano
Director of HOME Division
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701
Phone: 512-463-6164 Fax: 512-475-0220

-----Original Message-----
From: Robin Sisco [mailto:robinsisco@austin.rr.com]
Sent: Friday, October 17, 2008 9:15 AM
To: 'Jeannie Arellano'
Cc: 'Lora Lange'; michael.gerber@tdhca.state.tx.us; 'Donna Chatham'; 'Sandy Garcia'; 'Brooke Boston'
Subject: additional written comments to 2008 Proposed HOME Rule

Hi Jeannie –

In response to your request for more specifics regarding the admin and soft cost line items, here are our written comments:

1) The cost for "construction and disbursement documentation preparation" should go from $250 per activity to $400 per activity. This line item includes preparing subcontracts between the CA's and builders (which was not something required before the CA became the contractor). It also includes draw and match preparation. Proving up match can be a lengthy process requiring the tracking down of many documents. In addition, each project now includes 3 hard cost draws (50% construction complete, 100% construction complete, final 10% retainage).

2) The cost for "application intake and processing" should be raised from the proposed $600 to $800 per activity. This line item requires extensive time to meet with all prospective applicants, often on numerous occasions. The process to acquire documentation necessary to qualify an applicant often requires much personal assistance. Many times, due to the age or education level of the applicants, they cannot collect the required documentation themselves, and we must do so for them. In addition, due to the length of time it takes to move through the bidding and loan process, often re-verification of income has to occur.

3) The cost for "environmental review" should be increased from $400 to $500 per

activity. This more accurately reflects the time and documentation required to complete the tiering process (which involves both an overall review of the area and site specific reviews of each property.)

4) The cost of "information services" should increase from the proposed $200 to $600 per activity. This one is VERY important and probably the most undervalued on the entire list. From the time an applicant is approved for assistance to the time the home is completed and turned over to the assisted homeowner, each person/family requires much personal attention and many hours of communication and assistance. Helping these homeowners through the process is a big part of the CA's and consultant's responsibility. It is not accounted for anywhere else on the list, and cannot possibly be covered by $200 per activity.

I know this may not be as specific as you wanted. I know you want "auditable" costs, but HOME is a "people program" and as such, the hours spent developing and managing the process by the consultant for the benefit of the CA's, the builders, and the assisted homeowners are QUITE extensive. The specifics are often difficult to pin down, and they change from situation to situation. This is one of the reasons they are called "soft costs".

I hope this has helped you, and I'm very hopeful you will be persuaded to take a good look at these costs and make some increases for the sake of this program. Between these recommendations here and our recommendation made previously to increase the cost per home to $75,000, we believe this program can remain viable for many small communities.

Thank you! Please call or email me if you have any questions. -Robin

Robin Sisco
Langford Community Management Services
13740 Research Blvd, Suite G-1
Austin, Texas 78750
512-452-0432
fax 512-452-5380
robinsisco@austin.rr.com

HOME (10)

Michele Atkins

From: Jeannie Arellano
Sent: Friday, August 29, 2008 10:32 AM
To: Michele Atkins
Subject: FW: appraisal question in proposed rule HOME

This is the one 'public comment' I've received from the rules in the board book.

Jeannie Arellano
Director of HOME Division
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701
512-463-6164
www.tdhca.state.tx.us

-----Original Message-----
From: Robin Sisco [mailto:robinsisco@austin.rr.com]
Sent: Thursday, August 28, 2008 1:41 PM
To: 'Jeannie Arellano'
Cc: 'Lora Lange'; JudyL@austin.rr.com
Subject: RE: appraisal question in proposed rule

I agree with staff's suggestion to eliminate the appraisals, especially the second. However, the use of the first appraisal to determine equity was of value to the homeowners because it allowed the loan basis to be reduced by the amount of equity in the home – i.e. giving credit to the homeowner for what they already own. The homeowners should get something for that equity they have in their homes. So, we will probably propose that you continue to reduce the loan in the initial stage by the amount of equity in the home, but use the tax appraisal district's figure for determining that equity so that no independent appraisals will be necessary. I still think this will eliminate the problem you had with appraisals coming in at more than the amount of the assistance because I think it will be very unlikely that a tax appraisal will ever be more than the amount of assistance.

On the other note, we have asked the two contractors we are working with now to estimate what they would bid today for a 3 bedroom, 1 bath brick home at 860 sf (which is the home we currently build). We hope to submit letters from the two contractors showing what their base bid would be today both to build one home and to build several in one city (which will presumably get you a lesser bid per home due to economies of scale.) We hope this information will be helpful to the department in determining the actual hard costs that are associated with each activity.

Just a note – we normally have the cities handle demolition (either by bidding it out or by using their own labor and equipment, and we count this amount toward their match requirement.

I will talk to Judy concerning getting more detailed numbers to you for the soft cost and administrative costs. Thank you! -Robin

Robin Sisco
Langford Community Management Services
13740 Research Blvd, Suite G-1

Austin, Texas 78750
512-452-0432
fax 512-452-5380
robinsisco@austin.rr.com

From: Jeannie Arellano [mailto:jeannie.arellano@tdhca.state.tx.us]
Sent: Thursday, August 28, 2008 1:27 PM
To: 'Robin Sisco'; 'Jeannie Arellano'
Cc: 'Lora Lange'
Subject: RE: appraisal question in proposed rule

Hi Robin,
Staff is proposing the elimination of both appraisals. This would mean no appraisal to determine the loan amount at the beginning. The loan amount is proposed to be based on the amount of assistance with a principal reduction later for soft costs. Please let me know if you have any other questions.

On a previous note, can you provide us with more detailed line item information for a reconstruct budget that evidences a need to increase the construction costs via an increase in the maximum amount of assistance? We have received a couple of bids from others that include the demolition costs in the bid for construction. If you could provide a more complete budget on an activity basis that describes the construction, soft costs and admin line item estimates, it would be helpful in our attempt to address this issue.

Regards,
Jeannie

Jeannie Arellano
Director of HOME Division
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701
512-463-6164
www.tdhca.state.tx.us

-----Original Message-----
From: Robin Sisco [mailto:robinsisco@austin.rr.com]
Sent: Wednesday, August 27, 2008 3:23 PM
To: 'Jeannie Arellano'
Cc: 'Lora Lange'
Subject: appraisal question in proposed rule

Hi Jeannie -

I have been looking through the proposed 2009 HOME rule in the board materials, and I'm pleased with a lot of the changes staff has proposed. I do have one question though, is staff proposing to get rid of both appraisals or just the second appraisal? Will we still do one appraisal at the beginning or not?

Thank you! -Robin

Robin Sisco
Langford Community Management Services
13740 Research Blvd, Suite G-1
Austin, Texas 78750
512-452-0432
fax 512-452-5380
robinsisco@austin.rr.com

HOME (10)

Michele Atkins

From: Jeannie Arellano
Sent: Wednesday, September 03, 2008 9:30 AM
To: Michele Atkins
Subject: FW: some comments on the 2009 proposed rule

Jeannie Arellano
Director of HOME Division
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701
Phone: 512-463-6164 Fax: 512-475-0220

-----Original Message-----
From: Robin Sisco [mailto:robinsisco@austin.rr.com]
Sent: Friday, August 29, 2008 2:27 PM
To: 'Jeannie Arellano'
Cc: 'Lora Lange'; JudyL@austin.rr.com
Subject: some comments on the 2009 proposed rule

Hi Jeannie –

First, let me say I'm very pleased with many of the changes staff is proposing in the 2009 HOME rule. We really appreciate what you're doing to try to make this program workable again. I just want to make a couple of comments:

1) I've looked at the proposed project and admin costs listed in table in 10 TAC 53.85(a)(4). The increases are definitely a step in the right direction; however, they don't go quite far enough. If I add up all the costs possible for soft costs and admin from this table, on a six home contract, the amount that can be billed by the consulting firm totals $38,200. It doesn't matter whether you charge the amounts as admin costs or soft/project costs; the bottom line remains $38,200. That is about 10.2% of a $375,000 contract. (Remember, I'm adding soft costs and admin together, because that is how we determine how much will be available for the consulting firm to manage the construction and administer the grant. This does not include the 3rd party costs like title report, recording fees, insurance, etc. that are discussed in 53.85(a)(5).) Normally, on most grant projects we work on in other programs, we charge 12% to cover all the costs associated with administering a project. So, 10.2% is not quite enough to cover the costs. On a $375,000 contract, $45,000 (12%) is what we would expect to charge to be able to cover all costs associated with managing the construction and the grant process. You would need about a $1,000 increase in project/soft costs per home in the table to reach the 12% overall mark.

2) Bids are coming in much higher than in past years, and they continue to rise. The last

time we bid things was early this year. At that time, bids were in the mid fifties. Now, the proposed bid for the house we build (3/1, all brick, 860 sf) is into the sixties. (See letter attached to this email from Randy Malouf Builder who says $63,000-$70,000 is what we could expect from him if bidding this home today. These prices do not include demolition.) It would seem more feasible to have a per-home cap of $75,000 for a 1-4 person home rather than the $65,000 proposed. This would allow for increases in bid prices for next year. (Remember, we won't be bidding homes under the 2008 NOFA until mid-late 2009.) $75,000 would allow money for adequate construction and demolition costs and reasonable soft/project costs.

Thank you for your consideration of these comments. I look forward to seeing you at the board meeting next week. - Robin

Robin Sisco
Langford Community Management Services
13740 Research Blvd, Suite G-1
Austin, Texas 78750
512-452-0432
fax 512-452-5380
robinsisco@austin.rr.com

Sylvester Cantu, did you want to comment on the One-Year Action Plan as well?

MR. CANTU: Sylvester Cantu, City of Midland. I am the Community Development Administrator. While -- as Mr. Diaz and myself, we're both members of what's called the Midland Affordable Housing Alliance, I will primarily be wearing my City of Midland hat.

Regarding the HOME Program, we're very appreciative of the funds that we have been able to obtain over the years and currently as well, and also the current NOFAs that are available. Hopefully by the time that the comment period is concluded, then I would also have an opportunity to look at documents and I may or may not have some comments as well.

But primarily today I'd like to see in the device with the HOME rules that allowances be made for the increases in costs regarding the Owner-Occupied Program. I think the current -- it would call them caps or restrictive -- have not caught up to the times. I know it's always a difficult chore, the state being as large as it is.

But it is very difficult, especially given today's environment, while leaving aside the natural disasters, that our state has really been in a boom and with that increasing costs of not only rehab but also

reconstruction certainly puts a strain in getting that housing out for very low-income homeowners for rehab and reconstruction projects. That's one thing, increasing those limits.

The second, it would be for homebuyer assistance, a 10,000 cap, and there may be some variations in that. It certainly is not enough for underwriting the cost of housing but particularly in markets where housing is very limited, you exclusively have to go to reconstruction and then you need all the possible subsidy to make it possible for first-time homebuyers who are low income.

I think the last thing is, regarding the allocation formula, well, keep that up. You know, it's something that we in the various regions are able to take advantage of and try to get those funds because in some cases, competition statewide is something that even some of us cannot do. Thank you.

HOME, CAP (ESG) ConPlan

(12)

MHMRA
Administrative and Support Services
7011 Southwest Freeway
Houston, Texas 77074
P.O. Box 25381
Houston, Texas 77265-5381
(713) 970-7000
MENTAL HEALTH • MENTAL RETARDATION
AUTHORITY OF HARRIS COUNTY

October 2, 2008

Mr. Mike Gerber, Executive Director
Texas Department of Housing and Community Affairs
P.O. Box 13941
Austin, Texas 78711-3941

RE: 2009 State of Texas–Consolidated Plan-One Year Action Plan & Rule Changes

Dear Mr. Gerber:

The Mental Health Mental Retardation Authority of Harris County staff has done a quick review of the 2009 State of Texas, Consolidated Plan, One Year Action Plan and the HOME/ESG rule change from our perspective. We respectfully request that your staff review and consider the proposed changes shown in italics for the first two items on page 22 and 23. It was not clear to agency staff if the HUD HOME Regulations would allow an agency of the state or community mental health center to be listed as an eligible applicant so it is requested that your staff research and review this request to insure that this would be possible in the future.

Page 22 – HOME and ESG

Through the HOME Tenant-Based Rental Assistance Program, TDHCA assists households with rental subsidy and security deposit assistance for a period not to exceed 24 months, *but can be renewed based on HOME fund availability.* As a condition to receiving rental assistance, households must participate in a self-sufficiency program *unless it is a special needs household under Targeted Population who must participate in a community wide program or alternate program exclusively serving this special needs population.*

Page 23 – HOME and ESG

The ESG Program funds activities that provide shelter and essential services for homeless persons, as well as intervention services for persons threatened with homelessness. Essential services for homeless persons include medical, psychological counseling *and/or treatment*, employment counseling, substance abuse treatment, transportation, and other services.

Page 35 – Eligible Applicants

If regulations permit, we would like to include:

- Agency of the State and/or Community Mental Health Centers

It appears Project Access Initiative is designed to assist individuals under Olmstead and we would like if possible for you and your staff to consider including individuals with a chronic mental illness who are transitioning or are about to transfer from a state mental hospital back to a local community as an eligible group/category to be assisted by the Section 8 Housing Choice Voucher under this program.

We appreciate the tremendous effort you and your staff have done to compile and develop the Annual Plan, as well as revise the various rules and regulations for the housing programs. Furthermore, I have been advised that you and your staff had a very productive and helpful Housing Task Force Meeting in Houston on September 23, 2008 focusing on Hurricane Ike. Please feel free to contact me at 713-970-7189 or Samuel Hom at 713-970-7435 for additional information.

Thank you for your support of our Harris County residents.

Sincerely,

Steven B. Schnee, Ph.D.
Executive Director

SBS/sh

cc: Rose Childs
Samuel Hom

(13)

HOME
ConPlan

Michele Atkins

From: Barry Halla [barry@liferebuilders.org]
Sent: Tuesday, September 16, 2008 4:37 PM
To: brenda.hull@tdhca.state.tx.us; tdhcarulecomments@tdhca.state.tx.us
Cc: Jeannie Arellano; Eric Pike
Subject: One Year Action Plan/TDHCA HOME program

Dear Brenda and/or appropriate TDHCA staff:

Please consider this my request to once again provide CHDO HOME funds for land acquisition and single-family lot development. Today it is even more difficult for entry level buyers who qualify to buy a single-family home. Down payment and buyer closing cost assistance programs are helpful but financing for land and lot development is virtually no more thus making it difficult to provide entry level housing for these buyers. Too many mod-income Texans are being forced into rental housing due to limited entry level product being created today at affordable prices.

It is my understanding that the Colonia Model Subdivision Program would be the model to use. Jeannie Arellano reports an increased interest for these type funds. Being able to subordinate lot development funds to a qualified buyer's first mortgage would then accomplish the same thing that the buyer "grant" fund program is now accomplishing while helping the developer/builder create the entry level for-sale product that is becoming non-existent by being able to subordinate these "up-front" funds to a lot development loan or house construction loan from a financial institution. The CHDO HOME funds thus provide the "equity" for single-family construction up front where lenders are requiring it to be. The resulting 2nd mortgage loan would be forgivable over time to the qualified entry level buyer. If the home were sold to an over-income buyer, the CHDO HOME second loan on that house would be due and payable at closing.

Please let me know if I might be able to furnish more detail for these much needed "up-front" funds that in essence would serve to reduce the construction lenders LTV and thus would allow more entry level for-sale product to be offered to the wage earners and their families.

Respectfully submitted,

Barry Halla
Life Rebuilders, Inc.
480-837-3000
972-839-5959 cell
barry@liferebuilders.org
www.**TheLifeRebuildersGroup**.org

HOME Conplan (14)

Michele Atkins

From: Brenda Hull
Sent: Friday, October 17, 2008 3:07 PM
To: Michele Atkins; Jeannie Arellano
Subject: 14 Comments on Texas' Consolidated Plan One Year Action Plan 2009

Brenda Hull

Manager, Housing Resource Center
Texas Department of Housing and Community Affairs
221 East 11th, Austin, TX 78701-2401
PO Box 13941, Austin, TX 78711-3941
(512) 305-9038
www.tdhca.state.tx.us

-----Original Message-----
From: npoyo@nalcab.org [mailto:npoyo@nalcab.org]
Sent: Friday, October 17, 2008 3:02 PM
To: brenda.hull@tdhca.state.tx.us
Subject: Comments on Texas' Consolidated Plan One Year Action Plan 2009

Ms. Hull,

Please find attached, and pasted below in this e-mail, comments submitted by NALCAB - The National Association for Latino Community Asset Builders - with regard to the State of Texas' Consolidated Plan One Year Action Plan for 2009.

Thank you for this opportunity and please confirm your receipt of these comments.

Respectfully,

Noel Poyo
Executive Director
NALCAB - The National Association for Latino Community Asset Builders
T. 210-227-1010
F. 210-227-1014
npoyo@nalcab.org
www.nalcab.org

***

October 17, 2008

RE: COMMENTS ON THE STATE OF TEXAS' CONSOLIDATED PLAN ONE YEAR ACTION PLAN FOR 2009

SUBMITTED TO:

Brenda Hull
TDHCA
P.O. Box 13941
Austin, TX 78711-3941
FAX: (512) 469-9606

E-MAIL: brenda.hull@tdhca.state.tx.us

Dear Ms. Hull:

NALCAB - The National Association for Latino Community Asset Builders - represents and serves a geographically and ethnically diverse group of Latino-led asset building organizations, which include affordable housing developers, microlenders, economic development corporations and consumer counseling agencies. NALCAB's mission is to build financial and real estate assets as well as human and technology resources in Latino families, communities and organizations. NALCAB is a lean and flexible member service organization that acts as a catalyst and connector among its members, and fills gaps within the existing network of national and regional organizations that focus on community and economic development and asset building.

NALCAB's membership includes sixteen non-profit community and economic development organizations in the State of Texas. NALCAB has also communicated with twenty or more additional non-profit organizations through its Border Community Development Collaborative. Based on our communications with our member organizations and allies, NALCAB offers the following comments on TDHCA's One Year Action Plan for 2009.

***

1. Establish a Regional Intermediary Pilot Program to Facilitate the Investment of HOME funds in the Border Region *[Regional Allocation Formula (RAF) Regions 11 and 13]* - In order to more effectively invest HOME funds in the Border Region (i.e. improve administrative responsiveness, reduce the recapture rate, improve program outcomes, increase leveraging of non-State funds), NALCAB calls on the State of Texas to establish a regional intermediary pilot program for investing HOME funds in the Border region. The State should allocate a percentage of HOME dollars for direct investment in non-profit, community development organizations in the Border Region. Through a public process, the State should select two or more high-capacity, non-profit organizations that have a successful track record of promoting and developing affordable housing in the Border Region to act as intermediaries for the purposes of investing HOME funds. Representatives from non-profit community development corporations operating in the Border region should have significant input in the selection of the intermediary in their RAF region. These chosen intermediary organizations should administer HOME funds on behalf of the State in that region, making investments with non-profit partners, and leveraging a designated percentage of non-State resources to match HOME funds. Intermediaries should be able to use a percentage of the funding for their own development projects and should receive a percentage of the HOME administrative funding equal to the overall percentage of HOME funds administered on behalf of the State.

2. Invest in Technical Assistance and Regional Cooperation Among Community Development Corporations in the Border Region*[Regional Allocation Formula (RAF) Regions 11 and 13]* - The State should set aside funding of no less than $150,000 to support technical assistance and cooperative business arrangements for and among non-profit, community development corporations operating in the Border region to enhance the efficacy of this sector. The type of technical assistance to be offered and the selection of the technical assistance provider(s) should be determined by a panel made up primarily of representatives from non-profit community development corporations operating in the Border region, ensuring representation of the entire Border. Technical assistance providers should be required to match State funding.

3. Establish Benchmarks for the Timeliness of HOME-related Administrative Processing and Legal Review by the State of Texas - On many occasions, non-profits have been challenged in effectively utilizing HOME funds due to the length of time it takes the State to conduct administrative

processing and legal review. NALCAB recommends that benchmarks be established for the timeliness of the State's HOME-related administrative processing and legal review.

***

Thank you for the opportunity to submit these comments.

Respectfully,

Noel Poyo
Executive Director
NALCAB - The National Association for Latino Community Asset Builders

HOME ConPlan (14)

NALCAB

National Association for Latino Community Asset Builders

October 17, 2008

RE: COMMENTS ON THE STATE OF TEXAS' CONSOLIDATED PLAN ONE YEAR ACTION PLAN FOR 2009

SUBMITTED TO:

Brenda Hull
TDHCA
P.O. Box 13941
Austin, TX 78711-3941
FAX: (512) 469-9606
E-MAIL: brenda.hull@tdhca.state.tx.us

Dear Ms. Hull:

NALCAB – The National Association for Latino Community Asset Builders – represents and serves a geographically and ethnically diverse group of Latino-led asset building organizations, which include affordable housing developers, microlenders, economic development corporations and consumer counseling agencies. NALCAB's mission is to build financial and real estate assets as well as human and technology resources in Latino families, communities and organizations. NALCAB is a lean and flexible member service organization that acts as a catalyst and connector among its members, and fills gaps within the existing network of national and regional organizations that focus on community and economic development and asset building.

NALCAB's membership includes sixteen non-profit community and economic development organizations in the State of Texas. NALCAB has also communicated with twenty or more additional non-profit organizations through its Border Community Development Collaborative. Based on our communications with our member organizations and allies, NALCAB offers the following comments on TDHCA's One Year Action Plan for 2009.

***

1. Establish a Regional Intermediary Pilot Program to Facilitate the Investment of HOME funds in the Border Region *[Regional Allocation Formula (RAF) Regions 11 and 13]* - In order to more effectively invest HOME funds in the Border Region (i.e. improve administrative responsiveness, reduce the recapture rate, improve program outcomes, increase leveraging of non-State funds), NALCAB calls on the State of Texas to establish a regional intermediary pilot program for investing HOME funds in the Border region. The State should allocate a percentage of HOME dollars for direct investment in non-profit, community development organizations in

the Border Region. Through a public process, the State should select two or more high-capacity, non-profit organizations that have a successful track record of promoting and developing affordable housing in the Border Region to act as intermediaries for the purposes of investing HOME funds. Representatives from non-profit community development corporations operating in the Border region should have significant input in the selection of the intermediary in their RAF region. These chosen intermediary organizations should administer HOME funds on behalf of the State in that region, making investments with non-profit partners, and leveraging a designated percentage of non-State resources to match HOME funds. Intermediaries should be able to use a percentage of the funding for their own development projects and should receive a percentage of the HOME administrative funding equal to the overall percentage of HOME funds administered on behalf of the State.

2. Invest in Technical Assistance and Regional Cooperation Among Community Development Corporations in the Border Region *[Regional Allocation Formula (RAF) Regions 11 and 13]* – The State should set aside funding of no less than $150,000 to support technical assistance and cooperative business arrangements for and among non-profit, community development corporations operating in the Border region to enhance the efficacy of this sector. The type of technical assistance to be offered and the selection of the technical assistance provider(s) should be determined by a panel made up primarily of representatives from non-profit community development corporations operating in the Border region, ensuring representation of the entire Border. Technical assistance providers should be required to match State funding.

3. Establish Benchmarks for the Timeliness of HOME-related Administrative Processing and Legal Review by the State of Texas – On many occasions, non-profits have been challenged in effectively utilizing HOME funds due to the length of time it takes the State to conduct administrative processing and legal review. NALCAB recommends that benchmarks be established for the timeliness of the State's HOME-related administrative processing and legal review.

***

Thank you for the opportunity to submit these comments.

Respectfully,

Noel A. Poyo

Noel Poyo
Executive Director

P.O. Box 461266 • San Antonio, TX • 78246-1266
(ph) 210-227-1010 • (fx) 210-227-1014
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HOME, HTF, QAP (15)

motivation education & training, inc.

Austin Office
1811 West 38th Street
Austin TX 78731
Telephone: 512-965-0101
Fax number : 512-374-1657

October 10, 2009

Texas Department of Housing and Community Affairs
2009 Rule Comments
PO Box 13941
Austin, TX 78711-3941

RE: Public Comment

Dear TDHCA Representative:

Thank you for the opportunity to comment on programs and rules for the upcoming year. Motivation Education & Training, Inc. MET is a private nonprofit 501(c)(3) organization funded by a variety of public and private grants and contracts. The agency was incorporated in 1967 and operates on a statewide basis in Texas, Louisiana, Minnesota, North Dakota, and Wyoming. The organization was founded for the purpose of providing academic and vocational training to migrant and seasonal farm workers, with the objective of furthering economic self-sufficiency for MET participants. MET has conducted programs to improve farmworkers' housing situations since the 1970's.

MET's farmworker clients have an average income of $7,723 – 50 percent of the poverty level – extremely low earnings for working families! Yet only six percent receive public assistance. More than in past years, MET clients have difficulty with English and need longer time periods to learn English – 54 percent have limited English proficiency. They encounter difficulty filling out forms and understanding legal documents (leases, mortgages, intake forms). Most have no experience with computers. Fifty-two percent migrate to other parts of Texas and/or other states to perform farm labor.

MET has sponsored four statewide Farmworker Housing Summits since 2005 that bring together a diverse cross section of stakeholders and resource providers to explore the housing conditions and best methods to serve farmworkers with decent and affordable housing options. We also conducted regional "mini-summits" in 2005 and 2006. Through this process, we have collected a great deal of feedback and ideas, and updated our knowledge of the inventory of housing and programs available to farmworkers in Texas.

Urgency for farmworker housing resources in Texas is growing. Because agriculture is a leading economic driver in the state, the effect of labor shortages related to housing shortages will likely have a negative impact on the state's economic climate. The sheer number of farmworkers in Texas, home to the second most farmworkers behind California, demonstrate the contribution of farmworkers to the state's $85 million gross domestic product from agriculture.

Growers in Colorado and Nevada have experienced this downward trend in the agricultural economy for some years and relate it directly to documented workers are unwilling to migrate to areas with no housing. For the first time in Texas history, growers are finding that labor housing shortages are negatively impacting the crops they produce. Acreage for the infamous "Pecos cantaloupe" in West Texas first declined, then production stopped outright on the largest farm when Pecos housing authority units were no longer available to migrants during the harvesting season. After a three-year closing of farmworker housing operated by the housing authority in Floydada, one of the primary growers in the region decided to retire. The Texas Vegetable Association President and staff at the Texas Workforce have voiced concerns about labor shortages resulting from lack of available housing for farmworkers. TDHCA's migrant facilities inspectors also attest to hearing producers often talk about the lack of suitable housing for their workers.

In recognition of the historic lack of decent housing options for farmworkers, and the recent upswing in scarcity that is affecting agricultural production, the following priorities were established for farmworker housing during the first Summit and affirmed in subsequent Summits:

1. assist nonprofit and grower initiatives to develop new and maintain existing housing for farmworkers;
2. preserve existing Section 514/516 farm labor housing in the state;
3. expand the number of Section 514/516 units (Texas does not currently have its fair share of 514/516 units if the number of farmworkers in the state is compared to the number of existing 514/516 units in the state);
4. develop additional sources of financing for farmworker housing;
5. provide technical assistance, where requested, to potential housing developers to build the housing and operating capacity in the state.

Our most recent Summit concluded with more specific recommendations, listed below. The Summit was purposefully scheduled in advance of the TDHCA public comment period specifically to present recommendations regarding farmworker housing to TDHCA during this public comment period. The recommendations reflect the synthesis of thoughts and concerns voiced by the more than fifty persons Summit participants. The three programs toward which the comments are most relevant are the HOME program, the TDHCA Housing Trust Fund, and the Housing Tax Credit Qualified Allocation Plan and Rule (QAP). Recommendations are listed below by program relevance.

Recommendations Common to all TDHCA Funding Programs:

1. Explore more seamless combinations of funding, including TDHCA and Rural Development funding. Improve mechanisms to layer financing in more effective and efficient ways.
2. Offer an application workshop jointly with Texas Rural Development staff upon the issuance of USDA's 2009 Section 514/516 Notice of Funding Availability. Include RD, TDHCA, Texas State Affordable Housing Corporation, and other potential leveraged resources.
3. Allow HOME and HTF to serve as "first funding" committed in order to attract RD and other resources. Allow enough lead time (perhaps using forward commitments and conditional commitments) and flexibility to allow housing sponsors to secure all financing within various agency's timeframes and deadlines.
4. Apply repair dollars available through TDHCA to farmworker housing.
5. Assist in the development of Comprehensive Needs Analysis (CNA) for existing farm labor housing, to determine future viability and best funding options.
6. Conduct regional needs assessment for farmworker housing (as was conducted in three counties by TDHCA in 2008).
7. Although included as a member of TDHCA's Special Needs category, TDHCA needs to better serve farmworkers. According to recent Annual Performance Reports to the State of Texas Consolidated Plan, only two migrant households were served in fiscal year 2005, four were served in fiscal year 2006, and one in fiscal year 2007. If farmworkers are being served more frequently (and we suspect that farmworkers living in colonias participate in Office of Colonia Initiatives' Bootstrap and other programs), documentation needs to be more comprehensive on the number of farmworkers actually served.
8. Implement TDHCA's own recommendations cited in its report completed September, 2006 titled "Migrant Labor Housing Facilities in Texas: A report on the Quantity, Availability, Need and Quality of Migrant Labor Housing in the State." Such recommendations include:
    a. Expand education and research, making the migrant community more aware of licensing requirements and more likely to report possible unlicensed activity.
    b. Pursue an open and ongoing dialogue with farmworker advocacy groups to provide for a better understanding of where state and federal resources might most effectively assist both this sector of Texas residents and the larger agricultural industry, such as loans or other subsidies to improve and expand licensed facilities and the broadening of this sector's awareness of the array of other housing subsidies.

    MET stands ready to assist THDCA in accomplishing the recommendations cited in the Migrant Labor Housing report, and would urge TDHCA to set additional

recommendations for the future that are more substantial than outreach, research, and dialoguing for better understanding, and that will result in actual housing production and improvements.

Recommendations Specific to TDHCA HOME Program:

1. Provide HOME funds for farmworker housing as grants, rather than loans, recognizing the difficulty of repaying loans on housing rented by or owned by extremely low income working households.
2. As stated earlier for all program financing, improve layering possibilities and timeframes to work with other program financing.
3. Establish a pilot program for farmworker housing so grant guidelines can differ slightly from those in the established HOME program, recognizing that providing housing options for farmworkers may require some specific concessions.
4. Apply repair dollars available through TDHCA to both individually-owned farmworker housing and multi-family rental housing for farmworkers.
5. Where possible, utilize Tenant Based Rental Assistance for farmworkers, especially migrant workers.

Recommendations Specific to TDHCA Housing Trust Fund Rule:

1. Establish a Housing Trust Fund demonstration program for housing development, preservation, and organizational capacity-building to serve farmworker housing.
2. Make available at least $3 million in funding with the stated purpose of producing and preserving housing for Texas farmworkers, improving the conditions in which Texas farmworkers live, and increasing the availability and affordability of housing for Texas farmworkers.
3. Provide financial and technical assistance that would be available through a variety of programs to be established by TDHCA or programs proposed by potential grantees in response to grant solicitations. Following are some examples of how funds might be best used and possibilities for how the program might be structured.
4. Use of funds:

    - Funding for intermediary(ies) to provide resource information entities owning and/or developing and/or with the potential to own or develop farmworker housing, assist with packaging applications for funding, assist in teaming development partners, develop strategies and alternative mechanisms to promote housing development activities;
    - Funding for intermediary(ies) to disburse to qualifying entities for development activities. (One model exists in Washington State where the state-funded

Washington Housing Trust provides a coordinating role among government, the Washington Growers League, the state workforce development, and nonprofit housing providers). Administer funding using competitive or collaborative mechanisms to conduct these activities.

The types of projects, for example, would include:

- Predevelopment activities
  - site analysis, site searches, land tests, site preparation
  - market analyses, need assessments, and evaluation of specific geographic areas, environmental studies
  - packaging financing applications
  - miscellaneous activities (which can derail feasible projects in the early stages).
- Capacity building resources
  - Predevelopment activities as sited above
  - Organizational and financial management assistance
  - Seed funds to expand the managerial capacity of organizations involved with housing development
- Board development and business planning.
- Preservation resources
  - Comprehensive Needs Analysis (CNA)
  - market analyses, need assessments, and evaluation of specific geographic areas
  - packaging financing applications

- Funding for direct investments (loans, grants, combinations of loans and grants) for construction and permanent financing.
- Funding for dedicated project based rental assistance for farmworker tenants. This resource is particularly necessary when federal resources, such as Rural Development Rental Assistance and Section 8 is unavailable.
- Funding for rental assistance for Texas farmworkers when they migrate for work and must set up a temporary residence away from their primary home.
- Funding to investigate and experiment with alternative temporary housing options for farmworkers in the migrant stream. (Yurts are used in California, for example, and a Rent-A-Tent program is sponsored by the state of Washington for migrant workers. Architects have experimented with plans for buildings that can be constructed then deconstructed and moved to another location. Construction of temporary disaster relief building provide another model).
- Funding for repair and/or replacement of individually-owned farmworker housing and multi-family rental housing for farmworkers.

- Funding that will allow a qualifying organization to work with growers to establish cooperative housing arrangements with other growers or housing providers. An example of a grower consortium exists in Napa Valley California. Grower contract with a nonprofit housing provider to ensure workers have housing when they migrate there for work.
- Match funding for growers to renovate or construct new housing provided free to their workers (a model program is run by the state of Michigan).

5. Develop ongoing sources of funding to continue farmworker housing activities in the future using philanthropy grants, program related investments, and other potential resources and ideas. (The Washington Housing Trust is a model that amasses private and philanthropic dollars on behalf of
6. Explore other state's programs for applicability in Texas

Recommendations Specific to the Housing Tax Credit Qualified Allocation Plan and Rule:

1. Boost flexibility using tax credits for farm labor housing. One way of doing this is to allow bonus points in the 2009 Qualified Allocation Plan for farmworker housing development and preservation. Other states with large concentrations of farmworkers have encouraged farmworker housing development and preservation by providing similar incentives. (The states of Washington and Florida are two examples of states that include extra points in the QAP or priority for farmworker housing. Washington also provides a state income tax credit program that works in coordination with the federal tax credits).
2. Remove barriers in the state that impede the coupling of funding of Section 514 and 516 with Low Income Housing Tax Credit funding. House Bill 3221 which became law in July 2008, clarified that Section 514 and 516 can be used together with housing tax credits.

Thank you for the opportunity to comment. Please contact me if you have any questions or need clarification on any of these suggestions. MET would be happy to continue to work with TDHCA on these or other initiatives that benefit Texas farmworkers.

Sincerely,

Kathy Tyler
Housing Services Director

cc: Luis Esparza, Executive Director, MET Inc.
2008 Texas Farmworker Housing Summit Participants

Michele Atkins

From: Veronica Chapa
Sent: Friday, October 10, 2008 5:33 PM
To: Jeannie Arellano; Brenda Hull; Michele Atkins
Subject: FW: TDHCA testimony re: farmworker housing (Public Comment)

Dear All:

Sorry if duplicative, public comment attached.

Thanks,
Veronica

****

Veronica R. Chapa
Planner, HOME Division
Texas Department of Housing & Community Affairs
PO Box 13941
Austin, Texas 78711
Phone: (512) 305-9375
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Physical Address:
221 East 11th Street
Austin, Texas 78701

-----Original Message-----
From: Kathleen Tyler [mailto:austin@metinc.org]
Sent: Friday, October 10, 2008 5:18 PM
To: ktyler@austin.rr.com
Subject: TDHCA testimony re: farmworker housing

Dear Summit Participants & Farmworker Advocates:
Attached, as promised, are MET's comments to TDHCA regarding farmworker housing. The public comment period closes Oct. 20, so please feel free to write a letter as well.

Note that I will be out of the office Oct 13-24 and will have scarce access to email or phone messages while away. I return Oct 27.
If you need immediate assistance, please call MET headquarters at 281-689-5544.

Thanks! Kathy

Kathy Tyler, Housing Services Director
Motivation Education & Training, Inc.
1811 West 38th Street, Austin, TX 78731
(512) 965-0101 or (512) 451-5556
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HOME, QAP, Bond, REA, CAP (WAP)

(16)

SIERRA CLUB

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Lone Star Chapter

October 20, 2008

Ms. Brooke Boston
Texas Department of Housing and Community Affairs
PO Box 13941
Austin, Texas 78711-3941

Dear Brooke:

Thank you for the opportunity to comment on the 2009 Housing Tax Credit Draft Qualified Allocation Plan, Real Estate Analysis Guidelines, and other rules being considered by the TDHCA Board. While the Lone Star Chapter of the Sierra Club has not previously commented on proposed TDHCA rules, our nearly 25,000 members in Texas have put energy and energy efficiency at the top of their list in terms of priorities for Texas. As an agency that influences development of housing in Texas, we have an interest in making sure that you rules are helping to move Texas in the right direction in terms of on-site renewables and energy efficient homes and multi-family buildings, particularly for those Texans who face economic challenges. First of all, we would like to recognize the hard work and effort and commend the TDHCA staff for the inclusion of language that promotes green buildings and buildings located in urban areas near mass transit centers.

Secondly, we want to be on record as supporting the concepts of additional threshold and selection criteria points for green building – including on-site solar systems – in the QAP and related rules and have separately signed onto a letter submitted by Global Green which suggests changes to the staff draft version to be clearer and more understandable and have a more accurate set of numbers.

In addition to endorsing the proposed changes submitted separately to QAP Sections 49.9 (h) (4) (A) (ii) (XXV) and Section 49.9 (i) (17), we wanted to make the following recommendations:

QAP

While we support the development types added to the proposed 2009 QAP rules that would be eligible for a 30 percent increase in eligible basis, the provision that would make those developers with a renewable energy tax credit eligible is likely to lead to confusion because there is currently no application process but an automatic tax break that is earned when taxes are filed. Therefore we would support alternative language such as "The Development qualifies for and receives federal renewable energy tax credits. In order to qualify for the increase in eligible basis, the Application will be required to include evidence from the project architect and contractor that documents the planned qualified energy equipment and the cost."

Similarly, while we support the additional points given to developers in Section 49.6 (h) (D) (i) that locate housing near mass transit, since most bus routes go within one-quarter of any housing development anyway, the extra bonus should be limited to developments that are to be located near major bus transfer centers and/or regional or local rail transport stations. Thus, not all bus routes or stations are created equal and we should encourage those that are located near stations that are convenient and are more likely to be utilized.

2009 Real Estate Analysis Rules

Under 1.32. *Underwriting Rules and Guidelines (A) (iii), Gross Program Rents less Utility Allowance or Net Program Rents*, language should be added specifying that the "Utility Allowance" must consider any energy efficient provisions of the proposed building that might lead to additional energy savings and thus lower utility costs. Thus a sentence could be added such as:

"The Utility Allowance figures used should take into account any energy efficient measures that will be taken by the applicant and are verifiable and measurable."

Under (2) Expenses, we are supportive of the added language on green building components but would suggest adding the words ", including on-site renewable energy," after "green building components."

Under 1.33 Market Analysis Rules and Guidelines, language should be added to the Market Analysis to make it clear the analysis should examine both rents and expected utility costs. Thus, under (A) General Provisions, language could be added that states "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, including the expected costs of utilities."

We would suggest that more specific guidelines for including the cost of utilities in the market analysis could be referenced in (9) Market Information and (10) Conclusion.

Finally, in 1.34, Appraisal Rules and Guidelines, we would suggest that under (D) Description of Improvements that language be added such as "energy efficiency measures, including green building and on-site renewable energy, etc."

Housing Trust Fund Rules

The Lone Star Chapter of the Sierra Club would suggest adding some language under 51.13(Criteria for Funding) (2) Evaluation factors that would include the cost of energy as one of the evaluation factors. Thus, a (D) could be added,

(D) Extent to which the developer has taken measures in the proposed development that will keep energy and utility costs low, including green building and energy efficiency measures.

Multifamily Finance Production Division Multifamily Housing Revenue Bond Rules

We would encourage the Department to adopt the same language suggested by Global Green, Foundation Communities and the Lone Star Chapter of the Sierra Club for the QAP Rules under scoring criteria under the Multifamily Housing Revenue Bond Rules.

Thus, under 35.6 (RR) utilize the suggested language for Green Building amenities as suggested for the QAP.

HOME Program Rule

Under Chapter 53, the Lone Star Chapter of the Sierra Club would suggest that green building criteria also be expanded to encourage that rehabilitation of existing home become as energy efficient as possible. We would suggest that language be added in Subchapter D involving green building criteria that could be awarded special consideration. For example under 53.48 (2) (A), language could be added such as "Applications that are able to offer Green Building Amenities, such as those QAP Sections 49.9 (h) (4) (A) (ii) (XXV) and Section 49.9 (i) (17), will be given special consideration."

Weatherization Programs

The Lone Star Chapter of the Sierra Club is supportive of the proposed changes in rules in Subchapter G (WAP LIHEAP). Subchapter E (WAP General) and Subchapter F (WAP DOE). We would suggest , however, that some reference be made to other weatherization programs, including those run by utilities as well as those funded through the Systems Benefit Fund. The most likely way to address this would be through the State policy advisory council.

Thus we would suggest following under 5.602 (b).

(3) In addition to its other functions, the WAP PAC shall collect and review information about other energy efficiency programs implemented in the state that are designed to assist low-income Texans, including those funded through the Systems Benefit Fund and those implemented by individual utilities, and suggest to the Governing Board or Department how WAP activities can be coordinated with these programs.

Finally, the Lone Star Chapter of the Sierra Club would like to suggest that the Department consider naming a separate Policy Advisory Council that would be charged with reviewing how TDHCA rules and programs could continue to foster green building and energy efficiency measures and amenities. Such an Advisory Council should include energy efficiency and green building experts, as well as developers and low-income housing advocates. This council could help TDHCA identify further changes needed to its programs in FY 2010.

Sincerely,

Cyrus Reed
Conservation Director
Lone Star Chapter of Sierra Club

cc. The Honorable Royce West, Chair, Intergovernmental Relations
The Honorable Joe Straus, III, San Antonio, Author of HB 3693
The Honorable Kevin Bailey, Chair, Urban Affairs
The Honorable David Swinford, Chair, State Affairs
The Honorable Garnett Coleman, Houston
The Honorable Sylvester Turner, Houston

Lone Star Chapter, Sierra Club
1202 San Antonio
Austin, Texas 78701
(512) 477-1729

Michele Atkins

From: Cyrus Reed [cyrus.reed@sierraclub.org]
Sent: Monday, October 20, 2008 1:40 PM
To: tdhcarulecomments@tdhca.state.tx.us
Subject: Comments on Rules

Untitled Attachment

Please find attached our comments on the proposed rules at TDHCA.

Thank You
Cyrus Reed, PhD
Conservation Director
Lone Star Chapter of Sierra Club
1202 San Antonio
Austin, Texas 78701
512-477-1729
512-740-4086 (cell)
cyrus.reed@sierraclub.org

HOME, REA (17)

MR. HOOVER: My name is Dennis Hoover and we thank you for coming this morning to let us comment. Again, I want to address the smaller rural deals and specifically, talking about the allowable general requirements and overhead percentages currently at 6 percent and 2 percent on a tax-credit deal that goes into basis.

For probably 20 years running our general requirements and overhead both run about 9 percent on these small deal, and I'm calling a small deal -- a million dollar construction contract and a million and a half is generally what ours is.

And on a tax-credit deal that's -- that adds up to $100,000 of cost, verifiable cost. I mean, it's just the same year after year after year after year that we cannot put into basis.

And those percentages need to be changed. To say -- you know, to draw a comparison, if it's a $10 million job the overhead is -- allowable overhead is $200,000 that can go in the basis. If it's one of our jobs for a million dollars it's only 20,000.

And to say that the overhead for this job over here is 200,000 and this one's only 20,000 is just not right because they're probably almost the same. And it's an inequity that needs to be changed.

It makes it difficult to -- more and more difficult to do these rural, smaller deals. And you have to choose the bigger and bigger deals. And so the smaller, more difficult deals get progressively cut out year by year and the bar just gets higher and higher every year about how big a deal you have to do just to cover your -- to cover costs.

And it probably -- by the -- if you get below $3 million in construction costs that overhead and general requirements need to start moving up and by the time you get down to under a million and a half there need to be about 9 percent each. So that would be a great impediment -- to take away an impediment for doing these smaller deals.

MS. BOSTON: Dennis, do you think it should go up to 9 percent or is it -- you know, like a tier that you were thinking of doing, that it gradually --

MR. HOOVER: Yes. If it gets below three million it ought to go up a couple of percent, gets below two million go up another two. Because ours just -- I mean, I could produce 20 years of it, I think, and show that it's just 9 percent on every deal time after time for each of them.

But by the time it gets about a million and a half, you know, we generally -- where has it been in years

past? They -- it's about 9 percent on each one of them.

HTF (18)

Habitat for Humanity® Texas

October 20, 2008

Jeannie Arellano
Director
HOME Program
Texas Department of Housing and Community Affairs
P.O. BOX 13941
Austin, TX 78711-3941

Ms. Arellano:

Please accept Habitat Texas' recommendations to the Housing Trust Fund proposed draft rules for 2009. While Habitat Texas does not object to many of the proposed changes in the draft rules, Habitat Texas is generally uneasy in how the Housing Trust Fund rules have become more formalized and rigid over the past 3 years, essentially limiting the flexibility of the Housing Trust Fund to meet the needs of the very lowest income families in Texas. As the only source of funding for affordable housing from the State of Texas, the rules of the Housing Trust Fund should remain as flexible as possible so the program can address the affordable housing needs of families that are not able to be served by housing programs funded through the federal government.

Habitat Texas respectfully submits the following comments regarding the Housing Trust Fund Rules for 2009.

§51.3. Notice of Receipt of Application or Proposed Application
(a) Not later than the 14th day after the date an Application or a proposed Application for housing funds described by §2306.111 has been filed, the Department shall provide written notice of the filing of the Application or proposed Application to the following Persons:

Habitat Texas recommends clarifying this section to ensure that it only applies to multifamily applications and that notice will only be given if required by federal or state law.

51.64 (c). (c) Pursuant to §2306.754, Applicants combining other Housing Trust Fund funding with the Texas Bootstrap Loan Program funds must limit total Department loans to $30,000.

55 N. I-H 35, Suite 240 • Austin, TX 78702 • (512) 472-8777 x 410 • info@habitattexas.org • www.habitattexas.org

Habitat Texas recommends eliminating this insertion in the rules because *§2306.754* only applies to the subsection FF covering the Owner Builder Loan Program, and should not limit the ability of the Department to provide additional funding from other HTF or TDHCA Programs if so decided on by the board or staff. While *§2306.754* is clear that the amount of Bootstrap loans cannot exceed $30,000, *§2306.754* does not seem to apply to other TDHCA programs.

§51.106. Multifamily Development Application Requirements

Habitat Texas recommends reverting to the previous language on multifamily size limitations as it provides clarity on the intent of the use of Housing Trust Fund resources as leverage for multifamily rental programs and should not be the primary sources of funding for multifamily rental from the agency. Eliminating the size requirements for the Housing Trust Fund resources could allow that agency to over commit limited HTF funds to multifamily rental at the expense of single family homeownership.

Habitat for Humanity of Texas respectfully submits these comments to the Texas Department of Housing and Community Affairs. Please let me know if you have any questions.

Best regards,

Matt Hull
Executive Director

55 N. I-H 35, Suite 240 • Austin, TX 78702 • (512) 472-8777 x 410 • info@habitattexas.org • www.habitattexas.org

Michele Atkins

From: Jeannie Arellano
Sent: Monday, October 20, 2008 6:16 PM
To: Michele Atkins
Cc: Veronica Chapa
Subject: FW: Comments on 2009 HTF Draft Rules

Jeannie Arellano
Director of the HOME Division
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701
512-463-6164
www.tdhca.state.tx.us

-----Original Message-----
From: Matt Hull [mailto:matt@habitattexas.org]
Sent: Monday, October 20, 2008 2:25 PM
To: jeannie.arellano@tdhca.state.tx.us; 'Brooke Boston'
Subject: Comments on 2009 HTF Draft Rules

Jeannie and Brooke,

Please accept Habitat Texas' comments on the 2009 Draft HTF Rules. Please let me know if you have any questions.

Best regards,

Matt Hull
Executive Director
Habitat Texas
55 N. I-H 35, #240
Austin, TX 78702
512.472.8788 x 410
matt@habitattexas.org

332 Alton Griffin El Paso, Texas 79907
(Ph) 915.859.9196 (Fax) 915.860.7069

Ysleta del Sur Pueblo
Housing Department

Fax

To:	TDHCA, 2009 Rule Comments	From:	Albert T. Joseph, Director
Fax:	512-475-3978	Pages:	4
Phone:		Date:	October 20, 2008
Re:	2009 Rule Comments		

x Urgent ☐ For Review ☐ Please Comment x Please Reply ☐ Please Recycle

Fax'd + mailed original.

QAP

(9)

Ysleta del Sur Pueblo
Housing Department
332 Alfon Gallin • P.O. Box 17579 • El Paso, Texas 79917 • (915) 859-9196 • Fax (915) 860-7069

October 17, 2008

TDHCA, 2009 Rule Comments
P.O. Box 13941
Austin, TX 78711-3941

To Whom It May Concern,

We appreciate the opportunity to comment on the 2009 Housing Tax Credit (HTC) Qualified Allocation Plan and Rule (QAP). We have reviewed the draft changes posted online and have the following comments:

General Comments
The State of Texas (the second largest U.S. State) has only three Federally Recognized Indian Tribes – the Kickapoo Traditional Tribe of Texas, the Alabama-Coushatta Tribe, and the Ysleta Del Sur Pueblo – and its current and proposed QAP fail to recognize these Tribes' unique existence. By authority of the Federal Government, Indian Tribes have sovereign powers separate and independent from the federal and state governments. This includes separate and independent status from cities and counties within states. Tribal sovereignty allows tribes to remain distinct, independent and self-governing political communities. Tribes retain their inherent power of self-government absent action by Congress to limit those powers, and States cannot limit the powers of a Tribe. Among a Tribe's inherent right to govern, Tribes have the power to form a government, to decide their own membership, to regulate property, to maintain law and order, and regulate businesses.

Associated with the recognition as a Federally Recognized Indian Tribe, is the ability to receive federal assistance for a variety of elements of self-governance, one of which is funding assistance for housing. With this being said, throughout history Tribes have been economically and culturally devastated. Most Tribes, while being able to govern themselves, have not had the financial means to effectively exercise their governmental powers. Although Tribes do receive assistance for programs like housing, these funds are not nearly sufficient to undertake the rehabilitation and development necessary to meet the needs of tribal communities. As such, Tribes all across the country have started (successfully) to look towards the Low Income Housing Tax Credit program for the necessary leverage to meet their housing goals. We feel that the Tribes of Texas have a real opportunity to work with TDHCA to successfully create safe, decent and affordable housing on their land. Our subsequent recommendations will help to make participation in TDHCA's program a reality.

§49.3. Definitions
We would like to see the following definitions updated to acknowledge the role of Federally Recognized Indian Tribes as they relate to counties, cities, or other local governing bodies.

> **Governing Body**–An elected city, or county, or tribal entity that is responsible for the creation, implementation and/or enforcement of local rules and laws.

As recognized by Congress, Federally Recognized Indian Tribes have the authority and are responsible for the creation, implementation and/or enforcement of rules and laws on their lands. As such, they should be recognized in TDHCA's definition of a Governing Body.

Governmental Entity--Includes federal, ~~or~~ state, or tribal agencies, departments, boards, bureaus, commissions, authorities, and political subdivisions, special districts and other similar entities.

While Tribal Governments may fall under "other similar entities", it would provide clarification to see that TDHCA recognized specifically the fact that Tribal Governments are elected entities with the power to govern all activities of a Tribe.

Governmental Instrumentality--A legal entity such as a housing authority of a city, ~~or~~ county or tribe, a housing finance corporation, or a municipal utility, which is created by a local political subdivision under statutory authority and which instrumentality is authorized to transact business for the political subdivision.

In order to receive financial assistance through the Native American Housing Assistance and Self-Determination Act (NAHASDA) a Tribe must establish a Tribally Designated Housing Entity (TDHE). The TDHE – whether it is a housing department or a housing authority – is granted the authority by the Tribe to act on behalf of the Tribe in serving the housing needs of the reservation/community and forwarding the mission of the Tribe to serve its people. By definition, the TDHE is a Governmental Instrumentality of the Tribe authorized to transact business for the Tribe. In some instances, a separate authority is not created and designated as a TDHE, but rather it is the Tribe itself that serves as the TDHE.

Local Political Subdivision--A county, ~~or~~ municipality (city) or tribal reservation in Texas. For purposes of §49.9(i)(5) of this chapter, a local political subdivision may act through a Government Instrumentality such as a housing authority, housing finance corporation, or municipal utility even if the Government Instrumentality's creating statute states that the entity is not itself a "political subdivision."

As mentioned above, Tribes have the authority to create their own governments, their own constitution, own laws, and own enforcement policies. Their right to self-governance and sovereignty therefore makes them their own distinct political subdivision and should be included under TDHCA's definition of a Local Political Subdivision.

§49.9(h)(7)(D)(ii) – County and Property Taxes
As a threshold item, the QAP states that the applicant must provide "*A current valuation report from the county tax appraisal district and documentation of the current total property tax rate for the Development Site.*" We request that TDHCA add a condition here that states if a project is located on land not subject to county taxes or property taxes that these reports and documentation are not applicable. There are areas in the State of Texas where taxes are not applicable, specifically on Tribal Land and for Federally Recognized Indian Tribes. We feel that in order to clarify any ambiguity with this threshold item, acknowledgement needs to be given to instances where county and property taxes are not applicable.

§49.9(h)(7)(D)(iii)(I)-(II) – Title Policy/Commitment
Another threshold requirement in the QAP is to provide "*(I) The current title policy which shows that the ownership (or leasehold) of the Development Site is vested in the name of the Development Owner; or (II) a current title commitment with the proposed insured matching exactly the name of the Development*

Owner and the title of the Development Site vested in the exact name of the seller or lessor as indicated on the sales contract, option or lease. (III) If the title policy or commitment is more than six months old as of the day the Application Acceptance Period closes, then a letter from the title company indicating that nothing further has transpired on the policy or commitment." This requirement does not acknowledge the fact that for projects located on Trust Land – land that is held in Trust by the Federal Government – cannot provide a Title Policy or Title Commitment. Title Policies and Commitments are only beneficial for fee-simple land. In lieu of submitting a Title Policy or Title Commitment, projects located on Trust Land should be required to submit a Title Status Report (TSR) issued by the Bureau of Indian Affairs (BIA). According to 25 CFR part 150 § 150.2 (o), a TSR is *"a report issued after a title examination which shows the proper legal description of a tract of Indian land; current ownership, including any applicable conditions, exceptions, restrictions or encumbrances on record; and whether the land is in unrestricted, restricted, trust, or other status as indicated by the records in a Land Titles and Records Office."* As can be seen, a TSR is the best – and only – alternative to a Title Policy or Commitment. Tax credit investors who invest in Indian Country have accepted TSRs for closings in all transactions on Trust Land. TDHCA should acknowledge that a TSR is an acceptable document in lieu of a Title Policy or Commitment for purposes of meeting the threshold requirement of §49.9(h)(7)(D)(iii)(I)-(III).

We encourage TDHCA to recognize the housing need of Native Americans in Texas – no matter how few Tribes are represented in the State – and follow the direction of fellow NCSHA members who include provisions/references to Native Americans and Federally Recognized Indian Tribes in their QAPs and Procedural Manuals.

Please feel free to contact me at 915-859-9196 with any questions or comments.

Sincerely,

Albert T. Joseph
Director, Housing Department

Cc: Frank Paiz, Governor
Carlos Hisa, Lt. Governor
Tom Diamond, Tribal Attorney
Linda Austin, Tribal Operations

20 QAP

Michele Atkins

From: Apolonio Flores [nono62@swbell.net]
Sent: Monday, October 20, 2008 2:49 PM
To: 'Apolonio Flores'; tdhcarulecomments@tdhca.state.tx.us
Subject: RE: 2009 Draft QAP Comments

Please see the attachment to this email that corrects an error in my previous email. Use this attachment as my comments.

Apolonio (Nono) Flores
Flores Residential, LC
201 Cueva Lane
San Antonio, TX 78232
(210) 494-7944
(210) 494-0853 fax

From: Apolonio Flores [mailto:nono62@swbell.net]
Sent: Monday, October 20, 2008 1:46 PM
To: 'tdhcarulecomments@tdhca.state.tx.us'
Subject: 2009 Draft QAP Comments

Attached are my comments for consideration by TDHCA. Thanks.

Apolonio (Nono) Flores
Flores Residential, LC
201 Cueva Lane
San Antonio, TX 78232
(210) 494-7944
(210) 494-0853 fax

Apolonio (Nono) Flores
201 Cueva Lane, San Antonio, Texas 78232
Telephone 210-494-7944 Fax 210-494-0853
Email: nono62@swbell.net

COMMENTS ON 2009 DRAFT QAP

Section 49.6(c), Scattered Site Limitations (page 18 of 82) - The staff determined that for reconstruction of a scattered site project, an Applicant proposing to rebuild the same number of units must do so by rebuilding on each scattered site. The staff provided the following example:

> Tracts A, B, and C each have 50 units for a total of 150 units. The reconstruction project may only consist of the 150 units if there is rebuilding on all three tracts.

Using the above example, if each tract has seven (7) acres, an Applicant is able to reconstruct the 150 units on Tracts A and B. However, the TDHCA staff requires that at least one unit must be built on Tract C to be eligible to reconstruct 150 units or the applicant can only rebuild 100 units. The requirement to reconstruct at least one unit on Tract C results in a wasteful use of land. Tract C can be used to provide much needed affordable housing rather than having a seven acre tract with a single unit.

We cannot find in the QAP any requirements that support the TDHCA staff requirement.

Recommendation: The Board should correct the implemented staff requirement that units must be reconstructed on each tract of a scattered site project, and allow the reconstruction on land sufficient to meet local and TDHCA density requirements.

Section 49.6(d), Credit Amount (page 18 of 82) – An annual allocation of tax credits is limited to $2 million "to any Applicant, Developer, Related Party, or Guarantor . . . In order to encourage the capacity enhancement of inexperienced Developers, the Department will prorate the credit amount allocated . . . based on the percentage ownership . . . or the proportional percentage of the Developer fee received . . ."

It is unfair not to prorate the credit amount allocated in all instances based on the percentage of ownership or percentage of the developer fee received. For example, a $1 million allocation for a property where the developer fee is received 25% to one party and 75% to a developer with no ownership interest, results in each party charged with $1 million, or a total of $2 million. If there is a Consultant that earns a fee (not a share of the developer fee) greater than 10% of the developer fee or $150,000, the Consultant is also charged with a $1 million allocation, resulting in the actual $1 million allocation now assessed by TDHCA at $3 million.

If the above property was for a nonprofit or a Housing Authority with an Executive Director and five Board members, these six individuals are each charged with a $1

million allocation, or a total of $6 million. TDHCA has then taken a $1 million allocation and assessed it as $9 million

Recommendation: In all instances the credit amount allocated should be based on the percentage of ownership or the percentage of developer fee received. Since Executive Directors and Board members of nonprofits and Housing Authorities have no ownership or receive any of the developer fee, a credit allocation should not be assessed against these individuals. A credit allocation should not apply to a consultant unless the consultant has an ownership interest in the proposed project or will be paid an actual share of the developer fees.

Section 49.6(h)(4) 30% Increase in Eligible Basis (page 20 of 82) –

Recommendation: Include the following as eligible pursuant to the authority granted by H.R. 3221:

1. Qualified elderly development
2. A development of single family homes that after the initial compliance period will convert the single family homes to home ownership.
3. Developments that preserve appropriate types of rental housing for households that have difficulty finding suitable, affordable housing in the private marketplace (i.e. prevent losses of the state's supply of affordable residential rental housing through rehabilitation or reconstruction).

"Affordable housing" should not be limited to "at-risk" developments as defined in the QAP. "Affordable housing," for example, should include Section 8 Moderate Rehabilitation developments that are now eligible for tax credits, Public Housing, and developments with project based Housing Choice Vouchers.

Section 49.9(h)(7)(A)iv), identity of interest transaction (page 37 of 82)

Unfairly limits acquisition costs to the lesser of initial acquisition costs plus costs of owning, holding, or improving the property or the as-is appraised value. The QAP needs to be revised to allow as acquisition costs the as-is appraised value because an applicant may have owned a property for a significant period of time, may not able to document the costs of owning, holding or improving the property, and fairness dictates allowing not less than the as-is appraised value. The correct and fair costs are as supported by an independent appraisal and the QAP should allow the appraised value. Limiting property acquisition cost to "the lesser of" the original acquisition cost or current appraised value unfairly penalizes applicants for at-risk projects, USDA projects, and Housing Authorities trying to preserve affordable housing. This provision in the QAP is not consistent with Government Code Chapter Code 2306.6701, that requires that TDHCA "shall administer the low income housing Tax credit program to: (1) encourage the . . . preservation of appropriate types of rental housing for households that have difficulty finding suitable, affordable rental housing in the marketplace; . . . (3) prevent losses for any reason to the state's supply of suitable, affordable residential units . . . "

The QAP does not define "identity of interest" but does define "Related Party" (pages 11-12) as "more than 50%" that 50% factor matches related IRC provisions. In most, if not all, of the identity of interest transactions where the owner (or related entity) of property remains in the new owner entity, it is as the .01% general partner.

Section 49.9(i)(2)(A)(iv) Quantifiable Community Participation (page 46-47 of 82) – TDHCA continues to unfairly and without basis limit the rights of a Resident Council to "Rehabilitation or reconstruction of the property occupied by the residents." A Residents Council should be allowed to comment and appropriately be scored for new construction if the proposed new construction is within the boundaries of the property in which they reside or within the boundaries of their organization. TDHCA should not penalize a Residents Council or consider them to have lesser rights as a neighborhood organization simply because they reside in Public Housing.

An example is a Public Housing development of 80 units that has about 7 acres of vacant land. The total site was acquired 30 or more years ago. The vacant can be developer for additional affordable housing for seniors or families.

Another example is a 60 unit Public Housing development situated on 10 acres. The development is obsolete, needs to be demolished, and can be replaced with a new100 unit development.

In the above examples, the proposed developments are considered new construction. A Resident Council should be permitted to support or oppose the proposed development and TDHCA should score their QCP accordingly.

Recommendation: In addition to rehabilitation or reconstruction of the property occupied by the residents, allow a Resident Council to support or oppose a new construction development if the proposed development is within the boundaries of the property in which they reside or within the boundaries of their organization and score their QCP accordingly.

Section 49.9(i)(6)(A)(iv) Support from State representative or State Senator (page 51 of 82) – Allows a State Senator or a State Representative to withdraw a letter submitted by the April 1st deadline on or before June 15, 2009.

Recommendation: A State Representative or a State Senator may withdraw a letter submitted by the April 1st deadline on or before May 31, 2009. If a letter of support is to be withdrawn, a State Representative or a State Senator must inform the Applicant in writing not less than two weeks before withdrawing the letter of support.

Michele Atkins

From: Apolonio Flores [nono62@swbell.net]
Sent: Monday, October 20, 2008 7:32 PM
To: tdhcarulecomments@tdhca.state.tx.us
Subject: 2009 QAP

Some Housing Authorities, the Texas Chapter of NAHRO, and the Texas Housing Association used my comments and submitted these to you. They may have used the following which had a missing word in the recommendation section that I am showing in red below.

Section 49.6(d), Credit Amount (page 18 of 82) – An annual allocation of tax credits is limited to $2 million "to any Applicant, Developer, Related Party, or Guarantor . . . In order to encourage the capacity enhancement of inexperienced Developers, the Department will prorate the credit amount allocated . . . based on the percentage ownership . . . or the proportional percentage of the Developer fee received . . ."

It is unfair not to prorate the credit amount allocated in all instances based on the percentage of ownership or percentage of the developer fee received. For example, a $1 million allocation for a property where the developer fee is received 25% to one party and 75% to a developer with no ownership interest, results in each party charged with $1 million, or a total of $2 million. If there is a Consultant that earns a fee (not a share of the developer fee) greater than 10% of the developer fee or $150,000, the Consultant is also charged with a $1 million allocation, resulting in the actual $1 million allocation now assessed by TDHCA at $3 million.

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Recommendation: In all instances the credit amount allocated should be based on the percentage of ownership or the percentage of developer fee received. Since Executive Directors and Board members of nonprofits and Housing Authorities have no ownership or receive any of the developer fee, a credit allocation should not be assessed against these individuals. A credit allocation should not apply to a consultant unless the consultant has an ownership interest in the proposed project or will be paid an actual share of the developer fees.

Apolonio (Nono) Flores

Flores Residential, LC
201 Cueva Lane
San Antonio, TX 78232
(210) 494-7944
(210) 494-0853 fax

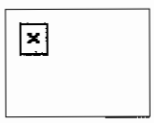
QAP (21)

Michele Atkins

Please accept the attached as comments on the 2009 Housing Tax Credit (HTC) Qualified Allocation Plan and Rule (QAP).

Thank you,

Bryan C. Schuler
Travois, Inc.
560 Hillwell Road
Chesapeake, VA 23322
Phone: 757-410-5364
Fax: 757-410-5438
Cell: 757-618-4427



QAP (21)

TRAVOIS

FAX COVER SHEET

DATE: October 17, 2008

TO: TDHCA, 2009 Rule Comments

FAX: 512-475-3978

FROM: Bryan Schuler

PHONE: 757-410-5364

PAGES: 4 (including cover)

TRAVOIS™

560 Hillwell Road
Chesapeake, VA 23322

October 17, 2008

TDHCA, 2009 Rule Comments
P.O. Box 13941
Austin, TX 78711-3941

To Whom It May Concern:

We very much appreciate the opportunity to comment on the 2009 Housing Tax Credit (HTC) Qualified Allocation Plan and Rule (QAP). We have reviewed the draft changes posted online and have the following comments:

General Comments
The State of Texas (the second largest U.S. State) has only three Federally Recognized Indian Tribes – the Kickapoo Traditional Tribe of Texas, the Alabama-Coushatta Tribe, and the Ysleta Del Sur Pueblo – and its current and proposed QAP fail to recognize these Tribes' unique existence. By authority of the Federal Government, Indian Tribes have sovereign powers separate and independent from the federal and state governments. This includes separate and independent status from cities and counties within states. Tribal sovereignty allows tribes to remain distinct, independent and self-governing political communities. Tribes retain their inherent power of self-government absent action by Congress to limit those powers, and States cannot limit the powers of a Tribe. Among a Tribe's inherent right to govern, Tribes have the power to form a government, to decide their own membership, to regulate property, to maintain law and order, and regulate businesses.

Associated with the recognition as a Federally Recognized Indian Tribe, is the ability to receive federal assistance for a variety of elements of self-governance, one of which is funding assistance for housing. With this being said, throughout history Tribes have been economically and culturally devastated. Most Tribes, while being able to govern themselves, have not had the financial means to effectively exercise their governmental powers. Although Tribes do receive assistance for programs like housing, these funds are not nearly sufficient to undertake the rehabilitation and development necessary to meet the needs of tribal communities. As such, Tribes all across the country have started (successfully) to look towards the Low Income Housing Tax Credit program for the necessary leverage to meet their housing goals. We feel that the Tribes of Texas have a real opportunity to work with TDHCA to successfully create safe, decent and affordable housing on their land. Our subsequent recommendations will help to make participation in TDHCA's program a reality.

§49.3. Definitions
We would like to see the following definitions updated to acknowledge the role of Federally Recognized Indian Tribes as they relate to counties, cities, or other local governing bodies.

> **Governing Body**–An elected city, ~~or~~ county, or tribal entity that is responsible for the creation, implementation and/or enforcement of local rules and laws.

As recognized by Congress, Federally Recognized Indian Tribes have the authority and are responsible for the creation, implementation and/or enforcement of rules and laws on their lands. As such, they should be recognized in TDHCA's definition of a Governing Body.

Governmental Entity~Includes federal, ~~or~~ state, or tribal agencies, departments, boards, bureaus, commissions, authorities, and political subdivisions, special districts and other similar entities.

While Tribal Governments may fall under "other similar entities", it would provide clarification to see that TDHCA recognized specifically the fact that Tribal Governments are elected entities with the power to govern all activities of a Tribe.

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In order to receive financial assistance through the Native American Housing Assistance and Self-Determination Act (NAHASDA) a Tribe must establish a Tribally Designated Housing Entity (TDHE). The TDHE – whether it is a housing department or a housing authority – is granted the authority by the Tribe to act on behalf of the Tribe in serving the housing needs of the reservation/community and forwarding the mission of the Tribe to serve its people. By definition, the TDHE is a Governmental Instrumentality of the Tribe authorized to transact business for the Tribe. In some instances, a separate authority is not created and designated as a TDHE, but rather it is the Tribe itself that serves as the TDHE.

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As mentioned above, Tribes have the authority to create their own governments, their own constitution, own laws, and own enforcement policies. Their right to self-governance and sovereignty therefore makes them their own distinct political subdivision and should be included under TDHCA's definition of a Local Political Subdivision.

§49.9(h)(7)(D)(ii) – County and Property Taxes

As a threshold item, the QAP states that the applicant must provide "*A current valuation report from the county tax appraisal district and documentation of the current total property tax rate for the Development Site.*" We request that TDHCA add a condition here that states if a project is located on land not subject to county taxes or property taxes that these reports and documentation are not applicable. There are areas in the State of Texas where taxes are not applicable, specifically on Tribal Land and for Federally Recognized Indian Tribes. We feel that in order to clarify any ambiguity with this threshold item, acknowledgement needs to be given to instances where county and property taxes are not applicable.

§49.9(h)(7)(D)(iii)(I)-(III) – Title Policy/Commitment

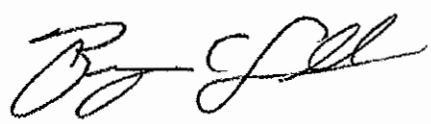
Another threshold requirement in the QAP is to provide "*(I) The current title policy which shows that the ownership (or leasehold) of the Development Site is vested in the name of the Development Owner; or (II) a current title commitment with the proposed insured matching exactly the name of the Development Owner and the title of the Development Site vested in the exact name of the seller or lessor as indicated on the sales contract, option or lease. (III)*

If the title policy or commitment is more than six months old as of the day the Application Acceptance Period closes, then a letter from the title company indicating that nothing further has transpired on the policy or commitment." This requirement does not acknowledge the fact that for projects located on Trust Land – land that is held in Trust by the Federal Government – cannot provide a Title Policy or Title Commitment. Title Policies and Commitments are only beneficial for fee-simple land. In lieu of submitting a Title Policy or Title Commitment, projects located on Trust Land should be required to submit a Title Status Report (TSR) issued by the Bureau of Indian Affairs (BIA). According to 25 CFR part 150 § 150.2 (o), a TSR is *"a report issued after a title examination which shows the proper legal description of a tract of Indian land; current ownership, including any applicable conditions, exceptions, restrictions or encumbrances on record; and whether the land is in unrestricted, restricted, trust, or other status as indicated by the records in a Land Titles and Records Office."* As can be seen, a TSR is the best – and only – alternative to a Title Policy or Commitment. Tax credit investors who invest in Indian Country have accepted TSRs for closings in all transactions on Trust Land. TDHCA should acknowledge that a TSR is an acceptable document in lieu of a Title Policy or Commitment for purposes of meeting the threshold requirement of §49.9(h)(7)(D)(iii)(I)-(III).

We encourage TDHCA to recognize the housing need of Native Americans in Texas – no matter how few Tribes are represented in the State – and follow the direction of fellow NCSHA members who include provisions/references to Native Americans and Federally Recognized Indian Tribes in their QAPs and Procedural Manuals.

Please feel free to contact me at bschuler@travois.com with any questions or comments.

Thank you,



Bryan C. Schuler
Development Director

QAP (22)

Michele Atkins

From: Robbye Meyer
Sent: Tuesday, October 14, 2008 9:41 PM
To: Brenda Hull; Michele Atkins
Subject: Fw: 2009 housing needs score

Public comment
Robbye G. Meyer
Director of Multifamily Finance

----- Original Message -----
From: Ofelia Elizondo <oelizondo@sbcglobal.net>
To: Robbye Meyer <robbye.meyer@tdhca.state.tx.us>; Audrey Martin <audrey.martin@tdhca.state.tx.us>
Cc: Charles R Holcomb <crhjah@cebridge.net>
Sent: Tue Oct 14 09:48:11 2008
Subject: 2009 housing needs score

We would like to make a comment regarding the housing needs score. Because of the devastation caused by Hurricane Ike, it seems logical to raise the housing needs score to 6 in all cities affected by the Hurricane. We await your response. Thank you.

Ofelia Elizondo for Charles Holcomb
1013 Van Buren
Houston, TX 77019
Tel. 713-522-4141
Fax 713-522-9775

QAP (23)

TESTIMONY OF CHARLIE PRICE, HOUSING PROGRAM MANAGER FOR THE CITY OF FORT WORTH, TEXAS

My name is Charlie Price, and I am the Housing Program Manager for the City of Fort Worth. Thank you for giving me the opportunity to present testimony before you today. I have brought with me copies of my testimony, for submission to the record.

The City of Fort Worth is very pleased with the proposed changes in the QAP. The state's current procedures for allocation of HTC sometimes had unintended consequences, consequences that conflict with local jurisdiction's affordable housing needs and goals.

Many local jurisdictions would prefer mixed income projects rather than 100% low income projects. Under the current QAP this has the effect of concentrating lower income populations in one area, rather than encouraging distribution of low income residents across a greater number and wider variety of local neighborhoods. The larger the project and the greater the number of units, the more pronounced the effect. In addition, the current points rating system used by TDHCA encourages only 100% low income projects makes it more difficult to utilize Low Income Housing Tax Credits as a tool to encourage revitalization and redevelopment in downtown and central city areas.

Fort Worth is not alone in its efforts to redevelop its downtown. But developable real estate in downtown areas commands a premium price. Due to this high cost for real estate, it is not economically feasible for downtown developers to dedicate 100% of their housing

projects to low-income purposes. However, local political leadership is often very sensitive to the need for workforce housing in the central city. Affordable rental units are needed for retail and restaurant workers, for office workers, and for the many other lower-paid workers in the rapidly growing service sector of our economy. Local political leaders are often asked to provide incentives to developers willing to take the risk of investing in downtown and central city areas – but they would also like to ensure that a wide spectrum of their constituencies are served by this development. The inflexibility resulting from a system that only allows for 100% low income projects has negative consequences for local communities' ability to encourage balanced redevelopment in downtown and central city areas.

The proposed changes in the QAP address these concerns and we applaud the staff of TDHCA in the effort to understand and make administrative changes to cure the inequity between mixed income proposals and 100% low income proposals. Mixed income housing projects are more acceptable to local communities, because low income populations are not concentrated.

I am here today to address one issue and make a suggestion on wording in the proposed QAP:

The definition of Urban Core: under the proposed language the QAP does not allow flexibility of local jurisdictions to create urban type of villages outside of the central business district, whereas many cities have created mixed use zoning classification to create urban

type villages with higher density housing, we propose changes to the definition of an Urban Core:

Urban Center: A compact and contiguous geographic area that is 1) located within a designated redevelopment target area with defined boundaries adopted by the governing body of a municipality or county, or 2) composed of adjacent block groups in which at least 90 percent of the land not in public ownership is zoned to accommodate a mix of medium or high density residential and commercial uses with in the same zoning district.

This language not only address's the issue but allows local jurisdiction a new tool to foster the redevelopment of older areas whom have a need for new development.

In conclusion the City of Fort Worth would like to thank the Texas Department of Housing and Community Affairs staff and its board of directors for its outstanding work on the proposed changes in the QAP to address mixed income proposals.

QAP
23

MS. HULL: Mr. Charlie Price?

MR. PRICE: Welcome to Fort Worth.

MS. HULL: Thank you.

MR. PRICE: My name is Charlie Price and I'm Housing Program Manager for the City of Fort Worth. And thank you for giving me the opportunity to present testimony before you today. I have brought with me copies of my testimony for submission for the record.

The City of Fort Worth is very pleased with the proposed changes in the QAP. The State's current procedure for allocation of housing tax credits sometimes had unintended consequences, consequences that could with local jurisdiction's affordable -- that conflict with local jurisdiction's affordable housing needs and goals.

Many local jurisdictions would prefer mixed-income projects rather than 100 percent low-income projects. Under the current QAP this has had the effect of concentrating lower-income populations in one area rather than encourage distribution of low-income residents across a greater number and a wide variety of local neighborhoods.

The larger the project, the greater the number of units, the more pronounced the effect. In addition, the current points rating system used by TDHCA encourages only 100 percent low-income projects, makes it more difficult to utilize low-income housing tax credits as a tool to encourage revitalization and redevelopment in

downtown central city areas.

Fort Worth is not alone in its effort to redevelop its downtown. But developable real estate in downtown areas command a premium price. Due to the high cost of real estate it's not economically feasible for downtown developers to dedicate 100 percent of their housing projects to low-income purposes.

However, local political leadership is often very sensitive to the need for workforce housing in the central city. Affordable rental units are needed for retail and restaurant workers, for office workers and for many other low-paid workers in the rapidly growing service sector of our economy.

Local political leaders are often asked to provide incentives to developers willing to take the risk of investing in downtown central city areas. But they also would like to ensure that a wide spectrum of their constituencies are served by the development.

The inflexibility resulting from a system that only allows for 100 percent low-income housing projects has negative consequences for local communities' ability to encourage balanced redevelopment in downtown central city areas.

The proposed changes in the QAP address these concerns and we applaud the staff of TDHCA in the effort to understand and make administrative changes to cure the inequity between mixed-income projects proposals and 100

percent low-income proposals. Mixed-income housing projects are more acceptable to local communities because low-income populations are not so concentrated.

I am here today to address one issue which Jim Johnson actually brought to your attention while ago and make a suggestion on wording in the proposed QAP.

The definition of urban core under the proposed language of the QAP does not allow flexibility of local jurisdictions to create urban type of villages outside of the central business district, whereas many cities have created mixed-use zoning classifications to create urban-type villages with higher density housing. And we propose basically a change in the actual definition of urban core. Call it "urban center," with a definition as follows:

A compact and contiguous geographic area that is one), located within a designated redevelopment target area with defined boundaries adopted by the governing body of the municipality or the county; or number two), composed of adjacent block groups in which at least 90 percent of the land not in public ownership is zoned to accommodate a mix of medium or high-density residential and commercial uses within the same zoning district.

The language not only addresses the issue but allows local jurisdictions a new tool to foster the redevelopment of older areas who have a need for new development.

In conclusion, the City of Fort Worth would like to thank the Texas Department of Housing and Community Affairs staff and its board of directors for its outstanding work in the proposed changes in the QAP to address mixed-income properties. Thank you.

Michele Atkins QAP (24)

From: Finlay, Chris [cfinlay@finlayllc.com]
Sent: Wednesday, September 03, 2008 3:01 PM
To: tdhcarulecomments@tdhca.state.tx.us
Subject: 2009 QAP

It seems that it has been a number of years since the tax credit maximum per deal and per developer has been increased. Since costs have increased so dramatically over the past several years it would seem reasonable that these limits do also. My suggestion would be $2,000,000 per deal and $4,000,000 per developer.

Thank you for the opportunity to comment.

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QAP (25)

Michele Atkins

From: Bast, Cynthia L. [cbast@lockelord.com]
Sent: Monday, October 20, 2008 4:33 PM
To: tdhcarulecomments@tdhca.state.tx.us
Subject: FW: 2009 QAP Comments

From: Bast, Cynthia L.
Sent: Monday, October 20, 2008 4:29 PM
To: 'tdhcarulescomments@tdhca.state.tx.us'
Cc: 'Sharon Gamble'; 'Robbye Meyer'; 'Kevin Hamby'
Subject: 2009 QAP Comments

Please find attached comments on the 2009 draft QAP. I have attached comments in both Word and PDF format, so that you can use whichever format is most efficient for you.

Thank you very much.

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Multifamily Finance Production Division

2009 Housing Tax Credit Program

Qualified Allocation Plan and Rules

§49.1. Purpose and Authority; Program Statement; Allocation Goals.

(a) Purpose and Authority. The rules in this chapter apply to the allocation by the Texas Department of Housing and Community Affairs (the "Department") of Housing Tax Credits authorized by applicable federal income tax laws. The Internal Revenue Code of 1986, §42, (the "Code") as amended, provides for credits against federal income taxes for owners of qualified low-income rental housing Developments. That section provides for the allocation of the available tax credit amount by state housing credit agencies. Pursuant to Chapter 2306, Subchapter DD, of the Texas Government Code, the Department is authorized to make Housing Credit Allocations for the State of Texas. As required by the Internal Revenue Code, §42(m)(1), the Department developed this Qualified Allocation Plan (QAP) which is set forth in §§49.1 - 49.23 of this chapter. Sections in this chapter establish procedures for applying for and obtaining an allocation of Housing Tax Credits, along with ensuring that the proper tThreshold cCriteria, sSelection cCriteria, priorities and preferences are followed in making such allocations.

(b) Program Statement. The Department shall administer the program to encourage the development and preservation of appropriate types of rental housing for households that have difficulty finding suitable, accessible, affordable rental housing in the private marketplace; maximize the number of suitable, accessible, affordable residential rental units added to the state's housing supply; prevent losses for any reason to the state's supply of suitable, accessible, affordable residential rental units by enabling the Rehabilitation of rental housing or by providing other preventive financial support; and provide for the participation of for-profit organizations and provide for and encourage the participation of nonprofit organizations in the acquisition, development and operation of accessible affordable housing developments in rural and urban communities. (§2306.6701)

(c) Allocation Goals. It shall be the goal of this Department and the Board, through these provisions, to encourage diversity through broad geographic allocation of tax credits within the state, and in accordance with the regional allocation formula; to promote maximum utilization of the available tax credit amount; and to allocate credits among as many different entities as practicable without diminishing the quality of the housing that is being built. The processes and criteria utilized to realize this goal are described in §49.7, §49.8 and §49.9 of this chapter, without in any way limiting the effect or applicability of all other provisions of this title. (General Appropriation Act, Article VII, Rider 8(e))

§49.2. Coordination with Rural Agencies.

To ensure maximum utilization and optimum geographic distribution of tax credits in rural areas, and to provide for sharing of information, efficient procedures, and fulfillment of Development requirements in rural areas, the Department will coordinate on existing, Rehabilitation, and New Construction housing Developments financed by TRDO-USDA; and will administer the Rural Regional Allocation with the Texas Office of Rural Community Affairs (ORCA). Through participation in hearings and meetings, ORCA will assist in developing all Threshold, Selection and Underwriting Criteria applied to Applications eligible for the Rural Regional Allocation. The Criteria will be approved by that Agency. To ensure that the Rural Regional Allocation receives a sufficient volume of eligible Applications, the Department and ORCA shall jointly implement outreach, training, and rural area capacity building efforts. (§2306.6723)

§49.3. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) **Adaptive Reuse--**The renovation or rehabilitation of an existing non-residential building or structure (e.g., school, warehouse, office, hospital, etc.), including physical alterations that modify the building's previous or original intended use. If any Units are built outside the original building footprint or foundation, the Development will be considered New Construction and not Adaptive Reuse.

The number of floors or stories may be increased in a building as long as the total number of Units for the Development does not exceed 80 Units in a Rural Area or 252 Units in an Urban Area.

(2) **Administrative Deficiencies**--The absence of information or inconsistent information in the Application as is required under §49.5, §49.6, §49.8 and §49.9 of this chapter that can be corrected by an additional submission to the Department, unless determined by the Department as unable to be corrected.

(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, Controls, is Controlled by, or is under common Control with any other Person, and specifically shall include parents or subsidiaries. Affiliates also include all General Partners, Special Limited Partners and Principals with an ownership interest unless the entity is an experienced Developer as described in §49.9(h)(9)(D) of this chapter.

(4) **Agreement and Election Statement**--A document in which the Development Owner elects, irrevocably, to fix the Applicable Percentage with respect to a building or buildings, as that in effect for the month in which the Department and the Development Owner enter into a binding agreement as to the housing credit dollar amount to be allocated to such building or buildings.

(5) **Applicable Fraction**--The fraction used to determine the Qualified Basis of the qualified low-income building, which is the smaller of the Unit fraction or the floor space fraction, all determined as provided in the Code, §42(c)(1).

(6) **Applicable Percentage**--The percentage used to determine the amount of the Housing Tax Credit for any Development (New Construction, Reconstruction, and/or Rehabilitation), as defined more fully in the Code, §42(b).

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

(i) the greater of 9% or the current applicable percentage for 70% present value credits for new buildings, pursuant to §42(b) of the Code for the month in which the Application is submitted to the Department; or

(ii) 15 basis points over the current applicable percentage for 30% present value credits associated with acquisition and with qualified Tax-Exempt Bond Developments, pursuant to §42(b) of the Code for the month in which the Application is submitted to the Department.

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

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

(ii) The actual applicable percentage as determined by the Code, §42(b), if all or part of the Development has been placed in service and for any buildings not placed in service the percentage will be the actual percentage as determined by the Code, §42(b) for the most current month; or

(iii) 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.

(7) **Applicant**--Any Person or Affiliate of a Person who files a Pre-Application or an Application with the Department requesting a Housing Credit Allocation. (§2306.6702)

(8) **Application**--An application, in the form prescribed by the Department, filed with the Department by an Applicant, including any exhibits or other supporting material. (§2306.6702)

(9) **Application Acceptance Period**--That period of time during which Applications for a Housing Credit Allocation from the State Housing Credit Ceiling may be submitted to the Department, December 3, 2008 through February 27, 2009, as more fully described in §§49.8 - 49.12 of this chapter. For Tax-Exempt Bond Developments this period is the date the Volumes 1 and 2 are submitted or the date the reservation is issued by the Texas Bond Review Board, whichever is earlier, until _____.

(10) **Application Round**--The period beginning on the date the Department begins accepting Applications and continuing until all available Housing Tax Credits are allocated, but not extending past the last day of the calendar year. (§2306.6702). For purposes of this section, this definition applies to Housing Tax Credits allocated with the State Housing Credit Ceiling.

(11) **Application Submission Procedures Manual**--The manual produced and amended from time to time by the Department which sets forth procedures, forms, and guidelines for the filing of Pre-Applications and Applications for Housing Tax Credits.

(12) **Area**--

(A) The geographic area contained within the boundaries of:

(i) An incorporated place; or

(ii) Census Designated Place (CDP) as established by the U.S. Census Bureau for the most recent Decennial Census.

(B) For Developments located outside the boundaries of an incorporated place or CDP, the Development shall take up the Area characteristics of the incorporated place or CDP whose boundary is nearest to the Development site.

(13) **Area Median Gross Income (AMGI)**--Area median gross household income, as determined for all purposes under and in accordance with the requirements of the Code, §42. (14) **At-Risk Development**--A Development that: (§2306.6702)

(A) has received the benefit of a subsidy in the form of a below-market interest rate loan, interest rate reduction, rental subsidy, Section 8 housing assistance payment, rental supplement payment, rental assistance payment, or equity incentive under at least one of the following federal laws, as applicable:

(i) Sections 221(d)(3) and (5), National Housing Act (12 U.S.C. §17151);

(ii) Section 236, National Housing Act (12 U.S.C. §1715z-1);

(iii) Section 202, Housing Act of 1959 (12 U.S.C. §1701q);

(iv) Section 101, Housing and Urban Development Act of 1965 (12 U.S.C. §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;

(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;

(vii) Sections 514, 515, and 516, Housing Act of 1949 (42 U.S.C. §§1484, 1485, and 1486); or

(viii) Section 42, of the Internal Revenue Code of 1986 (26 U.S.C. §42); and

(B) Is subject to the following conditions:

(i) The stipulation to maintain affordability in the contract granting the subsidy is nearing expiration (expiration will occur within two calendar years of July 31 of the year the Application is submitted); or

(ii) The federally insured mortgage on the Development is eligible for prepayment or is nearing the end of its mortgage term (the term will end within two calendar years of July 31 of the year the Application is submitted).

(C) An Application for a Development that includes the demolition of the existing Units which have received the financial benefit described in subparagraph (A) of this paragraph will not qualify as an At-Risk Development unless the redevelopment will include the same site.

(D) Developments must be at risk of losing all affordability from all of the financial benefits available on the Development, provided such benefit constitutes a subsidy, described in subparagraph (A) of this paragraph on the site. However, Developments that have an opportunity to retain or renew any of the financial benefit described in subparagraph (A) of this paragraph must retain or renew all possible financial benefit to qualify as an At-Risk Development.

(E) Nearing expiration on a requirement to maintain affordability includes Developments eligible to request a qualified contract under §42 of the Code. Evidence must be provided in the form of a copy of the recorded LURA, the first years' IRS Forms 8609 for all buildings showing Part II completed and, if applicable, documentation from the original application regarding the right of first refusal.

(15) **Bedroom**--A portion of a Unit which is no less than 100 square feet; has no width or length less than 8 feet; is self contained with a door; has at least one window that provides exterior access; and has at least one closet that is not less than 2 feet deep and 3 feet wide and high enough to accommodate 5 feet of hanging space. A den, study or other similar space that could reasonably function as a bedroom and meets this definition is considered a bedroom.

(16) **Board**--The governing Board of the Department. (§2306.004)

(17) **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 Treasury Regulations, §1.42-6.

(18) **Carryover Allocation Document**--A document issued by the Department, and executed by the Development Owner, pursuant to §49.14(a) of this chapter.

(19) **Carryover Allocation Procedures Manual**--The manual produced and amended from time to time by the Department which sets forth procedures, forms, and guidelines for filing Carryover Allocation requests.

(20) **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 United States Department of the Treasury or the Internal Revenue Service.

(21) **Colonia**--A geographic Area that is located in a county some part of which is within 150 miles of the international border of this state, that consists of 11 or more dwellings that are located in close proximity to each other in an area that may be described as a community or neighborhood, and that (§2306.581):

(A) Has a majority population composed of individuals and families of low-income and very low-income, based on the federal Office of Management and Budget poverty index, and meets the qualifications of an economically distressed Area under §17.921, Water Code; or

(B) Has the physical and economic characteristics of a colonia, as determined by the Department.

(22) **Commitment Notice**--A notice issued by the Department to a Development Owner pursuant to §49.13 of this chapter and also referred to as the "commitment."

(23) **Community Revitalization Plan**--A published document under any name, approved and adopted by the local Governing Body by ordinance or resolution, that targets specific geographic areas for revitalization and development of residential developments.

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

(25) **Compliance Period**--With respect to a building, the period of 15 taxable years, beginning with the first taxable year of the Credit Period pursuant to the Code, §42(i)(1).

(26) **Control**--(including the terms "Controlling," "Controlled by", and/or "under common Control with") the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of any Person, whether through the ownership of voting securities, by contract or otherwise, including specifically ownership of more than 50% of the General Partner interest in a limited partnership, or designation as a managing ~~General Partner~~ member of a limited liability company.

(27) ~~**Controlling or**~~ **Managing General Partner**--~~a co-owner of a business who owns, controls, or holds with power to vote, 10% or more of the voting stock;~~a general partner of a partnership that is vested with the authority to ~~can~~ take actions that are binding on behalf of the partnership and the other partners and, who is liable for all debts and other obligations of the venture as well as for the management and operation of the partnership under state law.

(28) **Cost Certification Procedures Manual**--The manual produced, and amended from time to time, by the Department which sets forth procedures, forms, and guidelines for filing requests for IRS Form(s) 8609 for Developments placed in service under the Housing Tax Credit Program.

(29) **Credit Period**--With respect to a building within a Development, the period of ten taxable years beginning with the taxable year the building is placed in service or, at the election of the Development Owner, the succeeding taxable year, as more fully defined in the Code, §42(f)(1).

(30) **Department**--The Texas Department of Housing and Community Affairs, an agency of the State of Texas, established by Chapter 2306, Texas Government Code, including Department employees and/or the Board. (§2306.004)

(31) **Determination Notice**--A notice issued by the Department to the Development Owner of a Tax-Exempt Bond Development which states that the Development may be eligible to claim Housing Tax Credits without receiving an allocation of Housing Tax Credits from the State Housing Credit Ceiling because it satisfies the requirements of this QAP; sets forth conditions which must be met by the Development before the Department will issue the IRS Form(s) 8609 to the Development Owner; and

specifies the Department's determination as to the amount of tax credits necessary for the financial feasibility of the Development and its viability as a rent restricted Development throughout the extended use period. (§42(m)(1)(D))

(32) **Developer**--Any Person entering into a contract with the Development Owner to provide development services with respect to the Development and receiving a fee for such services (which fee cannot exceed the limits identified in §49.9(d)(6)(B) of this chapter) and any other Person receiving any portion of such fee, whether by subcontract or otherwise.

(33) **Development**--A proposed qualified and/or approved low-income housing project, as defined by the Code, §42(g), for Adaptive Reuse, New Construction, reconstruction, or Rehabilitation, that consists of one or more buildings containing multiple Units, and that, if the Development shall consist of multiple buildings, is financed under a common plan and is owned by the same Person for federal tax purposes, and the buildings of which are either:

(A) Located on a single site or contiguous site; or

(B) Located on scattered sites and contain only rent-restricted units. (§2306.6702)

(34) **Development Consultant**--Any Person (with or without ownership interest in the Development) who provides professional services relating to the filing of an Application, Carryover Allocation Document, and/or cost certification documents.

(35) **Development Funding**--Means:

(A) a loan or grant; or

(B) an in-kind contribution, including a donation of real property, a fee waiver for a building permit or for water or sewer service, or a similar contribution that:

(i) provides an economic benefit; and

(ii) results in a quantifiable cost reduction for the applicable Development. (§2306.004(4-a))

(36) **Development 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. (§2306.6702)

(37) **Development Site**--The area, or if scattered site areas, for which the Development is proposed to be located and which is to be under the Applicant's control pursuant to §49.9(h)(7)(A) of this chapter.

(38) **Development Team**--All Persons or Affiliates thereof that play a role in the Development, construction, Rehabilitation, management and/or continuing operation of the subject Property, which will include any Development Consultant and Guarantor.

(39) **Disaster Area**--An area that has been declared as a disaster pursuant to §418.014 of the Texas Government Code.

(40) **Economically Distressed Area**--Consistent with §17.921 of Texas Water Code, an Area in which:

(A) Water supply or sewer services are inadequate to meet minimal needs of residential users as defined by Texas Water Development Board rules;

(B) Financial resources are inadequate to provide water supply or sewer services that will satisfy those needs; and

(C) An established residential subdivision was located on June 1, 1989, as determined by the Texas Water Development Board.

(41) **Eligible Basis**--With respect to a building within a Development, the building's Eligible Basis as defined in the Code, §42.

(42) **Executive Award and Review Advisory Committee ("The Committee")**--A Departmental committee as set forth in Chapter 2306 of the Texas Government Code. (§2306.1112)

(43) **Existing Residential Development**--Any Development Site which contains 4 or more existing residential Units at the time the Volume I is submitted to the Department.

(44) **Extended Housing Commitment**--An agreement between the Department, the Development Owner and all successors in interest to the Development Owner concerning the extended housing use of buildings within the Development throughout the extended use period as provided in the Code, §42(h)(6). The Extended Housing Commitment with respect to a Development is expressed in the LURA applicable to the Development.

(45) **General Contractor**--One who contracts for 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. This party may also be referred to as the "contractor."

(46) **General Partner**--That partner, or collective of partners, identified as the general partner of the partnership that is the Development Owner and that has general liability for the partnership. In addition, unless the context shall clearly indicate the contrary, if the Development Owner in question is a limited liability company, the term "General Partner" shall also mean the managing member or other party with management responsibility for the limited liability company.

(47) **Governing Body**--~~An elected city or county entity that is~~The body of elected public officials, responsible for the creation, implementation and/or enforcement of local rules and laws for a city or county, as applicable.

(48) **Governmental Entity**--Includes federal or state agencies, departments, boards, bureaus, commissions, authorities, and political subdivisions, special districts and other similar entities.

(49) **Governmental Instrumentality**--A legal entity such as a housing authority of a city or county, a housing finance corporation, or a municipal utility, which is created by a local political subdivision under statutory authority and which instrumentality is authorized to transact business for the political subdivision.

(50) **Grant**--Financial assistance that is awarded in the form of money to a housing sponsor or Development for a specific purpose and that is not required to be repaid. A Grant includes a forgivable loan. (§2306.004)

(51) **Guarantor**--Any Person that provides, or is anticipated to provide, a guaranty for the equity or debt financing for the Development.

(52) **Historically Underutilized Businesses (HUB)**--Any entity defined as a historically underutilized business with its principal place of business in the State of Texas in accordance with Chapter 2161, Texas Government Code.

(53) **Housing Credit Agency**--A Governmental Entity charged with the responsibility of allocating Housing Tax Credits pursuant to the Code, §42. For the purposes of this chapter, the Department is the sole "Housing Credit Agency" of the State of Texas.

(54) **Housing Credit Allocation**--An allocation by the Department to a Development Owner for a specific Application of Housing Tax Credits in accordance with the provisions of this chapter.

(55) **Housing Credit Allocation Amount**--With respect to a Development or a building within a Development, that amount 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 it allocates to the Development.

(56) **Housing Tax Credit ("tax credits")**--A tax credit allocated, or for which a Development may qualify, under the Housing Tax Credit Program, pursuant to the Code, §42. (§2306.6702)

(57) **HUD**--The United States Department of Housing and Urban Development, or its successor.

(58) **Ineligible Building Types**--Those Developments which are ineligible, pursuant to this QAP, for funding under the Housing Tax Credit Program, as follows:

(A) Hospitals, nursing homes, trailer parks, dormitories (or other buildings that will be predominantly occupied by students) or other facilities which are usually classified as transient housing (other than certain specific types of transitional housing for the homeless and Single Room Occupancy units, as provided in the Code, §42(i)(3)(B)(iii) and (iv)) are not eligible. However, structures formerly used as hospitals, nursing homes or dormitories are eligible for Housing Tax Credits if the Development involves the conversion of the building to a non-transient multifamily residential Development. Refer to IRS Revenue Ruling 98-47 for clarification of assisted living.

(B) Any Qualified Elderly Development or age restricted buildings in Intergenerational Housing Developments of two stories or more that does not include elevator service for any Units or living space above the first floor.

(C) Any Qualified Elderly Development or age restricted buildings in Intergenerational Housing Developments 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.

(D) Any Development, other than a Qualified Elderly Development or age restricted buildings in Intergenerational Housing Developments, with building(s) with four or more stories that does not include an elevator.

(E) Any Qualified Elderly Development or age restricted buildings in Intergenerational Housing Developments proposing more than 70% of the total number of Units in the Development as two-bedroom Units.

(F) Any Development that violates the Integrated Housing Rule of the Department, §1.15 of this title.

(G) Any Development located in an Urban Area involving any New Construction of additional Units (other than a Qualified Elderly Development, a Development composed entirely of single family dwellings, and certain specific types of transitional housing for the homeless and Single Room Occupancy units, as provided in the Code, §42(i)(3)(B)(iii) and (iv)) in which any of the designs in clauses (i) - (iv) of this subparagraph are proposed. For Applications involving a combination of single family detached dwellings and multifamily dwellings, the percentages in this subparagraph do not apply to the single family detached dwellings, but they do apply to the multifamily dwellings. For Intergenerational Housing Applications, the percentages in this subparagraph do not apply to buildings that are restricted by the age requirements of a Qualified Elderly Development, but they do apply to the other multifamily buildings. An Application may reflect a total of Units for a given bedroom size greater than the percentages in clauses (i) - (iv) of this subparagraph to the extent that the increase is only to reach the next highest number divisible by four.

(i) More than 30% of the total Units are one bedroom Units; or

(ii) More than 55% of the total Units are two bedroom Units; or

(iii) More than 40% of the total Units are three bedroom Units; or

(iv) More than 5% of the total Units in the Development with four or more bedrooms.

(H) Any Development that includes age restricted units that are not consistent with the Intergenerational Housing definition and policy or the definition of a Qualified Elderly Development.

(I) Any Development that either contains residential Units ~~either~~ designated for a single occupational group or violates the general public use requirement under Treasury Regulation §1.42-9.

(59) **Intergenerational Housing**--Housing that includes specific Units that are restricted to the age requirements of a Qualified Elderly Development and specific Units that are not age restricted in the same Development that:

(A) Have separate and specific buildings exclusively for the age restricted Units;

(B) Have specific leasing offices and leasing personnel for the age restricted Units;

(C) Have separate and specific entrances, and other appropriate security measures for the age restricted Units;

(D) Provide shared social service programs that encourage intergenerational activities but also provide separate amenities for each age group;

(E) Share the same Development Site;

(F) Are developed and financed under a common plan and owned by the same Person for federal tax purposes; and

(G) Meet the requirements of the federal Fair Housing Act.

(60) **IRS**--The Internal Revenue Service, or its successor.

(61) **Land Use Restriction Agreement (LURA)**--An agreement between the Department and the Development Owner which is binding upon the Development Owner's successors in interest, that encumbers the Development with respect to the requirements of this chapter, Chapter 2306, Texas Government Code, and the requirements of the Code, §42. (§2306.6702)

(62) **Local Political Subdivision**--A county or municipality (city) in Texas. For purposes of §49.9(i)(5) of this chapter, a local political subdivision may act through a Government Instrumentality such as a housing authority, housing finance corporation, or municipal utility even if the Government Instrumentality's creating statute states that the entity is not itself a "political subdivision."

(63) **Low-Income Unit**--sometimes referred to as a tax credit Unit, that is a Unit that is income and rent restricted at no greater than 60% of AMGI and is included in the Applicable Fraction for the Housing Tax Credit program.

(64) **Material Noncompliance**--As defined in Chapter 60, Subchapter A of this title.

(65) **Minority Owned Business**--A business entity at least 51% of which is owned by members of a minority group or, in the case of a corporation, at least 51% of the shares of which are owned by members of a minority group, and that is managed and Controlled by members of a minority group in its daily operations. Minority group includes women, African Americans, American Indians, Asian Americans, and Mexican Americans and other Americans of Hispanic origin. (§2306.6734)

(66) **Neighborhood Organization**--An organization that is composed of persons living near one another within the organization's defined boundaries for the neighborhood and that has a primary purpose of working to maintain or improve the general welfare of the neighborhood. A neighborhood organization includes a homeowners' association or a property owners' association. (§2306.001(23-a))

(67) **Net Rentable Area (NRA)**--The ~~u~~Unit space that is available exclusively to the tenant and is typically heated and cooled by a mechanical HVAC system. 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.

(68) **New Construction**--Any construction of a Development or a portion of a Development that does not meet the definition of Rehabilitation (which includes Reconstruction).

(69) **ORCA**--Office of Rural Community Affairs, as established by Chapter 487 of Texas Government Code.

(70) **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.

(71) **Persons with Disabilities**--A person who:

(A) Has a physical, mental or emotional impairment that:

(i) Is expected to be of a long, continued and indefinite duration;

(ii) Substantially impedes his or her ability to live independently; and

(iii) Is of such a nature that the disability could be improved by more suitable housing conditions;

(B) Has a developmental disability, as defined in the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. §15002); or

(C) Has a disability, as defined in 24 CFR §5.403.

(72) **Persons with Special Needs**--Persons with alcohol and/or drug addictions, Colonia residents, Persons with Disabilities, victims of domestic violence, persons with HIV/AIDS, homeless populations and migrant farm workers.

(73) **Pre-Application**--A preliminary application, in a form prescribed by the Department, filed with the Department by an Applicant prior to submission of the Application for the State Housing Credit Ceiling, including any required exhibits or other supporting material, as more fully described in this chapter. (§2306.6704)

(74) **Pre-Application Acceptance Period**--That period of time during which Competitive Housing Tax Credit Pre-Applications for a Housing Credit Allocation from the State Housing Credit Ceiling may be submitted to the Department.

(75) **Principal**--The term Principal is defined as Persons that will exercise Control over a partnership, corporation, limited liability company, trust, or any other private entity. In the case of:

(A) Partnerships, Principals include all General Partners, ~~Special Limited Partners~~ and Principals with ownership interest in the General Partner;

(B) Corporations, Principals include any officer authorized by the board of directors to act on behalf of the corporation, including the president, vice president, secretary, treasurer and all other executive officers, and each stock holder having a 10% or more interest in the corporation; and

(C) Limited liability companies, Principals include all managing members, members having a 10% or more interest in the limited liability company or any officer authorized to act on behalf of the limited liability company.

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

(77) **Qualified Allocation Plan (QAP)**This Plan as adopted.

(78) **Qualified Basis**--With respect to a building within a Development, the building's Eligible Basis multiplied by the Applicable Fraction, within the meaning of the Code, §42(c)(1).

(79) **Qualified Census Tract**--Any census tract which is so designated by the Secretary of HUD in accordance with the Code, §42(d)(5)(C)(ii).

(80) **Qualified Elderly Development**--A Development which meets the requirements of the federal Fair Housing Act and:

(A) Is intended for, and solely occupied by, individuals 62 years of age or older; or

(B) Is intended and operated for occupancy by at least one individual 55 years of age or older per Unit, where at least 80% of the total housing Units are occupied by at least one individual who is 55 years of age or older; and where the Development Owner publishes and adheres to policies and procedures which demonstrate an intent by the owner and manager to provide housing for individuals 55 years of age or older. (See 42 U.S.C. §3607(b))

(81) **Qualified Market Analyst**--A real estate appraiser certified or licensed by the Texas Appraiser Licensing and Certification Board, a real estate consultant, or other professional currently active in the subject property's market area who demonstrates competency, expertise, and the ability to render a high quality written report. The individual's performance, experience, and educational background will provide the general basis for determining competency as a Market Analyst. Competency will be determined by the Department, in its sole discretion. The Qualified Market Analyst must be a Third Party.

(82) **Qualified Nonprofit Organization**--An organization that is described in the Code, §501(c)(3) or (4), as these cited provisions may be amended from time to time, that is exempt from federal income taxation under the Code, §501(a), that is not affiliated with or Controlled by a for profit organization, and includes as one of its exempt purposes the fostering of low-income housing within the meaning of the Code, §42(h)(5)(C). A Qualified Nonprofit Organization may select to compete in one or more of the Set-Asides, including, but not limited to, the nonprofit Set-Aside, the At-Risk Development Set-Aside and the TRDO-USDA Allocation. (§2306.6729)

(83) **Qualified Nonprofit Development**--A Development in which a Qualified Nonprofit Organization (directly or through a partnership or wholly-owned subsidiary):

(A) Holds a ~~c~~Controlling interest in the Development proposed to be financed from the nonprofit allocation pool (§2306.6729); and

(B) Owns an interest in the Development and materially participates (within the meaning of the Code, §469(h), as it may be amended from time to time) in its development and operation throughout the Compliance Period, and otherwise meets the requirements of the Code, §42(h)(5). (§2306.6729)

(84) **Reference Manual**--That certain manual, and any amendments thereto, produced by the Department which sets forth reference material pertaining to the Housing Tax Credit Program.

(85) **Rehabilitation**--The improvement or modification of an Existing Residential Development through alteration, incidental addition or enhancement. The term includes the demolition of an Existing Residential Development and the reconstruction of a Development on the Development Site, but does not include Adaptive Reuse. Rehabilitation includes repairs necessary to correct the results of deferred maintenance, the replacement of principal fixtures and components, improvements to increase the efficient use of energy, and installation of security devices. Reconstruction, for these purposes, includes the demolition of one or more residential buildings in an Existing Residential Development and the re-construction of the Units on the Development Site. Developments proposing Adaptive Reuse or proposing to increase the total number of Units in the Existing Residential Development are not considered Rehabilitation or reconstruction.

(86) **Related Party**--As defined, (§2306.6702)

(A) The following individuals or entities:

(i) The brothers, sisters, spouse, ancestors, and descendants of a person within the third degree of consanguinity, as determined by Chapter 573, Texas Government Code;

(ii) A person and a corporation, if the person owns more than 50% of the outstanding stock of the corporation;

(iii) Two or more corporations that are connected through stock ownership with a common parent possessing more than 50% of:

(I) The total combined voting power of all classes of stock of each of the corporations that can vote;

(II) The total value of shares of all classes of stock of each of the corporations; or

(III) The total value of shares of all classes of stock of at least one of the corporations, excluding, in computing that voting power or value, stock owned directly by the other corporation;

(iv) A grantor and fiduciary of any trust;

(v) A fiduciary of one trust and a fiduciary of another trust, if the same person is a grantor of both trusts;

(vi) A fiduciary of a trust and a beneficiary of the trust;

(vii) A fiduciary of a trust and a corporation if more than 50% of the outstanding stock of the corporation is owned by or for:

(I) The trust; or

(II) A person who is a grantor of the trust.

(viii) A person or organization and an organization that is tax-exempt under the Code, §501(a), and that is controlled by that person or the person's family members or by that organization;

(ix) A corporation and a partnership or joint venture if the same persons own more than:

(I) 50% of the outstanding stock of the corporation; and

(II) 50% of the capital interest or the profits' interest in the partnership or joint venture.

(x) An S corporation and another S corporation if the same persons own more than 50% of the outstanding stock of each corporation;

(xi) An S corporation and a C corporation if the same persons own more than 50% of the outstanding stock of each corporation;

(xii) A partnership and a person or organization owning more than 50% of the capital interest or the profits' interest in that partnership; or

(xiii) Two partnerships, if the same person or organization owns more than 50% of the capital interests or profits' interests.

(B) Nothing in this definition is intended to constitute the Department's determination as to what relationship might cause entities to be considered "related" for various purposes under the Code.

(87) **Residential Rental Development**--For purposes of this definition, Residential Rental Development does not include: hotels, motels dormitories, fraternity or sorority houses, rooming houses, hospitals, nursing homes, sanitariums, rest homes, trailer parks and courts for use on a transient basis. Residential Rental Development means:

(A) A property that meets specific requirements including occupancy of Low-Income Tenants during the affordability period when Units must be continually rented or available for rent;

(B) A building or structure, together with functionally related and subordinate facilities, containing one or more Units that are available to members of the general public; and

(C) A property that does not provide continual or frequent nursing, medical or psychiatric services.

(88) **Rules**--The Department's Housing Tax Credit Program Qualified Allocation Plan and Rules as presented in this chapter.

(89) **Rural Area**--An Area that is located (this definition is not the same as Rural Projects as defined in §520 of the Housing Act of 1949 for purposes of determining rural income as described in H.R 3221):

(A) Outside the boundaries of a primary metropolitan statistical area or a metropolitan statistical area;

(B) 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

(C) In an Area that is eligible for funding by Texas Rural Development Office or the United States Department of Agriculture (TRDO-USDA), other than an Area that is located in a municipality with a population of more than 50,000. (§2306.004)

(90) **Rural Development**--A Development or proposed Development that is located in a Rural Area, other than rural New Construction Developments with more than 80 Units.

(91) **Selection Criteria (Selection)**--Criteria used to determine housing priorities of the State under the Housing Tax Credit Program as specifically defined in §49.9(i) of this chapter.

(92) **Set-Aside**--A reservation of a portion of the available Housing Tax Credits under the State Housing Credit Ceiling to provide financial support for specific types of housing or geographic locations or serve specific types of Applications or Applicants as permitted by the Qualified Allocation Plan on a priority basis. (§2306.6702)

(93) **Single Room Occupancy(SRO)**--A single efficiency unit that contains sanitary facilities but may not include food preparation facilities and is intended for occupancy by one person.

(94) **Special Management Districts**--Those districts named under Chapters 3801 to 3853, Texas Special District Local Laws Code, Subtitle C.

(95) **State Housing Credit Ceiling**--The limitation on 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 the Code, §42(h)(3)(C) and/or additonal ceiling provided by The Housing and Economic Recovery Act of 2008, H.R 3221.

(96) **Student Eligibility**--Per the Code, §42(i)(3)(D), A Unit shall not fail to be treated as a low-income Unit merely because it is occupied:

(A) By an individual who is:

(i) A student and receiving assistance under Title IV of the Social Security Act (42 U.S.C. §§601 et seq.), or

(ii) Enrolled in a job training program receiving assistance under the Job Training Partnership Act (29 USCS §§1501 et seq., generally; for full classification, consult USCS Tables volumes) or under other similar Federal, State, or local laws, or

(B) Entirely by full-time students if such students are:

(i) Single parents and their children and such parents and children are not dependents (as defined by the Code §152) of another individual, or

(ii) Married and file a joint return.

(97) **Supportive Housing**--Residential Rental Developments intended for occupancy by individuals or households transitioning from homelessness, at risk of homelessness, or in need of specialized and specific social services, to more stable, productive lives by offering residents an array of supportive services.

(98) **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 the Code, §42(h)(4), such that the Development does not receive an allocation of tax credit authority from the State Housing Credit Ceiling.

(99) **Third Party**--A Third Party is a Person who is not:

(A) An Applicant, General Partner, Developer, or General Contractor; or

(B) An Affiliate or a Related Party to the Applicant, General Partner, Developer or General Contractor; or

(C) Receiving any portion of the fees from the Development.

(100) **Threshold Criteria (Threshold)**--Criteria used to determine whether the Development satisfies the minimum level of acceptability for consideration as specifically defined in §49.9(h) of this chapter. (§2306.6702)

(101) **Total Housing Development Cost**--The total of all costs incurred or to be incurred by the Development Owner in acquiring, constructing, rehabilitating and financing a Development, as determined by the Department based on the information contained in the Application. Such costs include reserves and any expenses attributable to commercial areas. Costs associated with the sale or use of Housing Tax Credits to raise equity capital shall also be included in the Total Housing Development Cost. Such costs include but are not limited to syndication and partnership organization costs and fees, filing fees, broker commissions, related attorney and accounting fees, appraisal, engineering, and the environmental site assessment.

(102) **TRDO-USDA**--Texas Rural Development Office (TRDO) of the United States Department of Agriculture (USDA) serving the State of Texas (also known as USDA Rural Development and formerly known as TxFmHA) or its successor.

(103) **Unit**--(A) Any residential rental unit 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 (such as a microwave), and sanitation or (B) an SRO. (§2306.6702)

(104) **Urban Area**--The Area that is located within the boundaries of a primary metropolitan statistical area or a metropolitan statistical area other than an Area described in paragraph (89)(B) of this section or eligible for funding as described in paragraph (89)(C) of this section.

(105) **Urban Core**--A compact and contiguous geographical area composed of census tracts of a municipality in which at least 90 percent of the land is used or zoned for commercial purposes and that has historically been the primary location in the municipality where business has been transacted, as well as those census tracts that are contiguous to such areas.

§49.4. State Housing Credit Ceiling.

The Department shall determine the State Housing Credit Ceiling for each calendar year as provided in the Code, §42(h)(3)(C), using such information and guidance as may be made available by the Internal Revenue Service and/or The Housing and Economic Recovery Act of 2008, H.R. 3221. The Department shall publish each such determination in the Texas Register within 30 days after the receipt of such information as is required for that purpose by the Internal Revenue Service. The aggregate amount of commitments of Housing Credit Allocations made by the Department during any calendar year shall not exceed the State Housing Credit Ceiling for such year as provided in the Code, §42. As permitted by the Code, §42(h)(4), Housing Credit Allocations made to Tax-Exempt Bond Developments are not included in the State Housing Credit Ceiling.

§49.5. Ineligibility; Disqualification and Debarment; Certain Applicant and Development Standards; Representation by Former Board Member or Other Person; Due Diligence, Sworn Affidavit; Appeals and Administrative Deficiencies for Ineligibility, Disqualification and Debarment.

(a) **Ineligibility.** An Application is ineligible if:

(1) The Applicant, Development Owner, Developer or Guarantor has been or is barred, suspended, or terminated from procurement in a state or federal program or listed in the List of Parties Excluded from Federal Procurement or Non-Procurement Programs; or (§2306.6721(c)(2))

(2) The Applicant, Development Owner, Developer or Guarantor has been convicted of a state or federal felony crime involving fraud, bribery, theft, misrepresentation of material fact,

misappropriation of funds, or other similar criminal offenses within fifteen years preceding the Application deadline; or

(3) The Applicant, Development Owner, Developer or Guarantor at the time of Application is: subject to an enforcement or disciplinary action under state or federal securities law or by the NASD; is subject to a federal tax lien; or is the subject of an enforcement proceeding with any Governmental Entity; or

(4) The Applicant, Development Owner, Developer or Guarantor with any past due audits has not submitted those past due audits to the Department in a satisfactory format. A Person is not eligible to receive a commitment of Housing Tax Credits from the Department if any audit finding or questioned or disallowed cost is unresolved as of June 1 of each year, or for Tax-Exempt Bond Developments or other Applications not applying for Housing Tax Credits, but applying only under other Multifamily Programs (HOME, Housing Trust Fund, etc.) no later than 30 days after Volume III of the Application is submitted; or

(5) (§2306.6703(a)(1)). 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) A member of the Board; or

(B) The Executive Director, a Deputy Executive Director, the Director of Multifamily Finance Production, the Director of Portfolio Management and Compliance, the Director of Real Estate Analysis, or a manager over Housing Tax Credits employed by the Department.

(6) (§2306.6703(a)(2)). The Applicant proposes to replace in less than 15 years any private activity bond financing of the Development described by the Application, unless:

(A) The Applicant proposes to maintain for a period of 30 years or more 100% of the Development Units supported by Housing Tax Credits as rent-restricted and exclusively for occupancy by individuals and families earning not more than 50% of the Area Median Gross Income, adjusted for family size; and

(B) At least one-third of all the units in the Development are public housing units or Section 8 Development-based units; or,

(7) The Development is located in a municipality or in a valid Extra Territorial Jurisdiction (ETJ) of a municipality, or if located completely outside a municipality, a county, that has more than twice the state average of units per capita supported by Housing Tax Credits or private activity bonds at the time the Application Round begins (or for Tax-Exempt Bond Developments at the time the reservation is made by the Texas Bond Review Board) unless the Applicant: (§2306.6703(a)(4))

(A) Has obtained prior approval of the Development from the Governing Body of the appropriate municipality or county containing the Development; and

(B) Has included in the Application a written statement of support from that Governing Body. This statement must reference this rule and authorize an allocation of Housing Tax Credits for the Development;

(C) For purposes of this paragraph, evidence under subparagraphs (A) and (B) of this paragraph must be received by the Department no later than April 1, 2009 (or for Tax-Exempt Bond Developments no later than 14 days before the Board meeting where the credits will be considered) and may not be more than one year old from the date the Volume 1 is submitted to the Department; or

(8) The Applicant proposes to construct a new Development proposing New Construction or Adaptive Reuse (excluding New Construction of non-residential buildings) that is located one linear mile (measured by a straight line on a map) or less from a Development that: (§2306.6703(a)(3))

(A) Serves the same type of household as the new Development, regardless of whether the Development serves families, elderly individuals, or another type of household (Intergenerational Housing is not a type of household as it relates to this restriction); and

(B) Has received an allocation of Housing Tax Credits (including Tax-Exempt Bond Developments) 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 Volume I is submitted); and

(C) Has not been withdrawn or terminated from the Housing Tax Credit Program.

(D) An Application is not ineligible under this paragraph if:

(i) The Development is using federal HOPE VI funds received through the United States Department of Housing and Urban Development; locally approved funds received from a public improvement district or a tax increment financing district; funds provided to the state under the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. §§12701 et seq.); or funds provided to the state and participating jurisdictions under the Housing and Community Development Act of 1974 (42 U.S.C. §§5301 et seq.); or

(ii) The Development is located in a county with a population of less than one million; or

(iii) The Development is located outside of a metropolitan statistical area; or

(iv) The ~~local government~~ Governing Body of the Local Political Subdivision 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 subparagraphs (A) - (C) of this paragraph. For purposes of this clause, evidence of the ~~local government~~ Governing Body vote or evidence required by this subparagraph must be received by the Department no later than April 1, 2009 (or for Tax-Exempt Bond Developments no later than 14 days before the Board meeting where the credits will be committed) and may not be more than one year old.

(E) In determining ~~the age of~~ when an existing Development received an allocation as it relates to the application of the three-year period, the Development will be considered from the date the Board took action on approving the allocation of tax credits. In dealing with ties between two or more Developments as it relates to this rule, refer to §49.9(j) of this chapter.

(9) A Development is proposed to be located adjacent to or within 300 feet of a sexually-orirented business. For purposes of this paragraph, a sexually-oriented business shall be defined as stated in §243.002 of the Texas Local Government Code.

(10) A submitted Application has an entire Volume of the Application missing; has excessive omissions of documentation from the Threshold Criteria or Uniform Application documentation; or is so unclear, disjointed or incomplete that a thorough review can not reasonably be performed by the Department, as determined by the Department. If an Application is determined ineligible pursuant to this subsection, the Application will be terminated without being processed as an Administrative Deficiency. To the extent that a review was able to be performed, specific reasons for the Department's determination of ineligibly will be included in the termination letter to the Applicant.

(b) **Disqualification and Debarment.** The Department will disqualify an Application, and/or debar a Person, if it is determined by the Department that any issues identified in the paragraphs of this subsection exist. The Department may debar a Person for one year from the date of debarment, or until the violation causing the debarment has been remedied, whichever term is longer, if the Department determines the facts warrant it. Causes for disqualification and debarment include: (§2306.6721)

(1) The provision of fraudulent information, knowingly falsified documentation, or other intentional or negligent material misrepresentation in the Application or other information submitted to the Department at any stage of the evaluation or approval process; or

(2) The Applicant, Development Owner, Developer or Guarantor or anyone that has Controlling ownership interest in the Development Owner, Developer or Guarantor, or any Affiliate of such entities that is active in the ownership or Control of one or more other rent restricted rental housing properties in the state of Texas administered by the Department is in Material Noncompliance with the LURA (or any other document containing an Extended Housing Commitment) or the program rules in effect for such property as further described in Chapter 60 of this title on May 1, 2009 for Competitive Housing Tax Credit Applications or for Tax-Exempt Bond Development Applications or other Applications not applying for Housing Tax Credits, but applying only under other Multifamily Programs (HOME, Housing Trust Fund, etc.) no later than 30 days after Volume III of the Application is submitted (§2306.6721(c)(3)); or

(3) The Applicant, Development Owner, Developer, or any Guarantor, anyone that has Controlling ownership interest in the Development Owner, Developer or Guarantor, or any Affiliate of such entity that is active in the ownership or Control has been a Principal of any entity that failed to make all loan payments to the Department in accordance with the terms of the loan, as amended, or was otherwise in default with any provisions of any loans from the Department; or

(4) The Applicant or the Development Owner that is active in the ownership or Control of one or more tax credit properties in the state of Texas has failed to pay in full any fees or penalties within 30 days of when they were billed by the Department, as further described in §49.20 of this chapter; or

(5) An Applicant or a Related Party and any Person who is active in the construction, Rehabilitation, ownership, or Control of the proposed Development, including a General Partner or contractor, and a Principal or Affiliate of a General Partner or contractor, or an individual employed as a consultant, lobbyist or attorney by an Applicant or a Related Party, communicates with any Board member during the period of time beginning on the date Applications are filed in an Application Round and ending on the date the Board makes a final decision with respect to the approval of any Application in that Application Round, unless the communication takes place at any board meeting or public hearing held with respect to that Application but not during a recess or other non-record portion of the meeting or hearing. Communication with Department staff must be in accordance with §49.9(b) of this chapter; violation of the communication restrictions of §49.9(b) is also a basis for disqualification and/or debarment. (§2306.1113)

(6) It is determined by the Department's General Counsel that there is evidence that establishes probable cause to believe that an Applicant, Development Owner, Developer, or any of their employees or agents has violated a state revolving door or other standard of conduct or conflict of interest statute, including §2306.6733, Texas Government Code, or a section of Chapter 572, Texas Government Code, in making, advancing, or supporting the Application.

(7) Applicants may be ineligible as further described in §49.5 of this chapter.

(8) The Applicant, Development Owner, Developer, Guarantor, or any Affiliate of such entity whose previous funding contracts or commitments have been partially or fully deobligated during the 12 months prior to the submission of the applications due to a failure to meet contractual obligations ~~during the 12 months prior to the submission of the applications~~.

(9) The Applicant, Development Owner, Developer, Guarantor, or any Affiliate of such entity whose pre-development award of non-tax credit funds from the Department has not been repaid for the Development at the time of Carryover Allocation or Bond closing.

(c) **Certain Applicant and Development Standards.** Notwithstanding any other provision of this chapter, the Department may not allocate tax credits to a Development proposed by an Applicant if the Department determines that: (§2306.223)

(1) The Development is not necessary to provide needed decent, safe, and sanitary housing at rental prices that individuals or families of low and very low-income or families of moderate income can afford;

(2) The Development Owner undertaking the proposed Development will not supply well-planned and well-designed housing for individuals or families of low and very low-income or families of moderate income;

(3) The Development Owner is not financially responsible;

(4) The Development Owner has contracted, or will contract for the proposed Development with, a Developer that:

(A) Is on the Department's debarred list, including any parts of that list that are derived from the debarred list of the United States Department of Housing and Urban Development;

(B) Has breached a contract with a public agency and failed to cure that breach; or

(C) Misrepresented to a subcontractor the extent to which the Developer has benefited from contracts or financial assistance that has been awarded by a public agency, including the scope of the Developer's participation in contracts with the agency and the amount of financial assistance awarded to the Developer by the agency;

(5) The financing of the housing Development is not a public purpose and will not provide a public benefit; and/or

(6) The Development will be undertaken outside the authority granted by this chapter to the Department and the Development Owner.

(d) **Representation by Former Board Member or Other Person.** (§2306.6733)

(1) A former Board member or a former executive director, deputy executive director, director of multifamily finance production, director of portfolio management and compliance, director of real estate analysis or manager over Housing Tax Credits previously employed by the Department may not:

(A) For compensation, represent an Applicant or one of its Related Parties for an allocation of tax credits before the second anniversary of the date that the Board member's, director's, or manager's service in office or employment with the Department ceased; or

(B) Represent any Applicant or a Related Party of an Applicant or receive compensation for services rendered on behalf of any Applicant or Related Party regarding the consideration of an Application in which the former board member, director, or manager participated during the period of service in office or employment with the Department, either through personal involvement or because the matter was within the scope of the board member's, director's, or manager's official responsibility; or for compensation, communicate directly with a member of the legislative branch to influence legislation on behalf of an Applicant or Related Party before the second anniversary of the date that the board member's, director's, or manager's service in office or employment with the Department ceased.

(2) A Person commits a criminal offense if the Person violates §2306.6733. An offense under this section is a Class A misdemeanor.

(e) **Due Diligence, Sworn Affidavit.** In exercising due diligence in considering information of possible ineligibility, possible grounds for disqualification and debarment, Applicant and Development standards, possible improper representation or compensation, or similar matters, the Department may request a sworn affidavit or affidavits from the Applicant, Development Owner, Developer, Guarantor, or other Persons addressing the matter. If an affidavit determined to be sufficient by the Department is not received by the Department within seven business days of the date of the request by the Department, the Department may terminate the Application.

(f) **Appeals and Administrative Deficiencies for Ineligibility, Disqualification and Debarment.** An Application or Person found ineligible, disqualified, debarred or otherwise terminated under subsections (a) - (e) of this section will be notified in accordance with the Administrative Deficiency process described in §49.9(d)(4) of this chapter when applicable. They may also utilize the appeals process described in §49.17(b) of this chapter. (§2306.6721(d))

§49.6. Site and Development Restrictions: Floodplain; Ineligible Building Types; Scattered Site Limitations; Credit Amount; Limitations on the Size of Developments; Limitations on Rehabilitation Costs; Unacceptable Sites; Appeals and Administrative Deficiencies for Site and Development Restrictions.

(a) **Floodplain.** Any Development proposing New Construction or Reconstruction and located within the 100 year floodplain as identified by the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps must develop the site so that all finished ground floor elevations are at least one foot above the flood plain and parking and drive areas are no lower than six inches below the floodplain, subject to more stringent local requirements. If no FEMA Flood Insurance Rate Maps are available for the proposed Development, flood zone documentation must be provided from the local government with jurisdiction identifying the 100 year floodplain. No buildings or roads that are part of a Development proposing Rehabilitation or Adaptive Reuse, with the exception of Developments with federal funding assistance from HUD or TX USDA-RHS, will be permitted in the 100 year floodplain unless they already meet the requirements established in this subsection for New Construction.

(b) **Ineligible Building Types.** Applications involving Ineligible Building Types as defined in §49.3(56) of this chapter will not be considered for allocation of tax credits.

(c) **Scattered Site Limitations.** Consistent with §49.3(32) of this chapter, a Development must be financed under a common plan, be owned by the same Person for federal tax purposes, and the buildings may be either located on a single site or contiguous site, or be located on scattered sites and contain only rent-restricted units. Tax-Exempt Bond Developments are permitted to be located on multiple sites consistent with Chapter 1372, Texas Government Code and as further clarified by the Texas Bond Review Board.

(d) **Credit Amount.** The Department shall issue tax credits only in the amount needed for the financial feasibility and viability of a Development throughout the affordability period. The issuance of tax credits or the determination of any allocation amount in no way represents or purports to warrant the feasibility or viability of the Development by the Department, or that the Development will qualify for and be able to claim Housing Tax Credits. The Department will limit the allocation of tax credits to no more than $1.4 million per Development. The Department shall not allocate more than $2 million of tax credits in any given Application Round to any Applicant, Developer, Related Party or Guarantor; Competitive Housing Tax Credits approved by the Board during the 2009 calendar year, including commitments from the 2009 Credit Ceiling and forward commitments from the 2010 Credit Ceiling, are applied to the credit cap limitation for the 2009 Application Round. In order to evaluate this $2 million limitation, Nonprofit entities, public housing authorities, publicly traded corporations, individual board members, and executive directors must provide the documentation required in the Application with regard to this requirement. In order to encourage the capacity enhancement of inexperienced Developers who are ineligible to receive an experience certificate under Section 49.9(g) of this chapter, the Department will prorate the credit amount allocated in situations where ~~an Application is submitted in the either the Rural Regional Allocation or the Urban Regional Allocation~~ an inexperienced Developer partners with a Developer who can receive an experience certificate under Section 49.9(g) of this chapter. The Department will prorate the credits based on the percentage ownership in the Developer entity, if there is an ownership interest, or the proportional percentage of the Developer fee expected to be received, ~~if this applies to a~~ when the inexperienced Developer ~~without~~ does not have an ownership interest in the Developer entity. To be considered for this provision, a copy of a Joint Venture Agreement or similar document between the experienced Developer and the inexperienced Developer must be provided, along with ~~and~~ a narrative on how this arrangement builds the capacity of the inexperienced Developers ~~is required~~. Tax-Exempt Bond Development Applications are not subject to these Housing Tax Credit limitations, and Tax-Exempt Bond Development Applications will not count towards the total limit on tax credits per Applicant. The limitation does not apply (§2306.6711(b)):

(1) To an entity which raises or provides equity for one or more Developments, solely with respect to its actions in raising or providing equity for such Developments (including syndication related activities as agent on behalf of investors);

(2) To the provision by an entity of "qualified commercial financing" within the meaning of the Code (without regard to the 80% limitation thereof);

(3) To a Qualified Nonprofit Organization or other not-for-profit entity, to the extent that the participation in a Development by such organization consists only of the provision of loan funds, grants or social services; and

(4) To a Development Consultant with respect to the provision of consulting services, provided the Development Consultant fee received for such services does not exceed 10% of the fee to be paid to the Developer (or 20% for Qualified Nonprofit Developments), or $150,000, whichever is greater.

(e) **Limitations on the Size of Developments.**

(1) The minimum Development size will be 16 Units if the Development involves Housing Tax Credits. The minimum Development size will be 4 Units if the funding source only involves the Housing Trust Fund or HOME Program.

(2) Rural Developments involving any New Construction or Adaptive Reuse (excluding New Construction of non-residential buildings) will be limited to 80 Units (this includes individual Tax-Exempt Bond Developments). Rural Developments involving only Rehabilitation (excluding reconstruction) do not have a ~~size~~ limitation as to the number of Units.

(3) Urban Developments involving any New Construction or Adaptive Reuse (excluding New Construction of non-residential buildings), in the Competitive Housing Tax Credit Application Round will be limited to 252 total Units, wherein the maximum Department administered Units will be limited to 200 Units. Tax-Exempt Bond Developments will be limited to 252 restricted and total Units. These maximum Unit limitations also apply to those Developments which involve a combination of Rehabilitation, Reconstruction, and New Construction. Only Developments that consist solely of acquisition/Rehabilitation or Rehabilitation may exceed the maximum Unit restrictions.

(4) For Applications that are proposing an additional phase to an existing tax credit Development; that are otherwise adjacent to an existing tax credit Development; or that are proposing a Development on a contiguous site to another Application awarded in the same program year, the combined Unit total for the existing and proposed Developments may not exceed the maximum allowable Development size set forth in this subsection unless:

(A) the first phase of the Development has been completed and has attained Sustaining Occupancy (as defined in §1.31 of this title) for at least six months; or

(B) a resolution from the Governing Body of the city or county in which the proposed Development is located, dated on or before the date the Application is submitted, is submitted with the Application. Such resolution must state that there is a need for additional Units and that the Governing Body has reviewed a market study, the conclusion of which supports the need for additional Units; or

(C) the proposed Development is intended to provide replacement of previously existing affordable Units on the Development Site or that were originally located within a one mile radius from the Development Site; provided, however, the combined number of Units in the proposed Development may not exceed the number of Units being replaced. Documentation of such replacement units must be provided.

(f) **Limitations on the Location of Developments.** Staff will only recommend, and the Board may only allocate, Housing Tax Credits from the State Housing Credit Ceiling to more than one Development from the State Housing Credit Ceiling in the same calendar year if the Developments are, or will be, located more than one linear mile apart as determined by the Department. If the Board forward commits credits from the following year's State Housing Credit Ceiling, the Development is considered to be in the calendar year in which the Board votes, not in the year of the State Housing Credit Ceiling. This limitation applies only to communities contained within counties with populations exceeding one million (which for calendar year 2009 are Harris, Dallas, Tarrant and Bexar Counties). For purposes of this chapter, any two sites not more than one linear mile apart are deemed to be "in a single community." (§2306.6711(f)). This restriction does not apply to the allocation of Housing Tax Credits to Developments financed through the Tax-Exempt Bond program, including the Tax-Exempt Bond Development Applications under review and existing Tax-Exempt Bond Developments in the Department's portfolio. (§2306.67021)

(g) **Limitations of Development in Certain Census Tracts.** Staff will not recommend and the Board will not allocate Housing Tax Credits for a Competitive Housing Tax Credit or Tax-Exempt Bond Development located in a census tract that has more than 30% Housing Tax Credit Units per total households in the census tract as established by the U.S. Census Bureau for the most recent Decennial Census unless the Applicant:

(1) In an Area whose population is less than 100,000;

(2) Proposes only reconstruction or Rehabilitation (excluding New Construction of non-residential buildings); or,

(3) Submits to the Department an approval of the Development referencing this rule in the form of a resolution from the Governing Body of the appropriate municipality or county containing the Development. For purposes of this paragraph, evidence of the local government approval must be received by the Department no later than April 1, 2009 for Competitive Housing Tax Credit Applications

(or for Tax-Exempt Bond Development Applications no later than 14 days before the Board meeting where the credits will be committed). These ineligible census tracts are outlined in the 2009 Housing Tax Credit Site Demographic Characteristics Report.

(h) **Developments Proposing to Qualify for a 30% increase in Eligible Basis.** Staff will only recommend a 30% increase in Eligible Basis (pargraphs (3) and (4) of this subsection only apply to Competitive Housing Tax Credits allocated from the State Credit Ceiling) if:

(1) The Development proposing to build in a Hurricane Rita Gulf Opportunity Zone (Rita GO Zone), which was designated as a Difficult to Develop Area as determined by H.B. 4440, is able to be placed in service by December 31, 2010 (or date as revised by the Internal Revenue Service) as certified in the Application;

(2) The Development is located in a Qualified Census Tract that has less than 40% Housing Tax Credit Units per households in the tract as established by the U.S. Census Bureau for the most recent Decennial Census. Developments located in a Qualified Census Tract that has in excess of 40% Housing Tax Credit Units per 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 the Code, §42(d)(5)(C), unless the Development is proposing only Reconstruction or Rehabilitation (excluding New Construction of non-residential buildings). These ineligible Qualified Census Tracts are outlined in the 2009 Housing Tax Credit Site Demographic Characteristics Report;

(3) The Development qualifies for and receives Renewable Energy Tax Credits. For purposes of this paragraph, the Application will be required to include evidence that an application for the Renewable Energy Tax Credits has been submitted to the appropriate agency and Applicant will be required to show proof of receipt of the Renewable Energy Tax Credits at the time of Cost Certification; or

(4) Pursuant to the authority granted by H.R. 3221, the Development meets one of the criteria described in subparagraphs (A)-(D) of this paragraph:

(A) Rural Developments located in a census tract that has not received an award of Housing Tax Credits or Tax-Exempt Bonds (serving the same population type as proposed) in the last five years from the date of the Application Acceptance Period;

(B) Developments proposing at least 50% of the total number of Units for Supportive Housing;

(C) Developments proposing to provide 10% of the Low-Income Units, that will serve individuals and families at or below 30% of AMGI, in excess of those that are proposed in §49.9(i)(3) of this chapter; or

(D) Developments proposed in High Opportunity Areas as provided in clauses (i)-(iv) of this subparagraph:

(i) A Development that is proposed to be located within one-quarter mile of existing public transportation or commuter rail transportation stations that are accessible to all residents including Persons with Disabilities;

(ii) A Development that is proposed to be located in a census tract which has an AMGI that is higher than the AMGI of the county or place in which the census tract is located as of the first day of the Application Submission Acceptance Period;

(iii) A Development (serving families with children) that is proposed to be located in a school attendance zone that has an academic rating of "Exemplary" or "Recognized" rating (as determined by the Texas Education Agency) as of the first day of the Application Submission Acceptance Period; or

(iv) A Development that is proposed in a census tract that has no greater than 10% poverty population according to the most recent census data (these census tracts are designated in the 2009 Housing Tax Credit Site Demographic Characteristics Report).

(i) **Rehabilitation Costs.** Developments involving Rehabilitation must establish that the Rehabilitation will substantially improve the condition of the housing and will involve at least $15,000 per Unit in direct hard costs (including site work, contingency, contractor profit, overhead and general requirements) unless financed with TRDO-USDA in which case the minimum is $9,000.

(j) **Unacceptable Sites.** Developments will be ineligible if the Development is located on a site that is determined to be unacceptable by the Department.

(k) **Appeals and Administrative Deficiencies for Site and Development Restrictions.** An Application or Development found to be in violation of or conflict with ~~under~~ subsections (a) - (j) of this section will be notified in accordance with the Administrative Deficiency process described in §49.9(d)(4) of this chapter. They may also utilize the appeals process described in §49.17(b) of this chapter.

§49.7. Regional Allocation Formula; Set-Asides; Redistribution of Credits.

(a) **Regional Allocation Formula.** §2306.1115 as required by §2306.111(d), Texas Government Code, the Department uses a regional distribution formula developed by the Department and commented on by the public to distribute credits from the State Housing Credit Ceiling to all Urban Areas and Rural Areas. This formula establishes separate targeted tax credit amounts for Rural Areas and Urban Areas within each of the Uniform State Service Regions. Each Uniform State Service Region's targeted tax credit amount will be published on the Department's web site. The regional allocation for Rural Areas is referred to as the Rural Regional Allocation and the regional allocation for Urban Areas is referred to as the Urban Regional Allocation. Developments qualifying for the Rural Regional Allocation must meet the Rural Development definition. The Regional Allocation target will reflect that at least 20% of the State Housing Credit Ceiling for each calendar year shall be allocated to Developments in Rural Areas with a minimum of $500,000 for each Uniform State Service Region. (§2306.111(d)(3))

(b) **Set-Asides.** An Applicant may elect to compete in as many of the following Set-Asides for which the proposed Development qualifies (§2306.111(d)):

(1) 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 the Code, §42(h)(5). Qualified Nonprofit Organizations must have the Controlling interest in the ~~Qualified Nonprofit Development~~ Development Owner applying for this Set-Aside. If the Application is filed on behalf of a limited partnership, the Qualified Nonprofit Organization must be the ~~controlling m~~Managing General Partner. If the Application is filed on behalf of a limited liability company, the Qualified Nonprofit Organization must be the ~~controlling M~~managing ~~M~~member. Additionally, a Qualified Nonprofit Development submitting an Application in the nonprofit Set-Aside must have the nonprofit entity or its nonprofit Affiliate or subsidiary be the Developer or a co-Developer as evidenced in the development agreement. (§2306.6729 and §2306.6706(b))

(2) At least 5% of the State Housing Credit Ceiling for each calendar year shall be allocated to Developments which are financed through TRDO-USDA, that meet the definition of a Rural Development, do not exceed 80 Units if proposing any New Construction (excluding New Construction of non-residential buildings), and have filed an "Intent to Request 2009 Housing Tax Credits" form by the Pre-Application submission deadline. (§2306.111(d)(2) 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. Developments financed through TRDO-USDA's §538 Guaranteed Rural Rental Housing Program, in whole or in part, will not be considered under this Set-Aside. Any Rehabilitation or Reconstruction of an existing §515 Development that retains the §515 loan

and restrictions will be considered under the At-Risk Development and TRDO-USDA Set-Asides, unless such Development is also financed through TRDO-USDA's §538 Guaranteed Rural Rental Housing Program. Commitments of 2009 Competitive Housing Tax Credits issued by the Board in 2009 will be applied to each Set-Aside, Rural Regional Allocation, Urban Regional Allocation and/or TRDO-USDA Set-Aside for the 2009 Application Round as appropriate.

(3) 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 formula required under subsection (a) of this section. Through this Set-Aside, the Department, to the extent possible, shall allocate credits to Applications involving the preservation of Developments designated as At-Risk Developments as defined in §49.3(14) of this chapter. (§2306.6714). To qualify as an At-Risk Development, the Applicant must provide evidence that it either is not eligible to renew, retain or preserve any portion of the financial benefit described in §49.3(14)(A) of this chapter, or provide evidence that it will renew, retain or preserve the financial benefit described in §49.3(14)(A) of this chapter; and must have filed an "Intent to Request 2009 Housing Tax Credits" form by the Pre-Application submission deadline. Up to 5% of the State Credit Ceiling associated with this Set-Aside may be given priority to Rehabilitation Developments funded with TRDO.

(c) **Redistribution of Credits.** (§2306.111(d)). If any amount of Housing Tax Credits remain after the initial commitment of Housing Tax Credits among the Set-Asides, Rural Regional Allocation and Urban Regional Allocation, the Department may redistribute the credits amongst the different regions and Set-Asides depending on the quality of Applications submitted as evaluated under the factors described in §49.9(d) of this chapter, the need to most closely achieve regional allocation goals and then the level of demand exhibited in the Uniform State Service Regions during the Application Round, except that, if there are any tax credits set aside for Developments in a Rural Area in a specific Uniform State Service Region that remain after the allocation under §49.9(d)(5)(C) of this chapter, those tax credits shall be made available in any other Rural Area in the state, first, and then to Developments in Urban areas of any uniform state service region. (§2306.111(d)(3)). As described in subsection (b)(1) and (2) of this section, no more than 90% of the State's Housing Credit Ceiling for the calendar year may go to Developments which are not Qualified Nonprofit Developments. If credits will be transferred from a Uniform State Service Region which does not have enough qualified Applications to meet its regional credit distribution amount, then those credits will be apportioned to the other Uniform State Service Regions.

§49.8. Pre-Applications for Competitive Housing Tax Credits: Submission; Communication with Departments Staff; Evaluation Process; Threshold Criteria and Review; Results. (§2306.6704)

(a) **Pre-Application Submission.** Any Applicant requesting a Housing Credit Allocation may submit a Pre-Application to the Department during the Pre-Application Acceptance Period along with the required Pre-Application Fee as described in §49.20 of this chapter. Only one Pre-Application may be submitted by an Applicant for each site under the State Housing Credit Ceiling. The Pre-Application submission is a voluntary process. While the Pre-Application Acceptance Period is open, Applicants may withdraw their Pre-Application and subsequently file a new Pre-Application utilizing the original Pre-Application Fee that was paid as long as no evaluation was performed by the Department. The Department is authorized though not required to request the Applicant to provide additional information it deems relevant to clarify information contained in the Pre-Application or to submit documentation for items it considers to be Administrative Deficiencies. The rejection of a Pre-Application shall not preclude an Applicant from submitting an Application with respect to a particular Development or site at the appropriate time.

(b) **Communication with the Department.** Applicants that submit a Pre-Application are restricted from communication with Department staff as provided in §49.9(b) of this chapter. (§2306.1113)

(c) **Pre-Application Evaluation Process.** Eligible Pre-Applications will be evaluated for Pre-Application Threshold Criteria. Applications that are associated with a TRDO-USDA Development are not exempt from Pre-Application and are eligible to compete for the Pre-Application points further outlined in §49.9(i)(14) of this chapter. Pre-Applications that are found to have Administrative Deficiencies will be handled in accordance with §49.9(d)(4) of this chapter. Department review at this stage is limited and not all issues of eligibility and tThreshold are reviewed at Pre-Application. Acceptance by staff of a Pre-Application does not ensure that an Applicant satisfies all Application eligibility, Threshold or documentation requirements. The Department is not responsible for notifying an Applicant of potential areas of ineligibility or tThreshold deficiencies at the time of Pre-Application.

(d) **Pre-Application Threshold Criteria and Review.** Applicants submitting a Pre-Application will be required to submit information demonstrating their satisfaction of the Pre-Application Threshold Criteria. The Pre-Applications not meeting the Pre-Application Threshold Criteria will be terminated and the Applicant will receive a written notice to the effect that the Pre-Application Threshold Criteria have not been met. The Department shall not be responsible for the Applicant's failure to meet the Pre-Application Threshold Criteria and any failure of the Department's staff to notify the Applicant of such inability to satisfy the Pre-Application Threshold Criteria shall not confer upon the Applicant any rights to which it would not otherwise be entitled. The Pre-Application Threshold Criteria include:

(1) Submission of a "Pre-Application Submission Form" and "Certification of Pre-Application Itemized Self-Score". The Applicant may not change the Self-Score unless requested by the Department in a Deficiency Notice;

(2) Evidence of property control through February 27, 2009 as evidenced by the documentation required under §49.9(h)(7)(A) of this chapter; and

(3) Evidence in the form of a certification that all of the notifications required under this paragraph have been made. Requests for Neighborhood Organizations under subparagraph (A) of this paragraph must be made by the deadlines described in that clause; notifications under subparagraph (C) of this paragraph must be made prior to the close of the Pre-Application Acceptance Period. (§2306.6704) Evidence of notification must meet the requirements identified in subparagraph (B) of this paragraph to all of the individuals and entities identified in subparagraph (B) of this paragraph. (§2306.6704)

(A) The Applicant must request a list of Neighborhood Organizations on record with the county and state whose boundaries include the proposed Development Site as follows:

(i) No later than December 5, 2008, the Applicant must e-mail, fax or mail with registered receipt a completed "Neighborhood Organization Request" letter as provided in the Pre-Application to the local elected official for the city and county where the Development is proposed to be located. If the Development is located in an Area that has district based local elected officials, or both at-large and district based local elected officials, the request must be made to the city council member or county commissioner representing that district; if the Development is located an Area that has only at-large local elected officials, the request must be made to the mayor or county judge for the jurisdiction. If the Development is not located within a city or is located in the Extra Territorial Jurisdiction (ETJ) of a city, the county local elected official must be contacted. In the event that local elected officials refer the Applicant to another source, the Applicant must request Neighborhood Organizations from that source in the same format.

(ii) If no reply letter is received from the local elected officials by January 1, 2009, then the Applicant must certify to that fact in the "Pre-Application Notification Certification Form" provided in the Pre-Application.

(iii) The Applicant must list all Neighborhood Organizations on record with the county or state whose boundaries include the proposed Development Site as provided by the local elected officials, or that the Applicant has knowledge of as of Pre-Application Submission in the "Pre-Application Notification Certification Form" provided in the Pre-Application.

(B) Not later than the date the Pre-Application is submitted, notification must be sent to all of the following individuals and entities by e-mail, fax or mail with registered receipt return or similar tracking mechanism in the format required in the "Pre-Application Notification Template" provided in the Pre-Application. Developments located in an Extra Territorial Jurisdiction (ETJ) of a

city are not required to notify city officials, however, are required to notify county officials. Evidence of Notification is required in the form of a certification in the "Pre-Application Notification Certification Form" provided in the Pre-Application, although it is encouraged that Applicants retain proof of delivery of the notifications, to the persons or entities prescribed in clauses (i) - (ix) of this paragraph, in the event that the Department requires proof of Notification. Evidence of proof of delivery is demonstrated by signed receipt for mail or courier delivery and confirmation of receipt by the recipient for facsimile and electronic mail. Officials to be notified are those officials in office at the time the Pre-Application is submitted.

(i) Neighborhood Organizations on record with the state or county whose boundaries include the proposed Development Site as identified in subparagraph (A)(iii) of this paragraph;

(ii) Superintendent of the school district containing the Development;

(iii) Presiding officer of the board of trustees of the school district containing the Development;

(iv) Mayor of any municipality containing the Development;

(v) All elected members of the Governing Body of any municipality containing the Development;

(vi) Presiding officer of the Governing Body of the county containing the Development;

(vii) All elected members of the Governing Body of the county containing the Development;

(viii) State senator of the district containing the Development; and

(ix) State representative of the district containing the Development.

(C) Each such notice must include, at a minimum, all of the following:

(i) The Applicant's name, address, 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) Statement of whether the Development proposes New Construction, reconstruction, Adaptive Reuse or Rehabilitation;

(v) The type of Development being proposed (single family homes, duplex, apartments, townhomes, high-rise etc.) and population being served (family, Intergenerational Housing, or elderly);

(vi) The approximate total number of Units and approximate total number of Llow-lincome Units;

(vii) The approximate percentage of Units serving each level of AMGI (e.g. 20% at 50% of AMGI, etc.) and the approximate percentage of Units that are market rate;

(viii) The number of Units and proposed rents (less utility allowances) for the low-income Units and the number of Units and the proposed rents for any market rate Units. Rents to be provided are those that are effective at the time of the Pre-Application, which are subject to change as annual changes in the area median income occur; and

(ix) The expected completion date if credits are awarded.

(e) **Pre-Application Results.** Only Pre-Applications which have satisfied all of the Pre-Application Threshold Criteria requirements set forth in subsection (d) of this section and §49.9(i)(14) 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 Development on the Pre-Application Submission Log does not ensure that an Applicant will receive points for a Pre-Application.

§49.9. Application: Submission; Ex Parte Communications; Adherence to Obligations; Evaluation Process for Competitive Applications Under the State Housing Credit Ceiling; Evaluation Process for

Tax-Exempt Bond Development Applications; Evaluation Process for Rural Rescue Applications Under the 2010 Credit Ceiling; Experience Pre-Certification Procedures; Threshold Criteria; Selection Criteria; Tiebreaker Factors; Staff Recommendations.

(a) **Application Submission.** Any Applicant requesting a Housing Credit Allocation or a Determination Notice must submit an Application, and the required Application fee as described in §49.20 of this chapter, to the Department during the Application Acceptance Period. Only complete Applications will be accepted. All required volumes must be appropriately bound as required by the Application Submission Procedures Manual and fully complete for submission with all required copies and received by the Department not later than 5:00 p.m. on the date the Application is due. A bookmarked electronic copy of all required volumes and exhibits, unless otherwise indicated in the Application Submission Procedures Manual, must be submitted in the format of a single file presented in the order they appear in the hard copy of the complete Application on a CD-R clearly labeled with the report type, Development name, and Development location is required for submission and must be received by the Department not later than 5:00 p.m. on the date the Application is due. Only one Application may be submitted for a site in an Application Round. While the Application Acceptance Period is open, an Applicant may withdraw an Application and subsequently file a new Application utilizing the original Pre-Application Fee that was paid as long as no evaluation was performed by the Department. The Department is authorized, but not required, to request the Applicant to provide additional information it deems relevant to clarify information contained in the Application or to submit documentation for items it considers to be an Administrative Deficiency, including ineligibility criteria, site and development restrictions, and tThreshold and sSelection cCriteria documentation. (§2306.6708) An Applicant may not change or supplement any part of an Application in any manner after the filing deadline, and may not add any Set-Asides, increase the requested credit amount, or revise the Unit mix (both income levels and bedroom mixes), except in response to a direct request from the Department to remedy an Administrative Deficiency as further described in §49.3(2) of this chapter or by amendment of an Application after a commitment or allocation of tax credits as further described in §49.17(d) of this chapter.

(b) **Ex Parte Communications.**

(1) During the period beginning on the first date of the Application Acceptance Period and ending on the date the Board makes a final decision with respect to the approval of any Application in that Application Round, a member of the Board may not communicate with the following Persons:

(A) an Applicant or Related Party; and

(B) any Person who is:

(i) active in the construction, rehabilitation, ownership, or Control of the proposed Development, including:

(I) a General Contractor; and

(II) a Developer; and

(III) a General Partner, Principal or Affiliate of a General Partner or General Contractor; or

(ii) employed as a consultant, lobbyist, or attorney by an Applicant or a Related Party.

(2) During the period beginning on the first date of the Application Acceptance Period and ending on the date the Board makes a final decision with respect to the approval of any Application in that Application Round, an employee of the Department may communicate about any Application with the following Persons:

(A) the Applicant or a Related Party; and

(B) any Person who is:

(i) active in the construction, rehabilitation, ownership, or Control of the proposed Development, including:

(I) a General Partner or General Contractor; and

(II) a Developer; and

(III) a Principal or Affiliate of a General Partner or General Contractor; or

(ii) employed as a consultant, lobbyist or attorney by the Applicant or a Related Party.

(3) A communication under paragraph (2) of this subsection may be oral or in any written form, including electronic communication through the Internet, and must satisfy the following conditions:

(A) the communication must be restricted to technical or administrative matters directly affecting the Application;

(B) the communication must occur or be received on the premises of the Department during established business hours; and

(C) a record of the communication must be maintained and included with the Application for purposes of Board review and must contain the following information:

(i) the date, time, and means of communication;

(ii) the names and position titles of the Persons involved in the communication and, if applicable, the Person's relationship to the Applicant;

(iii) the subject matter of the communication; and

(iv) a summary of any action taken as a result of the communication.

(4) Notwithstanding paragraphs (1) or (2) of this subsection, a Board member or Department employee may communicate without restriction with a Person listed in paragraphs (1) or (2) during any Board meeting or public hearing held with respect to the Application, but not during a recess or other non-record portion of the meeting or hearing.

(5) Paragraph (1) of this subsection 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 all matters related to Applications to be considered by the Board will not be discussed.

(c) **Adherence to Obligations.** (§2306.6720), General Appropriation Act, Article VII, Rider 8(a)). All representations, undertakings and commitments made by an Applicant in the Application process for a Development, whether with respect to Threshold Criteria, Selection Criteria or otherwise, shall be deemed to be a condition to any Commitment Notice, Determination Notice, or Carryover Allocation for such Development, the violation of which shall be cause for cancellation of such Commitment Notice, Determination Notice, or Carryover Allocation by the Department, and if concerning the ongoing features or operation of the Development, shall be enforceable even if not reflected in the LURA. All such representations are enforceable by the Department and the tenants of the Development, including enforcement by administrative penalties for failure to perform, as stated in the representations and in accordance with the LURA. If a Development Owner does not produce the Development as represented in the Application; does not receive approval for an amendment to the Application by the Department prior to implementation of such amendment; or does not provide the necessary evidence for any points received by the required deadline:

(1) The Development Owner must provide a plan to the Department, for approval and subsequent implementation, that incorporates additional amenities to compensate for the non-conforming components; and

(2) The Board will opt either to terminate the Application and rescind the Commitment Notice, Determination Notice or Carryover Allocation Agreement as applicable or the Department must:

(A) Reduce the score for Applications for Competitive Housing Tax Credits that are submitted by an Applicant or Affiliate related to the Development Owner of the non-conforming Development by up to ten points for the two Application Rounds concurrent to, or following, the date that the non-conforming aspect, or lack of financing, was recognized by the Department of the need for the amendment; the placed in service date; or the date the amendment is accepted by the Board.

(B) Prohibit eligibility to apply for Housing Tax Credits for a Tax-Exempt Bond Development that are submitted by an Applicant or Affiliate related to the Development Owner of the non-conforming Development for up to 24 months from the date that the non-conforming aspect, or lack of financing, was recognized by the Department of the need for the amendment; the placed in service date; or the date the amendment is accepted by the Board, less any time delay caused by the Department.

(C) In addition to, or in lieu of, the penalty in subparagraph (A) or (B) of this paragraph, the Board may assess a penalty fee of up to $1,000 per day for each violation.

(3) For amendments approved administratively by the Executive Director, the penalties in paragraph (2) of this subsection will not be imposed.

(d) **Evaluation Process for Competitive Applications Under the State Housing Credit Ceiling.** Applications submitted for competitive consideration under the State Housing Credit Ceiling will be reviewed according to the process outlined in this subsection. An Application, during any of these stages of review, may be determined to be ineligible as further described in §49.5 of this chapter; Applicants will be promptly notified in these instances.

(1) Set-Aside and Selection Criteria Review. All Applications will first be reviewed as described in this paragraph. Applications will be confirmed for eligibility for Set-Asides. Then, each Application will be preliminarily scored according to the Selection Criteria listed in subsection (i) of this section. When a particular scoring criterion involves multiple points, the Department will award points to the proportionate degree, in its determination, to which a proposed Development complied with that criterion. As necessary to complete this process only, Administrative Deficiencies may be issued to the Applicant. This process will generate a preliminary Department score for every Application.

(2) Application Review Assessment. Each Application will be assessed based on either the Applicant's self-score or the Department's preliminary score, region, and any Set-Asides that the Application indicates it is eligible for, consistent with paragraph (5) of this subsection. Those Applications that appear to be most competitive will be reviewed in detail for Eligibility and Threshold Criteria during the Application Round.

(3) Eligibility and Threshold Criteria Review. Applications that appear to be most competitive will be evaluated for eligibility under §49.5(a)(7)-(9), (b)-(f), and §49.6 of this chapter. The remaining portions of the Eligibility Review under §49.5 of this chapter will be performed in the Compliance Evaluation and Eligibility Review as described under paragraph (7) of this subsection. The most competitive Applications will also be evaluated against the Threshold Criteria under subsection (h) of this section. The same portions of the Threshold Criteria review may be performed in the Underwriting Evaluation and Criteria review for financial feasibility by the Department's Real Estate Analysis Division as described under paragraph (6) of this subsection. Applications not meeting Threshold Criteria will be notified of any Administrative Deficiencies, in each event the Applicant will be given an opportunity to correct such deficiencies. Applications not meeting Threshold Criteria after receipt and review of the Administrative Deficiency response will be terminated and the Applicant will be provided a written notice to that effect. The Department shall not be responsible for the Applicant's failure to meet the Threshold Criteria, and any failure of the Department's staff to notify the Applicant of such inability to satisfy the Threshold Criteria shall not confer upon the Applicant any rights to which it would not otherwise be entitled. Not all Applications will be reviewed in detail for Threshold Criteria. To the extent that the review of Threshold Criteria documentation, or submission of Administrative Deficiency documentation, alters the score assigned to the Application, an Applicant will be notified of its final score.

(4) Administrative Deficiencies. If an Application contains Administrative Deficiencies pursuant to §49.3(2) of this chapter which, in the determination of the Department staff, require clarification or correction of information submitted at the time of the Application, the Department staff may request clarification or correction of such Administrative Deficiencies. Because the review for Eligibility, Selection, Threshold Criteria, and review for financial feasibility by the Department's Real Estate Analysis Division may occur separately, Administrative Deficiency requests may be made several times. The Department staff will request clarification or correction in a deficiency notice in the form of an email, or if an e-mail address is not provided in the Application, by facsimile, and a telephone call (only if there has not been confirmation of the receipt of the email within 24 hours) to the Applicant and one other party identified by the Applicant in the Application advising that such a request has been transmitted. If Administrative Deficiencies are not clarified or corrected to the satisfaction of the Department by 5:00 p.m. on the fifth business day following the date of the deficiency notice, then for competitive Applications under the State Housing Credit Ceiling, five points shall be deducted from the Selection Criteria score for each additional day the deficiency remains unresolved. If Administrative Deficiencies are not clarified or corrected by 5:00 p.m. on the seventh business day following the date of the deficiency notice, then the Application shall be terminated. The

time period for responding to a deficiency notice begins at the start of the 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. This Administrative Deficiency process applies to requests for information made by the Real Estate Analysis Division review.

(5) Subsequent Evaluation of Applications and Methodology for Award Recommendations to the Board. The Department will assign, as herein described, Developments for review for financial feasibility by the Department's Real Estate Analysis Division--in general these will be those Applications identified as most competitive and that meet the requirements of Eligibility and Threshold. This procedure will also be used in making recommendations to the Board as follows:

(A) Assignments will be determined by separately selecting the Applications with the highest scores in the At-Risk Set-Aside Statewide until the minimum requirements stated in §49.7(b) of this chapter are attained.

(B) Assignments will then be determined by selecting the Applications with the highest scores in the TRDO-USDA Allocation until the minimum requirements stated in §49.7(b) of this chapter are attained. If an Application in this Set-Aside involves Rehabilitation it will be attributed to, and come from the, At-Risk 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.

(C) Remaining funds within each Uniform State Service Region will then be selected based on the highest scoring Developments in each of the 26 sub-regions, regardless of Set-Aside, in accordance with the requirements under §49.7(a) of this chapter, without exceeding the credit amounts available for a Rural Regional Allocation and Urban Regional Allocation in each region. To the extent that Applications in the At-Risk and TRDO-USDA Set-Asides are not competitive enough within their respective Set-Asides, they will also be able to compete, with no Set-Aside preference, within their appropriate sub-region.

(D) If there are any tax credits set-aside for Developments in a Rural Area in a specific Uniform State Service Region that remain after allocation under subparagraph (C) of this paragraph those tax credits shall then be made available in any other Rural Area in the state to the Application in the most underserved Rural sub-region as compared to the Region's Rural Allocation. (§2306.111(d)(3)). This will be referred to as the Rural collapse.

(E) If there are any tax credits remaining in any sub-region after the Rural collapse, in the Rural Regional Allocation or Urban Regional Allocation, they then will be combined and made available to the Application in the most underserved sub-region as compared to the sub-region's allocation. This will be referred to as the statewide collapse.

(F) Staff will ensure that at least 10% of the State Housing Credit Ceiling is allocated to Qualified Nonprofit Organizations to satisfy the Nonprofit Set-Aside. If 10% is not met, then the Department will add the highest scoring Application by a Qualified Nonprofit Organization statewide until the 10% Nonprofit Set-Aside is met. Staff will ensure that at least 20% of the State Housing Credit Ceiling is allocated to Rural Developments. If this 20% minimum is not met, then the Department will add the highest scoring Rural Development Application statewide until the 20% Rural Development Set-Aside is met. Selection for each of the Set-Asides will take precedence over selection for the Rural Regional Allocation and Urban Regional Allocation. Funds for the Rural Regional Allocation or Urban Regional Allocation within a region, for which there are no eligible feasible Applications, will be redistributed as provided in §49.7(c) of this chapter, Redistribution of Credits. If the Department determines that an allocation recommendation would cause a violation of the $2 million limit described in §49.6(d) of this chapter, the Department will make its recommendation by selecting the Development(s) that most effectively satisfies(y) the Department's goals in meeting Set-Aside and regional allocation goals. Based on Application rankings, 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. To enable the Board to establish a Waiting List, the Department shall underwrite as many additional Applications as necessary to ensure that all available Competitive Housing Tax Credits are allocated within the period required by law. (§2306.6710(a)-(f); §2306.111)

(6) Underwriting Evaluation and Criteria. The Department shall underwrite an Application to determine the financial feasibility of the Development and an appropriate level of Housing Tax

Credits. In determining an appropriate level of Housing Tax Credits, the Department shall, at a minimum, evaluate the cost of the Development based on acceptable cost parameters as adjusted for inflation and as established by historical final cost certifications of all previous Housing Tax Credit allocations for the county in which the Development is to be located; if certifications are unavailable for the county, then the metropolitan statistical area in which the Development is to be located; or if certifications are unavailable under the county or the metropolitan statistical area, then the Uniform State Service Region in which the Development is to be located. Underwriting of a Development will include a determination by the Department, pursuant to the Code §42, that the amount of Housing Tax Credits recommended for commitment to a Development is necessary for the financial feasibility of the Development and its long-term viability as a qualified rent restricted housing property. In making this determination, the Department will use the Underwriting Rules and Guidelines, §1.32 of this title. An Applicant may not change or supplement any part of an Application in any manner after the filing deadline, and may not add any set-asides, increase their credit amount, or revise their unit mix (both income levels and bedroom mixes), except in response to a direct request from the Real Estate Analysis Division to remedy an Administrative Deficiency as further described in §49.3(2) of this chapter or by amendment of an Application after a commitment or allocation of tax credits as further described in §49.17(d) of this chapter. To the extent that the review of Administrative Deficiency documentation during this review alters the score assigned to the Application, Applicants will be re-notified of their final score. Receipt of feasibility points under §49.9(i)(1) of this chapter does not ensure that an Application will be considered feasible during the feasibility evaluation by the Real Estate Analysis Division and conversely, a Development may be found feasible during the feasibility evaluation by the Real Estate Analysis Division even if it did not receive points under subsection (i)(1) of this section. (§2306.6710 and §2306.11)

(A) The Department may have an external party perform the underwriting evaluation to the extent it determines appropriate. The expense of any external underwriting evaluation shall be paid by the Applicant prior to the commencement of the aforementioned evaluation.

(B) The Department will reduce the Applicant's estimate of Developer's and/or General Contractor fees in instances where these exceed the fee limits determined by the Department. In the instance where the General Contractor is an Affiliate of the Development Owner and both parties are claiming fees, General Contractor's overhead, profit, and general requirements, the Department shall be authorized to reduce the total fees estimated to a level that it determines to be reasonable under the circumstances. Further, the Department shall deny or reduce the amount of Housing Tax Credits allocated with respect to any portion of costs which it deems excessive or unreasonable. Excessive or unreasonable costs may include Developer fee attributable to Related Party acquisition costs. The Department also may require bids or Third Party estimates in support of the costs proposed by any Applicant. The Developer's fee limits will be calculated as follows:

(i) New construction pursuant to §42(b)(1)(A) U.S.C., the Developer fee cannot exceed 15% of the project's Total Eligible Basis, less Developer fees, or 20% of the project's Total Eligible Basis, less Developer fees if the Development proposes 49 total Units or less; and

(ii) Acquisition/rehabilitation Developments that are eligible for acquisition credits pursuant to §42(b)(1)(B) U.S.C., the acquisition portion of the Developer fee cannot exceed 15% of the existing structures acquisition basis, less Developer fee if the Development proposes 50 total Units or more, or 20% of the project's Total Eligible Basis, less Developer fees if the Development proposes 49 total Units or less, and will be limited to 4% credits. The rehabilitation portion of the Developer fee cannot exceed 15% of the total rehabilitation basis, less Developer fee if the Development proposes 50 total Units or more, or 20% of the project's Total Eligible Basis, less Developer fees if the Development proposes 49 total Units or less.

(7) Compliance Evaluation and Eligibility Review. After the Department has determined which Developments will be reviewed for financial feasibility, those same Developments will be reviewed for evaluation of the compliance status by the Department's Portfolio Management and Compliance Division, in accordance with Chapter 60 of this title, and will be evaluated in detail for eligibility under §49.5(a)-(f) of this chapter.

(8) Site Evaluation. Site conditions shall be evaluated through a physical site inspection by the Department or its assigns. Such inspection will evaluate the Development Site based upon the criteria set forth in the Site Evaluation form provided in the Application and the inspector shall provide

a written report of such site evaluation. The evaluations shall be based on the condition of the surrounding neighborhood, including appropriate environmental and aesthetic conditions and proximity to retail, medical, recreational, and educational facilities, and employment centers. The site's appearance to prospective tenants and its accessibility via the existing transportation infrastructure and public transportation systems shall be considered. "Unacceptable" sites include, without limitation, those containing a non-mitigable environmental factor that may adversely affect the health and safety of the residents. For Developments applying under the TRDO-USDA Set-Aside, the Department may rely on the physical site inspection performed by TRDO-USDA.

(e) **Evaluation Process for Tax-Exempt Bond Development Applications.** Applications submitted for consideration as Tax-Exempt Bond Developments will be reviewed according to the process outlined in this subsection. An Application, during any of these stages of review, may be determined to be ineligible as further described in §49.5 of this chapter; Applicants will be promptly notified in these instances.

(1) Eligibility and Threshold Criteria Review. All Tax-Exempt Bond Development Applications will first be reviewed as described in this paragraph. Tax-Exempt Bond Development Applications will be confirmed for eligibility under §49.5 and §49.6 of this chapter and Applications will be evaluated in detail against the Threshold Criteria. Tax-Exempt Bond Development Applications found to be ineligible and/or not meeting Threshold Criteria will be notified of any Administrative Deficiencies, in each event the Applicant will be given an opportunity to correct such deficiencies. Applications not meeting the Threshold Criteria after receipt and review of the Administrative Deficiency response will be terminated and the Applicant will be provided a written notice to that effect. The Department shall not be responsible for the Applicant's failure to meet the Threshold Criteria, and any failure of the Department's staff to notify the Applicant of such inability to satisfy the Threshold Criteria shall not confer upon the Applicant any rights to which it would not otherwise be entitled.

(2) Administrative Deficiencies. If an Application contains deficiencies which, in the determination of the Department staff, require clarification or correction of information submitted at the time of the Application, the Department staff may request clarification or correction of such Administrative Deficiencies. Because the review for Eligibility, Threshold Criteria, and review for financial feasibility by the Department's Real Estate Analysis Division may occur separately, Administrative Deficiency requests may be made several times. The Department staff will request clarification or correction in a deficiency notice in the form of an e-mail, or if an e-mail address is not provided in the Application, by facsimile, and a telephone call (only if there has not been confirmation of the receipt of the emai within 24 hours) to the Applicant and one other party identified by the Applicant in the Application advising that such a request has been transmitted. All Administrative Deficiencies shall be clarified or corrected to the satisfaction of the Department within five business days. Failure to resolve all outstanding deficiencies by 5:00 p.m. on the fifth business day following the date of the deficiency notice will result in a penalty fee of $500 for each business day the deficiency remains unresolved. Applications with unresolved deficiencies after 5:00 p.m. on the tenth day following the date of the deficiency notice will be terminated. The Applicant will be responsible for the payment of fees accrued pursuant to this paragraph regardless of any termination pursuant to §49.5(b)(4) of this chapter. The time period for responding to a deficiency notice begins at the start of the 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. The Application will not be presented to the Board for consideration until all outstanding fees have been paid. This Administrative Deficiency process applies equally to the Real Estate Analysis Division review and feasibility evaluation and the same penalty and termination will be assessed.

(3) Underwriting and Compliance Evaluation and Criteria. The Department will assign all eligible Tax-Exempt Bond Development Applications meeting the eligibility and tThreshold requirements for review for financial feasibility by the Department's Real Estate Analysis Division, or the Department may have an external party perform the underwriting evaluation to the extent it determines appropriate. The expense of any external underwriting evaluation shall be paid by the Applicant prior to the commencement of the aforementioned evaluation. The Department or external party shall underwrite an Application to determine the financial feasibility of the Development and an

appropriate level of Housing Tax Credits as further described in subsection (d)(6) of this section. Tax-Exempt Bond Development Applications will also be reviewed for evaluation of the compliance status by the Department's Portfolio Management and Compliance Division in accordance with Chapter 60, Subchapter A, of this title.

(4) Site Evaluation. Site conditions shall be evaluated through a physical site inspection by the Department or its assigns as further described in subsection (d)(8) of this section.

(f) **Evaluation Process for Rural Rescue Applications Under the 2010 Credit Ceiling.** Applications submitted for consideration as Rural Rescue Applications pursuant to §49.10(c) of this chapter under the 2010 Credit Ceiling will be reviewed according to the process outlined in this subsection. A Rural Rescue Application, during any of these stages of review, may be determined to be ineligible as further described in §49.5 of this chapter; Applicants will be promptly notified in these instances.

(1) Procedures for Intake and Review.

(A) Applications for Rural Rescue deals may be submitted between March 2, 2009 and November 15, 2009 and must be submitted in accordance with §49.21 of this chapter. A complete Application must be submitted at least 40 days prior to the date of the Board meeting at which the Applicant would like the Board to act on the proposed Development. Applications must include the full Application Fee as further described in §49.20(c) of this chapter. Applicants must submit documents in accordance with the procedures set out in the 2009 Application Submission Procedures Manual for Volumes I, II, III and IV. Volume IV, evidencing Selection Criteria, MUST be submitted.

(B) Applicants do not need to participate in the Pre-Application process outlined in §49.8 of this chapter, nor will they need to submit pre-certification documents identified in subsection (g) of this section.

(C) Applications will be processed on a first-come, first-served basis. Applications unable to meet all deficiency and underwriting requirements within 30 days of the request by the Department, will remain under consideration, but will lose their submission status and the next Application in line will be moved ahead in order to expedite those Applications most able to proceed. Applications for Rural Rescue will be processed and evaluated as described in this paragraph. Applications will be reviewed to ensure that the Application is eligible as a rural "rescue" Development as described in paragraph (2) of this subsection.

(D) Prior to the Development being recommended to the Board, TRDO-USDA must provide the Department with a copy of the physical site inspection report performed by TRDO-USDA, as provided in subsection (d)(8) of this section.

(2) Eligibility Review. All Rural Rescue Applications will first be reviewed as described in this paragraph and eligibility will be confirmed pursuant to §49.5 and §49.6 of this chapter and the criteria listed in subparagraphs (A)-(C) of this paragraph. Applications found to be ineligible will be notified.

(A) Applications must be funded through TRDO-USDA;

(B) Applications must able to provide evidence that the loan:

(i) has been foreclosed and is in the TRDO-USDA inventory; or

(ii) is being foreclosed; or

(iii) is being accelerated; or

(iv) is in imminent danger of foreclosure or acceleration; or

(v) is for an Application in which two adjacent parcels are involved, of which at least one parcel qualifies under clauses (i) - (iv) of this subparagraph and for which the Application is submitted under one ownership structure, one financing plan an for which there are no market rate units; and

(C) Applicants must be identified as in compliance with TRDO-USDA regulations.

(3) Threshold Review. Applications will be evaluated in detail against the Threshold Criteria. Applications found to be ineligible and/or not meeting Threshold Criteria will be notified of any Administrative Deficiencies, in which event the Applicant is given an opportunity to correct such deficiencies. Applications not meeting Threshold Criteria after receipt and review of the Administrative Deficiency response will be terminated and the Applicant will be provided a written notice to that effect. The Department shall not be responsible for the Applicant's failure to meet the Threshold

Criteria, and any failure of the Department's staff to notify the Applicant of such inability to satisfy the Threshold Criteria shall not confer upon the Applicant any rights to which it would not otherwise be entitled. Not all Applications will be reviewed in detail for Threshold Criteria.

(4) Selection Criteria Review. All Rural Rescue Applications will be evaluated against the Selection Criteria and a score will be assigned to the Application. The minimum score for Selection Criteria is not required to be achieved to be eligible.

(5) Administrative Deficiencies. If an Application contains deficiencies which, in the determination of the Department staff, require clarification or correction of information submitted at the time of the Application, the Department staff may request clarification or correction of such Administrative Deficiencies as further described in subsection (d)(4) of this section.

(6) Underwriting and Compliance Evaluation and Criteria. The Department will assign all eligible Rural Rescue Applications meeting the eligibility and tThreshold requirements for review for financial feasibility by the Department's Real Estate Analysis Division, or the Department may have an external party perform the underwriting evaluation to the extent it determines appropriate. The expense of any external underwriting evaluation shall be paid by the Applicant prior to the commencement of the aforementioned evaluation. The Department or external party shall underwrite an Application to determine the financial feasibility of the Development and an appropriate level of Housing Tax Credits as further described in subsection (d)(6) of this section. Rural Rescue Development Applications will also be reviewed for evaluation of the previous participation by the Department's Portfolio Management and Compliance Division in accordance with Chapter 60 of this title.

(7) Site Evaluation. Site conditions shall be evaluated through a physical site inspection by the Department or its assigns as further described in subsection (d)(8) of this section.

(8) Credit Ceiling and Applicability of this chapter. All Rural Rescue Applicants will receive their credit allocation out of the 2010 Credit Ceiling and therefore, will be required to follow the rules and guidelines identified in the 2010 Qualified Allocation Plan and Rules (QAP). However, because the 2010 QAP will not be in effect during the time period that the Rural Rescue Applications can be submitted, Applications submitted and eligible under the Rural Rescue Set-Aside will be considered by the Board to have satisfied the requirements of the 2010 QAP and are waived from 2010 QAP requirements that are changes from the 2009 QAP, to the extent permitted by statute.

(9) Procedures for Recommendation to the Board. Consistent with subsection (k) of this section, staff will make its recommendation to the Committee. The Committee will make commitment recommendations to the Board. Staff will provide the Board with a written, documented recommendation which will address at a minimum the financial and programmatic viability of each Application and a breakdown of which Selection Criteria were met by the Applicant. The Board will make its decision based on §49.10(a) of this chapter. Any award made to a Rural Rescue Development will be credited against the TRDO-USDA Set-Aside for the 2010 Application Round, as required under subsection (d)(5) of this section.

(10) Limitation on Allocation. No more than $350,000 in credits will be forward committed from the 2010 State Housing Credit Ceiling. To the extent Applications are received that exceed the maximum limitation, staff will prepare the award for Board consideration noting for the Board that the award would require a waiver of this limitation.

(g) **Experience Pre-Certification Procedures.** No later than 14 days prior to the close of the Application Acceptance Period for Competitive Housing Tax Credit Applications, an Applicant must submit the documents required in this subsection to obtain the required pre-certification. For Applications submitted for Tax-Exempt Bond Applications or Applications not applying for Competitive Housing Tax Credits, but applying only under other Multifamily Programs (HOME, Housing Trust Fund, etc.) all of the documents in this section must be submitted with the Application. Upon receipt of the evidence required under this section, a certification from the Department will be provided to the Applicant for inclusion in its Application(s). Evidence must show that one of the Development Owner's General Partners, the Developer or their Principals have a record of successfully constructing or developing residential units (single family or multifamily) in the capacity of owner, General Partner or Developer. If a Public Housing Authority organized an entity for the purpose of developing residential units the Public Housing Authority shall be considered a Principal for the purpose of this requirement. If the individual requesting the certification was not the Development Owner, General Partner or

Developer, but was the individual within one of those entities doing the work associated with the development of the Units (responsibility for work associated with the development of Units includes, but is not limited to, application submission, third-party engagement, post award activities, construction, cost certification, etc.), the individual must show that the units were successfully developed as required in paragraphs (1) and (2) of this subsection, and also provide written confirmation from the entity involved stating that the individual was the person responsible for the development. If rehabilitation experience is being claimed to qualify for an Application involving New Construction, then the rehabilitation must have been substantial and involved at least $12,000 of direct hard cost per unit.

(1) The term "successfully" is defined as acting in a capacity as the owner, General Partner, or Developer of:

(A) At least 100 residential units or, if less than 100 residential units, 80% of the total number of Units the Applicant is applying to build (e.g. you must have 40 units successfully built to apply for 50 Units); or

(B) At least 36 residential units if the Development is a Rural Development; or

(C) At least 25 residential units if the Development has 36 or fewer total Units.

(2) One or more of the following documents must be submitted: American Institute of Architects (AIA) Document A111 - Standard Form of Agreement Between Owner & Contractor, AIA Document G704 - Certificate of Substantial Completion, IRS Form 8609, HUD Form 9822, development agreements, partnership agreements, or other documentation satisfactory to the Department verifying that the Development Owner's General Partner, partner (or if Applicant is to be a limited liability company, the managing member), Developer or their Principals have the required experience. If submitting the IRS Form 8609, only one form per Development is required. The evidence must clearly indicate:

(A) That the Development has been completed (i.e. Development Agreements, Partnership Agreements, etc. must be accompanied by certificates of completion);

(B) That the names on the forms and agreements tie back to the Development Owner's General Partner, partner (or if Applicant is to be a limited liability company, the managing member), Developer or their Principals as listed in the Application; and

(C) The number of units completed or substantially completed.

(h) **Threshold Criteria.** The following Threshold Criteria listed in this subsection are mandatory requirements that must be submitted at the time of Application submission unless specifically indicated otherwise:

(1) Completion and submission of the Application, which includes the entire Uniform Application and any other supplemental forms which may be required by the Department. (§2306.1111)

(2) Completion and submission of the Site Packet as provided in the Application.

(3) Set-Aside Eligibility. Documentation must be provided that confirms eligibility for all Set-Asides under which the Application is seeking funding as required in the Application.

(4) Certifications. The "Certification Form" provided in the Application confirming the following items:

(A) A certification of the basic amenities selected for the Development. All Developments must meet at least the minimum threshold of points. These points are not associated with the sSelection Ceriteria points in subsection (i) of this section. The amenities selected must be made available for the benefit of all tenants. If fees in addition to rent are charged for amenities reserved for an individual tenant's use, then the amenity may not be included among those provided to satisfy this requirement. Developments must provide a minimum number of common amenities in relation to the Development size being proposed. The amenities selected must be selected from clause (ii) of this subparagraph and made available for the benefit of all tenants. Developments proposing Rehabilitation (excluding Reconstruction) or proposing Single Room Occupancy will receive 1.5 points for each point item (do not round). Applications for non-contiguous scattered site housing, including New Construction, reconstruction, Adaptive Reuse, Rehabilitation, and single-family design, will have the tThreshold test applied based on the number of Units per individual site, and must submit a separate certification for each individual site under control by the Applicant. Any future changes in these amenities, or substitution of these amenities, must be approved by the Department in

accordance with §49.17(d) of this chapter and may result in a decrease in awarded credits if the substitution or change includes a decrease in cost, or in the cancellation of a Commitment Notice or Carryover Allocation if all of the Common Amenities claimed are no longer met.

(i) Applications must meet a minimum threshold of points (based on the total number of Units in the Development) as follows:

(I) Total Units are less than 16, 0 points are required to meet Threshold for Single Room Occupancy and 1 point is required to meet tThreshold for all other Developments;

(II) Total Units are 16 to 24, 2 points are required to meet Threshold;

(III) Total Units are 25 to 40, 3 points are required to meet Threshold;

(IV) Total Units are 41 to 76, 6 points are required to meet Threshold;

(V) Total Units are 77 to 99, 9 points are required to meet Threshold;

(VI) Total Units are 100 to 149, 12 points are required to meet Threshold;

(VII) Total Units are 150 to 199, 15 points are required to meet Threshold; or

(VIII) Total Units are 200 or more, 18 points are required to meet Threshold.

(ii) Amenities for selection include those items listed in subclauses (I)-(XXV) of this clause. Both Developments designed for families and Qualified Elderly Developments can earn points for providing each identified amenity unless the item is specifically restricted to one type of Development. All amenities must meet accessibility standards as further described in subparagraphs (D) and (F) of this paragraph. An Application can only count an amenity once, therefore combined functions (a library which is part of a community room) only count under one category. Spaces for activities must be sized appropriately to serve the anticipated population.

(I) Full perimeter fencing (2 points);

(II) Controlled gate access (1 point);

(III) Gazebo w/sitting area (1 point);

(IV) Accessible walking/jogging path separate from a sidewalk (1 point);

(V) Community laundry room with at least one front loading washer (1 point);

(VI) Barbecue grill and picnic table-at least one of each for every 50 Units (1 point);

(VII) Covered pavilion that includes barbecue grills and tables (2 points);

(VIII) Swimming pool (3 points);

(IX) Furnished fitness center equipped with a minimum of two of the following fitness equipment options with at least one option per every 40 Units or partial increment of 40 Units: stationary bicycle, elliptical trainer, treadmill, rowing machine, universal gym, multi-functional weight bench, sauna, stair climber, etc. The maximum number of equipment options required for any Development, regardless of number of Units, shall be five (2 points);

(X) Equipped and functioning business center or equipped computer learning center with 1 computer for every 30 Units proposed in the Application, 1 printer for every 3 computers (with minimum of one printer), and 1 fax machine (2 points);

(XI) Furnished Community room (1 point);

(XII) Library with an accessible sitting area (separate from the community room) (1 point);

(XIII) Enclosed sun porch or covered community porch/patio (2 points);

(XIV) Service coordinator office in addition to leasing offices (1 point);

(XV) Senior Activity Room (Arts and Crafts, etc.) (2 points);

(XVI) Health Screening Room (1 point);

(XVII) Secured Entry (elevator buildings only) (1 point);

(XVIII) Horseshoe pit, putting green or shuffleboard court (1 point);

(XIX) Community Dining Room w/full or warming kitchen (3 points);

(XX) One Children's Playscape Equipped for 5 to 12 year olds, or one Tot Lot (1 Point);

(XXI) Two Children's Playscapes Equipped for 5 to 12 year olds, two Tot Lots, or one of each (2 points);

(XXII) Sport Court (Tennis, Basketball or Volleyball) (2 points);

(XXIII) Furnished and staffed Children's Activity Center (3 points);

(XXIV) Community Theater Room equipped with a 52 inch or larger screen with surround sound equipment; DVD player; and theater seating (3 points); or

(XXV) Green Building amenities:

(-a-) evaporative coolers (for use in designated counties listed in the Application Materials, 2009 Housing Tax Credit Site Demographics Information) (1 point);

(-b-) passive solar heating/cooling (3 points);

(-c-) water conserving features (toilets using less than or equal to 1.6 gallons per flush, showerheads, kitchen faucets or bathroom faucets using less than or equal to 2.0 gallons per minute) (1 point for each);

(-d-) solar water heaters (2 points);

(-e-) collected water (at least 50%) for irrigation purposes (2 points);

(-f-) sub-metered utility meters (3 points);

(-g-) Energy Star qualified windows and glass doors (2 points);

(-h-) thermally and draft efficient doors (SHGC of 0.40 and U-value specified by climate zone according to the 2006 IECC)(2 points);

(-i-) photovoltaic panels for electricity and design and wiring for the use of such panels (3 points);

(-j-) construction waste management and implementation of EPA's Best Management Practices for erosion and sedimentation control during construction (1 point);

(-k-) exterior envelope insulation, vapor barriers and air barriers greater than or equal to Energy Star air barrier and insulation criteria (2 points);

(-l-) HVAC, windows, domestic hot water heater or insulation that exceeds Energy Star standards or exceeds the IRC 2006 (2 points);

(-m-) bamboo flooring, wool carpet, linoleum flooring, straw board, poplar OSB, or cotton batt insulation (2 points);

(-n-) recycling service provided throughout the compliance period (1 point); or

(-o-) water permeable walkways (1 point).

(B) A certification that the Development will have all of the following Amenities at no charge to the tenants. All New Construction or Reconstruction Units must provide the amenities in clauses (i)-(vii) of this subparagraph. Rehabilitation (excluding Reconstruction) and Adaptive Reuse must provide the amenities in clauses (ii) - (ix) of this subparagraph unless expressly identified as not required. (§2306.187)

(i) All New Construction Units must be wired with RG-6 COAX or better and CAT3 phone cable or better, wired to each bedroom, dining room and living room;

(ii) Blinds or window coverings for all windows;

(iii) Disposal and Energy-Star or equivalently rated dishwasher (not required for TRDO-USDA or SRO Developments);

(iv) Energy-Star or equivalently rated (not required for SRO Developments) Refrigerator;

(v) Exhaust/vent fans (vented to the outside) in bathrooms;

(vi) Energy-Star or equivalently rated ceiling fans in living areas and bedrooms; and

(vii) Energy-Star or equivalently rated lighting fixtures in all Units.

(C) A certifiation that the Development will meet the minimum threshold for size of Units as provided in clauses (i) - (v) of this subparagraph. These minimum requirements are not associated with the sSelection cCriteria points in subsection (i) of this section. Developments proposing Rehabilitation (excluding Reconstruction) or Single Room Occupancy will not be subject to the requirements of this subparagraph.

(i) 550 square feet for an efficiency Unit;

(ii) 650 square feet for a ~~non-elderly~~ one Bedroom Unit that is not in a Qualified Elderly Development; 550 square feet for a~~n elderly~~ one Bedroom Unit in a Qualified Elderly Development;

(iii) 900 square feet for a ~~non-elderly~~ two Bedroom Unit that is not in a Qualified Elderly Development; 700 square feet for a~~n elderly~~ two Bedroom Unit in a Qualified Elderly Development;

(iv) 1,000 square feet for a three Bedroom Unit; and

(v) 1,200 square feet for a four Bedroom Unit.

(D) A certification that 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.

(E) A certification that the Applicant is 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.), and 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, the Code Requirements for Housing Accessibility 2000 (or as amended from time to time) produced by the International Code Council and the Texas Accessibility Standards. (§2306.257; §2306.6705(7))

(F) A certification that 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, and that the Applicant will submit a report at least once in each 90-day period following the date of the Commitment Notice until the Cost Certification is submitted, in a format prescribed by the Department and provided at the time a Commitment Notice is received, on the percentage of businesses with which the Applicant has contracted that qualify as Minority Owned Businesses. (§2306.6734)

(G) Pursuant to §2306.6722, any Development supported with a Housing Tax Credit allocation shall comply with the accessibility standards that are required under §504, Rehabilitation Act of 1973 (29 U.S.C. §794), and specified under 24 C.F.R. Part 8, Subpart C. The Applicant must provide a certification from the Development engineer, an accredited architect or Department-approved third

party accessibility specialist, that the Development will comply with the accessibility standards that are required under §504, Rehabilitation Act of 1973 (29 U.S.C. §794), and specified under 24 C.F.R. Part 8, Subpart C and this subparagraph. (§2306.6722 and §2306.6730)

(H) For Developments involving New Construction (excluding New Construction of non-residential buildings) where some Units are two-stories or single family design and are normally exempt from Fair Housing accessibility requirements, a minimum of 20% of each Unit type (i.e. one bedroom, two bedroom, three bedroom) must provide an accessible entry level and all common-use facilities in compliance with the Fair Housing Guidelines, and include a minimum of one bedroom and one bathroom or powder room at the entry level. A similar certification will also be required after the Development is completed from an inspector, architect, or accessibility specialist.

(I) A certification that the Development will be equipped with energy saving devices that meet the standard statewide energy code adopted by the state energy conservation office, unless historic preservation codes permit otherwise for a Development involving historic preservation. All Units must be air-conditioned. The measures must be certified by the Development architect as being included in the design of each tax credit Unit at the time the 10% Test Documentation is submitted and in actual construction upon Cost Certification. (§2306.6725(b)(1))

(J) A certification that the Development will be built by a General Contractor that satisfies the requirements of the General Appropriation Act, Article VII, Rider 8(c) applicable to the Department which requires that the General Contractor hired by the Development Owner or the Applicant, if the Applicant serves as General Contractor, must demonstrate a history of constructing similar types of housing without the use of federal tax credits.

(K) A certification that the Development Owner agrees to establish a reserve account consistent with §2306.186 Texas Government Code and as further described in §1.37 of this title.

(L) A certification that the Applicant, Developer, or any employee or agent of the Applicant has not formed a Neighborhood Organization for purposes of subsection (i)(2) of this section, has not given money or a gift to cause the Neighborhood Organization to take its position of support or opposition, nor has provided any assistance to a Neighborhood Organization to meet the requirements under subsection (i)(2) of this section which are not allowed under that subsection, as it relates to the Applicant's Application or any other Application under consideration in 2009.

(M) Operate in accordance with the requirements pertaining to rental assistance in Chapter 60 of this title.

(N) A certification that the Development Owner will contract with a Management Company throughout the Compliance Period that will perform criminal background checks on all adult tenants, head and co head of households.

(5) Design Items. This exhibit will provide:

(A) All of the architectural drawings identified in clauses (i) - (iii) of this subparagraph. While full size design or construction documents are not required, the drawings must have an accurate and legible scale and show the dimensions. All Developments involving New Construction, or conversion of existing buildings not configured in the Unit pattern proposed in the Application, must provide all of the items identified in clauses (i) - (iii) of this subparagraph. For Developments involving Rehabilitation for which the Unit configurations are not being altered, only the items identified in clauses (i) and (iii) of this subparagraph are required:

(i) A site plan which:

(I) Is consistent with the number of Units and Unit mix specified in the "Rent Schedule" provided in the Application;

(II) Is consistent with the number of buildings and building type/unit mix specified in the "Building/Unit Configuration" provided in the Application; and

(III) Identifies all residential and common buildings;

(ii) Floor plans and elevations for each type of residential building and each common area building clearly depicting the height of each floor and a percentage estimate of the exterior composition. Adaptive Reuse Developments, are only required to provide building plans delineating each unit by number, type and area consistent with those in the "Rent Schedule" and pictures of each elevation of the existing building depicting the height of each floor and percentage estimate of the exterior composition; and

(iii) Unit floor plans for each type of Unit. The net rentable areas these Unit floor plans represent should be consistent with those shown in the "Rent Schedule" and "Building/Unit Configuration" provided in the Application. Adaptive Reuse Developments, are only required to provide Unit floor plans for each distinct typical Unit type (i.e. one-bedroom, two-bedroom) and for all Units types that vary in area by 10% from the typical Unit; and

(B) A boundary survey of the proposed Development Site and of the property to be purchased. In cases where more property is purchased than the proposed Development Site, the survey or plat must show the survey calls for both the larger site and the Development Site. The survey must clearly delineate the flood plain boundary lines and show all easements. The survey does not have to be recent; but it must show the property purchased and the property proposed for the Development Site. In cases where the Development Site is only a part of the site being purchased, the depiction or drawing of the Development Site may be professionally compiled and drawn by an architect, engineer or surveyor.

(6) Evidence of the Development's development costs and corresponding credit request and syndication information as described in subparagraphs (A) - (G) of this paragraph.

(A) A written narrative describing the financing plan for the Development, including any non-traditional financing arrangements; the use of funds with respect to the Development; the funding sources for the Development including construction, permanent and bridge loans, rents, operating subsidies, and replacement reserves; and the commitment status of the funding sources for the Development. This information must be consistent with the information provided throughout the Application. (§2306.6705(1))

(B) All Developments must submit the "Development Cost Schedule" provided in the Application. This exhibit must have been prepared and executed not more than 6 months prior to the close of the Application Acceptance Period.

(C) Provide a letter of commitment from a syndicator that, at a minimum, provides an estimate of the amount of equity dollars expected to be raised for the Development in conjunction with the amount of Housing Tax Credits requested for allocation to the Development Owner, including pay-in schedules, syndicator consulting fees and other syndication costs. No syndication costs should be included in the Eligible Basis. (§2306.6705(2) and (3))

(D) For Developments located in a Qualified Census Tract (QCT) as determined by the Secretary of HUD or otherwise qualifying for a 30% increase in Eligible Basis, pursuant to the Code, §42(d)(5)(C) or §49.6(h)(3) and (4) of this chapter, if permitted under §49.6(h) of this chapter, Applicants must submit a copy of the census map clearly showing that the proposed Development is located within a QCT. Census tract numbers must be clearly marked on the map, and must be identical to the QCT number stated in the Department's Reference Manual.

(E) Rehabilitation Developments (including reconstruction and Adaptive Reuse) must submit a Property Condition Assessment meeting the requirements of paragraph (14)(C) of this subsection.

(F) If offsite costs are included in the budget as a line item, or embedded in the site acquisition contract, or referenced in the utility provider letters, then the supplemental form "Off Site Cost Breakdown" must be provided.

(G) If projected site work costs include unusual or extraordinary items or exceed $9,000 per Unit, then the Applicant must provide a detailed cost breakdown prepared by a Third Party engineer or architect, and a letter from a certified public accountant allocating which portions of those site costs should be included in Eligible Basis and which ones may be ineligible.

(7) Evidence of readiness to proceed as evidenced by at least one of the items under each of subparagraphs (A)-(D) of this paragraph:

(A) Evidence of Property control in the name of the Development Owner. If the evidence is not in the name of the Development Owner, then the documentation should reflect an expressed ability to transfer the rights to the Development Owner. All of the sellers of the proposed Property for the 36 months prior to the first day of the Application Acceptance Period and their relationship, if any, to members of the Development team must be identified at the time of Application (not required at Pre-Application). One of the following items described in clauses (i)-(iii) of this subparagraph must be provided, and if the acquisition can be characterized as an identity of

interest transaction as described in §1.32 of this title, items described in clause (iv) of this subparagraph must also be provided:

(i) A recorded warranty deed with corresponding executed settlement statement, unless required to submit items under clause (iv) of this subparagraph; or

(ii) A contract for lease (the minimum term of the lease must be at least 45 years) which is valid for the entire period the Development is under consideration for tax credits; or

(iii) A contract for sale, an exclusive option to purchase or a lease which is valid for the entire period the Development is under consideration for tax credits. For Tax Exempt Bond Development Applications, site control must be valid through December 1, 2008 with option to extend through March 1, 2009 (Applications submitted for lottery) or 90 days from the date of the bond reservation with the option to extend through the scheduled TDHCA Board meeting at which the award of Housing Tax Credits will be considered (Applications not submitted for lottery). The potential expiration of site control does not warrant the Application being presented to the TDHCA Board prior to the scheduled meeting.

(iv) If the acquisition can be characterized as an identity of interest transaction, as described in §1.32 of this title, subclauses (I), (II) and (III) of this clause, the Applicant must provide (not required at Pre-Application):

(I) Documentation of the original acquisition cost in the form of a settlement statement or, if a settlement statement is not available, the seller's most recent audited financial statement specifically indicating the asset value for the Development Site; and

(II) If the original acquisition cost evidenced by subclause (I) of this clause is less than the acquisition cost claimed in the Application;

(-a-) An appraisal meeting the requirements of paragraph (14)(D) of this subsection; and

(-b-) Any other verifiable costs of owning, holding, or improving the Property 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, a calculated return on equity at a rate consistent with the historical returns of similar risks, the cost of any physical improvements made to the property, the cost of rezoning, replatting or developing the property, or any costs to provide or improve access to the property.

(-2-) For transactions which include existing buildings that will be rehabilitated or otherwise maintained 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, a calculated return on equity at a rate consistent with the historical returns of similar risks, and allow 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.

(III) In no instance will the acquisition cost utilized by the underwriter exceed the lesser of the original acquisition cost evidenced by subclause (I) of this clause plus costs identified in subclause (II)(-b-) of this clause, or the "as-is" value conclusion evidenced by subclause (II)(-a-) of this clause.

(v) As described in clauses (ii) and (iii) of this subparagraph, property control must be continuous. Closing on the property is acceptable, as long as evidence is provided that there was no period in which control was not retained.

(B) Evidence from the appropriate local municipal authority that satisfies one of clauses (i) - (iii) of this subparagraph. Documentation may be from more than one department of the municipal authority and must have been prepared and executed not more than 6 months prior to the close of the Application Acceptance Period. (§2306.6705(5))

(i) For New Construction or reconstruction Developments, a letter from the chief executive officer of the Local pPolitical sSubdivision or another local official with appropriate jurisdiction stating that (For Tax-Exempt Bond Applications the items in clauses (I) - (III) of this clause must be submitted no later than 14 days prior to the Board meeting when the housing tax credits will be considered):

(I) The Development is located within the boundaries of a ~~p~~Local Political ~~s~~Subdivision which does not have a zoning ordinance; and either subclauses (II) or (III) of this clause;

(II) The letter must state that the Development is consistent with a local consolidated plan, comprehensive plan, or other local planning document that addresses affordable housing; or

(III) The letter must state that there is a need for affordable housing, if no such planning document exists.

(ii) For New Construction or reconstruction Developments, a letter from the chief executive officer of the Local ~~p~~Political ~~s~~Subdivision or another local official with appropriate jurisdiction stating that:

(I) The Development is permitted under the provisions of the zoning ordinance that applies to the location of the Development; or

(II) The Applicant is in the process of seeking the appropriate zoning and has signed and provided to the political subdivision a release agreeing to hold the political subdivision and all other parties harmless in the event that the appropriate zoning is denied (§2306.6705(1)(B)). The Applicant must also provide at the time of Application a copy of the application for appropriate zoning filed with the local entity responsible for zoning approval and proof of delivery of that application in the form of a signed certified mail receipt, signed overnight mail receipt, or confirmation letter from said official. Final approval of appropriate zoning must be achieved and documentation of acceptable zoning for the Development, as proposed in the Application, must be provided to the Department at the time the Commitment Fee, or Determination Notice Fee, is paid. If this evidence is not provided with the Commitment Fee, any commitment of credits will be rescinded. No extensions may be requested for the deadline for submitting evidence of final approval of appropriate zoning.

(iii) For Rehabilitation Developments, if the property is currently a non-conforming use as presently zoned, a letter from the chief executive officer of the political subdivision or another local official with appropriate jurisdiction which addresses the items in subclauses (I) - (IV) of this clause:

(I) A detailed narrative of the nature of non-conformance;

(II) The applicable destruction threshold;

(III) Owner's rights to reconstruct in the event of damage; and

(IV) Penalties for noncompliance.

(C) Evidence of interim and permanent financing sufficient to fund the proposed Total Housing Development Cost less any other funds requested from the Department and any other sources documented in the Application. Any local, state or federal financing identified in this section which restricts household incomes at any AMGI lower than restrictions required pursuant to the Rules must be identified in the Rent Schedule and the local, state or federal income restrictions must include corresponding rent levels that do not exceed 30% of the income limitation in accordance with §42(g) of the Code. The income and corresponding rent restrictions will be imposed by the Housing Tax Credit LURA and monitored throughout the extended use period. Such evidence must be consistent with the sources and uses of funds represented in the Application and shall be provided in one or more of the following forms described in clauses (i) - (iv) of this subparagraph:

(i) Bona fide financing in place as evidenced by:

(I) A valid and binding loan agreement; and

(II) Deed(s) of trust in the name of the Development Owner ~~expressly allowing transfer to the Development Owner~~ as grantor; ~~and~~ or

(III) For TRDO-USDA §515 Developments involving, an executed TRDO-USDA letter indicating TRDO-USDA has received a Consent Request, also referred to as a Preliminary Submittal, as described in 7 CFR §3560.406 and a copy of the original loan documents; or,

(ii) Bona fide commitment or term sheet for the interim and permanent loans issued by a lending institution or mortgage company that is actively and regularly engaged in the business of lending money which is addressed to the Development Owner and which has been executed by the lender (the term of the loan must be for a minimum of 15 years with at least a 30 year amortization). The commitment must state an expiration date and all the terms and conditions applicable to the financing including the mechanism for determining the interest rate, if applicable,

and the anticipated interest rate and any required Guarantors. Such a commitment may be conditional upon the completion of specified due diligence by the lender and upon the award of tax credits; or,

(iii) Any Federal, State or local gap financing, whether of soft or hard debt, must be identified at the time of Application as evidenced by:

(I) Evidence from the lending agency that an application for funding has been made or from the Applicant indicating an intent to apply for funding; and

(II) A term sheet which clearly describes the amount and terms of the funding, and the date by which the funding determination will be made and any commitment issued, must be submitted; and

(III) Evidence of application for funding from another Department program is not required except as indicated on the Uniform Application, as long as the Department funding is on a concurrent funding period with the Application submitted and the Applicant clearly indicates that such an Application has been filed as required by the Application Submission Procedures Manual; and

(IV) If the commitment from any funding source identified in this subparagraph has not been received by the date the Department's Commitment Notice is to be submitted, the Application will be reevaluated for financial feasibility. If the Application is infeasible without the funding source, the Commitment Notice may be rescinded; or

(iv) If the Development will be financed through more than 5% of Development Owner contributions, provide a letter from ~~an~~ Third Party CPA verifying the capacity of the Development Owner to provide the proposed financing with funds that are not otherwise committed together with a letter from the Development Owner's bank or banks confirming that sufficient funds are available to the Development Owner. Documentation must have been prepared and executed not more than 6 months prior to the close of the Application Acceptance Period.

(D) Provide the documents in clauses (i) - (iii) of this subparagraph:

(i) A copy of the full legal description for the Development Site; and

(ii) A current valuation report from the county tax appraisal district and documentation of the current total property tax rate for the Development Site, and

(iii) A copy of:

(I) The current title policy which shows that the ownership (or leasehold) of the Development Site is vested in the name of the Development Owner; or

(II) a current title commitment with the proposed insured matching ~~exactly~~ the name of the Development Owner and the title of the Development Site vested in the ~~exact~~ name of the seller or lessor as indicated on the sales contract, option or lease.

(III) If the title policy or commitment is more than six months old as of the day the Application Acceptance Period closes, then a letter from the title company indicating that nothing further has transpired on the policy or commitment.

(8) Evidence in the form of a certification of all of the notifications described in the subparagraphs of this paragraph. Such notices must be prepared in accordance with the "Public Notifications" certification provided in the Application.

(A) Evidence in the form of a certification that the Applicant met the requirements and deadlines identified in clauses (i) - (iii) of this subparagraph. Notification must not be older than three months from the first day of the Application Acceptance Period. (§2306.6705(9)). If evidence of these notifications was submitted with the Pre-Application Threshold for the same Application and satisfied the Department's review of Pre-Application Threshold, then no additional notification is required at Application, except that re-notification is required by tax credit Applicants who have submitted a change in the Application, whether from Pre-Application to Application or as a result of an Administrative Deficiency that reflects a total Unit increase of greater than 10%, a total increase of greater than 10% for any given level of AMGI, or a change to the population being served (elderly, Intergenerational Housing or family). For Applications submitted for Tax-Exempt Bond Developments or Applications not applying for Tax Credits, but applying only under other Multifamily Programs (HOME, Housing Trust Fund, etc.), notifications and proof thereof must not be older than three months prior to the date the Volume III of the Application is submitted.

(i) The Applicant must request a list of Neighborhood Organizations on record with the county and state whose boundaries include the proposed Development Site from local elected officials as follows:

(I) No later than January 20, 2009 for Competitive Housing Tax Credit Applications (or for Tax-Exempt Bond Applications, Rural Rescue, or Applications not applying for Tax Credits, but applying only for other Multifamily Programs such as HOME, Housing Trust Fund, etc., not later than 14 days prior to submission of the Threshold documentation), the Applicant must e-mail, fax or mail with registered receipt a completed "Neighborhood Organization Request" letter as provided in the Application to the local elected official for the city and county where the Development is proposed to be located. If the Development is located in an Area that has district based local elected officials, or both at-large and district based local elected officials, the request must be made to the city council member or county commissioner representing that district; if the Development is located an Area that has only at-large local elected officials, the request must be made to the mayor or county judge for the jurisdiction. If the Development is not located within a city or is located in the Extra Territorial Jurisdiction (ETJ) of a city, the county local elected official must be contacted. In the event that local elected officials refer the Applicant to another source, the Applicant must request Neighborhood Organizations from that source in the same format.

(II) If no reply letter is received from the local elected officials by February 20, 2009, (or For Tax-Exempt Bond Developments or Applications not applying for Tax Credits, but applying only for other Multifamily Programs such as HOME, Housing Trust Fund, etc., by 7 days prior to the submission of the Application), then the Applicant must certify to that fact in the "Application Notification Certification Form" provided in the Application.

(III) The Applicant must list all Neighborhood Organizations on record with the county or state whose boundaries include the proposed Development Site as outlined by the local elected officials, or that the Applicant has knowledge of as of the submission of the Application, in the "Application Notification Certification Form" provided in the Application.

(ii) Not later than the date the Application is submitted, notification must be sent to all of the following individuals and entities by e-mail, fax or mail with registered receipt return or similar tracking mechanism e-mail, fax or mail with registered receipt in the format required in the "Application Notification Template" provided in the Application. Developments located in an Extra Territorial Jurisdiction (ETJ) of a city are not required to notify city officials, however, are requred to notify county officials. Evidence of Notification is required in the form of a certification in the "Application Notification Certification Form" provided in the Application, although it is encouraged that Applicants retain proof of delivery of the notifications, to the persons or entites prescribed subclauses (I)-(IX) of this clause, in the event that the Department requires proof of Notification. Evidence of proof of delivery is demonstrated by signed receipt for mail or courier delivery and confirmation of receipt by recipient for facsimile and electronic mail. Officials to be notified are those officials in office at the time the Application is submitted.

(I) Neighborhood Organizations on record with the state or county whose boundaries include the proposed Development Site as identified in clause (i)(III) of this subparagraph.

(II) Superintendent of the school district containing the Development;

(III) Presiding officer of the board of trustees of the school district containing the Development;

(IV) Mayor of the Governing Body of any municipality containing the Development;

(V) All elected members of the Governing Body of any municipality containing the Development;

(VI) Presiding officer of the Governing Body of the county containing the Development;

(VII) All elected members of the Governing Body of the county containing the Development;

(VIII) State senator of the district containing the Development; and

(IX) State representative of the district containing the Development.

(iii) Each such notice must include, at a minimum, all of the following:

(I) The Applicant's name, address, 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) Statement of whether the Development proposes New Construction, reconstruction, Adaptive Reuse or Rehabilitation;

(V) The type of Development being proposed (single family homes, duplex, apartments, townhomes, high-rise etc.) and population being served (family, Intergenerational Housing or elderly);

(VI) The approximate total number of Units and approximate total number of low-income Units;

(VII) The approximate percentage of Units serving each level of AMGI (e.g. 20% at 50% of AMGI, etc.) and the approximate percentage of Units that are market rate;

(VIII) The number of Units and proposed rents (less utility allowances) for the low-income Units and the number of Units and the proposed rents for any market rate Units. Rents to be provided are those that are effective at the time of the Application, which are subject to change as annual changes in the area median income occur; and

(IX) The expected completion date if credits are awarded.

(B) Signage on Property or Alternative. A Public Notification Sign shall be installed on the Development Site prior to the date the Application is submitted unless prohibited by local ordinance or code or restrictive covenants. Scattered site Developments must install a sign on each non-contiguous Development Site. For Competitive Housing Tax Credit Applications the date, time and location of the public hearing, as published by the Department and closest to the Development Site, must be included on the sign. For Tax-Exempt Bond Developments, regardless of the Priority of the Application or the Issuer, the sign must be installed within thirty (30) days of the Department's receipt of Volumes I and II. The date, time and location of the bond Tax Exempt Fiscal Responsibility Act (TEFRA) public hearing must be included on the sign no later than thirty (30) days prior to the scheduled public hearing. Evidence submitted with the Application must include photographs of the site with the installed sign. The sign must be at least 4 feet by 8 feet in size and located within twenty feet of, and facing, the main road adjacent to the site. The sign shall be continuously maintained on the site until the day that the Board takes final action on the Application for the Development. The information and lettering on the sign must meet the minimum requirements identified in the Application. For Tax-Exempt Bond Developments, regardless of the issuer, the Applicant must certify to the fact that the sign was installed within 30 days of submission and the date, time and location of the TEFRA hearing is indicated on the sign at least 30 days prior to the date of the scheduled hearing. In areas where the Public Notification Sign is prohibited by local ordinance or code or restrictive covenants, an alternative to installing a Public Notification Sign and at the same required time, the Applicant shall, mail written notification to those addresses described in either clause (i) or (ii) of this subparagraph. This written notification must include the information otherwise required for the sign as provided in the Application. The final Application must include a map of the proposed Development Site and mark the distance required by clause (i) or (ii) of this subparagraph, up to 1,000 feet, showing street names and addresses; a list of all addresses the notice was mailed to; an exact copy of the notice that was mailed; and a certification that the notice was mailed through the U.S. Postal Service and stating the date of mailing. If Public Notification Sign is prohibited by local ordinance or code or restrictive covenants, evidence of the applicable ordinance or code or restrictive covenants must be submitted in the Application.

(i) All addresses required for notification by local zoning notification requirements. For example, if the local zoning notification requirement is notification to all those addresses within 200 feet, then that would be the distance used for this purpose; or

(ii) For Developments located in communities that do not have zoning, communities that do not require a zoning notification or those located outside of a municipality, all addresses located within 1,000 feet of any part of the proposed Development Site.

(C) If any of the Units in the Development are occupied at the time of Application, then the Applicant must certify that it has notified each tenant at the Development of all the information otherwise required on the sign, including the Department's public hearing schedule for comment on submitted Applications.

(9) Evidence of the Development's proposed ownership structure and the Applicant's previous experience as described in subparagraphs (A) - (D) of this paragraph.

(A) Chart which clearly illustrates the complete organizational structure of the final proposed Development Owner and of any Developer or Guarantor, providing the names and ownership percentages of all Persons having an ownership interest in the Development Owner or the Developer or Guarantor, as applicable, whether directly or through one or more subsidiaries. Nonprofit entities, public housing authorities, publicly traded corporations, individual board members, and executive directors must be included in this exhibit.

(B) Each Applicant, Development Owner, Developer or Guarantor, or any entity shown on an organizational chart as described in subparagraph (A) of this paragraph that has ownership interest in the Development Owner, Developer or Guarantor, shall provide the following documentation, as applicable:

(i) For entities that are not yet formed but are to be formed either in or outside of the state of Texas, a certificate of reservation of the entity name from the Texas Secretary of State; or

(ii) For existing entities whether formed in or outside of the state of Texas, evidence that the entity has the authority to do business in Texas or has applied for such authority.

(C) Evidence that each entity shown on the organizational chart described in subparagraph (A) of this paragraph that has ownership interest in the Development Owner, Developer or Guarantor, has provided a copy of the completed and executed Previous Participation and Background Certification Form to the Department. Nonprofit entities, public housing authorities and publicly traded corporations are required to submit documentation for the entities involved; documentation for individual board members and executive directors is required for this exhibit. Any Person receiving more than 10% of the Developer fee will also be required to submit documents for this exhibit. The 2009 versions of these forms, as required in the Uniform Application, must be submitted. Units of local government are also required to submit this document. The form must include a list of all developments that are, or were, previously under ownership or Control of the Person. All participation in any TDHCA funded or monitored activity, including non-housing activities, must be disclosed.

(D) Evidence, in the form of a certification, that one of the Development Owner's General Partners, the Developer or their Principals have a record of successfully constructing or developing residential units in the capacity of owner, General Partner or Developer. Evidence must be a certification from the Department that the Person with the experience satisfies this exhibit, as further described under subsection (g)(1) of this section. Applicants must request this certification at least fourteen days prior to the close of the Application Acceptance Period. Applicants must ensure that the Person whose name is on the certification appears in the organizational chart provided in subparagraph (A) of this paragraph.

(10) Evidence of the Development's projected income and operating expenses as described in subparagraphs (A) - (D) of this paragraph:

(A) All Developments must provide a 30-year proforma estimate of operating expenses and supporting documentation used to generate projections (operating statements from comparable properties).

(B) 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, which at a minimum identifies 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. (§2306.6705(4))

(C) Applicant must provide 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.

(D) Occupied Developments undergoing Rehabilitation must also submit the items described in clauses (i) - (iv) of this subparagraph.

(i) The items in subclauses (I) and (II) of this clause are required unless the current property owner is unwilling to provide the required documentation. In that case, submit a signed statement as to the Applicant's inability to provide all documentation as described.

(I) Submit at least one of the following:

(-a-) Historical monthly operating statements of the subject Development for 12 consecutive months ending not more than 3 months from the first day of the Application Acceptance Period;

(-b-) The two most recent consecutive annual operating statement summaries;

(-c-) The most recent consecutive six months of operating statements and the most recent available annual operating summary;

(-d-) All monthly or annual operating summaries available and a written statement from the seller refusing to supply any other summaries or expressing the inability to supply any other summaries, and any other supporting documentation used to generate projections may be provided; and

(II) A rent roll not more than 6 months old as of the first day the Application Acceptance Period, that discloses the terms and rate of the lease, rental rates offered at the date of the rent roll, Unit mix, tenant names or vacancy, and dates of first occupancy and expiration of lease.

(ii) A written explanation of the process used to notify and consult with the tenants in preparing the Application; (§2306.6705(6))

(iii) For Intergenerational Housing Applications or Qualified Elderly Developments, identification of the number of existing tenants qualified under the target population elected under this title;

(iv) A relocation plan outlining relocation requirements and a budget with an identified funding source; and (§2306.6705(6))

(v) If applicable, evidence that the relocation plan has been submitted to the appropriate legal or governmental agency. (§2306.6705(6))

(11) Applications involving Nonprofit General Partners and Qualified Nonprofit Developments.

(A) All Applications involving a nonprofit General Partner, regardless of the Set-Aside applied under, in which the Development will receive some financial or tax benefit for the involvement of the nonprofit General Partner, must submit all of the documents described in clauses (i) and (ii) of this subparagraph and indicate the nonprofit status on the carryover documentation and IRS Forms 8609: (§2306.6706)

(i) An IRS determination letter which states that the nonprofit organization is a §501(c)(3) or (4) entity or; and

(ii) The "Nonprofit Participation Exhibit."

(B) Additionally, all Applications applying under the Nonprofit Set-Aside, established under §49.7(b)(1) of this chapter, must also provide the following information with respect to the Qualified Nonprofit Organization as described in clauses (i) - (iii) of this subparagraph.

(i) A Third Party legal opinion stating:

(I) That the nonprofit organization is not affiliated with or Controlled by a forprofit organization and the basis for that opinion; and

(II) That the nonprofit organization is eligible, as further described, for a Housing Credit Allocation from the Nonprofit Set-Aside and the basis for that opinion. Eligibility is contingent upon the non-profit organization Controlling the Development, or if the organization's Application is filed on behalf of a limited partnership, or limited liability company, the Qualified Nonprofit Organization must be the ~~controlling Managing Member~~ Managing General Partner or managing member, as applicable; and otherwise meet the requirements of the Code, §42(h)(5); and

(III) That one of the exempt purposes of the nonprofit organization is to provide low-income housing; and

(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; and

(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

(ii) A copy of the nonprofit organization's most recent audited financial statement; and

(iii) 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 90 miles from the Development, if the Development is not located in a Rural Area.

(12) Applicants applying for acquisition credits must provide:

(A) An appraisal meeting the requirements of paragraph (14)(D) of this subsection; and

(B) An "Acquisition of Existing Buildings Form."

(13) Evidence of Financial Statement and Authorization to Release Credit Information. The financial statements and authorization to release credit information must be unbound and clearly labeled. A "Financial Statement and Authorization to Release Credit Information" must be completed and signed for any General Partner, Developer or Guarantor and any Person that has an ownership interest of 10% or more in the Development Owner, General Partner, Developer, or Guarantor. Nonprofit entities, public housing authorities and publicly traded corporations are only required to submit documentation for the entities involved; documentation for individual board members and executive directors is not required for this exhibit.

(A) Financial statements for an individual must not be older than 90 days from the first day of the Application Acceptance Period.

(B) Financial statements for partnerships or corporations should be for the most recent fiscal year ended 90 days from the first day of the Application Acceptance Period. An audited financial statement should be provided, if available, and all partnership or corporate financials must be certified. Financial statements are required for an entity even if the entity is wholly-owned by a Person who has submitted this document as an individual.

(C) Entities that have not yet been formed and entities that have been formed recently but have no assets, liabilities, or net worth are not required to submit this documentation, but must submit a statement with their Application that this is the case.

(14) Supplemental Threshold Reports. All Applications must include documents under subparagraphs (A) and (B) of this paragraph. If required under paragraph (6) of this subsection, a Property Condition Assessment as described in subparagraph (C) of this paragraph must be submitted. If required under paragraphs (7) or (12) of this subsection, an appraisal as described in subparagraph (D) of this paragraph must be submitted. All submissions must meet the requirements stated in subparagraphs (E) - (G) of this paragraph.

(A) A Phase I Environmental Site Assessment (ESA) report:

(i) Prepared by a qualified Third Party;

(ii) Dated not more than 12 months prior to the first day of the Application Acceptance Period. In the event that a Phase I Environmental Site Assessment on the Development is more than 12 months old prior to the first day of the Application Acceptance Period, the Applicant must supply the Department with an updated letter or updated report dated not more than three months prior to the first day of the Application Acceptance Period from the Person or organization which prepared the initial assessment confirming that the site has been re-inspected and reaffirming the conclusions of the initial report or identifying the changes since the initial report; and

(iii) Prepared in accordance with the Department's Environmental Site Assessment Rules and Guidelines, §1.35 of this title.

(iv) Developments whose funds have been obligated by TRDO-USDA will not be required to supply this information; however, the Applicants of such Developments 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.

(B) A comprehensive Market Analysis report:

(i) Prepared by a Third Party Qualified Market Analyst approved by the Department in accordance with the approval process outlined in the Market Analysis Rules and Guidelines, §1.33 of this title;

(ii) Dated not more than 6 months prior to the first day of the Application Acceptance Period. In the event that a Market Analysis is more than 6 months old prior to the first day of the Application Acceptance Period, the Applicant must supply the Department with an updated Market Analysis from the Person or organization which prepared the initial report; however the

Department will not accept any Market Analysis which is more than 12 months old as of the first day of the Application Acceptance Period; and

(iii) Prepared in accordance with the methodology prescribed in the Department's Market Analysis Rules and Guidelines, §1.33 of this title.

(iv) For Applications in the TRDO-USDA Set-Aside proposing acquisition and Rehabilitation with residential structures at or above 80% occupancy at the time of Application Submission, the appraisal, required under paragraphs (7) or (12) of this subsection and prepared in accordance with the Uniform Standards of Professional Appraisal Practice and the Department's Appraisal Rules and Guidelines, §1.34 of this title, 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) A Property Condition Assessment (PCA) report (required for Rehabilitation, reconstruction and Adaptive Reuse Developments:

(i) Prepared by a qualified Third Party;

(ii) Dated not more than 6 months prior to the first day of the Application Acceptance Period; and

(iii) Prepared in accordance with the Department's Property Condition and Assessment Rules and Guidelines, §1.36 of this title.

(iv) For Developments which require a capital needs assessment from TRDO-USDA, the capital needs assessment may be substituted and may be more than 6 months old, as long as TRDO-USDA has confirmed in writing that the existing capital needs assessment is still acceptable and it meets the requirements of §1.36 of this title.

(D) An appraisal report:

(i) Prepared by a qualified Third Party;

(ii) Dated not more than 6 months prior to the first day of the Application Acceptance Period. In the event that an appraisal is more than 6 months old prior to the first day of the Application Acceptance Period, the Applicant must supply the Department with an updated appraisal from the Person or organization which prepared the initial report; however the Department will not accept any appraisal which is more than 12 months old as of the first day of the Application Acceptance Period; and

(iii) Prepared in accordance with the Uniform Standards of Professional Appraisal Practice and the Department's Appraisal Rules and Guidelines, §1.34 of this title.

(iv) For Developments that require an appraisal from TRDO-USDA, the appraisal may be more than 6 months old, as long as TRDO-USDA has confirmed in writing that the existing appraisal is still acceptable.

(E) Inserted at the front of each of these reports must be a transmittal letter from the individual preparing the report that states that the Department is granted full authority to rely on the findings and conclusions of the report. The transmittal letter must also state the report preparer has read and understood the Department rules specific to the report found at §§1.33 - 1.36 of this title.

(F) All Applicants acknowledge by virtue of filing an Application that the Department is not bound by any opinion expressed in the report. The Department may determine from time to time that information not required in the Department's Rules and Guidelines will be relevant to the Department's evaluation of the need for the Development and the allocation of the requested Housing Credit Allocation Amount. The Department may request additional information from the report provider or revisions to the report to meet this need. In instances of non-response by the report provider, the Department may substitute in-house analysis.

(G) The requirements for each of the reports identified in subparagraphs (A) - (C) of this paragraph can be satisfied in either of the methods identified in clause (i) or (ii) of this subparagraph and meet the requirements of clause (iii) of this subparagraph.

(i) Upon Application submission, the documentation for each of these exhibits may be submitted in its entirety; or

(ii) Upon Application submission, the Applicant may provide evidence in the form of an executed engagement letter with the party performing each of the individual reports that the required exhibit has been commissioned to be performed and that the delivery date will be no later than April 1, 2009. In addition to the submission of the engagement letter with the Application, a map

must be provided that reflects the Qualified Market Analyst's intended market area. Subsequently, the entire exhibit must be submitted on or before 5:00 p.m. CSDT, April 1, 2009. If the entire exhibit is not received by that time, the Application will be terminated and will be removed from consideration.

(iii) A single hard copy of the report and a searchable soft copy in the format of a single file containing all information and exhibits in the hard copy report, presented in the order they appear in the hard copy report on a CD-R clearly labeled with the report type, Development name, and Development location are required.

(15) Self-Scoring. Applicant's self-score must be completed on the "Application Self-Scoring Form." An Applicant may not adjust the Application Self Scoring Form after submission of the Application without a request from the Department as a result of an Administrative Deficiency.

(i) **Selection Criteria.** All Applications will be scored and ranked using the point system identified in this subsection. Unless otherwise stated, do not round calculations. Points other than those provided in paragraphs (2) and (6) of this subsection will not be awarded unless requested in the Self Scoring Form. All Applications, with the exception of TRDO-USDA Applications, must receive a final score totaling a minimum of 118, not including any points awarded or deducted pursuant to paragraphs (2) and (6) of this subsection to be eligible for an allocation of Housing Tax Credits. Maximum Total Points: 240.

(1) Financial Feasibility of the Development. Financial Feasibility of the Development based on the supporting financial data required in the Application that will include a Development underwriting pro forma from the permanent or construction lender. (§2306.6710(b)(1)(A)). Applications may qualify to receive 28 points for this item. No partial points will be awarded. Evidence will include the documentation required for this exhibit, as reflected in the Application submitted, in addition to the commitment letter required under subsection (h)(7)(C) of this section. The supporting financial data shall include:

(A) A fifteen year pro forma prepared by the permanent or construction lender:

(i) Specifically identifying each of the first five years and every fifth year thereafter;

(ii) Specifically identifying underlying assumptions including, but not limited to general growth factor applied to income and expense; and

(iii) Indicating that the Development maintains a minimum 1.15 debt coverage ratio throughout the initial fifteen years proposed for all third party lenders that require scheduled repayment; and

(B) A statement in the commitment letter, or other form deemed acceptable by the Department, indicating that the lender's assessment finds that the Development will be feasible for fifteen years.

(C) For Developments receiving financing from TRDO-USDA, the form entitled "Sources and Uses Comprehensive Evaluation for Multi-Family Housing Loans" or other form deemed acceptable by the Department shall meet the requirements of this section.

(2) Quantifiable Community Participation from Neighborhood Organizations on Record with the State or County and Whose Boundaries Contain the Proposed Development Site. Points will be awarded based on written statements of support or opposition from Neighborhood Organizations on record with the state or county in which the Development is to be located and whose boundaries contain the proposed Development site. (§2306.6710(b)(1)(B); §2306.6725(a)(2)). It is possible for points to be awarded or deducted based on written statements from organizations that were not identified by the process utilized for notification purposes under subsection (h)(8)(A)(ii) of this section if the organization provides the information and documentation required in subparagraphs (A) - (C) of this paragraph. It is also possible that neighborhood organizations that were initially identified as appropriate organizations for purposes of the notification requirements will subsequently be determined by the Department not to meet the requirements for scoring. If an organization is determined not to be qualified under this paragraph, the organization may qualify under paragraph (18)(B) of this subsection.

(A) Basic Submission Requirements for Scoring. Each Neighborhood Organization may submit one letter (and enclosures) that represents the organization's input. In order to receive a point score, the letter (and enclosures) must be received, by the Department, or postmarked, if mailed by

the U.S Postal Service, no later than February 27, 2009, for letters relating to Applications that submitted a Pre-Application, or April 1, 2009 if a Pre-Application was not submitted. Letters should be addressed to the Texas Department of Housing and Community Affairs, "Attention: Director of Multifamily Finance (Neighborhood Input)." Letters received after the applicable deadline will be summarized for the Board's information and consideration, but will not affect the score for the Application. The organization's letter (and enclosures) must:

(i) State the name and location of the proposed single Development;

(ii) Certify that the letter is signed by the persons with the authority to sign on behalf of the neighborhood organization, and provide:

(I) the street and/or mailing addresses;

(II) day and evening phone numbers;

(III) and e-mail addresses and/or facsimile numbers for the signers of the letter and one additional contact for the organization;

(iii) Certify that the organization has boundaries, and that the boundaries in effect February 27, 2009 contain the proposed Development Site;

(iv) Certify that the organization meets the definition of "Neighborhood Organization as defined in §49.3(63) of this chapter." For the purposes of this section, a "Neighborhood Organization" is defined as an organization of persons living near one another within the organization's defined boundaries in effect February 27, 2009 that contain the proposed Development site and that has a primary purpose of working to maintain or improve the general welfare of the neighborhood. "Neighborhood Organizations" include homeowners associations, property owners associations, and resident councils in which the council is commenting on the Rehabilitation or reconstruction of the property occupied by the residents. "Neighborhood Organizations" do not include broader based "community" organizations;

(v) Include documentation showing that the organization is on record as of February 27, 2009 with the state or county in which the Development is proposed to be located. The receipt of a QCP letter, by the Department on or before February 27, 2009, that meets the requirements outlined in the QCP neighborhood information packet and the 2009 QAP, will constitute being on record with the State. The Neighborhood Organization must be signed by two officials or board members of the Neighborhood Organization and must include in its letter, a contact name with a mailing address and phone number of the persons signing the letter; one additional contact for the organization; a written description and map of the organization's geographical boundaries; and proof that the boundaries described were in effect as of February 27, 2009. This request must be received no later than February 27, 2009. Acceptance of this documentation will be subject to Department approval. The Department is permitted to issue a deficiency notice for this registration process and if satisfied, the organization will still be deemed to be timely placed on record with the state;

(vi) Accurately certify that the Neighborhood Organization was not formed by any Applicant, Developer, or any employee or agent of any Applicant (the seller of land is not considered, with the exception of an identity of interest, to be an agent of the Application) in the 2009 Competitive Housing Tax Credit Application Round, that the organization and any member did not accept money or a gift to cause the Neighborhood Organization to take its position of support or opposition, and has not provided any assistance other than education and information sharing to the Neighborhood Organization to meet the requirements of this subparagraph for any Application in the Application Round (i.e. hosting a public meeting, providing the "TDHCA Information Packet for Neighborhoods" to the Neighborhood Organization, or referring the Neighborhood Organization to TDHCA staff for guidance). Applicants may not provide any "production" assistance to meet these requirements for any Application in the Application Round (i.e. use of fax machines owned by the Applicant, use of legal counsel related to the Applicant, or assistance drafting a letter for the purposes of this subparagraph). Applicants may not provide delivery assistance of any communication between the Neighborhood Organization and the Department. Applicants may provide information about the process or deadlines to a Neighborhood Organization;

(vii) While not required, the organization is encouraged to hold a meeting to which all the members of the organization are invited to consider whether the organization should support, oppose, or be neutral on the proposed Development, and to have the membership vote on whether the organization should support, oppose, or be neutral on the proposed Development. The organization is also encouraged to invite the Developer or Applicant to this meeting; and

(viii) Letters from Neighborhood Organizations, and subsequent correspondence from Neighborhood Organizations, may not be provided via the Applicant which includes facsimile and email communication.

(B) Scoring of Letters (and Enclosures). The input must clearly and concisely state each reason for the Neighborhood Organization's support for or opposition to the proposed Development.

(i) The score awarded for each letter for this exhibit will range from a maximum of +24 for the position support to +12 for the neutral position to 0 for a position of opposition. The number of points to be allocated to each organization's letter will be based on the organization's letter and evidence enclosed with the letter. The final score will be determined by the Executive Director. The Department may investigate a matter and contact the Applicant and Neighborhood Organizations for more information. The Department may consider any relevant information specified in letters from other Neighborhood Organizations regarding a Development in determining a score.

(ii) The Department highly values quality public input addressed to the merits of a Development. Input that points out matters that are specific to the neighborhood, the proposed site, the proposed Development, or Developer are valued. If a proposed Development is permitted by the existing or pending zoning or absence of zoning, concerns addressed by the allowable land use that are related to any multifamily development may generally be considered to have been addressed at the local level through the land use planning process. Input concerning positive efforts or the lack of efforts by the Applicant to inform and communicate with the neighborhood about the proposed Development is highly valued. If the Neighborhood Organization refuses to communicate with the Applicant, the efforts of the Applicant will not be considered negative. 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.

(iii) In general, letters that meet the requirements of this paragraph and:

(I) Establish at least one reason for support or opposition will be scored the maximum points for either support (+24 points) or opposition (zero); or

(II) That do not establish a reason for support or opposition or that are unclear will be considered ineligible and scored as neutral (+12 points).

(iv) If an Application receives multiple eligible letters, the average score of all eligible letters will be applied to the Application.

(v) Applications for which no letters from Neighborhood Organizations are scored will receive a neutral score of +12 points.

(C) Basic Submission Deficiencies. The Department is authorized but not required to request that the Neighborhood Organization provide additional information or documentation the Department deems relevant to clarify information contained in the organization's letter (and enclosures). If the Department determines to request additional information from an organization, it will do so by e-mail or facsimile to the e-mail addresses or facsimile numbers provided with the organization's letter. If the deficiencies are not clarified or corrected in the Department's determination within five business days from the date the e-mail or facsimile is sent to the organization, the organization's letter will not be considered further for scoring and the organization will be so advised. This potential deficiency process does not extend any deadline required above for the "Quantifiable Community Participation" process. An organization may not submit additional information or documentation after the applicable deadlines except in response to an e-mail or facsimile from the Department specifically requesting additional information.

(3) The Income Levels of Tenants of the Development. Applications may qualify to receive up to 22 points for qualifying under only one of subparagraphs (A) - (F) of this paragraph. To qualify for these points, the household incomes must not be higher than permitted by the AMGI level (must round to the next highest whole Unit, no less than one Unit). To qualify for these points at least 10% of all the Units that are not Low-Income Units (i.e. market rate units) in the Development must be set-aside with

incomes at or below 80% of AMGI. The Development Owner, upon making selections for this exhibit, will set aside Units at the levels of AMGI and will maintain the percentage of such Units continuously over the compliance and extended use period as specified in the LURA. These income levels require corresponding rent levels that do not exceed 30% of the income limitation in accordance with §42(g), Internal Revenue Code. (§2306.111(g)(3)(B); §2306.111(g)(3)(E); §2306.6710(b)(1)(C); §2306.6710(e); and §42(m)(1)(B)(ii)(I))

(A) 22 points if at least 80% of the Low-Income Units in the Development are set-aside with incomes at or below 50% of AMGI; or

(B) 22 points if at least 40% of the Low-Income Units in the Development are set-aside with incomes at or below a combination of 50% and 30% of AMGI in which at least 5% of the Low-Income Units are at or below 30% of AMGI; or

(C) 20 points if at least 60% of the Low-Income Units in the Development are set-aside with incomes at or below 50% of AMGI; or

(D) 18 points if at least 10% of the Low-Income Units in the Development are set-aside with incomes at or below 30% of AMGI; or

(E) 16 points if at least 40% of the Low-Income Units in the Development are set-aside with incomes at or below 50% of AMGI; or

(F) 14 points if at least 35% of the Low-Income Units in the Development are set-aside with incomes at or below 50% of AMGI.

(4) The Size and Quality of the Units (Development Characteristics). Applications may qualify to receive up to 20 points. Applications may qualify for points under both subparagraphs (A) and (B) of this paragraph. (§2306.6710(b)(1)(D) and §42(m)(1)(C)(iii))

(A) Size of the Units. Applications may qualify to receive 6 points. The Development must meet the minimum requirements identified in this subparagraph to qualify for points. Six points for this item will be automatically granted for Applications involving Rehabilitation (excluding Reconstruction), Developments receiving funding from TRDO-USDA, or Developments proposing Single Room Occupancy without meeting these square footage minimums if requested in the Self Scoring Form. The square feet of all of the Units in the Development, for each type of Unit, must be at least the minimum noted in clauses (i) - (v) of this subparagraph. Changes to an Application during any phase of the review process that decreases the square footage below the minimums noted in clauses (i) - (v) of this subparagraph, will be re-evaluated and may result in a reduction of the Application score.

(i) 600 square feet for an efficiency Unit;

(ii) 700 square feet for a ~~non-elderly~~ one Bedroom Unit that is not in a Qualified Elderly Development; 600 square feet for a~~n elderly~~ one Bedroom Unit that is in a Qualified Elderly Development;

(iii) 950 square feet for a ~~non-elderly~~ two Bedroom Unit that is not in a Qualified Elderly Development; 750 square feet for a~~n elderly~~ two Bedroom Unit that is in a Qualified Elderly Development;

(iv) 1,050 square feet for a three Bedroom Unit; and

(v) 1,250 square feet for a four Bedroom Unit.

(B) Quality of the Units. Applications may qualify to receive 14 points. Applications in which Developments 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 clauses (i) - (xix) of this subparagraph, not to exceed 14 points in total. Applications involving scattered site Developments must have all of the Units located with a specific amenity to count for points. Applications involving Rehabilitation (excluding reconstruction) or ~~s~~Single ~~r~~Room ~~o~~Occupancy ~~may~~ will receive 1.5 points for each point item, not to exceed 14 points in total (do not round).

(i) Covered entries (1 point);

(ii) Nine foot ceilings in living room and all bedrooms (at minimum) (1 point);

(iii) Microwave ovens (1 point);

(iv) Self-cleaning or continuous cleaning ovens (1 point);

(v) Ceiling fixtures in all rooms (light with ceiling fan in living area and all bedrooms) (1 point);

(vi) Refrigerator with icemaker (1 point);

(vii) Laundry connections (2 points);

(viii) Storage room or closet, of approximately 9 square feet or greater, which does not include bedroom, entryway or linen closets - does not need to be in the Unit but must be on the property site (1 point);

(ix) Laundry equipment (washers and dryers) for each individual unit including a front loading washer and dryer in required UFAS compliant Units (3 points);

(x) Thirty year architectural shingle roofing (1 point);

(xi) Covered patios or covered balconies (1 point);

(xii) Covered parking (including garages) of at least one covered space per Unit (2 points);

(xiii) 100% masonry on exterior, which can include stucco, cementitious board products, concrete brick and mortarless concrete masonry, but not EIFS synthetic stucco (3 points) (Applicants may not select this item if item (xiv) of this subclause is selected);

(xiv) Greater than 75% masonry on exterior, which can include stucco and cementitious board products, concrete brick and mortarless concrete masonry, but not EIFS synthetic stucco (1 point) (Applicants may not select this item if item (xiii) of this subclause is selected);

(xv) Use of energy efficient alternative construction materials (for example, Structural Insulated Panel construction) with wall insulation at a minimum of R-20 (3 points);

(xvi) R-15 Walls / R-30 Ceilings (rating of wall system) (3 points);

(xvii) 14 SEER HVAC or evaporative coolers in dry climates for New Construction, Adaptive Reuse, and reconstruction or radiant barrier in the attic for Rehabilitation (excluding reconstruction) (3 points);

(xviii) High Speed Internet service to all Units at no cost to residents (2 points); or

(xix) Fire sprinklers in all Units (2 points).

(5) The Commitment of Development Funding by Local Political Subdivisions. Applications may qualify to receive up to 18 points for qualifying under this paragraph provided for under Development Funding. (§2306.6710(b)(1)(E))

(A) Basic Submission Requirements for Scoring. Evidence of the following must be submitted in accordance with the Application Submission Procedures Manual (ASPM).

(i) The loans, grant(s) or in-kind contribution(s) must be attributed to the Total Housing Development Costs, as defined in this chapter, unless otherwise stipulated in this section.

(ii) An Applicant may submit ~~enough~~ multiple sources to substantiate the point request, and all sources (up to 5% of the Total Housing Development Costs) must be included in the Sources and Uses form. For example, if an Applicant is requesting 18 points, five sources may be submitted if each is for an amount equal to 1% of the Total Housing Development Cost.

(iii) An Applicant may substitute any source in response to an Administrative Deficiency ~~Notice~~ or after the Application has been submitted to the Department.

(iv) A loan does not qualify as an eligible source unless it has a minimum ~~term~~ maturity date of the later of 1-year after funding of the loan or the Placed in Service date for the Development~~, and the interest rate must be at the Applicable Federal Rate (AFR) or below (at the time of loan closing)~~.

(v) In-kind contributions such as donation of land, tax exemptions, or waivers of fees such as building permits, water and sewer tap fees, or similar contributions are only eligible for points if the in-kind contribution provides a tangible economic benefit that results in a quantifiable Total Housing Development Cost reduction to benefit the Development~~ will be acceptable to qualify for these points~~. The quantified value of the Total Housing Development Cost reduction may only include the value during the period the contribution or waiver is received and/or assessed. Donations of land must be under the control of the Applicant, pursuant to subsection (h)(7) of this section to qualify, and will be valued as established by the appraisal required pursuant to clause (viii) of this subparagraph. The value of in-kind contributions other than donations of land may only include the time period between the later of the date of the tax credit award, or August 1, 2009 and the Development's Placed in Service date~~, with the exception of contributions of land. The full value of land contributions, as established by the appraisal required pursuant to clause (viii) of this~~

~~subparagraph.~~ Contributions in the form of tax exemptions or abatements may only count for points if the contribution is in addition to any tax exemption or abatement required under statute.

(vi) To the extent that a Notice of Funding Availability (NOFA) is released and funds are available, funds from TDHCA's HOME Investment Partnerships (HOME) Program will qualify if a resolution, dated on or before the date the Application Acceptance Period ends, is submitted with the Application from the Governing Body of the Local Political Subdivision, authorizing the Applicant to act on behalf of the Governing Body of the Local Political Subdivision in applying for HOME Funds from TDHCA for the particular Application. TDHCA's HOME funds may be substituted for a source originally submitted with the Application, provided the HOME funds substituted are from a NOFA released after the Application Acceptance Period ends and a resolution is submitted with the substitution documentation from ~~the~~ the Governing Body of the Local Political Subdivision, authorizing the Applicant to act on behalf of the Local Political Subdivision in applying for HOME Funds from TDHCA for the particular Application.

(vii) Development based rental subsidies may qualify under this section if evidence of the ~~remaining~~ value of the contract remaining after the Development is placed in service is submitted from the Local Political Subdivision. The value of the contract does not include past subsidies.

(viii) Evidence to be submitted with the Application must include a copy of the commitment of fundsing or contribution; a copy of the application to the funding entity and a letter from the funding entity indicating that the application was received; or a certification of intent to apply for funding or contribution that indicates the funding entity and program to which the application will be submitted, the ~~loan~~ funding or contribution amount to be applied for and the specific proposed terms. For in-kind contributions, evidence must be submitted in the Application from the Local Political Subdivision substantiating the value of the in-kind contributions. For in-kind contributions of land, evidence of the value of the contribution must be in the form of an appraisal.

(ix) If not already provided, at the time the executed Commitment Notice is required to be submitted, the Applicant or Development Owner must provide evidence of a commitment approved by the Governing Body of the Local Political Subdivision for the Development Funding to the Department. If the funding commitment from the Local Political Subdivision has not been received by the date the Department's Commitment Notice is to be submitted, the Application will be evaluated to determine if the loss of these points would have resulted in the Department's not committing the tax credits. If the loss of points would have made the Application noncompetitive, the Commitment Notice will be rescinded and the credits reallocated. If the Application would still be competitive even with the loss of points and the loss would not have impacted the recommendation for an award, the Application will be reevaluated for financial feasibility. If the Application is infeasible without the Local Political Subdivision's Development Funding, the Commitment Notice will be rescinded and the credits reallocated.

(x) Funding commitments from a Local Political Subdivision will not be considered final unless the Local Political Subdivision attests to the fact that any funds committed were not first provided to the Local Political Subdivision by the Applicant, the Developer, Consultant, Related Party or any individual or entity acting on behalf of the proposed Application, unless the Applicant itself is a Local Political Subdivision or subsidiary.

(B) Scoring. Points will be determined on a sliding scale based on the percentage of the Total Housing Development Costs of the Development, as reflected in the in the Development Cost Schedule. If a revised Development Cost Schedule is submitted to the Department in response to a Administrative dDeficiency ~~notice~~ at anytime during the review process, the Revised Development Cost Schedule will be utilized for this calculation, and Applicants will be notified of the revised score, consistent with subsection (e) of this section. Do not round for the following calculations. The "total contribution" is the total combined value of qualifying loan(s), grants or in-kind contributions from a Local Political Subdivision pursuant to subparagraph (A) of this paragraph. The required percentages for Rural Developments listed in clauses (i) - (iii) of this subparagraph only apply to Rural Developments applying for local funds.

(i) A total contribution equal to or greater than 1% (for Urban Developments) and 0.5% (for Rural Developments) of the Total Housing Development Cost of the Development receives 6 points; or

(ii) A total contribution equal to or greater than 2.5% (for Urban Developments) and 1.5% (for Rural Developments) of the Total Housing Development Cost of the Development receives 12 points; or

(iii) A total contribution equal to or greater than 5% (for Urban Developments) and 3% (for Rural Developments) of the Total Housing Development Cost of the Development receives 18 points.

(6) The Level of Community Support from State Representative or State Senator. The level of community support for the Application, evaluated on the basis of written statements received from the State Representative or State Senator that represents the district containing the proposed Development Site. (§2306.6710(b)(1)(F) and §2306.6725(a)(2)). Applications may qualify to receive 14 points for this item. Letters must identify the specific Development and must clearly state support for or opposition to the specific Development. This documentation will be accepted with the Application or through delivery to the Department from the Applicant or the State Representative or Senator on or before 5:00 p.m. (CSDT) April 1, 2009. A State Representative or State Senator may withdraw (in writing) a letter that is submitted by the April 1st deadline on or before June 15, 2009 but may not submit a new letter. The previous position of support or opposition that is withdrawn will be scored as neutral (0 points). State Representatives or Senators to be considered are those State Representatives or Senators in office at the time the Application is submitted. Letters of support from State Representatives or Senators that do not represent the district containing the proposed Development Site will not qualify for points under this Exhibit. Neutral letters, or letters that do not specifically refer to the Development, will receive neither positive nor negative points. Letters from State of Texas Representative or Senator: support letters are +14 points; opposition letters are -14 points for a maximum of either 14 or -14 points. If one letter is received in support and one letter is received in opposition the score would be 0 points.

(7) The Rent Levels of the Units. Applications may qualify to receive up to 12 points for qualifying under this exhibit. (§2306.6710(b)(1)(G)). Provided the Application has qualified for points under paragraph (i)(3) of this subsection, Income Levels of Tenants of the Development, an Application may qualify for points under this subsection by providing additional Low-Income Units at 50% of AMGI (must round up to the next whole Unit, not less than one Unit), as follows:

(A) An Application may receive 12 points if the Development provides an additional 10% of all Low-Income Units in excess of those committed in subsection (i)(3) of this section at rents and incomes at or below 50% of AMGI; or

(B) An Application may receive 6 points if the Development provides an additional 5% of all Low-Income Units in excess of those committed in paragraph (3) of this subsection at rents and incomes at or below 50% of AMGI.

(8) The Cost of the Development by Square Foot (Development Characteristics). Applications may qualify to receive 10 points for this item. (§2306.6710(b)(1)(H); §42(m)(1)(C)(iii)). For this exhibit, costs shall be defined as construction costs, including site work, direct hard costs, contingency, contractor profit, overhead and general requirements, as represented in the Development Cost Schedule. This calculation does not include indirect construction costs. The calculation will be costs per square foot of nNet rRentable aArea (NRA). For the purposes of this paragraph only, if the proposed Development is a building is in a Qualified Elderly Development or is an age restricted building in an Intergenerational Housing Development with an elevator building serving elderly or a high rise building with four or more stories serving any population, the NRA may include elevator served interior corridors. If the proposed Development is a Single Room Occupancy Development, the NRA may include elevator served interior corridors and may include up to 50 square feet of common area per efficiency Unit. As it relates to this paragraph, an interior corridor is a corridor that is enclosed, heated and/or cooled and otherwise finished space. The calculations will be based on the cost listed in the Development Cost Schedule and NRA shown in the Rent Schedule of the Application. Developments qualify for 10 points if their costs do not exceed $95 per square foot for Qualified Elderly Development, single family design, transitional Supportive Housing, and Single Room Occupancy Developments (transitional housing for the homeless and Single Room Occupancy units as provided in the Code, §42(i)(3)(B)(iii) and (iv)), unless located in a "First Tier County" in which case their costs do

not exceed $97 per square foot; and $85 for all other Developments, unless designated as "First Tier" by the Texas Department of Insurance, in which case their costs do not exceed $87 per square foot. For 2008, the First Tier counties are Aransas, Brazoria, Calhoun, Chambers, Galveston, Jefferson, Kenedy, Kleberg, Matagorda, Nueces, San Patricio, and Willacy. There are also specifically designated First Tier communities in Harris County that are east of State Highway 146, and evidence in the Application must include a map with the Development Ssite designated clearly within the community. These communities are Pasadena, Morgan's Point, Shoreacres, Seabrook and La Porte. Intergenerational Housing Developments will receive 10 points if costs described above do not exceed the square footage limit for elderly and non-elderly ~~u~~Units as determined by using the NRA attributable to the respective elderly and non-elderly ~~u~~Units. The Department will determine if points will be awarded by multiplying the NRA for elderly ~~u~~Units by the applicable square footage limit for the elderly ~~u~~Units and adding that total to the result of the multiplication of the NRA for family U~~u~~nits by the applicable non-elderly square footage limit. If this maximum cost amount is equal to, or greater than the total of the costs identified above for the Application, points will be awarded (10 points).

(9) The Services to be Provided to Tenants of the Development. Applications may qualify to receive up to 8 points. (§2306.6710(b)(1)(I)and §2306.6725(a)(1))

(A) The Applicant must certify that the Development will provide a combination of special supportive services appropriate for the proposed tenants. The provision of supportive services will be included in the LURA as selected from the list of services identified in this paragraph. No fees may be charged to the tenants for any of the services. Services must be provided on-site or transportation to off-site services must be provided (maximum of 7 points).

(i) Applications will be awarded points for selecting services listed in clause (ii) of this subparagraph based on the following scoring range:

(I) Two points will be awarded for providing two of the services; or

(II) Four points will be awarded for providing four of the services; or

(III) Seven points will be awarded for providing six of the services.

(ii) Service options include child care; transportation; basic adult education; legal assistance; counseling services; GED preparation; English as a second language classes; vocational training; home buyer education; credit counseling; financial planning assistance or courses; health screening services; health and nutritional courses; organized team sports programs or youth programs; scholastic tutoring; any other 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 out-of wedlock pregnancies; and encourages the formation and maintenance of two-parent families; or any other services approved in writing by the Department.

(B) In addition, Applications will receive 1 point for providing Notary Public Services to tenants at no cost to the tenant during regular business hours. If this point is selected, ~~T~~this requirement will be included in the LURA.

(10) Declared Disaster Areas (§2306.6710(b)(1)). Applications may receive 7 points, if at time the complete Application is submitted or at any time within the two-year period preceding the date of submission, the proposed Development site is located in a Disaster Area as defined in §49.3 of this chapter.

(11) Rehabilitation, (which includes reconstruction) or Adaptive Reuse. Applications may qualify to receive 6 points. Applications proposing to build solely Rehabilitation (excluding New Construction of non-residential buildings), solely reconstruction (excluding New Construction of non-residential buildings), or solely Adaptive Reuse qualify for points.

(12) Housing Needs Characteristics. (§42(m)(1)(C)(ii)). Applications may qualify to receive up to 6 points if the Development Site is located in an Area with a certain Affordable Housing Need Score. Each Application may receive a score if correctly requested in the self score form based on objective measures of housing need in the Area where the Development is located. This Affordable Housing Need Score for each Area will be published in a Site Demographic Characteristics table in the Reference Manual.

(13) Community Revitalization (Development Characteristics) (§42(m)(1)(C)(iii)) or Historic Preservation. Applications may qualify to receive 6 points for either subparagraph (A) or (B) of this paragraph.

(A) The Development includes the use of an Existing Residential ~~Housing~~ Development and proposes any Rehabilitation or any Reconstruction that is part of a Community Revitalization Plan. Evidence of the Community Revitalization Plan and a letter from the chief executive officer or other local official with appropriate jurisdiction of the ~~L~~local ~~Governing Body~~ Political Subdivision stating that the Development Site is located within the targeted development areas outlined in the Community Revitalization Plan must be submitted; or

(B) The Development includes the use of an existing building that is designated as historic by a Governmental ~~Efederal or state E~~ntity and proposes Rehabilitation (including reconstruction) or Adaptive Reuse. The Development itself must have the designation; points in this subparagraph are not available for Developments simply located within historic districts or areas that do not have a designation on the building. The Development must include the historic building. Evidence will include proof of the historic designation from the appropriate Governmental ~~Body~~ Entity.

(14) Pre-Application Participation Incentive Points. (§2306.6704) Applications that submitted a Pre-Application during the Pre-Application Acceptance Period and meet the requirements of this paragraph will qualify to receive 6 points for this item. To be eligible for these points, the Application must:

(A) Be for the identical Development Site, or a reduced portion of the Development Site, as the proposed Development Site under control in the Pre-Application;

(B) Have met the Pre-Application Threshold Criteria;

(C) Be serving the same target population (family, Intergenerational Housing, or elderly) as in the Pre-Application;

(D) Be ~~serving~~ applying for the same ~~target~~ Set-Asides as indicated in the Pre-Application (Set-Asides can be dropped between Pre-Application and Application, but no Set-Asides can be added); and

(E) Be awarded by the Department an Application score that is not more than 5% greater or less than the number of points awarded by the Department at Pre-Application, with the exclusion of points for support and opposition under paragraphs (2), (6), and (18) of this of this subsection. The Application score used to determine whether the Application score is 5% greater or less than the number of points awarded at Pre-Application will also include all point losses under subsection (d)(4) of this section. An Applicant must choose, at the time of Application either clause (i) or (ii) of this subparagraph:

(i) To request the Pre-Application points and have the Department cap the Application score at no greater than the 5% increase regardless of the total points accumulated in the scoring evaluation. This allows an Applicant to avoid penalty for increasing the point structure outside the 5% range from Pre-Application to Application; or

(ii) To request that the Pre-Application points be forfeited and that the Department evaluate the Application as requested in the self-scoring sheet.

(15) Economic Development Initiatives. A Development that is located in one of the following two areas may qualify to receive 4 points. For the purpose of this paragraph, "area" shall mean the boundaries of any zone or community in subparagraph (A) of this paragraph or the area in which funds in subparagraph (B) of this paragraph must be used:

(A) a Designated State or Federal Empowerment/Enterprise Zone, Urban Enterprise Community, or Urban Enhanced Enterprise Community. To be eligible for these points, Applicants must submit a letter and a map of the zoned area from a city/county official stating that the proposed Development is located within such a designated zone or area; is eligible to receive the state or federal economic development grants or loans associated with such designation; and the city/county still has available funds in such program. The letter should be no older than 6 months from the first day of the Application Acceptance Period. (General Appropriation Act, Article VII, Rider 3; §2306.127); or

(B) an area that has received an award within the three year period prior toas of November 1, 2008, within the past three years from the Texas Capital Fund, Texas or Federal Enterprise Zone Fund, Texas Leverage Fund, Industrial Revenue Bond Program, Emerging Technologies, Skills Development, Rural Business Enterprise Grants, Certified Development Company Loans, or Micro Loan Program or other state or federally funded economic development initiatives. (This excludes limited highway improvement and roadwork projects, but does include broader regional transportation initiatives targeted to expanding economic development). Grants that qualify in these areas are included in the Application Reference Manual.

(C) Points under subparagraphs (A) and (B) of this paragraph will not be granted if more than 3 tax credit Developments have been awarded received a Housing Credit Allocation in the applicable at area in the last 7 years prior to [blank]. The Applicant must provide evidence of the boundaries of the area, as required in the Application and Application Submission Procedures Manual.

(16) Development Location. (§2306.6725(a)(4)); §42(m)(1)(C)(i)). Applications may qualify to receive 4 points. Evidence, not more than 6 months old from the first day of the Application Acceptance Period, that the Development Site is located within one of the geographical areas described in subparagraphs (A)-(F) of this paragraph. Areas qualifying under any one of the subparagraphs (A)-(F) of this paragraph will receive 4 points. An Application may only receive points under one of the subparagraphs (A)-(F) of this paragraph.

(A) A geographical Area which is an Economically Distressed Area; a Colonia; or a Difficult Development Area (DDA) as specifically designated by the Secretary of HUD at the time of Application submission (these census tracts are designated in the 2009 Housing Tax Credit Site Demographic Characteristics Report). (§2306.127)

(B) The Development is located in a county that has received an award as of within the three years prior to November 1, 2008, within the past three years, from the Texas Department of Agriculture's Rural Municipal Finance Program or Real Estate Development and Infrastructure Program. Cities which have received one of these awards are categorized as awards to the county as a whole so Developments located in a different city than the city awarded, but in the same county, will still be eligible for these points.

(C) The Development is located in a census tract which has a median family income (MFI), as published by the United States Bureau of the Census (U.S. Census), that is higher than the median family income for the county in which the census tract is located. This comparison shall be made using the most recent data available as of the date the Application Round opens the year preceding the applicable program year. Developments eligible for these points must submit evidence documenting the median income for both the census tract and the county. These Census Tracts are outlined in the 2008 Housing Tax Credit Site Demographic Characteristics Report.

(D) The proposed Development will serve families with children (at least 70% of the total number of Units must have an eligible bedroom mix of two bedrooms or more) and is proposed to be located in an elementary school attendance zone of an elementary school that has an academic rating of "Exemplary" or "Recognized," or comparable rating if the rating system changes. The date for consideration of the attendance zone is that in existence as of the opening date of the Application Round and the academic rating is the most current rating determined by the Texas Education Agency as of that same date. (§42(m)(1)(C)(vii)).

(E) The proposed Development will expand affordable housing opportunities for low-income families with children outside of poverty areas. This must be demonstrated by showing that the Development will serve families with children (at least 70% of the total number of Units must have an eligible bedroom mix of two bedrooms or more) and that the census tract in which the Development is proposed to be located has no greater than 10% poverty population according to the most recent census data. Intergenerational Developments may qualify for points if 70% of the non-elderly Units in the Development have an eligible bedroom mix of two bedrooms or more. (§42(m)(1)(C)(vii)). These Census Tracts are outlined in the 2009 Housing Tax Credit Site Demographic Characteristics Report.

(F) The proposed Development is located in an Urban Core, on a site that is properly zoned for the intended use and provides infill housing. (17) Green Building Initiatives. Application may qualify to receive up to 6 points for providing green building amenities (points under this paragraph

may not be requested for the same items utilized for points under subsection (h)(4)(A)(ii)(XXV), Threshold Amenities):

(A) evaporative coolers (for use in designated counties listed in the Application Materials, 2009 Housing Tax Credit Site Demographics Information)(1 point);

(B) passive solar heating/cooling (3 points);

(C) water conservation fixtures (toilets using less than or equal to 1.6 gallons per flush, showerheads, kitchen faucets or bathroom faucets using less than or equal to 2.0 gallons per minute)(1 point for each);

(D) solar water heaters (2 points);

(D) water collection (at least 50%) for irrigation purposes (2 points);

(E) sub-metered utility meters (3 points);

(F) Energy-Star qualified windows and glass doors (2 points);

(G) thermally and draft efficient doors (SHGC of 0.40 and U-value specified by climate zone according to the 2006 IECC)(2 points);

(H) photovoltaic panels for electricity and design and wiring for use of such panels (4 points);

(I) construction waste management and implementation of EPA's Best Management Practices for erosion and sedimentation control during construction (2 points);

(J) recycle service provided throughout the compliance period (1 point);

(K) water permeable walkways (1 point);

(L) selection of native trees and plants that are appropriate to the site's soils and microclimate and that are located ~~them~~ to provide shading in the summer and allow for heat gain in the winter (2 points);

(M) exterior envelope insulation, vapor barriers and air barriers greater than or equal to Energy Star air barrier and insulation criteria (2 points);

(N) HVAC, windows, domestic hot water heater or insulation that exceeds Energy Star standards or exceeds the IRC 2006 (2 points); or

(O) bamboo flooring, wool carpet, linoleum flooring, straw board, poplar OSB, or cotton batt insulation (2 points).

(18) Demonstration of Community Input other than Quantifiable Community Participation: 49if an Application was awarded 12 points under paragraph (2) of this subsection, then that Application may receive up to 6 points for letters that qualify for points under subparagraphs (A), (B) or (C) of this paragraph.An Application may not receive points under more than one of the subparagraphs (A) - (C). All letters must be received by February 27, 2009 for the Application to receive these points.

(A) An Application may receive two points (maximum of 6 points) for each letter of support submitted from a community or civic organization that serves the community in which the Development sSite is located. Letters of support must identify the specific Development and must state support of the specific Development at the proposed location. The community or civic organization must provide some documentation of its existence in the community in which the Development is located to include, but not be limited to, listing of services and/or members, brochures, annual reports, etc. Letters of support from organizations that are not active in the area that includes the location of the Development will not be counted. For purposes of this subparagraph, community and civic organizations do not include neighborhood organizations, gGovernmental eEntities ~~(excluding~~

~~Special Management Districts~~), Local Political Subdivisions taxing entities or educational activities. Organizations that were created by a ~~g~~Governmental ~~e~~Entity or Local Political Subdivision or derive their source of creation from a ~~g~~Governmental ~~e~~Entity or Local Political Subdivision do not qualify under this item. For purposes of this item, educational activities include school districts, trade and vocational schools, charter schools and depending on how characterized could include day care centers; it would not include a PTA or PTO as that is a service organization even though it supports an educational activity. Should an Applicant elect this option and the Application receives letters in opposition by February 27, 2009, then two points will be subtracted from the score for each letter in opposition, provided that the letter is from an organization serving the community. At no time will the Application receive a score lower than zero for this item.

(B) An Application may receive 6 points for a letter of support, from a property owners association created for a master planned community whose boundaries include the ~~D~~development ~~s~~Site, that does not meet the requirements of a Neighborhood Organization for points under paragraph (2) of this subsection.

(C) An Application may receive 6 points for a letter of support from a Special Management District, whose boundaries, as of February 27, 2009, include the Development Site and for which there is not a Neighborhood Organization on record with the county or state. At no time will the Application receive a score lower than zero for this item.

(19) Developments in Census Tracts with No Other Existing Same Type Developments Supported by Tax Credits~~:~~. The Application may receive 6 points if the proposed Development is located in a census tract in which there are no other existing Developments supported by Housing Tax Credits that serve the same type of household, regardless of whether the development serves families, or elderly individuals (Intergenerational Housing is not a type of household as it relates to this paragraph). Applicant must provide evidence of the census tract in which the Development is located. (§2306.6725(b)(2)). These Census Tracts are outlined in the 2009 Housing Tax Credit Site Demographic Characteristics Report.

(20) Tenant Populations with Special Housing Needs. Applications may qualify to receive 4 points for this item. (§42(m)(1)(C)(v)). The Department will award these points to Applications in which at least 10% of the Units are set aside for Persons with Special Needs. Throughout the Compliance Period, unless otherwise permitted by the Department, the Development Owner agrees to affirmatively market Units to Persons with Special Needs. In addition, the Department will require a minimum 12 month period during which Units must either be occupied by Persons with Special Needs or held vacant. The 12 month period will begin on the date each building receives its certificate of occupancy. For buildings that do not receive a Certificate of Occupancy, the 12 month period will begin on the placed in service date as provided in the Cost Certification manual. After the 12 month period, the Development ~~O~~owner will no longer be required to hold Units vacant for ~~households~~ Persons with ~~s~~Special ~~n~~Needs, but will be required to continue to affirmatively market Units to ~~household~~ Persons with ~~s~~Special ~~n~~Needs.

(21) Length of Affordability Period. Applications may qualify to receive up to 4 points. (§2306.6725(a)(5); §2306.111(g)(3)(C); §2306.185(a)(1) and (c); §2306.6710(e)(2); and §42(m)(1)(B)(ii)(II)). In accordance with the Code, each Development is required to maintain its affordability for a 15-year compliance period and, subject to certain exceptions, an additional 15-year extended use period. Development Owners that are willing to extend the affordability period for a Development beyond the 30 years required in the Code may receive points as follows:

(A) Add 5 years of affordability after the extended use period for a total affordability period of 35 years (2 points); or

(B) Add 10 years of affordability after the extended use period for a total affordability period of 40 years. (4 points)

(22) Site Characteristics. Development Sites, including scattered sites, will be evaluated based on proximity to amenities, the presence of positive site features and the absence of negative site features. Sites will be rated based on the criteria in subparagraphs (A) and (B) of this paragraph.

(A) Proximity of site to amenities. Developments Sites located within a one mile radius (two-mile radius for Developments competing for a Rural Regional Allocation) of at least three services appropriate to the target population will receive four points. A site located within one-quarter mile of public transportation that is accessible to all residents including Persons With Disabilities and/or located within a community that has "on demand" transportation, special transit service, or specialized elderly transportation for Qualified Elderly Developments, will receive full points regardless of the proximity to amenities, as long as the Applicant provides appropriate evidence of the transportation services used to satisfy this requirement. If a Development is providing its own specialized van or on demand service, then this will be a requirement of the LURA. Only one service of each type listed in clauses (i) - (xiv) of this subparagraph will count towards the points. A map must be included identifying the Development Site and the location of the services. The services must be identified by name on the map. If the services are not identified by name, points will not be awarded. All services must exist or, if under construction, must be at least 50% complete by the date the Application is submitted. (4 points)

(i) Full service grocery store or supermarket.

(ii) Pharmacy.

(iii) Convenience Store/Mini-market.

(iv) Department or Retail Merchandise Store.

(v) Bank/Credit Union.

(vi) Restaurant (including fast food).

(vii) Indoor public recreation facilities, such as civic centers, community centers, and libraries.

(viii) Outdoor public recreation facilities such as parks, golf courses, and swimming pools.

(ix) Hospital/medical clinic.

(x) Medical offices (physician, dentistry, optometry).

(xi) Public Schools (only eligible for Developments that are not Qualified Elderly Developments).

(xii) Senior Center.

(xiii) Dry cleaners.

(xiv) Family video rental (Blockbuster, Hollywood Video, Movie Gallery).

(B) Negative Site Features. Development Sites with the following negative characteristics will have points deducted from their score. For purpose of this exhibit, the term 'adjacent' is interpreted as sharing a boundary with the Development Site. The distances are to be measured from all boundaries of the Development Site to all boundaries of the property containing the negative site feature. If an Applicant negligently fails to note a negative feature, double points will be deducted from the score or the Application may be terminated. If none of these negative features exist, the Applicant must sign a certification to that effect. (-6 points)

(i) Developments located adjacent to or within 300 feet of junkyards will have 1 point deducted from their score.

(ii) Developments located adjacent to or within 300 feet of active railroad tracks will have 1 point deducted from their score, unless the Applicant provides evidence that the city/community has adopted a Railroad Quiet Zone or the railroad in question is commuter or light rail. Rural Developments funded through TRDO-USDA are exempt from this point deduction.

(iii) Developments located adjacent to or within 300 feet of heavy industrial uses such as manufacturing plants will have 1 point deducted from their score.

(iv) Developments located adjacent to or within 300 feet of a solid waste or sanitary landfills will have 1 point deducted from their score.

(v) Developments where the buildings are located within the "fall line" of high voltage transmission power lines will have 1 point deducted from their score.

(vi) Developments where the buildings are located within the accident zones or clear zones for commercial or military airports will have 1 point deducted from their score.

(23) Development Size. The Development consists of not more than 36 Units (3 points).

(24) Qualified Census Tracts with Revitalization. Applications may qualify to receive 1 point for this item. (§42(m)(1)(B)(ii)(III)). Applications will receive the points for this item if the Development is located within a Qualified Census Tract and contributes to a concerted Community Revitalization Plan. Evidence of the Community Revitalization Plan and a letter from the chief executive officer or other local official with appropriate jurisdiction of the ~~l~~Local ~~Governing Body~~ Political Subdivsion stating that the Development Site is located within the targeted development areas outlined in the Community Revitalization Plan must be submitted.

(25) Sponsor Characteristics. Applications may qualify to receive a maximum of 2 points for this item for qualifying under either subparagraph (A) or (B) of this paragraph. (§42(m)(1)(C)(iv))

(A) An Application will receive these two points for submitting 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 Applicant 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.

(B) An Application will receive these points if there is evidence that a HUB that does not meet the experience requirements under subsection (g) of this section, as certified by the Texas Comptroller of Public Accounts, has at least 51% ownership interest in the General Partner and is the Managing General Partner of the Development Owner or is the managing member of the Development Owner and materially participates in the Development and operation of the Development throughout the Compliance Period. To qualify for these points, the Applicant must submit a certification from the Texas Comptroller of Public Accounts that the Person is a HUB at the close of the Application Acceptance Period. The HUB will be disqualified from receiving these points if any Principal of the HUB has developed, and received 8609's for, more than two Developments involving tax credits. Additionally, to qualify for these points, the HUB must partner with an experienced Developer (as defined by subsection (g) of this section); the experienced Developer, as an Affiliate, will not be subject to the credit limit described under §49.6(d) of this chapter for one Application per Application Round. For purposes of this section the experienced Developer may not be a Related Party to the HUB.

(26) Developments Intended for Eventual Tenant Ownership - Right of First Refusal. Applications may qualify to receive 1 point for this item. (§2306.6725(b)(1)); (§42(m)(1)(C)(viii)). Evidence that Development Owner agrees to provide a right of first refusal to purchase the Development upon or following the end of the Compliance Period for the minimum purchase price provided in, and in accordance with the requirements of, §42(i)(7) of the Code (the "Minimum Purchase Price"), to a Qualified Nonprofit Organization, the Department, or either an individual tenant with respect to a single family building, or a tenant cooperative, a resident management corporation in the Development or other association of tenants in the Development with respect to multifamily developments (together, in all such cases, including the tenants of a single family building, a "Tenant Organization"). Development Owner may qualify for these points by providing the right of first refusal in the following terms.

(A) Upon the earlier to occur of:

(i) The Development Owner's determination to sell the Development; or

(ii) The Development Owner's request to the Department, pursuant to §42(h)(6)(E)(II) of the Code, to find a buyer who will purchase the Development pursuant to a "qualified contract", within the meaning of §42(h)(6)(F) of the Code, the Development Owner shall provide a notice of intent to sell the Development ("Notice of Intent") to the Department and to such other parties as the Department may direct at that time. If the Development Owner determines that it will sell the Development at the end of the Compliance Period, the Notice of Intent shall be given no later than two years prior to expiration of the Compliance Period. If the Development Owner determines that it will sell the Development at some point later than the end of the Compliance Period, the Notice of Intent shall be given no later than two years prior to date upon which the Development Owner intends to sell the Development.

(B) During the two years following the giving of Notice of Intent, the Sponsor may enter into an agreement to sell the Development only in accordance with a right of first refusal for sale at the Minimum Purchase Price with parties in the following order of priority:

(i) During the first six-month period after the Notice of Intent, only with a Qualified Nonprofit Organization that is also a community housing development organization, as defined for

purposes of the federal HOME Investment Partnerships Program at 24 C.F.R. §92.1 (a "CHDO") and is approved by the Department;

(ii) During the second six-month period after the Notice of Intent, only with a Qualified Nonprofit Organization or a Tenant Organization; and

(iii) During the second year after the Notice of Intent, only with the Department or with a Qualified Nonprofit Organization approved by the Department or a Tenant Organization approved by the Department.

(iv) If, during such two-year period, the Development Owner shall receive an offer to purchase the Development at the Minimum Purchase Price from one of the organizations designated in clauses (i) - (iii) of this subparagraph (within the period(s) appropriate to such organization), the Development Owner shall sell the Development at the Minimum Purchase Price to such organization. If, during such period, the Development Owner shall receive more than one offer to purchase the Development at the Minimum Purchase Price from one or more of the organizations designated in clauses (i) - (iii) of this subparagraph (within the period(s) appropriate to such organizations), the Development Owner shall sell the Development at the Minimum Purchase Price to whichever of such organizations it shall choose.

(C) After whichever occurs the later of:

(i) The end of the Compliance Period; or

(ii) Two years from delivery of a Notice of Intent, the Development Owner may sell the Development without regard to any right of first refusal established by the LURA if no offer to purchase the Development at or above the Minimum Purchase Price has been made by a Qualified Nonprofit Organization, a Tenant Organization or the Department, or a period of 120 days has expired from the date of acceptance of all such offers as shall have been received without the sale having occurred, provided that the failure(s) to close within any such 120-day period shall not have been caused by the Development Owner or matters related to the title for the Development.

(D) At any time prior to the giving of the Notice of Intent, the Development Owner may enter into an agreement with one or more specific Qualified Nonprofit Organizations and/or Tenant Organizations to provide a right of first refusal to purchase the Development for the Minimum Purchase Price, but any such agreement shall only permit purchase of the Development by such organization in accordance with and subject to the priorities set forth in subparagraph (B) of this paragraph.

(E) The Department shall, at the request of the Development Owner, identify in the LURA a Qualified Nonprofit Organization or Tenant Organization which shall hold a limited priority in exercising a right of first refusal to purchase the Development at the Minimum Purchase Price, in accordance with and subject to the priorities set forth in subparagraph (B) of this paragraph.

(F) The Department shall have the right to enforce the Development Owner's obligation to sell the Development as herein contemplated by obtaining a power-of-attorney from the Development Owner to execute such a sale or by obtaining an order for specific performance of such obligation or by such other means or remedy as shall be, in the Department's discretion, appropriate.

(27) Leveraging of Private, State, and Federal Resources. Applications may qualify to receive 1 point for this item. (§2306.6725(a)(3)). Funding sources used for points under paragraph (5) of this subsection, may not be used for this point item.

(A) Evidence must be submitted in the Application that the proposed Development has received or will receive loan(s), grant(s) or in-kind contributions from a private, state or federal resource, which include Capital Grant Funds and HOPE VI funds, that is equal to or greater than 2% (do not round) of the Total Housing Development Costs reflected in the Application.

(B) For in-kind contributions, evidence must be submitted in the Application from a private, state or federal resource which substantiates the value of the in-kind contributions. Development based rental subsidies from a private, state or federal resource may qualify under this section if evidence of the remaining value of the contract is submitted from the source. The value of the contract does not include past subsidies.

(C) Qualifying funds awarded through ~~local entities~~ Local Political Subdivisions may qualify for points if the original source of the funds is from a private, state or federal source. If qualifying funds awarded through ~~l~~Local ~~entities~~ Political Subdivisions are used for this item, a statement from the ~~l~~Local ~~entity~~ Political Subdivision must be provided that identifies the original source of funds.

(D) Applicants may only submit enough sources to substantiate the point request, and all sources must be included in the Sources and Uses form. For example, two sources may be submitted if each is for an amount equal to 1% of the Total Housing Development Cost. However, two sources may not be submitted if each source is for an amount equal to 2% of the Total Housing Development Cost.

(E) The funding must be in addition to the primary funding (construction and permanent loans) that is proposed to be utilized and cannot be issued from the same primary funding source or an affiliated source. The provider of the funds must attest to the fact that they are not the Applicant, the Developer, Consultant, Related Party or any individual or entity acting on behalf of the proposed Application and attest that none of the funds committed were first provided to the entity by the Applicant, the Developer, Consultant, Related Party or any individual or entity acting on behalf of the proposed Application, unless the Applicant itself is a Local Political Subdivision.

(F) The Development must have already applied for funding from the funding entity. Evidence to be submitted with the Application must include a copy of the commitment of funds or a copy of the application to the funding entity and a letter from the funding entity indicating that the application was received. At the time the executed Commitment Notice is required to be submitted, the Applicant or Development Owner must provide evidence of a commitment approved by the ~~G~~governing ~~Body~~ board of the entity for the sufficient financing to the Department. If the funding commitment from the private, state or federal source identified in the Application, or qualifying substitute source, has not been received by the date the Department's Commitment Notice is to be submitted, the Application will be evaluated to determine if the loss of these points would have resulted in the Department's not committing the tax credits. If the loss of points would have made the Application noncompetitive, the Commitment Notice will be rescinded and the credits reallocated. If the Application would still be competitive even with the loss of points and the loss would not have impacted the recommendation for an award, the Application will be reevaluated for financial feasibility. If the Application is infeasible without the commitment from the private, state or federal source, the Commitment Notice will be rescinded and the credits reallocated. Funds from the Department's HOME and Housing Trust Fund sources will only qualify under this category if there is a Notice of Funding Availability (NOFA) out for available funds at the time of _____ and the Applicant is eligible under that NOFA.

(G) To qualify for this point, the Rent Schedule must show that at least 3% (not using normal rounding) of all ~~l~~Low-~~i~~Income Units are designated to serve individuals or families with incomes at or below 30% of AMGI.

(28) Third-Party Funding Commitment Outside of Qualified Census Tracts. Applications may qualify to receive 1 point for this item. (§2306.6710(e)(1)). Evidence that the proposed Development has documented and committed Third-Party funding sources and the Development is located outside of a Qualified Census Tract. The provider of the funds must attest to the fact that they are not the Applicant, the Developer, Consultant, Related Party or any individual or entity acting on behalf of the proposed Application and attest that none of the funds committed were first provided to the entity by the Applicant, the Developer, Consultant, Related Party or any individual or entity acting on behalf of the proposed Application. The commitment of funds (an application alone will not suffice) must already have been received from the Third-Party funding source and must be equal to or greater than 2% (do not round) of the Total Development Costs reflected in the Application. Funds from the Department's HOME and Housing Trust Fund sources will not qualify under this category. The Third-Party funding source cannot be a loan from a commercial lender.

(29) Bonus Points. Applications may qualify to receive up to 6 points for this item.

(A) An Application may receive 2 points if the Applicant or its Affiliate or Principal had submitted acceptable proof of site control at the time of Carryover (November 1, 2008) for Applications that received a Housing Tax Credit commitment made in the Application Round preceding the current round. For purposes of this subparagraph, evidence of site control will consist of an executed deed for the subject property bearing the marks of receipt for filing by the county clerk and confirming the Development Owner as the grantee;

(B) An Application may receive 2 points if the Applicant or its Affiliate or Principal has submitted the complete, acceptable, required documentation for the 10% Test, on or before June 1 for Applications that received a Housing Tax Credit commitment made in the Application Round preceding

the current round. (Applications that request extensions of the June 1 date, are not eligible for these bonus points);

(C) An Application may receive 2 points for having 5 or less aggregate Administrative dDeficiencies through the combined Eligibility, Selection and Threshold reviews;

(D) An Application may receive 1 point for having 10 or less aggregate Administrative dDeficiencies through the combined Eligibility, Selection and Threshold reviews; and/or

(D) An Application may receive 1 point if an Applicant satisfies Administrative Ddeficiencies, to the satisfaction of the Department, on or before the third business day following the date of the applicable deficiency notice.

(30) Scoring Criteria Imposing Penalties. (§2306.6710(b)(2))

(A) Penalties will be imposed on an Application if the Applicant has requested an extension of the Carryover or 10% Test deadline, and did not meet the original submission deadline, relating to Developments receiving a Housing Tax Credit commitment made in the Application Round preceding the current round. For each extension request made, the Applicant will receive a 5 point deduction. No penalty points or fees will be deducted for extensions that were requested on Developments that involved Rehabilitation when the Department is the primary lender, or for Developments that involve TRDO-USDA as a lender if TRDO-USDA or the Department is the cause for the Applicant not meeting the deadline.

(B) Point Ppenalties ~~will~~ may be imposed on an Application if the Developer or Principal of the Applicant has been removed by the lender, equity provider, or limited partners in the past five years for failure to perform its obligations under the loan documents or limited partnership agreement. An affidavit will be provided by the Applicant and the Developer certifying that they have not been removed as described, or requiring that they disclose each instance of removal with a detailed description of the situation. If an Applicant or Developer submits the affidavit, and the Department learns at a later date that a removal did take place as described, then the Application will be terminated and any Allocation made will be rescinded. The Applicant, Developers or Principals of the Applicant that are in court proceedings at the time of Application must disclose this information and the situation will be evaluated on a case-by-case basis. 3 points will be deducted for each instance of removal.

(C) Penalties will be imposed on an Application if Developer or Principal of the Applicant violates the Adherence to Obligations pursuant to subsection (c) of this section.

(j) **Tie Breaker Factors.**

(1) In the event that two or more Applications receive the same number of points in any given Set-Aside category, Rural Regional Allocation or Urban Regional Allocation, or Uniform State Service Region, and are both practicable and economically feasible, the Department will utilize the factors in this paragraph, in the order they are presented, to determine which Development will receive a preference in consideration for a tax credit commitment.

(A) Applications involving any Rehabilitation or Reconstruction of existing Units will win this first tier tie breaker over Applications involving solely New Construction or Adaptive Reuse.

(B) The Application located in the municipality or, if located outside a municipality, the county that has the lowest state average of units per capita supported by Housing Tax Credits or private activity bonds at the time the Application Round begins as reflected in the Reference Manual will win this second tier tie breaker.

(C) The amount of requested tax credits per ~~net~~square foot of Net Rentable Area ~~rentable square foot~~ (the lower credits per square foot has preference).

(D) Projects that are intended for eventual tenant ownership. Such Developments must utilize a detached single family site plan and building design and have a business plan describing how the ~~project~~ Development is intended to~~will~~ convert to tenant ownership at the end of the 15-year compliance period.

(2) This paragraph identifies how ties will be handled when dealing with the restrictions on location identified in §49.5(a)(8) of this chapter, and in dealing with any issues relating to capture rate calculation. When two Tax-Exempt Bond Developments would violate one of these restrictions, and

only one Development can be selected, the Department will utilize the reservation docket number issued by the Texas Bond Review Board in making its determination. When two Competitive Housing Tax Credits Applications in the Application Round would violate one of these restrictions, and only one Development can be selected, the Department will utilize the tie breakers identified in paragraph (1) of this subsection. When a Tax-Exempt Bond Development and a Competitive Housing Tax Credit Application in the Application Round would both violate a restriction, the following determination will be used:

(A) Tax-Exempt Bond Developments that receive their reservation from the Bond Review Board on or before April 30, 2009 will take precedence over the Housing Tax Credit Applications in the 2009 Application Round;

(B) Housing Tax Credit Applications approved by the Board for tax credits in July 2009 will take precedence over the Tax-Exempt Bond Developments that received their reservation from the Bond Review Board on or between May 1, 2009 and July 31, 2009; and

(C) After July 31, 2009, a Tax-Exempt Bond Development with a reservation from the Bond Review Board will take precedence over any Housing Tax Credit Application from the 2009 Application Round on the Waiting List. However, if no reservation has been issued by the date the Board approves an allocation to a Development from the Waiting List of Applications in the 2009 Application Round or a forward commitment, then the Waiting List Application or forward commitment will be eligible for its allocation.

(k) **Staff Recommendations.** (§2306.1112 and §2306.6731) After eligible Applications have been evaluated, ranked and underwritten in accordance with the QAP and the Rules, the Department staff shall make its recommendations to the Executive Award and Review Advisory Committee. The Committee will develop funding priorities and shall make commitment recommendations to the Board. Such recommendations and supporting documentation shall be made in advance of the meeting at which the issuance of Commitment Notices or Determination Notices shall be discussed. The Committee will provide written, documented recommendations to the Board which will address at a minimum the financial or programmatic viability of each Application and a list of all submitted Applications which enumerates the reason(s) for the Development's proposed selection or denial, including all factors provided in §49.10(a) of this chapter that were used in making this determination.

§49.10. Board Decisions; Waiting List; Forward Commitments.

(a) **Board Decisions.** The Board's decisions shall be based upon the Department's and the Board's evaluation of the proposed Developments' consistency with the criteria and requirements set forth in this QAP and Rules.

(1) On awarding tax credits, the Board shall document the reasons for each Application's selection, including any discretionary factors used in making its determination, and the reasons for any decision that conflicts with the recommendations made by Department staff. The Board may not make, without good cause, a commitment decision that conflicts with the recommendations of Department staff. Good cause includes the Board's decision to apply discretionary factors. (§2306.6725(c); §2306.6731; and §42(m)(1)(A)(iv))

(2) In making a determination to allocate tax credits, the Board shall be authorized to not rely solely on the number of points scored by an Application. It shall in addition, be entitled to take into account, as it deems appropriate, the discretionary factors listed in this paragraph. The Board may also apply these discretionary factors to its consideration of Tax-Exempt Bond Developments. If the Board disapproves or fails to act upon an Application, the Department shall issue to the Applicant a written notice stating the reason(s) for the Board's disapproval or failure to act. In making tax credit decisions (including those related to Tax-Exempt Bond Developments), the Board, in its discretion, may evaluate, consider and apply any one or more of the following discretionary factors: (§2306.111(g)(3))

(A) The Developer market study;

(B) The location;

(C) The compliance history of the Developer;

(D) The financial feasibility;

(E) The appropriateness of the Development's size and configuration in relation to the housing needs of the community in which the Development is located;

(F) The Development's proximity to other low-income housing Developments;

(G) The availability of adequate public facilities and services;

(H) The anticipated impact on local school districts;

(I) Zoning and other land use considerations;

(J) Any matter considered by the Board to be relevant to the approval decision and in furtherance of the Department's purposes; and

(K) Other good cause as determined by the Board.

(3) Before the Board approves any Application, the Department shall assess the compliance history of the Applicant with respect to all applicable requirements; and the compliance issues associated with the proposed Development, including compliance information provided by the Texas State Affordable Housing Corporation. The Committee shall provide to the Board a written report regarding the results of the assessments. The written report will be included in the appropriate Development file for Board and Department review. The Board shall fully document and disclose any instances in which the Board approves a Development Application despite any noncompliance associated with the Development or Applicant. (§2306.057)

(b) **Waiting List.** (§2306.6711(c) and (d)). If the entire State Housing Credit Ceiling for the applicable calendar year has been committed or allocated in accordance with this chapter, the Board shall generate, concurrently with the issuance of commitments, a waiting list of additional Applications ranked by score in descending order of priority based on Set-Aside categories and regional allocation goals. The Board may also apply discretionary factors in determining the Waiting List. If at any time prior to the end of the Application Round, one or more Commitment Notices expire ~~and~~ or a sufficient amount of the State Housing Credit Ceiling becomes available, the Board shall issue a Commitment Notice to Applications on the waiting list subject to the amount of returned credits, the regional allocation goals and the Set-Aside categories, including the 10% Nonprofit Set-Aside allocation and 15% At-Risk Set-Aside allocation and 5% TRDO-USDA Set-Aside required under the Code, §42(h)(5). At the end of each calendar year, all Applications which have not received a Commitment Notice shall be deemed terminated. The Applicant may re-apply to the Department during the next Application Acceptance Period.

(c) **Forward Commitments.** The Board may determine to issue commitments of tax credit authority with respect to Applications from the State Housing Credit Ceiling for the calendar year following the year of issuance (each a "forward commitment") to Applications submitted in accordance with the rules and timelines required under this rule and the Application Submission Procedures Manual. The Board will utilize its discretion in determining the amount of credits to be allocated as forward commitments and the reasons for those commitments considering score and discretionary factors. The Board may utilize the forward commitment authority to allocate credits to TRDO-USDA Developments which are experiencing foreclosure or loan acceleration at any time during the 2009 calendar year, also referred to as Rural Rescue Developments. Applications that are submitted under the 2009 QAP and granted a Forward Commitment of 2010 Housing Tax Credits are considered by the Board to comply with the 2010 QAP by having satisfied the requirements of this 2009 QAP, except for statutorily required QAP changes.

(1) Unless otherwise provided in the Commitment Notice with respect to a Development selected to receive a forward commitment, actions which are required to be performed under this chapter by a particular date within a calendar year shall be performed by such date in the calendar year of the State Housing Credit Ceiling from which the credits are allocated.

(2) Any forward commitment made pursuant to this section shall be made subject to the availability of State Housing Credit Ceiling in the calendar year with respect to which the forward commitment is made. If a forward commitment shall be made with respect to a Development placed in service in the year of such commitment, the forward commitment shall be a "binding commitment" to allocate the applicable credit dollar amount within the meaning of the Code, §42(h)(1)(C).

(3) If tax credit authority shall become available to the Department in a calendar year in which forward commitments have been awarded, the Department may allocate such tax credit

authority to any eligible Development which received a forward commitment, in which event the forward commitment shall be canceled with respect to such Development.

§49.11. Required Application Notifications, Receipt of Public Comment, and Meetings with Applicants; Viewing of Pre-Applications and Applications; Confidential Information.

(a) **Required Application Notifications, Receipt of Public Comment, and Meetings with Applicants.**

(1) Within approximately 14 days after the close of the Pre-Application Acceptance Period, the Department shall publish a Pre-Application Submission Log on its web site. Such log shall contain the Development name, address, Set-Aside, number of Units, requested credits, owner contact name and phone number. (§2306.6717(a)(1))

(2) Approximately 30 days before the close of the Application Acceptance Period, the Department will release the evaluation and assessment of the Pre-Applications on its web site.

(3) Not later than 14 days after the close of the Pre-Application Acceptance Period, or Application Acceptance Period for Applications for which no Pre-Application was submitted, the Department shall: (§2306.1114)

(A) Publish an Application submission log on its web site.

(B) Give notice of a proposed Development in writing that provides the information required under clause (i) of this subparagraph to all of the individuals and entities described in clauses (ii) - (x) of this subparagraph. (§2306.6718(a)-(c))

(i) The following information will be provided in these notifications:

(I) The relevant dates affecting the Application including the date on which the Application was filed, the date or dates on which any hearings on the Application will be held and the date by which a decision on the Application will be made;

(II) A summary of relevant facts associated with the Development;

(III) A summary of any public benefits provided as a result of the Development, including rent subsidies and tenant services; and

(IV) The name and contact information of the employee of the Department designated by the director to act as the information officer and liaison with the public regarding the Application.

(ii) Presiding officer of the Governing Body of the Local ~~p~~Political ~~s~~Subdivision containing the Development (mayor or county judge) to advise such individual that the Development, or a part thereof, will be located in his/her jurisdiction and request any comments which such individual may have concerning such Development.

(iii) If the Department receives a letter from the mayor or county judge of an affected city or county that expresses opposition to the Development, the Department will give consideration to the objections raised and will offer to visit the proposed site or Development with the mayor or county judge or their designated representative within 30 days of notification. The site visit must occur before the Housing Tax Credit can be approved by the Board. The Department will obtain reimbursement from the Applicant for the necessary travel and expenses at rates consistent with the state authorized rate; (General Appropriation Act, Article VII, Rider 5) (§42(m)(1))

(iv) Any member of the Governing Body of a Local ~~p~~Political ~~s~~Subdivision who represents the Area containing the Development. If the Governing Body has single-member districts, then only that member of the Governing Body for that district will be notified, however if the Governing Body has at-large districts, then all members of the Governing Body will be notified;

(v) State ~~r~~Representative and ~~s~~State ~~s~~Senator who represent the community where the Development is proposed to be located. If the ~~s~~State ~~r~~Representative or ~~s~~Senator hosts a community meeting, the Department, if timely notified, will ensure staff are in attendance to provide information regarding the Housing Tax Credit Program; (General Appropriation Act, Article VII, Rider 8(d))

(vi) United States representative who represents the community containing the Development;

(vii) Superintendent of the school district containing the Development;

(viii) Presiding officer of the board of trustees of the school district containing the Development;

(ix) Any Neighborhood Organizations on record with the ~~city~~ state or county in which the Development is to be located and whose boundaries contain the proposed Development site or otherwise known to the Applicant or Department and on record with the state or county; and

(x) Advocacy organizations, social service agencies, civil rights organizations, tenant organizations, or others who may have an interest in securing the development of affordable housing that are registered on the Department's email list service.

(C) The Department shall maintain an electronic mail notification service that will notify a subscriber, by zip code, of: (§2306.67171)

(i) The receipt of a Pre-Application or Application for a Development Site within such zip code within 14 days of receipt;

(ii) The publication of materials to be presented to the Board for the Pre-Application or Application referred to in clause (i) of this subparagraph; and

(iii) Any public hearing for the Pre-Application or Application referred to in clause (i) of this subparagraph.

(D) The elected officials identified in subparagraph (B) of this paragraph will be provided an opportunity to comment on the Application during the Application evaluation process. (§42(m)(1))

(4) The Department shall hold at least three public hearings in different Uniform State Service Regions of the state to receive comment on the submitted Applications and on other issues relating to the Housing Tax Credit Program for ~~c~~Competitive Housing Tax Credit Applications under the State Housing Credit Ceiling. (§2306.6717(c))

(5) The Department shall make available on the Department's website information regarding the Housing Tax Credit Program including notice of public hearings, meetings, Application Round opening and closing dates, submitted Applications, and Applications approved for underwriting and recommended to the Board, and shall provide that information to locally affected community groups, local and state elected officials, local housing departments, any appropriate newspapers of general or limited circulation that serve the community in which a proposed Development is to be located, nonprofit and for-profit organizations, on-site property managers of occupied Developments that are the subject of Applications for posting in prominent locations at those Developments, and any other interested persons including community groups, who request the information. (§2306.6717(b))

(6) Approximately forty days prior to the date of the July Board meeting at which the issuance of Commitment Notices shall be discussed, the Department will notify each Applicant of the receipt of any opposition received by the Department relating to his or her Development at that time.

(7) Not later than the third working day after the date of completion of each stage of the Application process, including the results of the Application scoring and underwriting phases and the commitment phase, the results will be posted to the Department's web site. (§2306.6717(a)(3))

(8) At least thirty days prior to the date of the July Board meeting at which the issuance of Commitment Notices shall be discussed, the Department will:

(A) Provide the Application scores to the Board; (§2306.6711(a)) and

(B) If feasible, post to the Department's web site the entire Application, including all supporting documents and exhibits, the Application Log as further described in §49.19(b) of this chapter, a scoring sheet providing details of the Application score, and any other documents relating to the processing of the Application. (§2306.6717(a)(1) and (2))

(9) A summary of comments received by the Department on specific Applications shall be part of the documents required to be reviewed by the Board under this subsection if ~~it is~~ such comments are received 30 business days prior to the date of the Board Meeting at which the issuance of Commitment Notices or Determination Notices shall be discussed. Comments received after this deadline will not be part of the documentation submitted to the Board. However, a public comment period will be available prior to the Board's decision, at the Board ~~m~~Meeting where tax credit commitment decisions will be made.

(10) Not later than the 120th day after the date of the initial issuance of Commitment Notices for Housing Tax Credits, the Department shall provide an Applicant who did not receive a

commitment for Housing Tax Credits with an opportunity to meet and discuss with the Department the Application's deficiencies, scoring and underwriting. (§2306.6711(e))

(b) **Viewing of Pre-Applications and Applications.** Pre-Applications and Applications for tax credits are public information and are available upon request after the Pre-Application and Application Acceptance Periods close, respectively. All Pre-Applications and Applications, including all exhibits and other supporting materials, except Personal Financial Statements and Social Security numbers, will be made available for public disclosure after the Pre-Application and Application periods close, respectively. The content of Personal Financial Statements may still be made available for public disclosure upon request if the Attorney General's office deems it is not protected from disclosure by the Texas Public Information Act.

(c) **Confidential Information.** The Department may treat the financial statements of any Applicant as confidential and may elect not to disclose those statements to the public. A request for such information shall be processed in accordance with §552.305 of the Texas Government Code. (§2306.6717(d))

§49.12. Tax-Exempt Bond Developments: Filing of Applications; Applicability of Rules; Supportive Services; Financial Feasibility Evaluation; Satisfaction of Requirements.

(a) **Filing of Applications for Tax-Exempt Bond Developments.** Applications for a Tax-Exempt Bond Development may be submitted to the Department as described in paragraphs (1) and (2) of this subsection:

(1) Applicants which receive advance notice of a Program Year 2009 reservation as a result of the Texas Bond Review Board's (TBRB) lottery for the private activity volume cap must file a complete Application not later than 12:00 p.m. on December 29, 2008. Such filing must be accompanied by the Application fee described in §49.20 of this chapter.

(2) Applicants which receive advance notice of a Program Year 2009 reservation after being placed on the waiting list as a result of the TBRB lottery for private activity volume cap must submit Volume 1 and Volume 2 of the Application and the Application fee described in §49.20 of this chapter prior to the Applicant's bond reservation date as assigned by the TBRB. Those Applications designated as Priority 3 by the TBRB must submit Volumes I and II within 14 days of the bond reservation date if the Applicant intends to apply for tax credits regardless of the Issuer. Any outstanding documentation required under this section regardless of Priority must be submitted to the Department at least 60 days prior to the Board meeting at which the decision to issue a Determination Notice would be made unless a waiver is requested by the Applicant. The Department staff will have limited discretion to recommend an Application with appropriate justification of the late submission.

(3) Applications involving multiple sites must submit the required information as outlined in the Application Submission Procedures Manual. The Application will be considered to be one Application as identified in Chapter 1372, Texas Government Code.

(b) **Applicability of Rules for Tax-Exempt Bond Developments.** Tax-Exempt Bond Development Applications are subject to all rules in this chapter, with the only exceptions being the following sections: §49.4 of this chapter (regarding State Housing Credit Ceiling), §49.7 of this chapter (regarding Regional Allocation and Set-Asides), §49.8 of this chapter (regarding Pre-Application), §49.9(d) and (f) of this chapter (regarding Evaluation Processes for Competitive Applications and Rural Rescue Applications), §49.9(i) of this chapter (regarding Selection Criteria), §49.10(b) and (c) of this chapter (regarding Waiting List and Forward Commitments), and §49.14(a) and (b) of this chapter (regarding Carryover and 10% Test). Such Developments requesting a Determination Notice in the current calendar year must meet all Threshold Criteria requirements stipulated in §49.9(h) of this chapter. Such Developments which received a Determination Notice in a prior calendar year must meet all Threshold Criteria requirements stipulated in the QAP and Rules in effect for the calendar year in which the Determination Notice was issued; provided, however, that such Developments shall comply with all procedural requirements for obtaining Department action in the current QAP and Rules; and such other requirements of the QAP and Rules as the Department determines applicable. Applicants

will be required to meet all conditions of the Determination Notice by the time the construction loan is closed unless otherwise specified in the Determination Notice. Applicants must meet the requirements identified in §49.15 of this chapter. No later than 60 days following closing of the bonds, the Development Owner must also submit a Management Plan and an Affirmative Marketing Plan (as further described in the Carryover Allocation Procedures Manual), and evidence must be provided at this time of attendance of the Development Owner or management company at Department-approved Fair Housing training relating to leasing and management issues for at least five hours and the Development architect and engineer at Department-approved Fair Housing training relating to design issues for at least five hours. Certifications must not be older than two years. Applications that receive a reservation from the Bond Review Board on or before December 31, 2008 will be required to satisfy the requirements of the 2008 QAP; Applications that receive a reservation from the Bond Review Board on or after January 1, 2009 will be required to satisfy the requirements of the 2009 QAP.

(c) **Supportive Services for Tax-Exempt Bond Developments.** Tax-Exempt Bond Development Applications must provide an executed agreement with a qualified service provider for the provision of special supportive services that would otherwise not be available for the tenants. No fees may be charged to the tenants for any of the services. Services must be provided on-site or transportation to off-site services must be provided. The provision of these services will be included in the LURA. Acceptable services as described in paragraphs (1) - (3) of this subsection include:

(1) The services must be in at least one of the following categories: child care, transportation, notary public service, basic adult education, legal assistance, counseling services, GED preparation, English as a second language classes, vocational training, home buyer education, credit counseling, financial planning assistance or courses, health screening services, health and nutritional courses, organized team sports programs, youth programs, scholastic tutoring, social events and activities, community gardens or computer facilities;

(2) Any other program 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 out-of wedlock pregnancies; and encourages the formation and maintenance of two-parent families; or

(3) Any other services approved in writing by the Issuer. The plan for tenant supportive services submitted for review and approval of the Issuer must contain a plan for coordination of services with state workforce development and welfare programs. The coordinated effort will vary depending upon the needs of the tenant profile at any given time as outlined in the plan.

(d) **Financial Feasibility Evaluation for Tax-Exempt Bond Developments.** Code §42(m)(2)(D) requires the bond issuer (if other than the Department) to ensure that a Tax-Exempt Bond Development does not receive more tax credits than the amount needed for the financial feasibility and viability of a Development throughout the Compliance Period. Treasury Regulations prescribe the occasions upon which this determination must be made. In light of the requirement, issuers may either elect to underwrite the Development for this purpose in accordance with the QAP and the Underwriting Rules and Guidelines, §1.32 of this title or request that the Department perform the function. If the issuer underwrites the Development, the Department will, nonetheless, review the underwriting report and may make such changes in the amount of credits which the Development may be allowed as are appropriate under the Department's guidelines. The Determination Notice issued by the Department and any subsequent IRS Form(s) 8609 will reflect the amount of tax credits for which the Development is determined to be eligible in accordance with this subsection, and the amount of tax credits reflected in the IRS Form 8609 may be greater or less than the amount set forth in the Determination Notice, based upon the Department's and the bond issuer's determination as of each building's placement in service. Any increase of tax credits, from the amount specified in the Determination Notice, at the time of each building's placement in service will only be permitted if it is determined by the Department, as required by Code §42(m)(2)(D), that the Tax-Exempt Bond Development does not receive more tax credits than the amount needed for the financial feasibility and viability of a Development throughout the Compliance Period. Increases to the amount of tax credits that exceed 110% of the amount of credits reflected in the Determination Notice are contingent upon approval by

the Board. Increases to the amount of tax credits that do not exceed 110% of the amount of credits reflected in the Determination Notice may be approved administratively by the Executive Director.

(e) **Satisfaction of Requirements for Tax-Exempt Bond Developments.** If the Department staff determines that all requirements of this QAP and Rules have been met, the Department will recommend that the Board authorize the issuance of a Determination Notice. The Board, however, may utilize the discretionary factors identified in §49.10(a) of this chapter in determining if they will authorize the Department to issue a Determination Notice to the Development Owner. The Determination Notice, if authorized by the Board, will confirm that the Development satisfies the requirements of the QAP and Rules in accordance with the Code, §42(m)(1)(D).

(f) **Certification of Tax Exempt Applications with New Docket Numbers.** Applications that are processed through the Department review and evaluation process and receive an affirmative Board Determination, but do not close the bonds prior to the bond reservation expiration date, and subsequently have that docket number withdrawn from the Bond Review Board, may have their Determination Notice reinstated. The Applicant would need to receive a new docket number from the Texas Bond Review Board. One of the following must apply:

(1) The new docket number must be issued in the same program year as the original docket number and must not be more than four months from the date the original application was withdrawn from the BRB. The application must remain unchanged. This means that at a minimum, the following can not have changed: site control, total number of units, unit mix (bedroom sizes and income restrictions), design/site plan documents, financial structure including bond and Housing Tax Credit amounts, development costs, rent schedule, operating expenses, sources and uses, ad valorem tax exemption status, target population, scoring criteria (TDHCA issues) or BRB priority status including the effect on the inclusive capture rate. Note that the entities involved in the Applicant entity and Developer can not 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. Notifications under §49.9(h)(8) of this chapter are not required to be reissued. In the event that the Department's Board has already approved the Application for tax credits, the Application is not required to be presented to the Board again (unless there is public opposition) and a revised Determination Notice will be issued once notice of the assignment of a new docket number has been provided to the Department and the Department has confirmed that the capture rate and market demand remain acceptable. This certification must be submitted no later than thirty days after the date the Bond Review Board issues the new docket number and no later than thirty days before the anticipated closing. In the event that the Department's Board has not yet approved the Application, the Application will continue to be processed and ultimately provided to the Board for consideration. This certification must be submitted no later than thirty days after the date the Bond Review Board issues the new docket number and no later than forty-five days before the anticipated Department's Board meeting date.

(2) If there are changing to the Application as referenced in paragraph (1) of this subsection, the Application 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.

§49.13. Commitment and Determination Notices; Agreement and Election Statement; Documentation Submission Requirements.

(a) **Commitment and Determination Notices.** If the Board approves an Application for a Housing Credit Allocation, the Department will:

(1) If the Application is for a commitment from the State Housing Credit Ceiling, issue a Commitment Notice to the Development Owner which shall:

(A) Confirm that the Board has approved the Application; and

(B) State the Department's commitment to make a Housing Credit Allocation to the Development Owner in a specified amount, subject to the feasibility determination described in §49.16 of this chapter, and compliance by the Development Owner with the remaining requirements of this chapter and any other terms and conditions set forth therein by the Department. This commitment

shall expire on the date specified therein unless the Development Owner indicates acceptance of the commitment by executing the Commitment Notice, pays the required fee specified in §49.20 of this chapter, and satisfies any other conditions set forth therein by the Department. The Commitment Notice expiration date may not be extended.

(2) If the Application regards a Tax-Exempt Bond Development, issue a Determination Notice to the Development Owner which shall:

(A) Confirm the Board's determination that the Development satisfies the requirements of this QAP; and

(B) State the Department's commitment to issue IRS Form(s) 8609 to the Development Owner in a specified amount, subject to the requirements set forth in §49.12 of this chapter and compliance by the Development Owner with all applicable requirements of this chapter and any other terms and conditions set forth therein by the Department. The Determination Notice shall expire on the date specified therein unless the Development Owner indicates acceptance by executing the Determination Notice and paying the required fee specified in §49.20 of this chapter. The Determination Notice shall also expire unless the Development Owner satisfies any conditions set forth therein by the Department. The Determination Notice expiration date may not be extended.

(3) Notify, in writing, the presiding officer of the Governing Body of the Local Political Subdivision ~~mayor or other equivalent chief executive officer of the municipality~~ in which the ~~Property~~ Development is located informing him/her of the Board's issuance of a Commitment Notice or Determination Notice, as applicable.

(4) A Commitment or Determination Notice shall not be issued with respect to any Development for an unnecessary amount or where the cost for the total development, acquisition, construction or Rehabilitation exceeds the limitations established from time to time by the Department and the Board, unless the Department staff make a recommendation to the Board based on the need to fulfill the goals of the Housing Tax Credit Program as expressed in this QAP and Rules, and the Board accepts the recommendation. The Department's recommendation to the Board shall be clearly documented.

(5) A Commitment or Determination Notice shall not be issued with respect to the Applicant, the Development Owner, the General Contractor, or any Affiliate of the General Contractor that is active in the ownership or Control of one or more other low-income rental housing properties in the state of Texas administered by the Department that is in Material Noncompliance with the LURA (or any other document containing an Extended Low-income Housing Commitment) or the program rules in effect for such property, as described in Chapter 60 of this title.

(6) The executed Commitment or Determination Notice must be returned to the Department on the date specified within the Commitment Notice or Determination Notice, which shall be no earlier than ten days ~~of~~after the effective date of the Notice.

(b) **Agreement and Election Statement.** Together with the Development Owner's acceptance of the Carryover Allocation, the Development Owner may execute an Agreement and Election Statement, in the form prescribed by the Department, for the purpose of fixing the Applicable Percentage for the Development as that for the month in which the Carryover Allocation was accepted (or the month the bonds were closed for Tax-Exempt Bond Developments), as provided in the Code, §42(b)(2). Current Treasury Regulations, §1.42-8(a)(1)(v), suggest that in order to permit a Development Owner to make an effective election to fix the Applicable Percentage for a Development receiving credits from the State Housing Credit Ceiling, the Carryover Allocation Document must be executed by the Department and the Development Owner within the same month. The Department staff will cooperate with a Development Owner, as possible or reasonable, to assure that the Carryover Allocation Document can be so executed.

(c) **Documentation Submission Requirements at Commitment of Funds.** No later than the date the Commitment Notice or Determination Notice is executed by the Applicant and returned to the Department with the appropriate Commitment or Determination Fee as further described in §49.20(f) of this chapter, the following documents must also be provided to the Department. Failure to provide these documents may cause the Commitment or Determmination to be rescinded. For each Applicant all of the following must be provided:

(1) Evidence that the ~~entity~~ Development Owner has the authority to do business in Texas;

(2) A Certificate of Account Status from the Texas Comptroller of Public Accounts for the Development Owner or, if such a Certificate is not available because the entity is newly formed, a statement to such effect; and a Certificate of Organization from the Secretary of State for the Development Owner;

(3) Copies of the entity's governing documents, including, but not limited to, its ~~Articles of Incorporation, Articles of Organization, Certificate of Limited Partnership~~ Certificate of Formation, Bylaws, ~~Regulations~~ Company Agreement and/or Partnership Agreement; and

(4) Evidence that the signer(s) of the Application have the authority to sign on behalf of the Applicant in the form of ~~a corporate~~ resolutions or ~~by-laws~~ governing documents which indicate same from the ~~sub-entity~~ Person in Control and that those Persons signing the Application constitute all Persons required to sign or submit such documents.

§49.14. Carryover; 10% Test; Commencement of Substantial Construction.

(a) **Carryover.** All Developments which received a Commitment Notice, and will not be placed in service and receive IRS Form 8609 in the year the Commitment Notice was issued, must submit the Carryover documentation to the Department no later than November 1 of the year in which the Commitment Notice is issued pursuant to §42(h)(l)(c) IRC.

(1) Commitments for credits will be terminated if the Carryover documentation, or an approved extension, has not been received by this deadline. In the event that a Development Owner intends to submit the Carryover documentation in any month preceding November of the year in which the Commitment Notice is issued, in order to fix the Applicable Percentage for the Development in that month, it must be submitted no later than the first Friday in the preceding month.

(2) If the financing structure, syndication rate, or the amount of debt or syndication proceeds are revised at the time of Carryover from what was proposed in the original Application, applicable documentation of such changes must be provided and the Development may be reevaluated by the Department.

(3) The Carryover Allocation format must be properly completed and delivered to the Department as prescribed by the Carryover Allocation Procedures Manual.

(4) All Carryover Allocations will be contingent upon the Development Owner providing evidence that the Development ~~s~~Site is still under control of the Development Owner. For purposes of this paragrapgh, site control must be identical to the same Development Site that was submitted at the time of Application ~~S~~submission.

(5) The Department will not execute a Carryover Allocation Agreement with any Development Owner in Material Noncompliance on October 1, 2009, and the Commitment Notice for such Development shall be rescinded. ~~.~~

(6) The Development Owner may receive bonus points, as referenced in §49.9(i)(29) of this chapter, in the Application Round following the execution of the Carryover Allocation Agreement, if the Development Owner provides evidence of the purchase, transfer, lease or otherwise has ownership, of the Development Site, at the time of submission of the Carryover documentation.

(b) **10% Test.** No later than eleven months from the date the Carryover Allocation Document is executed by the Department and the Development Owner, more than 10% of the Development Owner's reasonably expected basis must have been incurred pursuant to §42(h)(1)(E)(i) and (ii) of the Internal

Revenue Code (as amended by The Housing and Economic Recovery Act of 2008) and Treasury Regulations, §1.42-6. The evidence to support the satisfaction of this requirement must be submitted to the Department no later than December 1 of the year following the execution of the Carryover Allocation Document in a format prescribed by the Department. At the time of submission of the documentation, the Development Owner must also submit a Management Plan and an Affirmative Marketing Plan as further described in the Carryover Allocation Procedures Manual. Evidence must be provided at this time of attendance of the Development Owner or management company at Department-approved Fair Housing training relating to leasing and management issues for at least five hours and the Development architect and engineer at Department-approved Fair Housing training relating to design issues for at least five hours on or before the time the 10% Test Documentation is submitted. Certifications must not be older than two years from the date of submission of the 10% Test Documentation. The 10% Test Documentation ~~will be contingent upon~~ must include the following, in addition to all other conditions placed upon the Application in the Commitment Notice:

(1) Evidence that ~~T~~the Development Owner ~~for all Developments must have~~ has purchased, transferred, leased or otherwise ha~~ves~~ ownership~~,~~ of, the Development Site.

(2) A current original plat or survey of the land, prepared by a duly licensed Texas Registered Professional Land Surveyor. Such survey shall conform to standards prescribed in the Manual of Practice for Land Surveying in Texas as promulgated and amended from time to time by the Texas Surveyors Association as more fully described in the Carryover Procedures Manual.

(3) For all Developments involving New Construction or Adaptive Reuse, evidence of the availability of all necessary utilities/services to the Development site must be provided. Necessary utilities include natural gas (if applicable), electric, trash, water, and sewer. Such evidence must be a letter or a monthly utility bill from the appropriate municipal/local service provider. If utilities are not already accessible, then the letter must clearly state: an estimated time frame for provision of the utilities, an estimate of the infrastructure cost necessary to obtain service, and an estimate of any portion of that cost that will be borne by the Development Owner. Letters must be from an authorized individual representing the organization which actually provides the services. Such documentation should clearly indicate the Development ~~property~~ Site. If utilities are not already accessible (undeveloped areas), then the letter should not be older than three months from the first day of the Application Acceptance Period.

(4) The Development Owner must submit evidence of having commenced and continued substantial construction activities as defined in Chapter 60 of this title.

(5) The Development Owner may receive bonus points, as referenced in section 49.9(i)(29) of this chapter, in the Application Round following the execution of the Carryover Allocation Agreement, if the Development Owner provides evidence that the requirements of the 10% Test were met, on or before June 1 in the year following the execution of the Carryover Allocation Agreement (with the exception of the documentation required in paragraph (4) of this subsection), and submits the complete documentation, to the Department, on or before June 1 in the year following the execution of the same Carryover Allocation Agreement. The submission of the commencement of substantial construction documentation, as referenced in paragraph (4) of this subsection, will be required on or before December 1 of the year following the Carryover Allocation Agreement to achieve these bonus points.

§49.15. LURA, Cost Certification.

(a) **Land Use Restriction Agreement (LURA).** The Development Owner must request a LURA from the Department no later than the date specified in Chapter 60 of this title, the Department's Compliance Rules. The Development Owner must complete, date, sign and acknowledge before a notary public the LURA and send the original to the Department for execution. The initial compliance and monitoring fee must be included, accompanied by a statement, signed by the Owner, indicating the start of the Development's Credit Period and the earliest placed in service date for the Development buildings. After receipt of the signed LURA from the Department, the Development Owner shall then record the LURA, along with any and all exhibits attached thereto, in the real property records of the county where the Development is located and return the original document, duly certified as to recordation by the appropriate county official, to the Department no later than the date that the Cost Certification Documentation is submitted to the Department. If any liens (other than mechanics' or materialmen's liens) shall have been recorded against the Development ~~and/or the Property~~ prior to the recording of the LURA, the Development Owner shall obtain the subordination of the rights of any such lienholder, or other effective consent, to the survival of certain obligations contained in the LURA, which are required by §42(h)(6)(E)(ii) of the Code to remain in effect following the foreclosure of any such lien. Receipt of such certified recorded original LURA by the Department is required prior to issuance of IRS Form 8609. A representative of the Department, or assigns, shall physically inspect the Development for compliance with the Application and the representations, warranties, covenants, agreements and undertakings contained therein. Such inspection will be conducted before the IRS Form 8609 is issued for a building, but it shall be conducted in no event later than the end of the second calendar year following the year the last building in the Development is placed in service. The Development Owner for Tax-Exempt Bond Developments shall obtain a subordination agreement wherein the lien of the mortgage is subordinated to the LURA. The LURA shall contain any provision which requires the Development Owner to restrict rents and incomes at any AMGI level, as approved by the Board. The restricted gross rents for any AMGI level outlined in the LURA will be calculated in accordance with §42(g)(2)(A), Internal Revenue Code.

(b) **Cost Certification.** The Cost Certification Procedures Manual sets forth the documentation required for the Department to perform a feasibility analysis in accordance with §42(m)(2)(C)(i)(II), Internal Revenue Code, and determine the final Credit to be allocated to the Development.

(1) To request IRS Forms 8609, Developments must have:

(A) Placed in Service by December 31 of the year the Commitment Notice was issued if a Carryover Allocation was not requested and received; or December 31 of the second year following the year the Carryover Allocation Agreement was executed;

(B) Scheduled a final construction inspection in accordance with Chapter 60 of this title, the Department's Compliance Monitoring Policies and Procedures;

(C) Informed the Department of and received written approval for all Development amendments in accordance with §49.17(c) of this chapter;

(D) Submitted to the Department the LURA in accordance with subsection (a) of this section;

(E) Paid all applicable Department fees; and

(F) Prepared all Cost Certification documentation as more fully described in the Cost Certification Procedures Manual including:

(i) Carryover Allocation Agreement/Determination Notice and Election Statement;
(ii) Owner's Statement of Certification;
(iii) Owner Summary;
(iv) Evidence of Nonprofit and CHDO Participation;
(v) Evidence of Historically Underutilized Business (HUB) Participation;
(vi) Development Summary;
(vii) As-Built Survey;
(viii) Closing Statement;
(ix) Title Policy;
(x) Evidence of Placement in Service;
(xi) Independent Auditor's Reports;
(xii) Total Development Cost Schedule;

(xiii) AIA Form G702 and G703, Application and Certificate for Payment;
(xiv) Rent Schedule;
(xv) Utility Allowance;
(xvi) Annual Estimated Operating Expenses and 15-Year Proforma;
(xvii) Current Annual Operating Statement and Rent Roll;
(xviii) Final Sources of Funds;
(xix) Executed Limited Partnership Agreement;
(xx) Loan Agreement or Firm Commitment;
(xxi) Architect's Certification of Fair Housing Requirements; and
(xxii) TDHCA Compliance Workshop Certificate.

(2) Required Cost Certification documentation must be received by the Department no later than January 15 following the year the Credit Period begins. Any Developments issued a Commitment Notice or Determination Notice that fails to submit its Cost Certification documentation by this deadline will be reported to the IRS and the Owner will be required to submit a request for extension consistent with §49.20(l) of this chapter.

(3) The Department will perform an initial evaluation of the Cost Certification documentation within 45 days from the date of receipt and notify the Development Owner in a deficiency letter of all additional required documentation. Any deficiency letters issued to the Development Owner pertaining to the Cost Certification documentation will also be copied to the syndicator. The Department will issue IRS Forms 8609 no later than 90 days from the date that all required documents have been received.

(4) The Department will perform an evaluation to determine if the Applicant is in Material Noncompliance with the LURA (or any other document containing an Extended Low-income Housing Commitment) or the program rules in effect for the subject property, as described in Chapter 60 of this title, prior to issuance of IRS Forms 8609.

§49.16. Housing Credit Allocations.

(a) In making a commitment of a Housing Credit Allocation under this chapter, the Department shall rely upon information contained in the Application to determine whether a building is eligible for the credit under the Code, §42. The Development Owner shall bear full responsibility for claiming the credit and assuring that the Development complies with the requirements of the Code, §42. The Department shall have no responsibility for ensuring that a Development Owner who receives a Housing Credit Allocation from the Department will qualify for the tax credit.

(b) The Housing Credit Allocation Amount shall not exceed the dollar amount the Department determines is necessary for the financial feasibility and the long term viability of the Development throughout the affordability period. (§2306.6711(b)). Such determination shall be made by the Department at the time of issuance of the Commitment Notice or Determination Notice; at the time the Department makes a Housing Credit Allocation; and as of the date each building in a Development is placed in service. Any Housing Credit Allocation Amount specified in a Commitment Notice, Determination Notice or Carryover Allocation Document is subject to change by the Department based upon such determination. Such a determination shall be made by the Department based on its evaluation and procedures, considering the items specified in the Code, §42(m)(2)(B), and the dDepartment in no way or manner represents or warrants to any Applicant, sponsor, investor, lender or other entity that the Development is, in fact, feasible or viable.

(c) The General Contractor hired by the Development Owner must meet specific criteria as defined by the General Appropriation Act, Article VII, Rider 8(c). A General Contractor hired by a Development Owner or a Development Owner, if the Development Owner serves as General Contractor, must demonstrate a history of constructing similar types of housing without the use of federal tax credits. Evidence must be submitted to the Department, in accordance with §49.9(h)(4)(I) of this chapter, which sufficiently documents that the General Contractor has constructed some housing without the use of Housing Tax Credits. This documentation will be required as a condition of the

Commitment Notice or Carryover Allocation Agreement, and must be complied with prior to commencement of construction and at cost certification and final allocation of credits.

(d) An allocation will be made in the name of the Development Owner identified in the related Commitment Notice or Determination Notice. If an allocation is made to a member or Affiliate of the ownership entity proposed at the time of Application, the Department will transfer the allocation to the ownership entity as consistent with the intention of the Board when the Development was selected for an award of tax credits. Any other transfer of an allocation will be subject to review and approval by the Department consistent with §49.17(c) of this chapter. The approval of any such transfer does not constitute a representation to the effect that such transfer is permissible under §42 of the Code or without adverse consequences thereunder, and the Department may condition its approval upon receipt and approval of complete current documentation regarding the owner including documentation to show consistency with all the criteria for scoring, evaluation and underwriting, among others, which were applicable to the original Applicant.

(e) The Department shall make a Housing Credit Allocation, either in the form of IRS Form 8609, with respect to current year allocations for buildings placed in service, or in the Carryover Allocation Document, for buildings not yet placed in service, to any Development Owner who holds a Commitment Notice which has not expired, and for which all fees as specified in §49.20 of this chapter have been received by the Department and with respect to which all applicable requirements, terms and conditions have been met. For Tax-Exempt Bond Developments, the Housing Credit Allocation shall be made in the form of a Determination Notice. For an IRS Form 8609 to be issued with respect to a building in a Development with a Housing Credit Allocation, satisfactory evidence must be received by the Department that such building is completed and has been placed in service in accordance with the provisions of the Department's Cost Certification Procedures Manual. The Cost Certification documentation requirements will include a certification and inspection report prepared by a Third-Party accessibility specialist to certify that the Development meets all required accessibility standards. IRS Form 8609 will not be issued until the certifications are received by the Department. The Department shall mail or deliver IRS Form 8609 (or any successor form adopted by the Internal Revenue Service) to the Development Owner, with Part I thereof completed in all respects and signed by an authorized official of the Department. The delivery of the IRS Form 8609 will occur only after the Development Owner has complied with all procedures and requirements listed within the Cost Certification Procedures Manual. Regardless of the year of Application to the Department for Housing Tax Credits, the current year's Cost Certification Procedures Manual must be utilized when filing all cost certification materials. A separate Housing Credit Allocation shall be made with respect to each building within a Development which is eligible for a tax credit; provided, however, that where an allocation is made pursuant to a Carryover Allocation Document on a Development basis in accordance with the Code, §42(h)(1)(F), a housing credit dollar amount shall not be assigned to particular buildings in the Development until the issuance of IRS Form 8609s with respect to such buildings. The Department may delay the issuance of IRS Form 8609 if any Development violates the representations of the Application.

(f) In making a Housing Credit Allocation, the Department shall specify a maximum Applicable Percentage, not to exceed the Applicable Percentage for the building permitted by the Code, §42(b), and a maximum Qualified Basis amount. In specifying the maximum Applicable Percentage and the maximum Qualified Basis amount, the Department shall disregard the first-year conventions described in the Code, §42(f)(2)(A) and §42(f)(3)(B). The Housing Credit Allocation made by the Department shall not exceed the amount necessary to support the extended low-income housing commitment as required by the Code, §42(h)(6)(C)(i).

(g) Development inspections shall be required to show that the Development is built or rehabilitated according to construction ~~t~~Threshold Cre~~r~~iteria and Development characteristics identified at application. At a minimum, all Development inspections must meet Uniform Physical Condition Standards (UPCS) as referenced in Treasury Regulation §1.42-5(d)(2)(ii) and include an inspection for quality during the construction process while defects can reasonably be corrected and a

final inspection at the time the Development is placed in service. All such Development inspections shall be performed by the Department or by an independent Third Party inspector acceptable to the Department. The Development Owner shall pay all fees and costs of said inspections as described in §49.20 of this chapter. Details regarding the construction inspection process are set forth in the Department Rule Chapter 60 of this title, the Department's Compliance Monitoring Policies and Procedures (§2306.081; General Appropriation Act, Article VII, Rider 8(b)).

(h) After the entire Development is placed in service, which must occur prior to the deadline specified in the Carryover Allocation Document and as further outlined in §49.15 of this chapter, the Development Owner shall be responsible for furnishing the Department with documentation which satisfies the requirements set forth in the Cost Certification Procedures Manual. For purposes of this title, and consistent with IRS Notice 88-116, the placed in service date for a new or existing building used as residential rental property is the date on which the building is ready and available for its specifically assigned function and more specifically when the first Unit in the building is certified as being suitable for occupancy in accordance with state and local law and as certified by the appropriate local authority or registered architect as ready for occupancy. The Cost Certification must be submitted for the entire Development; therefore partial Cost Certifications are not allowed. The Department may require copies of invoices and receipts and statements for materials and labor utilized for the New Construction or Rehabilitation and, if applicable, a closing statement for the acquisition of the Development as well as for the closing of all interim and permanent financing for the Development. If the Development Owner does not fulfill all representations and commitments made in the Application, the Department may make reasonable reductions to the tax credit amount allocated via the IRS Form 8609, may withhold issuance of the IRS Form 8609s until these representations and commitments are met, and/or may terminate the allocation, if appropriate corrective action is not taken by the Development Owner.

(i) The Board at its sole discretion may allocate credits to a Development Owner in addition to those awarded at the time of the initial Carryover Allocation in instances where there is bona fide substantiation of cost overruns and the Department has made a determination that the allocation is needed to maintain the Development's financial viability.

(j) The Department may, at any time and without additional administrative process, determine to award credits to Developments previously evaluated and awarded credits if it determines that such previously awarded credits are or may be invalid and the owner was not responsible for such invalidity.

(k) If an Applicant returns a full credit allocation after the Carryover Allocation deadline required for that allocation, the Department will impose a penalty on the score for any Competitive Housing Tax Credit Applications submitted by that Applicant or any Affiliate of that Applicant for any Application in an Application Round occurring concurrent to the return of credits or if no Application Round is pending the Round immediately following the return of credits unless otherwise exempted in accordance with the Board's policy pursuant to the implementation of The Housing and Economic Recovery Act of 2008, H.R. 3221, in September 2008. The penalty will be assessed in an amount that reduces the Applicant's final awarded score by an additional 20%.

§49.17. Board Reevaluation, Appeals Process; Provision of Information or Challenges Regarding Applications; Amendments; Housing Tax Credit and Ownership Transfers; Sale of Tax Credit Properties; Withdrawals; Cancellations; Alternative Dispute Resolution.

(a) **Board Reevaluation.** (§2306.6731(b)). Regardless of development stage, the Board shall reevaluate a Development that undergoes a substantial change between the time of initial Board approval of the Development and the time of issuance of a Commitment Notice or Determination Notice for the Development. For the purposes of this subsection, substantial change shall be those items identified in subsection (d)(4) of this section. The Board may revoke any Commitment Notice or Determination Notice issued for a Development that has been unfavorably reevaluated by the Board.

(b) **Appeals Process.** (§2306.6715) An Applicant may appeal decisions made by the Department as follows.

(1) The decisions that may be appealed are identified in subparagraphs (A)-(D) of this paragraph.

(A) A determination regarding the Application's satisfaction of:

(i) Eligibility Requirements;

(ii) Disqualification or debarment criteria;

(iii) Pre-Application or Application Threshold Criteria;

(iv) Underwriting Criteria;

(B) The scoring of the Application under the Application Selection Criteria; and

(C) A recommendation as to the amount of Housing Tax Credits to be allocated to the Application.

(D) Any Department decision that results in termination of an Application.

(2) An Applicant may not appeal a decision made regarding an Application filed by another Applicant.

(3) An Applicant must file its appeal in writing with the Department not later than the seventh day after the date the Department publishes the results of any stage of the Application evaluation process identified in §49.9 of this chapter. In the appeal, the Applicant must specifically identify the Applicant's grounds for appeal, based on the original Application and additional documentation filed with the original Application. If the appeal relates to the amount of Housing Tax Credits recommended to be allocated, the Department will provide the Applicant with the underwriting report upon request.

(4) The Executive Director of the Department shall respond in writing to the appeal not later than the 14th day after the date of receipt of the appeal. If the Applicant is not satisfied with the Executive Director's response to the appeal, the Applicant may appeal directly in writing to the Board, provided that an appeal filed with the Board under this subsection must be received by the Board before:

(A) The seventh day preceding the date of the Board meeting at which the relevant commitment decision is expected to be made; or

(B) The third day preceding the date of the Board meeting described by subparagraph (A) of this paragraph, if the Executive Director does not respond to the appeal before the date described by subparagraph (A) of this paragraph.

(5) Board review of an appeal under paragraph (4) of this subsection is based on the original Application and additional documentation filed with the original Application. The Board may not review any information not contained in or filed with the original Application. The decision of the Board regarding the appeal is final.

(6) The Department will post to its web site an appeal filed with the Department or Board and any other document relating to the processing of the appeal. (§2306.6717(a)(5))

(c) **Provision of Information or Challenges Regarding Applications from Unrelated Entities to the Application.** The Department will address information or challenges received from unrelated entities to a specific 2009 active Application, utilizing a preponderance of the evidence standard, as stated in paragraphs (1) - (3) of this subsection, provided the information or challenge includes a contact name, telephone number, fax number and e-mail address of the person providing the information or challenge and must be received by the Department no later than June 15, 2009:

(1) Within 14 business days of the receipt of the information or challenge, the Department will post all information and challenges received (including any identifying information) to the Department's website;

(2) Within seven business days of the receipt of the information or challenge, the Department will notify the Applicant related to the information or challenge. The Applicant will then have seven business days to respond to all information and challenges provided to the Department; and

(3) Within 14 business days of the receipt of the response from the Applicant, the Department will evaluate all information submitted and other relevant documentation related to the investigation. This information may include information requested by the Department relating to this

evaluation. The Department will post its determination summary to its website. Any determinations made by the Department cannot be appealed by any party unrelated to the Applicant.

(d) **Amendment of Application Subsequent to Allocation by Board.** (§2306.6712 and §2306.6717(a)(4))

(1) If a proposed modification would materially alter a Development approved for an allocation of a Housing Tax Credit, or if the Applicant has altered any sSelection cCriteria item for which it received points, the Department shall require the Applicant to file a formal, written request for an amendment to the Application.

(2) The Executive Director of the Department shall require the Department staff assigned to underwrite Applications to evaluate the amendment and provide an analysis and written recommendation to the Board. The appropriate party monitoring compliance during construction in accordance with §49.18 of this chapter shall also provide to the Board an analysis and written recommendation regarding the amendment. For amendments which require Board approval, the amendment request must be received by the Department at least 30 days prior to the Board meeting where the amendment will be considered.

(3) The Board must vote on whether to approve an amendment. The Board by vote may reject an amendment and, if appropriate, rescind a Commitment Notice or terminate the allocation of Housing Tax Credits and reallocate the credits to other Applicants on the Waiting List if the Board determines that the modification proposed in the amendment:

(A) would materially alter the Development in a negative manner; or

(B) would have adversely affected the selection of the Application in the Application Round.

(4) Material alteration of a Development includes, but is not limited to:

(A) a significant modification of the site plan;

(B) a modification of the number of units or bedroom mix of units;

(C) a substantive modification of the scope of tenant services;

(D) a reduction of 3% or more in the square footage of the units or common areas;

(E) a significant modification of the architectural design of the Development;

(F) a modification of the residential density of the Development of at least 5%;

(G) an increase or decrease in the site acreage of greater than 10% from the original site under control and proposed in the Application; and

(H) any other modification considered significant by the Board.

(5) In evaluating the amendment under this subsection, the Department staff shall consider whether the need for the modification proposed in the amendment was:

(A) Reasonably foreseeable by the Applicant at the time the Application was submitted; or

(B) Preventable by the Applicant.

(6) This section shall be administered in a manner that is consistent with the Code, §42.

(7) Before the 15th day preceding the date of Board action on the amendment, notice of an amendment and the recommendation of the Executive Director and monitor regarding the amendment will be posted to the Department's web site.

(8) In the event that an Applicant or Developer seeks to be released from the commitment to serve the income level of tenants targeted in the Real Estate Analysis Report at the time of the Commitment Notice issuance, as approved by the Board, the following procedure will apply. For amendments that involve a reduction in the total number of lLow-iIncome Units being served, or a reduction in the number of lLow-iIncome Units at any level of AMGI, as approved by the Board, evidence must be presented to the Department that includes written confirmation from the lender and syndicator that the Development is infeasible without the adjustment in Units. The Board may or may not approve the amendment request, however, any affirmative recommendation to the Board is contingent upon concurrence from the Real Estate Analysis Division that the Unit adjustment (or an alternative Unit adjustment) is necessary for the continued feasibility of the Development. Additionally, if it is determined by the Department that the allocation of credits would not have been made in the year of allocation because the loss of low-income targeting points would have resulted in

the Application not receiving an allocation, and the amendment is approved by the Board, the approved amendment will carry a penalty that prohibits the Applicant and all ~~p~~Persons ~~or entities~~ with any ownership interest in the Application (excluding any tax credit purchaser/syndicator), from participation in the Housing Tax Credit Program (for both the Competitive Housing Tax Credit Developments and Tax-Exempt Bond Developments) for 24 months from the time that the amendment is approved.

(9) The Department may promulgate policies or procedures for the administration of amendment requests hereunder.

(e) **Housing Tax Credit and Ownership Transfers.** (§2306.6713) A Development Owner may not transfer an allocation of Housing Tax Credits or ownership of a Development supported with an allocation of Housing Tax Credits to any Person other than an Affiliate of the Development Owner unless the Development Owner obtains the Executive Director's prior, written approval of the transfer. The Executive Director may not unreasonably withhold approval of the transfer.

(1) Transfers will not be approved prior to the issuance of IRS Forms 8609 unless the Development Owner can provide evidence that a hardship is creating the need for the transfer (potential bankruptcy, removal by a partner, etc.). A Development Owner seeking Executive Director approval of a transfer and the proposed transferee must provide to the Department a copy of any applicable agreement between the parties to the transfer, including any third-party agreement with the Department.

(2) A Development Owner seeking Executive Director approval of a transfer must provide the Department with documentation requested by the Department, including but not limited to, a list of the names of transferees and Related Parties; and detailed information describing the experience and financial capacity of transferees and related parties. All transfer requests must disclose the reason for the request. The Development Owner shall certify to the Executive Director that the tenants in the Development have been notified in writing of the transfer before the 30th day preceding the date of submission of the transfer request to the Department. Not later than the fifth working day after the date the Department receives all necessary information under this section, the Department shall conduct a qualifications review of a transferee to determine the transferee's past compliance with all aspects of the Housing Tax Credit Program, LURAs; and the sufficiency of the transferee's experience with Developments supported with Housing Credit Allocations. If the viable operation of the Development is deemed to be in jeopardy by the Department, the Department may authorize changes that were not contemplated in the Application.

(3) As it relates to the Credit Cap further described in §49.6(d) of this chapter, the credit cap will not be applied in the following circumstances:

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

(B) In cases where the General Partner is being replaced if the award of credits was made at least five years prior to the transfer request date.

(f) **Sale of Certain Tax Credit Properties.** Consistent with §2306.6726, Texas Government Code, not later than two years before the expiration of the Compliance Period, a Development Owner who agreed to provide a right of first refusal under §2306.6725(b)(1), Texas Government Code and who intends to sell the property shall notify the Department of its intent to sell.

(1) The Development Owner shall notify Qualified Nonprofit Organizations and tenant organizations of the opportunity to purchase the Development. The Development Owner may:

(A) During the first six-month period after notifying the Department, negotiate or enter into a purchase agreement only with a Qualified Nonprofit Organization that is also a community housing development organization as defined by the Federal Home Investment Partnership Program (HOME);

(B) During the second six-month period after notifying the Department, negotiate or enter into a purchase agreement with any Qualified Nonprofit Organization or tenant organization; and

(C) During the year before the expiration of the compliance period, negotiate or enter into a purchase agreement with the Department or any Qualified Nonprofit Organization or tenant organization approved by the Department.

(2) Notwithstanding items for which points were received consistent with §49.9(i) of this chapter, a Development Owner may sell the Development to any purchaser after the expiration of the compliance period if a Qualified Nonprofit Organization or tenant organization does not offer to purchase the Development at the minimum price provided by §42(i)(7), Internal Revenue Code of 1986 (26 U.S.C. §42(i)(7)), and the Department declines to purchase the Development.

(g) **Withdrawals.** An Applicant may withdraw an Application prior to receiving a Commitment Notice, Determination Notice, Carryover Allocation Document or Housing Credit Allocation, or may cancel a Commitment Notice or Determination Notice by submitting to the Department a notice, as applicable, of withdrawal or cancellation, and making any required statements as to the return of any tax credits allocated to the Development at issue.

(h) **Cancellations.** The Department may cancel a Commitment Notice, Determination Notice or Carryover Allocation prior to the issuance of IRS Form 8609 with respect to a Development if:

(1) The Applicant or the Development Owner, or the Development, as applicable, fails to meet any of the conditions of such Commitment Notice or Carryover Allocation or any of the undertakings and commitments made by the Development Owner in the Applications process for the Development;

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

(3) An event occurs with respect to the Applicant or the Development Owner which would have made the Development's Application ineligible for funding pursuant to §49.5 of this chapter if such event had occurred prior to issuance of the Commitment Notice or Carryover Allocation; or

(4) The Applicant or the Development Owner or the Development, as applicable, fails to comply with these Rules or the procedures or requirements of the Department.

(i) **Alternative Dispute Resolution Policy.** In accordance with §2306.082, Texas Government Code, it is the Department's policy to encourage the use of appropriate alternative dispute resolution procedures ("ADR") under the Governmental Dispute Resolution Act, Chapter 2009, Texas Government Code, to assist in resolving disputes under the Department's jurisdiction. As described in Chapter 154, Civil Practices and Remedies Code, ADR procedures include mediation. Except as prohibited by the Department's ex parte communications policy, the Department encourages informal communications between Department staff and Applicants, and other interested persons, to exchange information and informally resolve disputes. The Department also has administrative appeals processes to fairly and expeditiously resolve disputes. If at anytime an Applicant or other person would like to engage the Department in an ADR procedure, the person may send a proposal to the Department's Dispute Resolution Coordinator. For additional information on the Department's ADR Policy, see the Department's General Administrative Rule on ADR at §1.17 of this title.

§49.18. Compliance Monitoring and Material Noncompliance.

The Code, §42(m)(1)(B)(iii), requires the Department as the housing credit agency to include in its QAP a procedure that the Department will follow in monitoring Developments for compliance with the provisions of the Code, §42 and in notifying the IRS of any noncompliance of which the Department becomes aware. Detailed compliance rules and procedures for monitoring are set forth in Chapter 60 of this title.

§49.19. Department Records; Application Log; IRS Filings.

(a) **Department Records.** At all times during each calendar year the Department shall maintain a record of the following:

(1) The cumulative amount of the State Housing Credit Ceiling that has been committed pursuant to Commitment Notices during such calendar year;

(2) The cumulative amount of the State Housing Credit Ceiling that has been committed pursuant to Carryover Allocation Documents during such calendar year;

(3) The cumulative amount of Housing Credit Allocations made during such calendar year; and

(4) The remaining unused portion of the State Housing Credit Ceiling for such calendar year.

(b) **Application Log.** (§2306.6702(a)(3) and §2306.6709) The Department shall maintain for each Application an Application Log that tracks the Application from the date of its submission. The Application Log will contain, at a minimum, the information identified in paragraphs (1) - (9) of this subsection.

(1) The names of the Applicant and all General Partners of the Development Owner, the owner contact name and phone number, and full contact information for all members of the Development Team;

(2) The name, physical location, and address of the Development, including the relevant Uniform State Service Region of the state;

(3) The number of Units and the amount of Housing Tax Credits requested for allocation by the Department to the Applicant;

(4) Any Set-Aside category under which the Application is filed;

(5) The requested and awarded score of the Application in each scoring category adopted by the Department under the Qualified Allocation Plan;

(6) Any decision made by the Department or Board regarding the Application, including the Department's decision regarding whether to underwrite the Application and the Board's decision regarding whether to allocate Housing Tax Credits to the Development;

(7) The names of individuals making the decisions described by paragraph (6) of this subsection, including the names of Department staff scoring and underwriting the Application, to be recorded next to the description of the applicable decision;

(8) The amount of Housing Tax Credits allocated to the Development; and

(9) A dated record and summary of any contact between the Department staff, the Board, and the Applicant or any Related Parties.

(c) **IRS Filings.** The Department shall mail to the Internal Revenue Service, not later than the 28th day of the second calendar month after the close of each calendar year during which the Department makes Housing Credit Allocations, a copy of each completed (as to Part I) IRS Form 8609, the original of which was mailed or delivered by the Department to a Development Owner during such calendar year, along with a single completed IRS Form 8610, Annual Low-income Housing Credit Agencies Report. When a Carryover Allocation is made by the Department, a copy of the Carryover Allocation Agreement will be mailed or faxed to the Development Owner by the Department. The original of the Carryover Allocation Document will be retained by the Department and IRS Form 8610 Schedule A will be filed by the Department with IRS Form 8610 for the year in which the allocation is made. The Department shall be authorized to vary from the requirements of this section to the extent required to adapt to changes in IRS requirements.

§49.20. Program Fees; Refunds; Public Information Requests; Adjustments of Fees and Notification of Fees; Extensions; Penalties.

(a) **Timely Payment of Fees.** All fees must be paid as stated in this section, unless the Executive Director has granted a waiver for specific extenuating and extraordinary circumstances. To be eligible for a waiver, the Applicant must submit a request for a waiver no later than 10 business days prior to the deadlines as stated in this section. Any fees, as further described in this section, that are not timely paid will cause an Applicant to be ineligible to apply for tax credits and additional tax credits and ineligible to submit extension requests, ownership changes and Application amendments. Payments made by check, for which insufficient funds are available, may cause the Application, Commitment or Allocation to be terminated.

(b) **Pre-Application Fee.** Each Applicant that submits a Pre-Application shall submit to the Department, along with such Pre-Application, a non refundable Pre-Application fee, in the amount of

$10 per Unit. Units for the calculation of the Pre-Application Fee include all Units within the Development, including tax credit, market rate and owner-occupied Units. Pre-Applications without the specified Pre-Application Fee in the form of a check will not be accepted. Pre-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, will receive a discount of 10% off the calculated Pre-Application fee. (General Appropriation Act, Article VII, Rider 7; §2306.6716(d)). For Tax Exempt Bond Developments with the Department as the issuer, the Applicant shall submit the following fees: $1,000 (payable to TDHCA), $2,000 (payable to Vinson & Elkins, Bond Counsel), and $5,000 (payable to the Texas Bond Review Board).

(c) **Application Fee.** Each Applicant that submits an Application shall submit to the Department, along with such Application, an Application fee. For Applicants having submitted a Pre-Application which met Pre-Application Threshold and for which a Pre-Application fee was paid, the Application fee will be $20 per Unit. For Applicants not having submitted a Pre-Application, the Application fee will be $30 per Unit. Units for the calculation of the Application Fee include all Units within the Development, including tax credit, market rate and owner-occupied Units. Applications without the specified Application Fee in the form of a check will not be accepted. Applications in which a CHDO or Qualified Nonprofit Organization intends to serve as he managing General Partner of the Development Owner, or Control the managing General Partner of the Development Owner, will receive a discount of 10% off the calculated Application fee. (General Appropriation Act, Article VII, Rider 7; §2306.6716(d)). For Tax Exempt Bond Developments with the Department as the Issuer the Applicant shall submit a tax credit application fee of $30 per unit and bond application fee of $10,000. For Tax-Exempt Bond Development refunding Applications, with the Department as the issuer, the Application Fee will be $10,000 unless the refunding is not required to have a TEFRA public hearing, in which case the fee will be $5,000. Those Applications utilizing a local issuer only need to submit the tax credit application fee.

(d) **Refunds of Pre-Application or Application Fees.** (§2306.6716(c)). Upon written request from the Applicant, the Department shall refund the balance of any fees collected for a Pre-Application or Application that is withdrawn by the Applicant or that is not fully processed by the Department. The amount of refund on Pre-Applications not fully processed by the Department will be commensurate with the level of review completed. Intake and data entry will constitute 50% of the review, and Threshold review prior to a deficiency issued will constitute 30% of the review. Deficiencies submitted and reviewed constitute 20% of the review. The amount of refund on Applications not fully processed by the Department will be commensurate with the level of review completed. Intake and data entry will constitute 20% of the review, the site visit will constitute 20% of the review, Eligibility and Selection review will constitute 20%, and Threshold review will constitute 20% of the review, and underwriting review will constitute 20%. The Department must provide the refund to the Applicant not later than the 30th day after the date of request.

(e) **Third Party Underwriting Fee.** Applicants will be notified in writing prior to the evaluation of a Development by an independent external underwriter in accordance with §49.9(d)(6), (e)(3), and (f)(6) of this chapter 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 fee established in subsection (f) of this section, in the event that a Commitment Notice or Determination Notice is issued by the Department to the Development Owner.

(f) **Commitment or Determination Notice Fee.** Each Development Owner that receives a Commitment Notice or Determination Notice shall submit to the Department, not later than the expiration date on the Commitment or Determination notice, a Commitment or Determination fee equal to 5% of the annual Housing Credit Allocation amount. The Commitment or Determination fee shall be paid by check. If a Development Owner of an Application awarded Competitive Housing Tax Credits has paid a Commitment Fee and returns the credits by November 1, 2009, the Development Owner may receive a refund of 50% of the Commitment Fee. If a Development Owner of an Application

awarded Housing Tax Credits associated with Tax-Exempt Bonds has paid a Determination Fee and is not able close on the bond transaction within 90 days of the date of the dDetermination ~~by the Board~~ Notice, the Development Owner may receive a refund of 50% of the Determination Fee. The Determination Fee will not be refundable after the 90 days ~~of~~ after the ~~issuance~~ date of the Determination Notice.

(g) **Compliance Monitoring Fee.** Upon receipt of the cost certification, the Department will invoice the Development Owner for compliance monitoring fees. The amount due will equal $40 per tax credit unit. The fee will be collected, retroactively if applicable, beginning with the first year of the credit period. The invoice must be paid prior to the issuance of form 8609. 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. For Tax-Exempt Bond Developments with the Department as the issuer, the annual tax credit compliance fee will be paid in advance (for the duration of the compliance or affordability period) and is equal to $40/Unit beginning two years from the first payment date of the bonds; the bond compliance fee is paid in advance (for as long as the bonds are outstanding) and is equal to $15/Unit beginning two years from the first payment date of the bonds; the asset management fee is paid in advance and is equal to $25/Unit beginning two years from the first payment date. Compliance fees may be adjusted from time to time by the Department.

(h) **Building Inspection Fee.** The Building Inspection Fee must be paid at the time the Commitment Fee is paid. The Building Inspection Fee for all Developments is $750. Inspection fees in excess of $750 may be charged to the Development Owner not to exceed an additional $250 per Development.

(i) **Tax-Exempt Bond Credit Increase Request Fee.** As further described in §49.12 of this chapter, 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 5% of the amount of the credit increase for one year.

(j) **Public Information Requests.** Public information requests are processed by the Department in accordance with the provisions of the Government Code, Chapter 552. The Department uses the guidelines promulgated by The Texas Facilities Commission to determine the cost of copying, and other costs of production.

(k) **Periodic 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 program will 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. The Department shall publish each year an updated schedule of Application fees that specifies the amount to be charged at each stage of the Application process. 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.

(l) **Extension and Amendment Requests.**

(1) All extension requests relating to the Carryover, Documentation for 10% Test, Substantial Construction Commencement, Placed in Service or Cost Certification requirements shall be submitted to the Department in writing and be accompanied by a mandatory non-refundable extension fee in the form of a check in the amount of $2,500. Such requests must be submitted to the Department no later than the date for which an extension is being requested. All requests for extensions totaling less than 6 months may be approved by the Executive Director and are not required to have Board approval. For extensions that require Board approval, the extension request must be received by the Department at least 15 business days prior to the Board meeting where the extension will be considered. The extension request shall specify a requested extension date and the reason why such an extension is required. Carryover extension requests shall not request an extended deadline later than December 1st of the year the Commitment Notice was issued. The Department, in its sole discretion, may consider

and grant such extension requests for all items. If an extension is required at Cost Certification, the fee of $2,500 must be received by the Department to qualify for issuance of Forms 8609.

(2) Amendment requests must be submitted consistent with §49.17(d) of this chapter. Amendment requests shall be submitted to the Department in writing and be accompanied by a mandatory non-refundable amendment fee in the form of a check in the amount of $2,500. The amendment request will not be considered received until the corresponding fee is received.

(3) The Board may waive ~~related~~ extension and amendment fees for good cause.

(m) **Penalties.** 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 8609's. 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 form 8609's 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 §42, Internal Revenue Code.

§49. 21.Manner and Place of Filing All Required Documentation.

(a) All Applications, letters, documents, or other papers filed with the Department must be received only between the hours of 8:00 a.m. and 5:00 p.m. on any day which is not a Saturday, Sunday or a holiday established by law for state employees.

(b) All notices, information, correspondence and other communications under this chapter shall be deemed to be duly given if delivered or sent and effective in accordance with this subsection. Such correspondence must reference that the subject matter is pursuant to the Tax Credit Program and must be addressed to the Housing Tax Credit Program, Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, TX 78711-3941 or for hand delivery or courier to 221 East 11th Street, Austin, Texas 78701 or more current address of the Department as released on the Department's website. Every such correspondence required or contemplated by this chapter to be given, delivered or sent by any party may be delivered in person or may be sent by courier, telecopy, express mail, telex, telegraph or postage prepaid certified or registered air mail (or its equivalent under the laws of the country where mailed), addressed to the party for whom it is intended, at the address specified in this subsection. Regardless of method of delivery, documents must be received by the Department no later than 5:00 p.m. for the given deadline date. Notice by courier, express mail, certified mail, or registered mail will be considered received on the date it is officially recorded as delivered by return receipt or equivalent. Notice by telex or telegraph will be deemed given at the time it is recorded by the carrier in the ordinary course of business as having been delivered, but in any event not later than one business day after dispatch. Notice not given in writing will be effective only if acknowledged in writing by a duly authorized officer of the Department.

(c) If required by the Department, Development Owners must comply with all requirements to use the Department's web site to provide necessary data to the Department.

§49.22. Waiver and Amendment of Rules.

(a) The Board, in its discretion, may waive any one or more of these Rules if the Board finds that waiver is appropriate to fulfill the purposes or policies of Chapter 2306, Texas Government Code, or for other good cause, as determined by the Board.

(b) Section 1.13 of this title may be waived for any person seeking any action by filing a request with the Board.

(c) The Department may amend this chapter and the Rules contained herein at any time in accordance with the Government Code, Chapter 2001.

§49.23. Deadlines for Allocation of Housing Tax Credits. (§2306.6724)

(a) Not later than September 30 of each year, the Department shall prepare and submit to the Board for adoption the draft QAP required by federal law for use by the Department in setting criteria and priorities for the allocation of tax credits under the Housing Tax Credit program.

(b) The Board shall adopt and submit to the Governor the QAP not later than November 15 of each year.

(c) The Governor shall approve, reject, or modify and approve the QAP not later than December 1 of each year. (§2306.67022) (§42(m)(1))

(d) The Board shall annually adopt a manual, corresponding to the QAP, to provide information on how to apply for Housing Tax Credits.

(e) Applications for Housing Tax Credits to be issued a Commitment Notice during the Application Round in a calendar year must be submitted to the Department not later than March 1.

(f) The Board shall review the recommendations of Department staff regarding Applications and shall issue a list of approved Applications each year in accordance with the Qualified Allocation Plan not later than June 30.

(g) The Board shall approve final commitments for allocations of Housing Tax Credits each year in accordance with the Qualified Allocation Plan not later than July 31, unless unforeseen circumstances prohibit action by that date. In any event, the Board shall approve final commitments for allocations of Housing Tax Credits each year in accordance with the Qualified Allocation Plan not later than September 30. Department staff will subsequently issue Commitment Notices based on the Board's approval. Final commitments may be conditioned on various factors approved by the Board, including resolution of contested matters in litigation.

QAP (26)

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October 20, 2008

Via Email: tdhcarulecomments@tdhca.state.tx.us

TDHCA, 2009 Rule Comments
P.O. Box 13941
Austin, TX 78711-3941

Re: Comments to 2009 Qualified Allocation Plan ("QAP")

Ladies and Gentlemen,

We appreciate the opportunity to provide comments to the 2009 draft QAP in connection. As you know, we have developed, built and managed affordable housing (new construction and acquisition/rehabilitation) using federal tax credits in Virginia since the inception of the Low Income Housing Tax Credit program. In fact we helped draft the initial QAP in Virginia and have participated in the subsequent revisions to the Virginia QAP. We also own a 232 unit apartment complex (market rate) in Pasadena, Texas, that we purchased from HUD and rehabilitated. We are currently working on Highland Manor (TDHCA # 08198), a 9% tax credit project in Region 6 approved by the TDHCA Board in this 2008 tax credit round. We have worked with the QAP and we would like to highlight the following comments.

QAP – General. It would make the QAP more user friendly if you could add a more detailed Table of Contents and if all of the sections and subsection numbers and headings would be in bold, italics and/or underlined. Spaces between subsections would be helpful as well. (In the current QAP just the main section headings are in bold.)

Application – General. We agree with the suggestion made at the QAP round table to also make the application easier to use by setting it up so that duplicate information auto-fills in other areas of the application. It would also be helpful to reduce the number of times the Applicant signs the application. We would suggest that the applicant sign the application once with respect to all of its certifications.

§49.6 (d) ***Credit Amount***

The Department will limit the allocation of tax credits to no more than $ 1.4 million per Development. The Department shall not allocate more than $2 million of tax credits in any given Application Round to any Applicant, Developer, Related Party or Guarantor; ....

- We agree that increasing the $1.2 million cap to $1.4 million is a move in the right direction. However, given the significant increases in costs and the continuing

decreases in prices for tax credits, please consider increasing the $1.4 million to $2 million and consider increasing the $2 million overall cap.

- In addition, we understand that the $1.4 million per deal cap (as adjusted/increased) was established to ensure that 9% tax credits are spread among the most deals as fairly as possible. This cap does not appear to distinguish between the limited 9% credits and the 4% credits for which a competitive "9%" tax credit property may qualify. To encourage rehabilitation/reconstruction activities using competitive "9%" tax credits, we request that the QAP clearly provide that the $1.4 million cap (as adjusted/increased) only applies to the 9% credits for which an application would be eligible and not the 4% portion of the competitive tax credits. (The language in Section 49.6(d) already makes it clear that "Tax-Exempt Bond Development Applications are not subject to these Housing Tax Credit limitations, and Tax-Exempt Bond Developments will not count towards the total limit on tax credits per Applicant." We would like for the 4% portion of the competitive tax credits to be treated the same way.)

§49.6(e)(2). Limitations on the Size of Developments. We request that Rural Bond transactions be allowed to exceed the 80 unit new construction limit, as they have in previous years. We believe that market demand should determine the number of units, not an arbitrary number. In addition, we request that Rural Developments involving Reconstruction not have a size limitation (similar to the way Rehabilitation projects are treated).

§49.8(d)(3)(B). Pre-Application Threshold Criteria and Review – Evidence of Notification. We request that the evidence of proof of delivery be expanded. A recipient may refuse to sign a receipt for mail or courier delivery, in which case, a returned receipt that has been properly addressed but not signed should also be evidence of proof of delivery.

§49.9(h) Developments Proposing to Qualify for a 30% increase in Eligible Basis. We agree with TAAHP's September 3, 2008 comments, namely:

- (4)(a) Instead of limiting this to "rural developments located in a census tract that has not received an award of Housing Tax Credits or Tax-exempt Bonds (serving the same population type as proposed) in the last five years..." Make all developments eligible, both urban and rural.
- Additionally, we support adding an additional category, for developments that are located in any of the First Tier Counties, as designated by the Texas Department of Insurance.

§49.9(i)(2) Quantifiable Community Participation ("QCP") and 49.9(i)(18) Demonstration of Community Support other than Quantifiable Community Participation ("Other Than QCP"). We understand that the QCP points have been legislated to be the second highest point category in the QAP and as such both the QCP and the Other Than QCP points should be revisited.

- We request that the Applicant/Developer be permitted to provide production assistance. The Neighborhood Organizations are not used to working with TDHCA's rules and deadlines. Neighborhood Organization members are volunteers and are busy with their work and family responsibilities and do not want to take the time to wade through and understand the QCP neighborhood information packet (unless they are opposed to a project, in which case they will spare no amount of effort or time to do everything they can think of to kill that project). The second largest point category should not be left in the hands of volunteers without any assistance. Even State legislators request assistance in writing letters of support and they have a staff and much more experience in these

matters than do Neighborhood Organizations. In any event, it should be permissible to forward TDHCA notices of deficiency and other correspondence to Neighborhood Organizations so that deadlines are not missed. (The two new sentences that have been added at the end of paragraph (A)(iv) covering this point are confusing: if a TDHCA communication contains a deadline for curing a deficiency, is a developer allowed to forward that to the Neighborhood Organization?) It does not seem equitable that a project that has Neighborhood Organization support may not get the benefit in the form of points because the Neighborhood Organization does not understand the rules and deadlines of the QAP and the Applicant and Developer are not permitted to assist.

- The time for Neighborhood Organizations should be lengthened rather than shortened.

- We appreciate the changes that have been made in the 2009 draft QAP with respect to making the QCP and Other Than QCP point categories work together a bit more. Even with the proposed changes, a Neighborhood Organization can kill a project by opposing it, even though the community in general needs and supports the project. We suggest that the support of the Mayor or City Council and the Other Than QCP points be permitted to counterbalance Neighborhood Organization objections in determining QCP points in the same manner that Neighborhood Organization support counterbalances Neighborhood Organization opposition. In this regard, it would be helpful for Other Than QCP points to be allowed even if a project receives 0 points under paragraph 49.9(i)(2) Quantifiable Community Participation.

§49.9(i)(4)(A) – The Size and Quality of the Units (Development Characteristics). We suggest not increasing the minimum size of units at a time when we need to find ways to reduce construction costs and increase energy efficiency.

§49.9(i)(5) – The Commitment of Development Funding by Local Political Subdivisions. We agree with TAAHP's September 3, 2008 comments and appreciate the department reducing the percentage of LPS funds that need to be received for maximum points for projects in Rural areas. We also support TAAHP's request that this be applicable to all Non Participating Jurisdict ions because small cities suffer the same lack of funding sources as do the Rural areas.

Having said that, we would prefer that you remove this requirement all together, if possible. If a project is financially feasible without Local Political Subdivisio n financial support, why impose this additional requirement? There are areas that need affordable housing but do not have the ability to provide this type of support. We have discussed potential projects with various Community Development organizations and Political Subdivisions. One county in Region 6 informed us that they need affordable housing and support it but have no financial resources to provide because they have over-extended themselves in connection with building community development centers throughout the county. Another city informed us that they are happy to have affordable housing in their community so long as we can obtain the needed financial support on our own without the city's help in the way of letters of support or financial support. This city supported an affordable housing project several years ago and the city and members of City Council were heavily criticized by vociferous objecting constituents and the city did not want to subject itself to the criticism that they are taking sides. If a project is needed and is fiscally viable, without political subdivision support, the project should be allowed to proceed. The requirement for such financial support also gives those who want it the opportunity for "NIMBY-ism."

§49.9(i)(8) – The Cost of the Development by Square Foot. We agree with the changes that were made to this section.

§49.9(i)(29) – Bonus Points. We appreciate the goal of the this new category, but we think that it will create more issues than it solves and we are concerned that it is unfair to developers that are new to the program or that did not have a project approved in the 2008 round.

We appreciate the opportunity to provide comments to the QAP and hope that you will consider and make the changes that we have outlined. We also appreciate the difficulty you have in achieving a balance among all of the competing interests.

If you have any questions about our comments, please let us know.

Sincerely,

David M. Koogler
President

cc: Ms. Robbye Meyer (Via Email: robbye.meyer@tdhca.state.tx.us)
Director of Multifamily Finance
Texas Department of Housing and
Community Affairs
221 East 11th Street
Austin, Texas 78701-2410

Michele Atkins

From: David Koogler [dkoogler@comcast.net]
Sent: Monday, October 20, 2008 4:13 PM
To: tdhcarulecomments@tdhca.state.tx.us
Cc: 'Robbye Meyer'
Subject: Comments to 2009 Qualified Allocation Plan

Attached are our comments to the 2009 QAP.

Please reply to this email to confirm your receipt of this email and the attachment.

Thank you,
David

David Mark Koogler
President
Mark-Dana Corporation
19 Silverstrand Place
The Woodlands, Texas 77381
(713) 906-4460
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dkoogler@comcast.net

MS. HULL: Thank you. Ms. Debra Guerrero?

MS. GUERRERO: Thank you very much. My name is Debra Guerrero and I'm with the NRP Group. We have just a couple of comments regarding the QAP.

And one of them first refers to the urban core definition. And I know the City of Fort Worth and Mr. Price have worked very hard to ensure that mixed-use -- I'm sorry -- mixed-income developments are not at a disadvantage in the QAP. And we applaud that.

My only comment to that is that in the final determination -- because of the way that the definition is written, that the final determination be made by the municipality in whose location the development will be.

Because the definition does appear to be a bit -- and it could be interpreted a couple of different ways. And so if the local municipality, say, the City of Fort Worth, can make that final determination that, yes, this does meet that definition, then I think that needs to be included in the QAP.

On 49.385, the definition of reconstruction -- and I know we've brought this up maybe a couple of years ago, but probably not as specifically as I'd like to bring it up today.

On the definition of reconstruction I'd like to take into consideration a demolition of reconstruction developments that have subsequent phasing. As you know, we have a lot of larger deteriorating developments that

we can't demolish and rebuild all in one phase.

It requires, because of how large they are and the limited number of units you can do per development, to do it in phases. And there isn't anything in the QAP that really takes that into consideration, that this is a phased development and in order to really complete and make an impact in a neighborhood we need to complete the full development. And I really feel that in the reconstruction definition that could apply.

Reconstruction also does not take into consideration if you demolish the number of units and you rebuild, it has to be the same number of units that you demolished. And I understand that has to do with the market in the area and you don't want to have a negative impact on that market.

What we would suggest is that we go ahead and be allowed to demolish, to rebuild and be able to put even an increased number of units in order to make the development financially feasible but at the same time require, if there are additional units, a market study that will -- that ultimately determine that that number of units does not negatively impact the area or the region, and then at the same time still allow that particular development to be considered reconstruction.

The representative signing in the new 49.9(i)(2) -- and I'll give you this in writing, Brenda -- the requirement that there be an additional

signature on the neighborhood for the QCP points, I -- you know, a lot of these are volunteer organizations. We've been working with neighborhood organizations all over the State of Texas.

The idea is to make it easier for neighborhood organizations to stay involved and be involved. And believe it or not, sometimes it can be an issue, a time issue, to go and find that other representative. One signature from a neighborhood organization should be more than enough. This isn't something that we should be policing neighborhood organizations. If that president signs that letter of support that should be more than enough to count for QCP points.

On the green building initiatives, 49.9(i)(17) you have listed a bunch of green building initiatives. And we're excited about green building because we're doing it in our senior developments in San Antonio right now. And we plan on doing it in our senior developments all over Texas and our family, as well.

NAHB has just put out some guidelines this last week. And I'll forward those over to you all to see and see how the two are reconciled. I haven't had a chance to read them because they just gave them to me last night. And I know they're pretty thorough. But I'll probably send some subsequent comments regarding how we can incorporate some of those guidelines.

On the bonus points I think there needs to be

some clarification. And I know the idea -- and it's a great idea -- that if developers work with the agency to get information in quicker than waiting till the last minute, we should absolutely take advantage of bonus points. There just needs to be some clarification.

For example, in (i)(29)(C) you talk about five or less aggregate deficiencies. Are you referring to the number of items on the deficiency letter or are you referring to the actual number of deficiencies that come in per application?

And also, in (d) when giving that one point to satisfy deficiencies, are you referring to a one-point-per-actual-deficiency letter or the aggregate again? It's just those kinds of questions that we have.

With regards to financial statements -- and this is really for 4 percent applications; I know they're required for the 9 percent, as well, and my application people told me I needed to say this. They require that the financial statements not be any older than 90 days old.

What we're asking for is that once we file a financial statement for everybody listed on the org chart, as is required, that that financial statement at least be good for six months, if not a year, for subsequent developments or applications that we submit.

Believe it or not, after 90 days they don't really change that much. So it does tend to -- it would

just be easier if we could do it the other way. Because each day they have to get recertified every 90 days or every application.

On -- and then lastly, once we receive the reservation for our private activity bond allocation and we have to turn in our tax credit application it would be nice to be able to submit lines 1 and 2 in a length greater than three days. Because we always have to return it in three days. And it's a pretty big application, as you all know. And so even if we went to the five days, which is allowed for deficiencies, that would be enough time. But three days is a lot of work to do over that three-day period.

So I really appreciate the opportunity to talk about it. As you can see, there's not really a lot of changes. But I'd like to go ahead and submit these if you don't mind.

MS. HULL: Thank you.

MS. GUERRERO: Sure.

MS. HULL: Would anybody else like to comment on the QAP?

QAP (28)

I C P inclusive communities project

October 20, 2008

TDHCA, 2009 Rule Comments
P.O. BOX 13941
Austin, TX 78711-3941
VIA FACSIMILE & EMAIL

Dear TDHCA Board:

The Inclusive Communities Project, Inc. ("ICP") is a Dallas based fair housing and civil rights organization. ICP focuses on the issue of racial segregation and policies and practices that operate to exclude low income families from higher opportunity, predominately White or non-minority areas of the Dallas metropolitan area. In furtherance of ICP's mission, ICP assists Black or African American Dallas Housing Authority Section 8 families in finding housing opportunities in the suburban communities in the Dallas area. The assistance includes efforts to make units in Low Income Housing Tax Credit assisted properties available for ICP's clients. The Low Income Housing Tax Credit projects cannot refuse to rent to Section 8 tenants because the tenants are on the Section 8 voucher program. Texas Government Code 2306.269(b). TDHCA's failure to correct the disproportionate allocation of housing tax credits to low income minority areas directly interferes with ICP's ability to find housing for its clients in the higher opportunity, predominately White areas of the Dallas metropolitan area.[1] ICP has five comments on the proposed 2009 QAP.

1. TDHCA has the duty to administer the LIHTC program in a manner that affirmatively furthers fair housing and contributes to elimination of the over-concentration of low income housing tax credit units in minority areas. TDHCA has discretion to waive any QAP requirements that are not required by the federal or state statutes governing the program. QAP 50.10(a)(1), (2); Tex. Gov't Code §2306.6725(c). TDHCA has the duty to exercise that discretion in a manner that would result in the approval of tax credits for projects that would contribute to elimination of the over-concentration of low income housing tax credit units in minority areas. TDHCA thus has the power to approve tax credits for desegregated projects locations no matter what is in the QAP for any given year. However the QAP is an explicit statement by TDHCA of its guidelines and priorities which is therefore relied upon by those considering whether

[1] ICP has sued TDHCA in federal court for a remedy that eliminates the effects of TDHCA's racially segregated system of tax credit housing in the Dallas area. *ICP v. TDHCA*, (Civil Action No. 3:08-CV-0546D, N. D. Tex.).

Inclusive Communities Project
3301 Elm Street, Dallas, Texas 75226 * office 214.939.9239 * fax 214.939.9229 * www.inclusivecommunities.net

to file an application for low income housing tax credits. This alone makes the QAP an important document. The draft 2009 QAP does not show a commitment to remedying the existing over-concentration and segregation of TDHCA supported projects in the low income and minority concentrated census tracts in the Dallas area.

2. Recent federal legislation gives state housing finance agencies the discretion to establish a third category of applications eligible to receive tax credits based on 130% of the project basis, outside of the Qualified Census Tract (QCT) and Difficult to Develop (DDA) designations.[2] In spite of the new opportunities for the use of the 130% basis presented to TDHCA to address the issue of segregation and concentration of its tax credit developments in low income and minority areas, the Agency chooses not to do so. Instead, the draft QAP uses this new authority to reinforce its well established preference for locations in low income minority areas by including areas near public transportation stations and commuter rail stations in the areas eligible for the 130% basis. 49.6(h)(4)(D)(i). In the Dallas area this includes many of the census tracts that are already Qualified Census Tracts and eligible for the 130% of basis credits. Twenty five of the 58 Dallas Area Rapid Transit ("DART") transit centers listed on the DART web site are in QCTS. DART locations.pdf.[3] All but 10 of the other public transportation and commuter rail station areas eligible for this basis increase would be eligible under one of the other three criteria. DART locations.pdf. The 10 locations that would be eligible solely under the public transit station criteria include six that are in census tracts that are 37% or less White non-Hispanic or Latino. The poverty rates in these tracts range from 12% to 28%.

3. The discretionary $1.4 million cap in 49.6(d) significantly inhibits the use of the 130% basis in High Opportunity Areas that meet the 49.6(h)(4)(D)(ii)-(iv) criteria. TDHCA is aware of the effect that will have on potential development in such areas where the boost could be used to address issues like higher land costs or other factors which contribute to higher costs in those areas. The decision to continue to impose a discretionary cap lower than that statutorily required, will, at the very least, limit the number of units that can be developed in those higher opportunity areas, and is a decision to perpetuate the present discriminatory pattern whereby the projects in the concentrated minority areas contain a larger number of units than the low income housing tax credit projects in predominantly White areas.

4. The House Committee On Urban Affairs of the Texas House of Representatives found that:

The Department's funding allocations, as well as the allocations under the

[2] This comment assumes that the four definitions of High Opportunity Areas in 49.6(h)(4)(D) are disjunctive and not conjunctive. If all four definitions must be met, then the inclusion of the public transportation stations or commuter rail stations will not only steer development into Qualified Census Tracts that are predominantly minority, it will also eliminate many non-minority census tracts from consideration.

[3] DART locations.pdf is attached with this comment.

Bond Review Board's (BRB) Bond Program should promote racial integration, however, the continued failure of these entities to evaluate the implications of prior and current funding decisions permits the Department and the BRB to disproportionately allocate federal low income housing tax credit funds and the tax-exempt bond funds to developments located in impacted areas (above average minority concentration and below average income levels).

House Committee On Urban Affairs Texas House of Representatives, "Interim Report 2006 A Report to the House of Representatives 80th Texas Legislature", December 6, 2006, Robert Talton, Chairman, Findings page 48.

The proposed QAP contains no elements that address TDHCA's continued failure to evaluate the implications of prior and current funding decisions and to correct the resulting disproportionate allocation of low income housing tax credits in impacted areas and the racial segregation of TDHCA supported units in the Dallas area caused by those funding decisions.

5. Part of the harm from TDHCA's segregation and over-concentration of its assisted units in impacted areas arises if those neighborhoods are also areas of slum and blight. TDHCA has no standards that prevent its support for low income housing tax credit units that are in such areas. The threshold requirement that a site not contain a non-mitigable environmental factor that may adversely affect the health and safety of the residents does not make adjacent or nearby environment factors a condition of unacceptability. 49.9(d)(8). While such neighborhood conditions in adjacent sites may be noted on a site evaluation, the draft QAP can be read to limit the impact of any such condition to the loss of a single point under the selection criteria. For example, a proposed low income housing tax credit unit can be immediately adjacent to a dangerous and noxious industrial use and lose only one point under the selection critieria. 49.9(i)(22)(B)(i-iv).

TDHCA low income housing tax credit units should at least be subject to site and neighborhood standards that prohibit the use of housing that is in sites and neighborhoods that are not free from disturbing noises, dangers to the health, safety, and general welfare of the occupants and serious adverse environmental conditions. See for example the Section 8 Voucher program site and neighborhood standards. 24 C.F.R. § 982.401(l). Because TDHCA's assistance is tied to the units and cannot move with the tenant, the locations for those units should be subject to even higher standards. The neighborhood should not be one which is seriously detrimental to family life or in which substandard dwellings or other undesirable elements such as high crime rates predominate, unless there is actively in progress a concerted program to remedy the undesirable conditions and those conditions will be eliminated before the housing is occupied. The housing must be accessible to social, recreational, educational, commercial, and health facilities and services, and other municipal facilities and services that are at least equivalent to those typically found in neighborhoods consisting largely of similar unassisted standard housing. While TDHCA's QAP provides for the

gain or loss of a few points for these location factors, these point amounts do not prevent the location of tax credit units in neighborhoods with few amenities and gross conditions of slum and blight.

There are other provisions that choose to reinforce placement of tax credit units in distressed areas and the urban core, and the QAP is replete with TDHCA using its discretion to address other priorities and achieve other goals that are not mandated by statute. Unfortunately, affirmatively furthering fair housing by reducing the concentrations of units that are located in minority areas, and expanding housing opportunity for low income families in high opportunity, predominately white areas are not among them.

Sincerely,

Elizabeth K. Julian / by Demetra McEwen

Elizabeth K. Julian
President
ekjulian@inclusivecommunities.net

Station	Census Tract	county	% White alone Not Hispanic	% Black alone Not Hispanic	% Hispanic	% < poverty	Tract AMGI >County	Tract AMGI> place	QCT	poverty rate < 10%	Tract has at least one basis booster
Central Business District West	21	Dallas	100%	0%	0%	100.00%	No	No	Yes	No	TRUE
Pearl Station	21	Dallas	100%	0%	0%	100.00%	No	No	Yes	No	TRUE
St. Paul Station	21	Dallas	100%	0%	0%	100.00%	No	No	Yes	No	TRUE
West End Station	21	Dallas	100%	0%	0%	100.00%	No	No	Yes	No	TRUE
ITC Station	1018	Tarrant	67%	21%	8%	29.93%	No	No	Yes	No	TRUE
Texas and Pacific Station	1018	Tarrant	67%	21%	8%	29.93%	No	No	Yes	No	TRUE
Medical Market Center Station	100	Dallas	38%	42%	18%	42.99%	No	No	Yes	No	TRUE
North Irving Transit Center	100	Dallas	38%	42%	18%	42.99%	No	No	Yes	No	TRUE
South Irving Station	100	Dallas	38%	42%	18%	42.99%	No	No	Yes	No	TRUE
Convention Center Station	32.01	Dallas	32%	59%	5%	58.75%			Yes	No	TRUE
Cedars Station	33	Dallas	25%	14%	60%	43.63%	No	No	Yes	No	TRUE
Illinois Station	33	Dallas	25%	14%	60%	43.63%	No	No	Yes	No	TRUE
Lake June Transit Center	93.01	Dallas	21%	11%	67%	22.14%	No	No	Yes	No	TRUE
Downtown Plano Station	319	Collin	19%	12%	65%	26.07%	No	No	Yes	No	TRUE
Parker Road Station	319	Collin	19%	12%	65%	26.07%	No	No	Yes	No	TRUE
JB Jackson Jr Transit Center	29	Dallas	16%	79%	4%	43.71%	No	No	Yes	No	TRUE
Cockrell Hill Transfer	199	Dallas	12%	2%	85%	17.81%	No	No	Yes	No	TRUE
Red Bird Transit Center	109.01	Dallas	5%	82%	13%	19.63%	No	No	Yes	No	TRUE
Bernal/Singleton Transfer Station	106.01	Dallas	3%	4%	93%	26.27%	No	No	Yes	No	TRUE
VA Medical Center Station	87.04	Dallas	3%	92%	5%	39.13%	No	No	Yes	No	TRUE
Morrell Station	49	Dallas	2%	77%	20%	32.91%	No	No	Yes	No	TRUE
Kiest Station	88.02	Dallas	1%	92%	4%	34.26%	No	No	Yes	No	TRUE
8th and Corinth Station	41	Dallas	1%	71%	24%	53.56%	No	No	Yes	No	TRUE
Dallas Zoo Station	41	Dallas	1%	71%	24%	53.56%	No	No	Yes	No	TRUE
Malcolm X Blvd Transfer	38	Dallas	0%	95%	4%	36.22%	No	No	Yes	No	TRUE
Central Business District East Transfer Center	17.01	Dallas	100%	0%	0%	0.00%	No	Yes		Yes	TRUE
Farmers Branch Park & Ride	140.02	Dallas	91%	2%	7%	7.42%	Yes	No		Yes	TRUE

Station	Census Tract	county	% White alone Not Hispanic	% Black alone Not Hispanic	% Hispanic	% < poverty	Tract AMGI >County	Tract AMGI> place	QCT	poverty rate < 10%	Tract has at least one basis booster
Galatyn Park Station	318.05	Collin	84%	1%	4%	2.68%	Yes	Yes		Yes	TRUE
Mockingbird Station	3	Dallas	83%	3%	10%	4.09%	Yes	Yes		Yes	TRUE
Lake Ray Hubbard Transit Center	181.29	Dallas	76%	11%	10%	4.30%	Yes	Yes		Yes	TRUE
Rowlett Park & Ride	181.16	Dallas	75%	9%	10%	3.40%	Yes	No		Yes	TRUE
West Plano Transit Center	316.21	Collin	74%	5%	7%	5.34%	No	No		Yes	TRUE
Lovers Lane Station	79.05	Dallas	70%	8%	14%	13.73%	No	Yes		No	TRUE
Addison Transit Center	136.16	Dallas	70%	3%	19%	10.03%	Yes	No		No	TRUE
Victory Station	19	Dallas	66%	21%	8%	11.34%	Yes	Yes		No	TRUE
Spring Valley Station	191	Dallas	66%	8%	11%	7.93%	No	No		Yes	TRUE
Bush Turnpike Station	320.09	Collin	64%	5%	4%	0.46%	Yes	Yes		Yes	TRUE
Forest Jupiter Station	185.01	Dallas	60%	6%	29%	7.16%	No	No		Yes	TRUE
Forest Lane Station	78.05	Dallas	58%	24%	11%	10.19%	No	Yes		No	TRUE
Arapaho Center Station	190.1	Dallas	58%	8%	18%	7.10%	Yes	No		Yes	TRUE
CentrePort DFW Airport Station	1065.08	Tarrant	56%	16%	13%	9.48%	No	Yes		Yes	TRUE
White Rock Station	78.09	Dallas	52%	22%	25%	17.73%	No	Yes		No	TRUE
West Irving Station	144.08	Dallas	52%	15%	16%	7.63%	Yes	No		Yes	TRUE
Glenn Heights Park & Ride	166.13	Dallas	50%	32%	15%	9.59%	Yes	No		Yes	TRUE
North Carrollton Transit Center	137.19	Dallas	49%	6%	9%	9.59%	Yes	No		Yes	TRUE
Hampton Station	63.02	Dallas	24%	5%	69%	14.82%	No	Yes		No	TRUE
Westmoreland Station	65.02	Dallas	15%	3%	81%	13.11%	No	Yes		No	TRUE
Ledbetter Station	113	Dallas	2%	95%	1%	13.03%	No	Yes		No	TRUE
Hurst Bell Station	1065.09	Tarrant	67%	17%	8%	11.17%	No	No		No	FALSE
Downtown Garland Station	188.02	Dallas	62%	18%	18%	23.36%	No	No		No	FALSE
Richland Hills Station	1012.01	Tarrant	56%	1%	42%	16.71%	No	No		No	FALSE
South Garland Transit Center	184.01	Dallas	50%	11%	35%	17.87%	No	No		No	FALSE
Cityplace Station	16	Dallas	37%	47%	14%	27.89%	No	No		No	FALSE
LBJ/Skillman Station	185.04	Dallas	28%	47%	15%	12.42%	No	No		No	FALSE
Park Lane Station	78.06	Dallas	27%	31%	40%	20.39%	No	No		No	FALSE

Station	Census Tract	county	% White alone Not Hispanic	% Black alone Not Hispanic	% Hispanic	% < poverty	Tract AMGI >County	Tract AMGI> place	QCT	poverty rate < 10%	Tract has at least one basis booster
Walnut Hill Station	78.06	Dallas	27%	31%	40%	20.39%	No	No		No	FALSE
LBJ/Central Station	192.08	Dallas	22%	11%	59%	23.20%	No	No		No	FALSE
Tyler Vernon Station	51	Dallas	10%	3%	86%	12.63%	No	No		No	FALSE

Michele Atkins

From: Hali Harrington [hharrington@inclusivecommunities.net]
Sent: Monday, October 20, 2008 1:24 PM
To: tdhcarulecomments@tdhca.state.tx.us
Subject: TDHCA, 2009 Rule Comments

Attached, please find Inclusive Communities Project's comments.

Sincerely,
Hali Harrington
Executive Assistant
Inclusive Communities Project
3301 Elm Street
Dallas, TX 75226
(214) 939-9239
hharrington@inclusivecommunities.net

<<...>>

MS. HULL: The next person to comment is Fei Dai.

MS. DAI: Hello. This is Fei Dai representing Catellus Development Group. As mentioned last time, I think we appreciate what the -- changes that have been made to the QAP.

And then we have additional two comments. One is excluding certain costs from the eligible basis. Because one of the reasons that for developing higher-density area, sometimes the garage or a parking facilities, et cetera, is -- there's no land available for it or it's too expensive for service parking.

So for a parking garage structure or higher-density development it is beneficial to put all the development in the same level ground. So one way is to include the parking garage in the square footage calculation or to exclude the parking facility or the land associated with that out of the eligible basis.

And then the second comment is about urban core definition. I agree with Scott Marks' comments. I think it is better to tie it with the high-opportunity area and with the population of more than 100,000 people. That's our comments. Thank you very much for the opportunity.

QAP (36)

The Housing Authority of the City of Pharr

104 W. Polk
PHARR, TEXAS 78577
787-1822 or 787-9501
FAX NUMBER (956) 783-0955

PARKVIEW TERRACE
SUNSET TERRACE
MEADOW HEIGHTS
VILLA LAS MILPAS
LAS MILPAS HOMES

COMMENTS ON 2009 DRAFT QAP

Section 49.6(c), Scattered Site Limitations (page 18 of 82) - The staff determined that for reconstruction of a scattered site project, an Applicant proposing to rebuild the same number of units must do so by rebuilding on each scattered site. The staff provided the following example:

> Tracts A, B, and C each have 50 units for a total of 150 units. The reconstruction project may only consist of the 150 units if there is rebuilding on all three tracts.

Using the above example, if each tract has seven (7) acres, an Applicant is able to reconstruct the 150 units on Tracts A and B. However, the TDHCA staff requires that at least one unit must be built on Tract C to be eligible to reconstruct 150 units or the applicant can only rebuild 100 units. The requirement to reconstruct at least one unit on Tract C results in a wasteful use of land. Tract C can be used to provide much needed affordable housing rather than having a seven acre tract with a single unit.

We cannot find in the QAP any requirements that support the TDHCA staff requirement.

Recommendation: The Board should correct the implemented staff requirement that units must be reconstructed on each tract of a scattered site project, and allow the reconstruction on land sufficient to meet local and TDHCA density requirements.

Section 49.6(d), Credit Amount (page 18 of 82) – An annual allocation of tax credits is limited to $2 million "to any Applicant, Developer, Related Party, or Guarantor . . . In order to encourage the capacity enhancement of inexperienced Developers, the Department will prorate the credit amount allocated . . . based on the percentage ownership . . . or the proportional percentage of the Developer fee received . . ."

It is unfair not to prorate the credit amount allocated in all instances based on the percentage of ownership or percentage of the developer fee received. For example, a $1 million allocation for a property where the developer fee is received 25% to one party and 75% to a developer with no ownership interest, results in each party charged with $1 million, or a total of $2 million. If there is a Consultant that earns a fee (not a share of the developer fee) greater than 10% of the developer fee or $150,000, the Consultant is also charged with a $1 million allocation, resulting in the actual $1 million allocation now assessed by TDHCA at $3 million.

If the above property was for a nonprofit or a Housing Authority with an Executive Director and five Board members, these six individuals are each charged with a $1 million allocation, or a total of $6 million. TDHCA has then taken a $1 million allocation and assessed it as $9 million

Recommendation: In all instances the credit amount allocated should be based on the percentage of ownership or the percentage of developer fee received. Since Executive Directors and Board members of nonprofits and Housing Authorities have no ownership or receive any of the developer fee, a credit allocation should be assessed against these individuals. A credit allocation should not apply to a consultant unless the consultant has an ownership interest in the proposed project or will be paid an actual share of the developer fees.

Section 49.6(h)(4) 30% Increase in Eligible Basis (page 20 of 82) –

Recommendation: Include the following as eligible pursuant to the authority granted by H.R. 3221:

1. Qualified elderly development
2. A development of single family homes that after the initial compliance period will convert the single family homes to home ownership.
3. Developments that preserve appropriate types of rental housing for households that have difficulty finding suitable, affordable housing in the private marketplace (i.e. prevent losses of the state's supply of affordable residential rental housing through rehabilitation or reconstruction).

"Affordable housing" should not be limited to "at-risk" developments as defined in the QAP. "Affordable housing," for example, should include Section 8 Moderate Rehabilitation developments that are now eligible for tax credits, Public Housing, and developments with project based Housing Choice Vouchers.

Section 49.9(h)(7)(A)iv), identity of interest transaction (page 37 of 82)

Unfairly limits acquisition costs to the lesser of initial acquisition costs plus costs of owning, holding, or improving the property or the as-is appraised value. The QAP needs to be revised to allow as acquisition costs the as-is appraised value because an applicant may have owned a property for a significant period of time, may not able to document the costs of owning, holding or improving the property, and fairness dictates allowing not less than the as-is appraised value. The correct and fair costs are as supported by an independent appraisal and the QAP should allow the appraised value. Limiting property acquisition cost to "the lesser of" the original acquisition cost or current appraised value unfairly penalizes applicants for at-risk projects, USDA projects, and Housing Authorities trying to preserve affordable housing. This provision in the QAP is not consistent with Government Code Chapter Code 2306.6701, that requires that TDHCA "shall administer the low income housing Tax credit program to: (1) encourage the . . . preservation of appropriate types of rental housing for households that have difficulty

finding suitable, affordable rental housing in the marketplace; . . . (3) prevent losses for any reason to the state's supply of suitable, affordable residential units . . . "

Section 49.9(i)(2)(A)(iv) Quantifiable Community Participation (page 46-47 of 82) – TDHCA continues to unfairly and without basis limit the rights of a Resident Council to "Rehabilitation or reconstruction of the property occupied by the residents." A Residents Council should be allowed to comment and appropriately be scored for new construction if the proposed new construction is within the boundaries of the property in which they reside or within the boundaries of their organization. TDHCA should not penalize a Residents Council or consider them to have lesser rights as a neighborhood organization simply because they reside in Public Housing.

An example is a Public Housing development of 80 units that has about 7 acres of vacant land. The total site was acquired 30 or more years ago. The vacant can be developer for additional affordable housing for seniors or families.

Another example is a 60 unit Public Housing development situated on 10 acres. The development is obsolete, needs to be demolished, and can be replaced with a new100 unit development.

In the above examples, the proposed developments are considered new construction. A Resident Council should be permitted to support or oppose the proposed development and TDHCA should score their QCP accordingly.

Recommendation: In addition to rehabilitation or reconstruction of the property occupied by the residents, allow a Resident Council to support or oppose a new construction development if the proposed development is within the boundaries of the property in which they reside or within the boundaries of their organization and score their QCP accordingly.

Section 49.9(i)(6)(A)(iv) Support from State representative or State Senator (page 51 of 82) – Allows a State Senator or a State Representative to withdraw a letter submitted by the April 1st deadline on or before June 15, 2009.

Recommendation: A State Representative or a State Senator may withdraw a letter submitted by the April 1st deadline on or before May 31, 2009. If a letter of support is to be withdrawn, a State Representative or a State Senator must inform the Applicant in writing not less than two weeks before withdrawing the letter of support.

Sincerely,

J. Fernando Lopez
Interim Executive Director

Michele Atkins

From: Janie Martinez [janie@pharrha.com]
Sent: Thursday, October 16, 2008 1:48 PM
To: tdhcarulecomments@tdhca.state.tx.us
Subject: Emailing: Comments on 2009 Draft QAP Pharr HA

Comments on 2009 Draft QAP.tif...

TO WHOM IT MAY CONCERN:

Attached please find the Comments on 2009 Draft QAP for the Pharr Housing Authority.

Thank You!

J. Fernando Lopez
Interim Executive Director
Pharr Housing Authority
104 W. Polk Ave
Pharr, Texas 78577

QAP (31)

Michele Atkins

From: Jack Burleson [JBurleson@iccsafe.org]
Sent: Saturday, October 18, 2008 11:19 AM
To: 2009rulecomments@tdhca.state.tx.us; tdhcarulecomments@tdhca.state.tx.us
Subject: Proposed Changes to TDHCA Rules Chapter 49 - Section 49.9

October 17, 2008

Mr. Michael Gerber, Executive Director
Texas Department of Housing and Community Affairs
2009 Rule Comments
P.O. Box 13941
Austin, Texas 78711-3941

Ref. Texas Register, September 19, 2008, Volume 33, Number 38, Chapter 49 - 2009 Qualified Allocation Plan an

Dear Mr. Gerber:

SB1458 passed by the 2005 Texas legislature adopted the 2003 International Building Code (IBC) for all municipalities, excluding unincorporated areas. The law gave municipalities the authority to adopt later editions of the IBC at will without further legislative action. Both the 2003 IBC and the 2006 IBC are enforced in Texas.

The U.S. Department of Housing and Urban Development (HUD) have certified the 2003 IBC and the 2006 IBC and the 2003 ICC/ANSI A117.1 Accessible and Usable Buildings and Facilities as safe harbors in compliance with the federal Fair Housing Act (FHA) accessibility requirements. Please see the attached news releases.

To help TDHCA ensure compliance with state and federal accessibility laws, respectfully request the paragraph being proposed is Section 49.9 be revised to include the 2003 IBC and 2006 IBC. Please note the Code Requirements for Housing Accessibility (CRHA) 2000, while certified as a 'safe harbor' document, was intended to pick up the Fair Housing requirements between the 2001 IBC Supplement and the 2003 IBC.

(E) A certification that the Applicant is in compliance with state and federal laws, including but not limited to, fair Title VIII of the Civil Rights Act of 1968 (42 U.S.C. Sections 3601 et seq.), and the Fair Housing Amendments Ac the Civil Rights Act of 1964 (42 U.S.C. Sections 2000a et seq.); the Americans with Disabilities Act of 1990 (42 U the Rehabilitation Act of 1973 (29 U.S.C. Sections 701 et seq.); Fair Housing Accessibility; the Texas Fair Housin consistent with the Fair Housing Act Design Manual produced by HUD, **the 2003 International Building Code, 1**

Please contact me at 1.888.422.7233, ext.7777 or jburleson@iccsafe.org if you have any questions.

Sincerely,

Mailed and Faxed Signed Original

Jack D. Burleson, Assoc. AIA, CBO
Regional Manager, Government Relations
International Code Council - Texas Field Office

International Code Council

NEWS RELEASE

For Immediate Release
Feb. 25, 2005
www.iccsafe.org

Contact: Kim Paarlberg
1-888-ICC-SAFE (422-7233), ext. 4306

2003 International Building Code meets FHA accessibility requirements

Architects, developers, builders and others who use the 2003 International Building Code (IBC) to design and construct multi-family housing can be confident they are in compliance with the Federal Fair Housing Act (FHA). The U.S. Department of Housing and Urban Development (HUD) has found that the IBC constitutes safe harbor for compliance with the FHA's accessibility requirements.

"When jurisdictions adopt and enforce the 2003 IBC, they help to ensure the availability of accessible housing," said International Code Council CEO James Lee Witt. "The safe harbor status granted to the IBC benefits persons with disabilities as well as architects, developers, builders, code officials and others involved with multi-family construction."

HUD's review of the IBC found the code meets or exceeds the seven design and construction requirements of the FHA. HUD also requires the International Code Council to publish the following statement: "ICC interprets Section 1104.1, and specifically, the Exception to Section 1104.1, to be read together with Section 1107.4, and that the Code requires an accessible pedestrian route from site arrival points to accessible building entrances, unless site impracticality applies. Exception 1 to Section 1107.4 is not applicable to site arrival points for any Type B dwelling units because site impracticality is addressed under Section 1107.7." The International Code Council will provide additional clarification on its Web site and in periodicals, code opinions, commentaries, training materials and other documents.

The International Code Council will continue to work with HUD through the code development process to ensure that the 2006 edition of the IBC also will comply with the design and construction requirements of the FHA.

The International Code Council, a membership association dedicated to building safety and fire prevention, develops the codes used to construct residential and commercial buildings, including homes and schools. Most U.S. cities, counties and states that adopt codes choose the International Codes developed by the International Code Council.

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EDITORS' NOTE: The entire HUD report is available at http://www.iccsafe.org/safety/fairhousing/

International Code Council

NEWS RELEASE

For Immediate Release
July 16, 2007
www.iccsafe.org

Contact: Gretchen Hesbacher
1-888-ICC-SAFE (422-7233), ext. 6240

2006 International Building Code meets FHA accessibility requirements

The U.S. Department of Housing and Urban Development (HUD) recently recognized the 2006 *International Building Code* (IBC) and the 2003 ICC/ANSI A117.1 *Accessible and Usable Buildings and Facilities* as safe harbors in compliance with the federal Fair Housing Act (FHA) accessibility requirements.

Architects, developers, builders and others who use the 2006 IBC to design and construct multi-family housing, and code officials who enforce it, can be confident they are in compliance with the FHA.

"HUD staff actively participated in the code development process for both the 2006 IBC and the 2003 ICC/ANSI A117.1," said International Code Council CEO Rick Weiland. "The Code Council appreciates HUD's involvement, as well as the other key players who participated in the process, because having the 2006 IBC receive safe harbor status benefits everyone."

When jurisdictions adopt the 2006 IBC with its safe harbor status, they help ensure the availability of accessible housing in their communities. People with disabilities have greater opportunities to find an affordable place to live. According to the U.S. Census Bureau, more than 50 million Americans have a disability. At least 11 million use a cane, crutch, walker or wheelchair. As people age, their likelihood of becoming disabled increases. Seventy-two percent of people over the age of 80 have a disability.

For more information on accessibility and the IBC, visit iccsafe.org/safety/accessibility/.

The International Code Council, a membership association dedicated to building safety and fire prevention, develops the codes used to construct residential and commercial buildings, including homes and schools. Most U.S. cities, counties and states that adopt codes choose the International Codes developed by the International Code Council.

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EDITORS NOTE: The entire HUD report is available at http://www.hud.gov/offices/fheo/disabilities/modelcodes/IBC-Notice.pdf.

QAP 32

Michele Atkins

From: Jennifer Hicks [jennifer.hicks@foundcom.org]
Sent: Tuesday, October 14, 2008 3:16 PM
To: tdhcarulecomments@tdhca.state.tx.us
Cc: Brenda Hull; Walter Moreau
Subject: TDHCA Rule Comments - Foundation Communities

Please find attached our comments for the 2009 TDHCA QAP and associated rules.

Please let me know if you have any questions – 512-447-2026 x.25.

Thanks much,
Jennifer Hicks

Jennifer Daughtrey Hicks
Development Project Manager
Foundation Communities
3036 S. 1st Street, Suite 200
Austin, TX 78704
Phone: (512) 447-2026 x.25
Fax: (512) 447-0288
www.foundcom.org
"creating housing where families succeed"

FOUNDATION COMMUNITIES
creating housing where families succeed

3036 S. 1st St.
Suite 200
Austin, TX 78704

tel: 512-447-2026
fax: 512-447-0288

www.foundcom.org

October 14, 2008

Ms. Brooke Boston
Texas Department of Housing and Community Affairs
P.O. Box 13941
Austin, TX 78711-3941

Dear Brooke:

Thank you for the opportunity to comment on the 2009 Housing Tax Credit Draft Qualified Allocation Plan, Real Estate Analysis Guidelines, and associated rules. We would like to commend TDHCA staff for the inclusion of language that promotes supportive housing, green building, developments that target lower incomes, and developments located in urban areas.

Specifically, we are supportive of the following **QAP** sections as they are written and encourage TDHCA staff to leave the language as is in the draft:

- **Section 49.3 (93)** – definition of "Single Room Occupancy"
- **Section 49.3 (97)** – definition of "Supportive Housing" and FC encourages staff to utilize the same definition in the Real Estate Analysis Guidelines.
- **Section 49.6 (h)(4)(B) and (C)** – language adding developments proposing at least 50% of Units of Supportive Housing and developments proposing to provide 10% of the Low Income Units at 30% AMGI as eligible for the 30% increase in Eligible Basis.
- **Section 49.9 (i)(7)** –language added that encourages additional available units at or below 50% AMGI if an applicant qualifies for points under 49.9(i)(3)

While we are supportive of the following **QAP** sections, Foundation Communities recommends the following changes to the language to boost the effectiveness of these sections:

- **Section 49.6(h)(3)** – Foundation Communities supports the development types added to the 2009 Draft QAP to be eligible for the 30% increase in eligible basis. The following tweaks are recommended:
  - **Section 49.6(h)(3)** – The following replacement language is recommended: "*The Development qualifies for and receives federal renewable energy tax credits. For purposes of this paragraph, the Application will be required to include evidence from the project architect and contractor that documents the planned qualified energy equipment and the cost.*" The energy credit is often referred to as the solar energy credit or the business energy credit or the renewable energy credit – and this year it is up for renewal at Congress and might be called something else altogether. There is no application process. A business can install qualified renewable energy equipment (defined in the federal code) and they are automatically entitled to the 30% federal credit.
  - **Section 49.6 (h)(4)(D)(i)** – The following replacement language is recommended: "*A Development that is proposed to be located within one-quarter mile of existing major bus transfer centers and/or regional or local rail transport stations that are....*" FC thinks the current language would allow a majority of projects to get

the boost because they are located near a bus stop. Therefore, we recommend amending language to instead include "major bus transfer centers." In addition, "commuter rail" could be interpreted to mean trains from the suburbs into the City. We want to make sure that local rail is included as qualification for the boost.

- **Section 49.9(h)(4)(A)(ii)(XXV)** and **Section 49.9(i)(17)** – Foundation Communities commends TDHCA staff for including more detailed green building language in the "amenities" section of the Threshold Criteria and for the "scoring" section of the Selection Criteria. However, we feel that there are a few changes to both sets of language that will make it easier to understand and easier to implement. Therefore, FC supports the language proposed by Global Green that is clear and measurable.
- **Section 49.9(i)(8)** – Foundation Communities commends TDHCA staff for adding language that allows Single Room Occupancy Developments to include up to 50 square feet of common area per efficiency Unit in the cost per square foot calculation. There is just a small tweak we would recommend to the language: "If the proposed Development is a Single Room Occupancy Development, the NRA may include ~~elevator served~~ interior corridors and may include up to 50 square feet of common area per efficiency Unit. As it relates to this paragraph, an interior corridor is a corridor that is enclosed, heated and/or cooled and otherwise finished space." Many SROs will not be elevator served, but only one-story. In order for SROs to gain maximum benefit for the inclusion of this language, we recommend removing the requirement that corridors be "elevator–served."
- **Section 49.9(i)(8)** – Foundation Communities recommends making the following change to the third sentence of this paragraph: "*This calculation does not include indirect construction costs or any other construction costs that are excluded by the Applicant from eligible basis*." This change prevents developments in urban areas from being penalized from building parking garages that exceed the construction cost caps established for scoring points under this section.

Foundation Communities does not support the following additions to the QAP:

- **Section 49.3 (15)** – Foundation Communities does not support the addition of the language "is self-contained with a door" into the definition of "bedroom." This definition would not allow for loft style developments which are typical in urban developments.
- **Section 49.9(i)(29)** – Foundation Communities does not support the bonus points added to reward good behavior of Applicants based on 2008 deals. This is an unfair advantage to those 2009 applicants that did not pursue a 2008 deal.

Thanks so much for your time and consideration of our comments. Please do not hesitate to contact me with any questions – 512/447-2026 x. 16.

Sincerely,

Walter Moreau
Executive Director

Jennifer Hicks

Jennifer Daughtrey Hicks
Development Project Manager

MR. JOHNSON: Good morning. My name is Jim Johnson. I'm Development Director for Downtown Fort Worth, Inc. Appreciate you all coming to Fort Worth to hear our comments.

Downtown Fort Worth, Inc., has advocated for the presence of affordable housing in downtown for quite some time. The board of directors has approved a policy statement that calls for a range of affordability of housing in downtown and would like to see mixed-income developments with the use of the federal Low-Income Housing Tax Credit.

The changes that are proposed to the QAP go almost all the way towards meeting what we would like to see for the QAP. And in particular, I'd like to speak on the income level of tenant section, the rent level of units and development location.

The way these are worded, I believe, put mixed-income developments on equal footing with all affordable developments. And that's what we'd like to see.

I noticed that at the income level of tenants section there is an additional requirement for market-rate units to have a set-aside for some units at 80 percent of the area median income. And even though that presents a little bit more of a financial hurdle to market-rate units, we believe that's appropriate. And we support that.

That will help -- to some extent it disadvantages a downtown development because we have higher land costs and probably higher construction costs than other areas of town. But we think that -- because we want to see all kinds of housing in downtown, we think that's an appropriate compromise on this section of the QAP.

And the rent level of units, I think, becomes an appropriate bonus for adding more units at 50 percent of the area median income.

Finally, on development location we'd certainly like to see downtown included in any definition to be awarded those four points. We understand that the City of Fort Worth is working on some language that would also include other areas of the city where high-density residential and probably mixed-use development is appropriate and has been so zoned. So we would support that effort as well.

So we would strongly encourage you to approve these changes. And I appreciate the opportunity to make comment.

MS. HULL: Thank you.

QAP (34)

McAllen Housing Authority

2301 JASMINE AVENUE
McALLEN, TEXAS 78501

JOE SAENZ
EXECUTIVE DIRECTOR

October 20, 2008

TDHCA, 2009 Rule Comments
P.O. Box 13941
Austin, TX 78711-3941

To Whom It May Concern:

In response to requests for comments on the 2009 Draft QAP, the McAllen Housing Authority submits the following:

COMMENTS ON 2009 DRAFT QAP

Section 49.6(c), Scattered Site Limitations (page 18 of 82) - The staff determined that for reconstruction of a scattered site project, an Applicant proposing to rebuild the same number of units must do so by rebuilding on each scattered site. The staff provided the following example:

> Tracts A, B, and C each have 50 units for a total of 150 units. The reconstruction project may only consist of the 150 units if there is rebuilding on all three tracts.

Using the above example, if each tract has seven (7) acres, an Applicant is able to reconstruct the 150 units on Tracts A and B. However, the TDHCA staff requires that at least one unit must be built on Tract C to be eligible to reconstruct 150 units or the applicant can only rebuild 100 units. The requirement to reconstruct at least one unit on Tract C results in a wasteful use of land. Tract C can be used to provide much needed affordable housing rather than having a seven acre tract with a single unit.

We cannot find in the QAP any requirements that support the TDHCA staff requirement.

Recommendation: The Board should correct the implemented staff requirement that units must be reconstructed on each tract of a scattered site project, and allow the reconstruction on land sufficient to meet local and TDHCA density requirements.

Section 49.6(d), Credit Amount (page 18 of 82) – An annual allocation of tax credits is limited to $2 million "to any Applicant, Developer, Related Party, or Guarantor . . . In order to encourage the capacity enhancement of inexperienced Developers, the Department will prorate the credit amount allocated . . . based on the percentage ownership . . . or the proportional percentage of the Developer fee received . . ."

It is unfair not to prorate the credit amount allocated in all instances based on the percentage of ownership or percentage of the developer fee received. For example, a $1 million allocation for a property where the

developer fee is received 25% to one party and 75% to a developer with no ownership interest, results in each party charged with $1 million, or a total of $2 million. If there is a Consultant that earns a fee (not a share of the developer fee) greater than 10% of the developer fee or $150,000, the Consultant is also charged with a $1 million allocation, resulting in the actual $1 million allocation now assessed by TDHCA at $3 million.

If the above property was for a nonprofit or a Housing Authority with an Executive Director and five Board members, these six individuals are each charged with a $1 million allocation, or a total of $6 million. TDHCA has then taken a $1 million allocation and assessed it as $9 million

Recommendation: In all instances the credit amount allocated should be based on the percentage of ownership or the percentage of developer fee received. Since Executive Directors and Board members of nonprofits and Housing Authorities have no ownership or receive any of the developer fee, a credit allocation should not be assessed against these individuals. A credit allocation should not apply to a consultant unless the consultant has an ownership interest in the proposed project or will be paid an actual share of the developer fees.

Section 49.6(h)(4) 30% Increase in Eligible Basis (page 20 of 82) –

Recommendation: Include the following as eligible pursuant to the authority granted by H.R. 3221:

1. Qualified elderly development
2. A development of single family homes that after the initial compliance period will convert the single family homes to home ownership.
3. Developments that preserve appropriate types of rental housing for households that have difficulty finding suitable, affordable housing in the private marketplace (i.e. prevent losses of the state's supply of affordable residential rental housing through rehabilitation or reconstruction).

"Affordable housing" should not be limited to "at-risk" developments as defined in the QAP. "Affordable housing," for example, should include Section 8 Moderate Rehabilitation developments that are now eligible for tax credits, Public Housing, and developments with project based Housing Choice Vouchers.

Section 49.9(h)(7)(A)iv), identity of interest transaction (page 37 of 82)

Unfairly limits acquisition costs to the lesser of initial acquisition costs plus costs of owning, holding, or improving the property or the as-is appraised value. The QAP needs to be revised to allow as acquisition costs the as-is appraised value because an applicant may have owned a property for a significant period of time, may not able to document the costs of owning, holding or improving the property, and fairness dictates allowing not less than the as-is appraised value. The correct and fair costs are as supported by an independent appraisal and the QAP should allow the appraised value. Limiting property acquisition cost to "the lesser of" the original acquisition cost or current appraised value unfairly penalizes applicants for at-risk projects, USDA projects, and Housing Authorities trying to preserve affordable housing. This provision in the QAP is not consistent with Government Code Chapter Code 2306.6701, that requires that TDHCA "shall administer the low income housing Tax credit program to: (1) encourage the . . . preservation of appropriate types of rental housing for households that have difficulty finding suitable, affordable rental housing in the marketplace; . . . (3) prevent losses for any reason to the state's supply of suitable, affordable residential units . . . "

Section 49.9(i)(2)(A)(iv) Quantifiable Community Participation (page 46-47 of 82) – TDHCA continues to unfairly and without basis limit the rights of a Resident Council to "Rehabilitation or reconstruction of the property occupied by the residents." A Residents Council should be allowed to comment and appropriately be scored for new construction if the proposed new construction is within the boundaries of the property in which they reside or within the boundaries of their organization. TDHCA should not penalize a Residents Council or consider them to have lesser rights as a neighborhood organization simply because they reside in Public Housing.

An example is a Public Housing development of 80 units that has about 7 acres of vacant land. The total site was acquired 30 or more years ago. The vacant land can be developed for additional affordable housing for seniors or families.

Another example is a 60 unit Public Housing development situated on 10 acres. The development is obsolete, needs to be demolished, and can be replaced with a new100 unit development.

In the above examples, the proposed developments are considered new construction. A Resident Council should be permitted to support or oppose the proposed development and TDHCA should score their QCP accordingly.

Recommendation: In addition to rehabilitation or reconstruction of the property occupied by the residents, allow a Resident Council to support or oppose a new construction development if the proposed development is within the boundaries of the property in which they reside or within the boundaries of their organization and score their QCP accordingly.

Section 49.9(i)(6)(A)(iv) Support from State representative or State Senator (page 51 of 82) – Allows a State Senator or a State Representative to withdraw a letter submitted by the April 1st deadline on or before June 15, 2009.

Recommendation: A State Representative or a State Senator may withdraw a letter submitted by the April 1st deadline on or before May 31, 2009. If a letter of support is to be withdrawn, a State Representative or a State Senator must inform the Applicant in writing not less than two weeks before withdrawing the letter of support.

If the TDHCA staff should have any other questions, please contact me at 686-3951.

Sincerely,

Jose A. Saenz
Executive Director

Michele Atkins

From: Joe Saenz [jasaenz@mcaha.org]
Sent: Monday, October 20, 2008 3:46 PM
To: tdhcarulecomments@tdhca.state.tx.us
Subject: 2009 QAP Comments

See attached letter.

QAP (35)

Michele Atkins

From: Robbye Meyer
Sent: Friday, October 17, 2008 6:00 PM
To: Michele Atkins
Subject: FW: 2009 QAP Comments and Recommendations

Robbye G. Meyer
Director of Multifamily Finance
Texas Department of Housing and Community Affairs
221 E. 11th Street
Austin, Texas 78701
(512) 475-2213 (V)
(512) 475-0764 (F)

-----Original Message-----
From: Michael Lyttle
Sent: Friday, October 17, 2008 12:06 PM
To: Robbye Meyer
Subject: FW: 2009 QAP Comments and Recommendations

Public comment from Joe Bishop's crew.

-----Original Message-----
From: Joe Bishop [mailto:joe@cap-con.net]
Sent: Friday, October 17, 2008 12:00 PM
To: michael.gerber@tdhca.state.tx.us
Cc: mlyttle@tdhca.state.tx.us; bboston@tdhca.state.tx.us; Jim Shearer; Butler, Carley
Subject: 2009 QAP Comments and Recommendations

Dear Mr. Gerber,

Attached you will find comments and recommendations on the proposed 2009 QAP. These comments and recommendations are on behalf of our client, Texas United Independent Developers (TUID). Also attached is a summary on TUID and a list of its membership.

We are providing you hard copies of these attachments via FedEx delivery. If you or your staff have any questions, please feel free to contact us.

Thank you, joe

Joseph W. Bishop
Capital Consultants
1122 Colorado, Suite 320
Austin, TX 78701
512.322.0020 . Fax 512.474.9088
Cell 817.637.7220
www.cap-con.net

CAPITAL CONSULTANTS

October 17, 2008

via Email and FedEx to:
Mr. Michael Gerber,
michael.gerber@tdhca.state.tx.us

Mr. Michael Gerber
Executive Director
Texas Department Housing and Community Affairs
P.O. Box 13941
Austin, TX 78711-3941

Re: Comments and Recommendations Concerning 2009 Qualified Application Plan

Dear Mr. Gerber,

We represent the Texas United Independent Developers (TUID). We have been requested by TUID to submit this letter to you.

This letter contains the comments and recommendations of the Texas United Independent Developers regarding the proposed 2009 Qualified Applications Plan (QAP).

TUID is an Austin based association of affordable housing developers. Formed in 1999, TUID has been an active participant in the legislative process regarding TDHCA. Attached is information on TUID and its membership.

TUID's comments and recommendations are:

Issue #1. Increase the maximum HTC award per development to $1.8 million.

Comments.

Increase the proposed $1,400,000 HTC awarded per development to $1,800,000 (§49.6(d), proposed 2009 QAP). This allows the development a maximum that is realistic for 252 total units in Urban due to significant increases in cost of materials and construction.

Recommendation.

Amend in the proposed 2009 QAP, §49.6(d), Credit Amount, by replacing $1.4 million per Development with $1.8 million per Development.

1122 COLORADO SUITE 320 • AUSTIN *TX* 78701 ■ OFC 512.322.0020 • FAX 512.474.9088
www.cap-con.net

Issue #2. If the local community supports a development, eliminate the rule which presently penalizes HTC application's proposed site if it is located in a qualified census tract with existing HTC developments.

Comments.

The local communities should be given the right to dictate if a special HTC development is planned in counties with populations of 1 million or more and is needed and desired in a qualified census tract with existing HTC developments. The 2009 QAP should not penalize the HTC application's proposed site in the qualified census tract and should award additional scoring points for such a special HTC development.

Recommendation.

Amend in the 2009 QAP by eliminating any rule which penalizes HTC special application's proposed site if it is located in a qualified census tract with existing HTC developments if supported by the local community and award additional points to such a special HTC application.

Issue #3. Delete in QAP the rule that penalizes a General Partner even if it has met its obligations in the partnership agreement or other agreements.

Comments.

The General Partner should not be penalized in the 2009 QAP when it has met all of its obligations in the partnership agreement or other agreements.

Recommendation.

1. Strike any rule or language in the 2009 QAP that penalizes the General Partner when it has met all of its obligations in the partnership agreement or other agreements.

2. The General Partner shall present to the Department evidence, as described by the Department in the 2009 QAP, of meeting its obligations.

TUID members and Capital Consultants are available to you and your stuff for discussions and review of specific language concerning these issues. If you and your staff have questions concerning our comments, please contact us.

Sincerely yours,

/s/ Joseph W. Bishop
Joseph W. Bishop
Co-Owner
Capital Consultants

Texas United Independent Developers Summary and Membership

August 5, 2008

- **Texas United Independent Developers (TUID)** is an Austin based association of affordable housing developers. Formed in 1999, TUID has been an active participant in the legislative process regarding TDHCA.

- **TUID's** mission is to protect the private sector provider of *high quality and long term financially feasible affordable housing* for working American families and individuals. It defends private enterprise as an irreplaceable component for the delivery of affordable housing, from beginning to end, through ownership, financing, construction and property management.

- The private sector historically delivers affordable housing more effectively and efficiently than governmental alternatives while being tax paying members of the local community.

- **TUID** protects these rights and structures by educating federal and state regulators, Members of Congress, Members of State Legislators, local governments and affordable housing colleagues. **TUID** increases quality and financially feasibility of affordable housing by sharing and improving practices among its members.

- **TUID** is not new to the Texas Legislature or the affordable housing regulators. It has measurable success with impacting issues in Texas and Washington. TUID strives to create a mutually beneficial environment between its members and federal, state and local governments. By working together, the regulatory and legislative institutions develop partnerships with the private sector. This allows recognition and solutions regarding the difficulties of providing efficient affordable housing.

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Ms. Brown?

MS. BROWN: I haven't done my form. I'm so sorry.

MS. HULL: That's fine. You can fill it out later, if you'd like to go ahead and make comment.

MS. BROWN: You all are really rolling along today.

I'm Joy Horack Brown. I'm New Hope Housing's executive director, and we develop and operate affordable single-room occupancy housing, housing for adults who live alone on low incomes. And I would like to comment on several items that are included in the QAP and that I want to underscore the importance of these items remaining.

One of them is to allow for certain common areas to be included in the per-net-rentable square footage calculation for SRO housing. The importance of this is due to the fact that, in single-room occupancy housing, what would be in a conventional tax credit deal, the living room, the dining room, the kitchen, is congregate.

And therefore, the net-rentable square footage is really quite small for an SRO, if you only consider the living units. This is of extreme importance to those of us who are wishing to continue to develop supportive housing.

Supportive housing is also added as a state-designated building type and this is also quite a positive

move, and this is assuming that at least 50 percent of the units would be eligible for the boost. And I would really like to encourage that this remain.

In addition, the adoption of the supportive housing definition, which is in the QAP, is one that I personally support. It's also excellent that points be added to encourage the availability of units at or below 50 percent. Typically, single-room occupancy in supportive housing units are at or below 50 percent, and so I would very naturally be quite in favor of that as a move.

I also thank you for adding a definition of single-room occupancy housing to the QAP. I've been working with the Department to develop a single-room occupancy housing when there wasn't a definition, and I'm very happy to see that we're now being recognized. And I thank you very much.

QAP (37)

Michele Atkins

From: Linda Bryant, Texas Housing Assoc. [txtha@texas.net]
Sent: Monday, October 20, 2008 4:24 PM
To: tdhcarulecomments@tdhca.state.tx.us
Subject: Comments on QAP


Untitled Attachment 2009 Draft QAP Comments-2.doc ...

As an organization representing 400 public housing authorities/agencies in the state, we have reviewed the attached comments on the Draft QAP prepared by Flores Residential, Ltd, a company with a strong history of housing authority involvement and advocacy. We support their recommendations as beneficial for our member agencies who are involved with or are planning to be involved with tax credit developments.

.....

Linda Bryant
Executive Director

TEXAS HOUSING ASSOCIATION
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Duncanville, TX 75137
(972)572-2262 . (800)837-0645
(972)572-2289 fax

www.txtha.com

Michele Atkins

As an organization representing 400 public housing authorities/agencies in the state, we have reviewed the attached comments on the Draft QAP prepared by Flores Residential, Ltd, a company with a strong history of housing authority involvement and advocacy. We support their recommendations as beneficial for our member agencies who are involved with or are planning to be involved with tax credit developments.

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COMMENTS ON 2009 DRAFT QAP

Section 49.6(c), Scattered Site Limitations (page 18 of 82) - The staff determined that for reconstruction of a scattered site project, an Applicant proposing to rebuild the same number of units must do so by rebuilding on each scattered site. The staff provided the following example:

> Tracts A, B, and C each have 50 units for a total of 150 units. The reconstruction project may only consist of the 150 units if there is rebuilding on all three tracts.

Using the above example, if each tract has seven (7) acres, an Applicant is able to reconstruct the 150 units on Tracts A and B. However, the TDHCA staff requires that at least one unit must be built on Tract C to be eligible to reconstruct 150 units or the applicant can only rebuild 100 units. The requirement to reconstruct at least one unit on Tract C results in a wasteful use of land. Tract C can be used to provide much needed affordable housing rather than having a seven acre tract with a single unit.

We cannot find in the QAP any requirements that support the TDHCA staff requirement.

Recommendation: The Board should correct the implemented staff requirement that units must be reconstructed on each tract of a scattered site project, and allow the reconstruction on land sufficient to meet local and TDHCA density requirements.

Section 49.6(d), Credit Amount (page 18 of 82) – An annual allocation of tax credits is limited to $2 million "to any Applicant, Developer, Related Party, or Guarantor . . . In order to encourage the capacity enhancement of inexperienced Developers, the Department will prorate the credit amount allocated . . . based on the percentage ownership . . . or the proportional percentage of the Developer fee received . . ."

It is unfair not to prorate the credit amount allocated in all instances based on the percentage of ownership or percentage of the developer fee received. For example, a $1 million allocation for a property where the developer fee is received 25% to one party and 75% to a developer with no ownership interest, results in each party charged with $1 million, or a total of $2 million. If there is a Consultant that earns a fee (not a share of the developer fee) greater than 10% of the developer fee or $150,000, the Consultant is also charged with a $1 million allocation, resulting in the actual $1 million allocation now assessed by TDHCA at $3 million.

If the above property was for a nonprofit or a Housing Authority with an Executive Director and five Board members, these six individuals are each charged with a $1 million allocation, or a total of $6 million. TDHCA has then taken a $1 million allocation and assessed it as $9 million

Recommendation: In all instances the credit amount allocated should be based on the percentage of ownership or the percentage of developer fee received. Since Executive Directors and Board members of nonprofits and Housing Authorities have no ownership or receive any of the developer fee, a credit allocation should not be assessed against these individuals. A credit allocation should not apply to a consultant unless the consultant has an ownership interest in the proposed project or will be paid an actual share of the developer fees.

Section 49.6(h)(4) 30% Increase in Eligible Basis (page 20 of 82) –

Recommendation: Include the following as eligible pursuant to the authority granted by H.R. 3221:

1. Qualified elderly development
2. A development of single family homes that after the initial compliance period will convert the single family homes to home ownership.
3. Developments that preserve appropriate types of rental housing for households that have difficulty finding suitable, affordable housing in the private marketplace (i.e. prevent losses of the state's supply of affordable residential rental housing through rehabilitation or reconstruction).

"Affordable housing" should not be limited to "at-risk" developments as defined in the QAP. "Affordable housing," for example, should include Section 8 Moderate Rehabilitation developments that are now eligible for tax credits, Public Housing, and developments with project based Housing Choice Vouchers.

Section 49.9(h)(7)(A)iv), identity of interest transaction (page 37 of 82)

Unfairly limits acquisition costs to the lesser of initial acquisition costs plus costs of owning, holding, or improving the property or the as-is appraised value. The QAP needs to be revised to allow as acquisition costs the as-is appraised value because an applicant may have owned a property for a significant period of time, may not able to document the costs of owning, holding or improving the property, and fairness dictates allowing not less than the as-is appraised value. The correct and fair costs are as supported by an independent appraisal and the QAP should allow the appraised value. Limiting property acquisition cost to "the lesser of" the original acquisition cost or current appraised value unfairly penalizes applicants for at-risk projects, USDA projects, and Housing Authorities trying to preserve affordable housing. This provision in the QAP is not consistent with Government Code Chapter Code 2306.6701, that requires that TDHCA "shall administer the low income housing Tax credit program to: (1) encourage the . . . preservation of appropriate types of rental housing for households that have difficulty finding suitable, affordable rental housing in the marketplace; . . . (3) prevent losses for any reason to the state's supply of suitable, affordable residential units . . . "
The QAP does not define "identity of interest" but does define "Related Party" (pages 11-12) as "more than 50%" that 50% factor matches related IRC provisions. In most, if not

all, of the identity of interest transactions where the owner (or related entity) of property remains in the new owner entity, it is as the .01% general partner.

Section 49.9(i)(2)(A)(iv) Quantifiable Community Participation (page 46-47 of 82) – TDHCA continues to unfairly and without basis limit the rights of a Resident Council to "Rehabilitation or reconstruction of the property occupied by the residents." A Residents Council should be allowed to comment and appropriately be scored for new construction if the proposed new construction is within the boundaries of the property in which they reside or within the boundaries of their organization. TDHCA should not penalize a Residents Council or consider them to have lesser rights as a neighborhood organization simply because they reside in Public Housing.

An example is a Public Housing development of 80 units that has about 7 acres of vacant land. The total site was acquired 30 or more years ago. The vacant can be developer for additional affordable housing for seniors or families.

Another example is a 60 unit Public Housing development situated on 10 acres. The development is obsolete, needs to be demolished, and can be replaced with a new100 unit development.

In the above examples, the proposed developments are considered new construction. A Resident Council should be permitted to support or oppose the proposed development and TDHCA should score their QCP accordingly.

Recommendation: In addition to rehabilitation or reconstruction of the property occupied by the residents, allow a Resident Council to support or oppose a new construction development if the proposed development is within the boundaries of the property in which they reside or within the boundaries of their organization and score their QCP accordingly.

Section 49.9(i)(6)(A)(iv) Support from State representative or State Senator (page 51 of 82) – Allows a State Senator or a State Representative to withdraw a letter submitted by the April 1st deadline on or before June 15, 2009.

Recommendation: A State Representative or a State Senator may withdraw a letter submitted by the April 1st deadline on or before May 31, 2009. If a letter of support is to be withdrawn, a State Representative or a State Senator must inform the Applicant in writing not less than two weeks before withdrawing the letter of support.

QAP (38)

Michele Atkins

From: Mary Lawler [MaryL@avenuecdc.org]
Sent: Friday, October 17, 2008 5:22 PM
To: tdhcarulecomments@tdhca.state.tx.us
Cc: Jason Holoubek
Subject: Avenue CDC Comments

To Whom it May Concern,

Avenue CDC welcomes the opportunity to provide comments on the 2009 draft QAP and underwriting rules. Avenue CDC is a non-profit organization dedicated to improving our community by developing affordable housing and economic opportunities. Avenue CDC serves the greater Houston metropolitan area.

Comments on the draft 2009 QAP:

- **Scoring Criteria 3,** we support the proposed changes, which encourage a greater number of the Low-Income Units to be set aside for households with lower incomes of 30-50% of area median income

- **Scoring Criteria 4,** we question the need to increase the square footages. In this day of increasing construction and energy costs, increasing square footages drives up the costs to construct the units, and drives up the ongoing utility costs to cool and heat the units. With good architectural design, the 2008 square footages were adequate—in fact, one- bedroom units could be reduced to 650 square feet, and two-bedroom units could be reduced to 780.

- **Scoring Criteria 7**, we agree with the proposed changes in this year's draft QAP which make it more feasible to do mixed-income developments. These changes will allow developers who want to add additional market rate units to do so, which will result in an overall increase in the amount of affordable housing, since even market rate units in mixed- income developments tend to be more affordable than other market rate units.

- **Scoring Criteria 8,** we agree with the proposed increases in construction costs as well as the inclusion of common area in the NRA calculation for SROs

- **Scoring Criteria 17,** we agree with the new emphasis on green building as opposed to the previous points for exurban developments. In this day of high energy costs, it is even more important to enable low-income families to live near mass transit and employment centers, and to encourage resource-efficient construction.

- **Scoring Criteria 19,** we recommend a reduction in the number of points awarded to developments in census tracts with no other existing same type developments supported by tax credits. There are some census tracts which, despite the existence of another same type tax credit development, still have a need for and community support for additional affordable units. Therefore, we recommend that the Department should reduce the points for this criteria to 1 point so that the number of points under this criteria does not overwhelm high housing needs and community support scores.

- **Scoring Criteria 22** – Site Characteristics, we note that one of the most critical needs for residents of affordable housing is proximity to job opportunities and public transportation—especially in this

age of rising transportation costs and traffic congestion. We recommend that in addition to the possible four point for proximity to three of the listed amenities, the department should award an additional four points to developments located within 5 miles of a major employment center and/or located within 1 mile from a proposed light rail line.

Proposed Changes to 10 TAC Chapter 1, Subchapter B, Sec. 132, *Underwriting Rules and Guidelines*

5(B) Long Term Proforma – We request reconsideration of the proposed changes to the long term proforma underwriting guideline that will reduce both the annual growth factor for expenses and income by one percent, from four and three percent, respectively. This has the effect of projecting that the annual growth rate in expenses will be 50% bigger than the growth rate in income, whereas under the current rules the difference is only 33.3%. This cumulative change can become quite significant over the period of 15 to 30 years. We concur that increases in income have been lagging in recent years, but we encourage the department to keep the growth factor proportional. Thus, if the annual growth rate in income is reduced to 2%, we recommend that the annual growth factor in expenses be reduced to 2.66%.

Thank you for the opportunity to submit these comments. If you have any questions, please call me at (713) 864-8099, ext. 227.

Mary Lawler
Executive Director
Avenue Community Development Corporation
2505 Washington Avenue
Houston, TX 77007
Phone: (713) 864-8099, ext. 227
Fax: (713) 864-0027

Avenue
Community Development Corporation

October 17, 2008

TDHCA, 2009 Rule Comments
P.O. Box 13941
Austin, TX 78711-3941

To Whom it May Concern,

Avenue CDC welcomes the opportunity to provide comments on the 2009 draft QAP and underwriting rules. Avenue CDC is a non-profit organization dedicated to improving our community by developing affordable housing and economic opportunities. Avenue CDC serves the greater Houston metropolitan area.

Comments on the draft 2009 QAP:

- **Scoring Criteria 3,** we support the proposed changes, which encourage a greater number of the Low-Income Units to be set aside for households with lower incomes of 30-50% of area median income

- **Scoring Criteria 4,** we question the need to increase the square footages. In this day of increasing construction and energy costs, increasing square footages drives up the costs to construct the units, and drives up the ongoing utility costs to cool and heat the units. With good architectural design, the 2008 square footages were adequate—in fact, one- bedroom units could be reduced to 650 square feet, and two-bedroom units could be reduced to 780.

- **Scoring Criteria 7**, we agree with the proposed changes in this year's draft QAP which make it more feasible to do mixed-income developments. These changes will allow developers who want to add additional market rate units to do so, which will result in an overall increase in the amount of affordable housing, since even market rate units in mixed- income developments tend to be more affordable than other market rate units.

- **Scoring Criteria 8,** we agree with the proposed increases in construction costs as well as the inclusion of common area in the NRA calculation for SROs

- **Scoring Criteria 17,** we agree with the new emphasis on green building as opposed to the previous points for exurban developments. In this day of high energy costs, it is even more important to enable low-income families to live near mass transit and employment centers, and to encourage resource-efficient construction.

- **Scoring Criteria 19,** we recommend a reduction in the number of points awarded to developments in census tracts with no other existing same type developments

supported by tax credits. There are some census tracts which, despite the existence of another same type tax credit development, still have a need for and community support for additional affordable units. Therefore, we recommend that the Department should reduce the points for this criteria to 1 point so that the number of points under this criteria does not overwhelm high housing needs and community support scores.

- **Scoring Criteria 22** – Site Characteristics, we note that one of the most critical needs for residents of affordable housing is proximity to job opportunities and public transportation—especially in this age of rising transportation costs and traffic congestion. We recommend that in addition to the possible four point for proximity to three of the listed amenities, the department should award an additional four points to developments located within 5 miles of a major employment center and/or located within 1 mile from a proposed light rail line.

Proposed Changes to 10 TAC Chapter 1, Subchapter B, Sec. 132, *Underwriting Rules and Guidelines*

5(B) Long Term Proforma – We request reconsideration of the proposed changes to the long term proforma underwriting guideline that will reduce both the annual growth factor for expenses and income by one percent, from four and three percent, respectively. This has the effect of projecting that the annual growth rate in expenses will be 50% bigger than the growth rate in income, whereas under the current rules the difference is only 33.3%. This cumulative change can become quite significant over the period of 15 to 30 years. We concur that increases in income have been lagging in recent years, but we encourage the department to keep the growth factor proportional. Thus, if the annual growth rate in income is reduced to 2%, we recommend that the annual growth factor in expenses be reduced to 2.66%.

Thank you for the opportunity to submit these comments. If you have any questions, please call me at (713) 864-8099, ext. 227.

Sincerely,

Mary Lawler

Mary Lawler
Executive Director

MS. LAWLER: Good morning. I'm Mary Lawler. I'm executive director of Avenue Community Development Corporation. We're a nonprofit community housing development organization and we work in the neighborhoods north and northwest of downtown Houston.

And I had comments on four of the scoring criteria in the QAP. On scoring criteria number seven we agree with the proposed change in this year's draft QAP which would make it more feasible to do mixed-income developments.

On scoring criteria number 17 we agree with the new emphasis on green building as opposed to the previous points for exurban developments.

For scoring criteria number 19 we request a reduction in the number of points awarded to developments in census tracts with no other existing same-type development supported by tax credits. There are some census tracts which, despite the existence of another same-type tax credit development, still have a need for, and community support for, additional affordable units.

Therefore, we recommend that the Department should reduce the points for this criteria to one point so that the number of points under this criteria does not overwhelm high housing needs in community support scores.

And finally, with regard to scoring criteria number 22, site characteristics, we note that one of the most critical needs for residents of affordable housing

is proximity to job opportunities and public transportation. And we recommend that in addition to the possible four points for proximity to three of the listed amenities, the Department should award an additional four points to developments located within five miles of a major employment center or located within one mile from a proposed light rail line.

And I've submitted these remarks in writing as well. Thank you.

MS. MEYER: Thank you.

MS. HULL: Thank you.

QAP 39

Michele Atkins

From: Robbye Meyer
Sent: Saturday, October 18, 2008 10:42 AM
To: 'Valentin DeLeon'
Cc: Michele Atkins
Subject: FW: Green Building Recommendations for Texas QAP - FINAL

Val,

Here are some additional QAP comments.

Robbye G. Meyer
Director of Multifamily Finance
(512) 475-2213 (voice)
(512) 475-0764 (Fax)
-----Original Message-----
From: Mary Luevano [mailto:mluevano@globalgreen.org]
Sent: Friday, October 17, 2008 7:03 PM
To: robbye.meyer@tdhca.state.tx.us
Cc: Walter Moreau; Sunshine Mathon; Granger MacDonald; Sally Gaskin; Jeff Crozier; Liz Grant; VA Stephens
Subject: Green Building Recommendations for Texas QAP - FINAL

Dear Robbye,

Please find attached our final recommendations for including green building in the 2009 Texas QAP. Our recs are in blue, just below the draft language prepared by TDHCA. You will also find a letter of support signed by Global Green, Foundation Communities and the Sierra Club that outlines the process for the development of these recommendations.

Thank you for your attention to this and please do not hesitate to call should you have any questions.

Sincerely,

Mary

Mary Luévano
Policy and Legislative Affairs Director
Global Green USA
2218 Main Street, 2nd Floor
Santa Monica, CA 90405
Office: 310-581-2700 x101
Fax: 310-581-2702
Mobile: 310-497-7781
Email: mluevano@globalgreen.org

Please consider the trees before printing this email
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October 17, 2008

Ms. Robbye G. Meyer
Director of Multifamily Finance
Texas Department of Housing and Community Affairs
221 East 11th Street
P.O. Box 13941
Austin, Texas 78711-3941

Dear Ms. Meyer:

Attached please find Global Green USA, Foundation Communities, and Sierra Club's suggested amendments to TDHCA's proposed green menu for the Texas 2009 QAP. These amendments reflect language that was developed collaboratively by members of both the environmental and developer communities including the Texas Association of Affordable Housing Providers and the Rural Rental Housing Association of Texas. These recommendations are intended to ensure future affordable housing in the state that is built with attention to health and environmental concerns as well as cost effectiveness.

While not all of the groups involved in the drafting of these recommendations were able to sign this letter of support, all agreed that the recommendations have merit. Specifically, TAAHP voiced support for these measures if they are assured that credits can be given for the cost of green improvements and if TDHCA will allow for flexibility in the menu. The flexibility is needed to address situations where a substitution of products or practices must be made during the design and construction process.

In addition to creating incentives for developers to incorporate basic sustainable building methods into Low-Income Housing Tax Credit projects, the proposed amendments to the 2009 QAP green menu will encourage the construction of buildings characterized by "passive survivability." Passive survivability refers to the design and construction of homes that incorporate independent energy resources and reinforced structural integrity that can greatly assist occupants in the event of a variety of natural disasters, including major storms and hurricanes. Global Green USA has already experienced successes with the implementation of such standards through our green building work in New Orleans and the aftermath of Hurricane Gustav.

The green building language proposed by Global Green USA, Foundation Communities, and Sierra Club should be incorporated because it is practical, cost-effective, and sound policy. Given the potential benefit this language will have to the state, affordable housing developers, and residents, we strongly encourage TDHCA adopt these amendments to ensure that truly affordable, not cheap, housing is built for the people of Texas.

Please note that all groups signing on to this letter are jointly endorsing these recommended changes, but certain groups may be submitting additional comments on behalf of their own organizations on the QAP and other proposed rules.

Sincerely,

Mary Luevano
Policy and Legislative Affairs Director
Global Green USA

Walter Moreau
Executive Director
Foundation Communities

Cyrus Reed
Conservation Director
Lone Star Chapter of the Sierra Club

Original TDHCA language indicated below in black.
Updated amendments from Global Green USA and Foundation Communities indicated below in blue:

Threshold & Selection Criteria Green Menu

Green Building Initiatives. Application may qualify to receive up to 6 points for providing green building amenities (points under this paragraph may not be requested for the same items utilized for points under subsection (h)(4)(A)(ii)(XXV), Threshold Amenities):

(A) evaporative coolers (for use in designated counties listed in the Application Materials, 2009 Housing Tax Credit Site Demographics Information)(1 point);

(B) passive solar heating/cooling (3 points);
Two points for completing both of the following (source: LEED-Homes)
a. The glazing area on the north- and south-facing walls of the building is at least 50% greater than the sum of the glazing area on the east- and west- facing walls.
b. The east-west axis of the building is within 15 degrees of due east-west.

One point for completing one of the following (source: LEED-Homes, Green Communities, and Foundation Communities)
a. In addition to the east-west axis of the building oriented within 15 degrees of due east-west, utilize a narrow floor plate (less than 40 feet), single loaded corridors and open floor plan to optimize daylight penetration and passive ventilation (note: to qualify for this particular point, application must also implement building orientation option b. above)
b. 100% of HVAC condenser units are shaded so they are fully shaded 75% of the time during summer months (May through August)
c. Solar screens or solar film on all East, West, and South Windows with building oriented to east-west axis within 15 degrees of due east-west, west-south axis within 15 degrees of due west-south, and south-east axis within 15 degrees of due south-east.

(C) water conservation fixtures (toilets using less than or equal to 1.6 gallons per flush, showerheads, kitchen faucets or bathroom faucets using less than or equal to 2.0 gallons per minute)(1 point for each);
a. 1.6 gallons/flush toilets are current code, high efficiency toilets (HET) or "green" toilets are 1.28 gallons/flush (note that within toilet manufacturing there is a jump from 1.6 to 1.28 without increments in between). To adhere to green standards, language should read "install high efficiency toilets (HETs) that use less than or equal to 1.28 gallons/flush" (1 point)
b. Install bathroom lavatory faucets and showerheads that do not exceed 2.0 gallons/minute and kitchen faucets that do not exceed 1.5 gallons/minute. Applies to all fixtures throughout development. Rehab projects may choose to install compliant faucet aerators instead of replacing entire faucets. (1 point)

(D) solar water heaters (2 points);
Solar water heaters designed to provide at least 25% of the average energy used to heat domestic water throughout the entire development. (2 points)

(D) water collection (at least 50%) for irrigation purposes [check health and safety issues](2 points);
See 1. Irrigation and landscaping discussion below**

(E) sub-metered utility meters (3 points);

(L) selection of native trees and plants that are appropriate to the site's soils and microclimate and locate them to provide shading in the summer and allow for heat gain in the winter (2 points);

Suggested Amendments

(L) Projects implement both of the following (2 points):
(i) 90% of planted plants and trees are chosen from the Texas Urban Landscape Guide according to the development's bio-region with an Earthkind Index rating of 6 or higher. http://urbanlandscapeguide.tamu.edu/selector3.html
(ii) 40% of irrigation water is designed to be sourced from non-potable sources including rainwater collection, reclaimed water and/or recycled site water during an average climactic year.

2. Energy Discussion**

First, each of the energy elements should be listed concurrently so as to have a more logical and therefore readable menu. Considering energy is the main thrust of our green building campaign, we should quasi-bundle these points where individually a developer can receive 1 point for completing each of these criteria for a maximum of 3 points **OR** they can meet the requirements of Energy Star for Homes for 4 points. Below lists the language as is and then our suggested amendments:

Original Language

(F) Energy-Star qualified windows and glass doors (2 points);

(M) exterior envelope insulation, vapor barriers and air barriers greater than or equal to Energy Star air barrier and insulation criteria (2 points);

(N) HVAC, windows, domestic hot water heater or insulation that exceeds Energy Star standards or exceeds the IRC 2006 (2 points;

Suggested Amendments

(A) Energy Efficiency.
(i) Energy-Star qualified windows and glass doors (1 point);
(ii) Exterior envelope insulation, vapor barriers and air barriers greater than or equal to Energy Star air barrier and insulation criteria (1 point);
(iii) HVAC, domestic hot water heater, and insulation that exceeds Energy Star standards or exceeds the IRC 2006 (1 point);
(please note that "windows" has been removed from (iii) because it was redundant with criteria (i))

OR

The project promotes energy efficiency by meeting the requirements of Energy Star for Homes by either complying with the appropriate builder option package or a HERS score of 85 (4 points)

QAP (46)

CATELLUS™

A PROLOGIS COMPANY

October 15th, 2008

VIA FACSIMILE (512-475-3978) AND E-MAIL tdhcarulecomments@tdhca.state.tx.us
Mr. Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701

Re: 2009 Qualified Allocation Plan

Dear Mr. Gerber:

Thank you for allowing us to comment on the 2009 Qualified Allocation Plan. We commend you on proposing an excellent draft QAP and offer a few suggestions to improve several provisions.

49.3(105) – The Urban Core definition should be simplified.

The current definition of "Urban Core" is confusing because developers typically do not have access to information such as the percentage of land in a census tract with a particular zoning designation. Also, the requirement that census tracts must have "historically been the primary location in the municipality where business has been transacted" will lead to disputes among developers that cannot be easily resolved by TDHCA. Census tracts are fairly large geographic areas. Is the "primary location" where business has been transacted to be based on the number of jobs in a census tract or in a group of census tracts? This information is not available to most developers, and the references to multiple census tracts, including those that are contiguous to the primary location, will be difficult for developers to understand and for TDHCA to administer. Does the Urban Core in a city such as Austin include the University of Texas, the IBM campus, or only the location of many of the state government agencies? The definition does not provide a clear answer.

We suggest the following revision, "Urban Core—a High Opportunity Area in a municipality with a population of 100,000 persons or more." This definition captures both the "urban" concept (notice that small towns could qualify as Urban under the current definition) and also "core" locations but only if they are "high opportunity." Also, the definition of High Opportunity Area should be moved from 49.6(h)(4)(D) to 49.3.

4550 Mueller Blvd Austin, Texas 78723 Tel (512) 703-9200 Fax (512) 703-9201

§49.9(i)(8) – Exclude certain costs from calculating cost per square foot.

When applying the selection criteria for the Cost of the Development by Square Foot points, it makes sense to calculate the cost per square foot of net rentable area in such a way that projects will be competing on the basis of the construction cost for the housing, and not the accouterments. For projects with sufficient land to permit surface parking, the cost of the land is not included in this calculation, which automatically and inappropriately lowers the per square foot cost of the development. This places projects with structured parking garages at a distinct disadvantage. Generally, structured parking facilities are required in communities where the land is either too expensive to use for surface parking, or is unavailable.

To provide equal treatment to all developments, the cost of any parking should be excluded from calculating cost per square foot. This would exclude both the cost of land and paving for surface parking lots and the cost of structured garages. Alternatively, TDHCA should allow developers to exclude hard costs from eligible basis and not receive tax credits for certain costs as a way for high-cost developments to earn the cost-per-square-foot points and compete on a level playing field. This revision will permit developments to compete for these points on the basis of the cost efficiency of the residential units, a more equitable way to allocate points.

Another problem with this section of the QAP is that TDHCA's practices in administering this provision conflict with another provision of the QAP, section 49.17(d)(1). If construction costs in the cost certification submission exceed the cost limits that the applicant claimed for points, 49.17(d)(1) requires an Application Amendment: "[I]f the Applicant has altered any selection criteria item for which it received points, the Department shall require the Applicant to file a formal, written request for an amendment to the Application."

In our experience, TDHCA does not require Application Amendments when actual construction costs exceed the cost limits. TDHCA should clarify that section 49.9(i)(8) imposes a limit on the construction costs that generate tax credits rather than a limit on total construction costs. This clarification would not penalize applicants for being forthright about high construction costs and will lead to more realistic underwriting analysis of applications.

We suggest the following revision to the third sentence of 49.9(i)(8), "This calculation does not include indirect construction costs or any other construction costs that are excluded by the Applicant from eligible basis."

CATELLUS
A PROLOGIS COMPANY

49.9(i)(16)(F) – Clarify Urban Core developments that qualify for Development Location points.

The current definition is vague regarding the types of Urban Core sites that qualify for points. We recommend a clarification of this provision to clarify that "infill" does not necessarily mean scattered sites and to clarify the zoning requirements for these points.

We suggest the following revision, "The proposed Development is located in an Urban Core on a site that is properly zoned for the intended use (or is not zoned) and is not restricted against the intended use. The proposed Development should provide infill housing, but need not be a scattered site project."

49.6(d) – Remove cap on credit allocation per Development.

The State Legislature has imposed a $2 million cap on the 9% tax credits that can be allocated to a single applicant, developer, related party or guarantor. TDHCA proposes in the 2009 QAP to impose a further cap of $1.4 million for a single Development. Given current market conditions in the tax credit investor market, we recommend that TDHCA impose only the statutory cap and remove the allocation cap on Developments.

Thank you for providing us with an opportunity to comment on the Qualified Allocation Plan. We appreciate the TDHCA staff's efforts to tailor each year's QAP to meet the State's current needs for affordable housing development and hope you will agree that the proposed changes will improve the 2009 QAP.

Sincerely,

Matt Whelan
Senior Vice President
Catellus Development Group

cc: Ms. Brooke Boston
Ms. Robbye Meyer
Mr. Tom Gouris
Ms. Sharon Gamble

Michele Atkins

From: McCann, Vanessa [mmccann@catellus.com]
Sent: Monday, October 20, 2008 3:06 PM
To: tdhcarulecomments@tdhca.state.tx.us
Subject: TDHCA Rule Comments - Matt Whelan
Importance: High

Please see the attached letter.

Thank you,

vm

Vanessa McCann
Senior Administrative Assistant to Matt Whelan
Catellus Development Group | A ProLogis Company
4550 Mueller Boulevard
Austin, Texas 78723
Phone: 512.703.9200 Fax: 512.703.9201
Email: mmccann@catellus.com

QAP (41)

Michele Atkins

From: Michael Hartman [mah1370@hotmail.com]
Sent: Friday, September 05, 2008 3:24 PM
To: tdhcarulecomments@tdhca.state.tx.us
Cc: Roundstone
Subject: 2009 draft QAP

Attached are our comments to the draft 2009 QAP.

Thank you to all of the staff for your hard work in updating all of these rules and working with everyone on the implementation of the new bill (HR 3221).

Michael A. Hartman
Roundstone Development, LLC
1370 Taurus Court
Merritt Island, FL 32953
321-453-9587
321-453-6796 fax
321-223-8650 cell

Roundstone Development, LLC
Michael Hartman
1370 Taurus Court
Merritt Island, FL 32953
321-453-9587
mh@rstdev.com

Comments on 2009 Draft QAP as approved by
TDHCA Board on 9/4/08

September 5, 2008

1. 49.6(h)(4)(A) – why give the 30% boost only to Rural Developments that are in a census tract that has not received credits or bonds in the last five years? Shouldn't this also apply to Urban census tracts that have not received a deal in the last five years?
2. 49.9(i)(29)(A) and (B) – because new Developers would not be eligible for these points, these provisions would tend to discriminate against new Developers trying to enter the business and would work against the goal of the Department to diversify and expand the pool of Developers working under the Tax Credit Program.
3. 49.9(i)(17) – why did TDHCA remove the Ex-Urban points from the scoring criteria? We would respectfully request that you restore these points.

Thank you for your consideration of our comments.

MR. GUAJARDO: Good morning. My name is Ramon Guajardo from Fort Worth. I'm a consultant and I work with the Fort Worth Housing Authority.

Just a couple of comments. I want to echo the supportive words of Mr. Johnson and Mr. Price earlier this morning regarding the change -- or the proposed change in the recording system. They would put mixed-income developments on the same foot -- the same playing field as 100 percent low income.

I think there's opportunities here to truly try to disperse low income within a mixed-income setting. And we're supportive of that.

My other comment is regarding that the requirement that a property condition assessment report be submitted for a reconstruction project.

I understand why that report may be required. But that report is due in when the application is submitted. When a applicant is considering a reconstruction project a lot of work has already been done. The application requires some basic architect work to be done on the new buildings.

So I don't understand why the Department is at that time seeking to review a property conditions report when the applicant would have already made some investment in the design of the new buildings. So I would hope that

that requirement is revisited and maybe some answers

coming forth as to why it's needed at that time. Thank you.

MS. HULL: Any other comment on the QAP?

(No response.)

QAP

43

MS. HULL: Representative Lon Burnam requested that this letter be read into the record.

"Dear Mr. Gerber, I write to support your effort to revise the QAP rules to include incentives for green building and low-income housing under the 2009 Housing Tax Credit Program.

"Awarding points for on-site solar generation and measures to increase energy efficiency is a great way to reduce energy costs for any household, but particularly for low-income ones.

"I was surprised and heartened to see these proposals included in the Governor's Competitiveness Council 2008 Energy Plan and I enthusiastically support them.

"Regarding installation of photo voltaic panels, I would like to see points awarded accordingly to the generation capacity of the system installed, such that more points are awarded for larger systems than smaller ones.

"Additionally, for the purpose of the Housing Tax Credit Program application, I would like to see the cost of solar insulations excluded from the project cost so that developers are not deterred from including such systems in their projects. Thank you for your consideration and congratulations on this excellent initiative."

QAP QAP (43)

TEXAS HOUSE OF REPRESENTATIVES

CAPITOL OFFICE:
P.O. BOX 2910
AUSTIN, TEXAS 78768-2910
512-463-0740
EMAIL: LON.BURNAM@HOUSE.STATE.TX.US

DISTRICT OFFICE:
1067 W. MAGNOLIA
FORT WORTH, TEXAS 76104
817-924-1997

LON BURNAM
DISTRICT 90 • FORT WORTH

September 26, 2008

Mr. Michael Gerber
Executive Director
Texas Dept. of Housing and Community Affairs
221 East 11th St.
Austin, TX 78701

Re: Qualified Allocation Plan (QAP) draft rules

Dear Mr. Gerber,

I write to support your efforts to revise the QAP rules to include incentives for green building in low-income housing under the 2009 Housing Tax Credit Program.

Awarding points for on-site solar generation and measures to increase energy efficiency is a great way to reduce energy costs for any household, but particularly for low-income ones. I was surprised and heartened to see these proposals included in the Governor's Competitiveness Council's 2008 Energy Plan and enthusiastically support them.

Regarding installation of photovoltaic panels, I would like to see points awarded according to the generation capacity of the system installed such that more points are awarded for larger systems than smaller ones. Additionally, for the purpose of the Housing Tax Credit application, I would like to see the costs of solar installations excluded from the project cost so that developers are not deterred from including such systems in their projects.

Thank you for your consideration, and congratulations on this excellent initiative.

Sincerely,

Lon Burnam

Lon Burnam
State Representative
House District 90

QAP (44)

Michele Atkins

From: Michael Gerber
Sent: Monday, October 20, 2008 5:15 PM
To: Robbye Meyer; 'Brooke Boston'; Michele Atkins
Subject: FW: QAP comments

-----Original Message-----
From: Yvette Hernandez [mailto:Yvette_Hernandez@hacc.org]
Sent: Monday, October 20, 2008 4:39 PM
To: michael.gerber@tdhca.state.tx.us
Cc: 'Richard Franco'; 'Deborah Sherrill'
Subject: QAP comments

Michele Atkins

Please find attached to this email correspondence from Richard J. Franco.

If you have any questions feel free to contact me at the number below.

Sincerely,
Yvette Torres-Hernandez
Executive Assistant

Corpus Christi Housing Authority
3701 Ayers St.
Corpus Christi, TX 78415
office: (361) 889-3350
fax: (361) 889-3326

CORPUS CHRISTI HOUSING AUTHORITY
Executive Offices
3701 Ayers Street
Corpus Christi, Texas 78415

RICHARD J. FRANCO, CEO
Office: 361-889-3350
Fax: 361-889-3326
Website: www.hacc.org

October 20, 2008

Michael Gerber, Executive Director
TDHCA
P.O. Box 13941
Austin, TX 78711-3941

Dear Mr. Gerber:

Choice greetings to you all!

Consistent with our review and analysis of the 2009 QAP, attached hereto, please find our observations and comments for your consideration and determination.

With sincerest regards and best wishes on your continued excellent management of your agency, I remain,

Respectfully,

Deborah Sherrill for

Richard J. Franco, CEO

COMMENTS ON 2009 DRAFT QAP

Section 49.6(c), Scattered Site Limitations (page 18 of 82) - The staff determined that for reconstruction of a scattered site project, an Applicant proposing to rebuild the same number of units must do so by rebuilding on each scattered site. The staff provided the following example:

> Tracts A, B, and C each have 50 units for a total of 150 units. The reconstruction project may only consist of the 150 units if there is rebuilding on all three tracts.

Using the above example, if each tract has seven (7) acres, an Applicant is able to reconstruct the 150 units on Tracts A and B. However, the TDHCA staff requires that at least one unit must be built on Tract C to be eligible to reconstruct 150 units or the applicant can only rebuild 100 units. The requirement to reconstruct at least one unit on Tract C results in a wasteful use of land. Tract C can be used to provide much needed affordable housing rather than having a seven acre tract with a single unit.

We cannot find in the QAP any requirements that support the TDHCA staff requirement.

Recommendation: The Board should correct the implemented staff requirement that units must be reconstructed on each tract of a scattered site project, and allow the reconstruction on land sufficient to meet local and TDHCA density requirements.

Section 49.6(d), Credit Amount (page 18 of 82) – An annual allocation of tax credits is limited to $2 million "to any Applicant, Developer, Related Party, or Guarantor . . . In order to encourage the capacity enhancement of inexperienced Developers, the Department will prorate the credit amount allocated . . . based on the percentage ownership . . . or the proportional percentage of the Developer fee received . . ."

It is unfair not to prorate the credit amount allocated in all instances based on the percentage of ownership or percentage of the developer fee received. For example, a $1 million allocation for a property where the developer fee is received 25% to one party and 75% to a developer with no ownership interest, results in each party charged with $1 million, or a total of $2 million. If there is a Consultant that earns a fee (not a share of the developer fee) greater than 10% of the developer fee or $150,000, the Consultant is also charged with a $1 million allocation, resulting in the actual $1 million allocation now assessed by TDHCA at $3 million.

If the above property was for a nonprofit or a Housing Authority with an Executive Director and five Board members, these six individuals are each charged with a $1 million allocation, or a total of $6 million. TDHCA has then taken a $1 million allocation and assessed it as $9 million

Recommendation: In all instances the credit amount allocated should be based on the percentage of ownership or the percentage of developer fee received. Since

Executive Directors and Board members of nonprofits and Housing Authorities have no ownership or receive any of the developer fee, a credit allocation should be assessed against these individuals. A credit allocation should not apply to a consultant unless the consultant has an ownership interest in the proposed project or will be paid an actual share of the developer fees.

Section 49.6(h)(4) 30% Increase in Eligible Basis (page 20 of 82) –

Recommendation: Include the following as eligible pursuant to the authority granted by H.R. 3221:

1. Qualified elderly development
2. A development of single family homes that after the initial compliance period will convert the single family homes to home ownership.
3. Developments that preserve appropriate types of rental housing for households that have difficulty finding suitable, affordable housing in the private marketplace (i.e. prevent losses of the state's supply of affordable residential rental housing through rehabilitation or reconstruction).

"Affordable housing" should not be limited to "at-risk" developments as defined in the QAP. "Affordable housing," for example, should include Section 8 Moderate Rehabilitation developments that are now eligible for tax credits, Public Housing, and developments with project based Housing Choice Vouchers.

Section 49.9(h)(7)(A)iv), identity of interest transaction (page 37 of 82)

Unfairly limits acquisition costs to the lesser of initial acquisition costs plus costs of owning, holding, or improving the property or the as-is appraised value. The QAP needs to be revised to allow as acquisition costs the as-is appraised value because an applicant may have owned a property for a significant period of time, may not able to document the costs of owning, holding or improving the property, and fairness dictates allowing not less than the as-is appraised value. The correct and fair costs are as supported by an independent appraisal and the QAP should allow the appraised value. Limiting property acquisition cost to "the lesser of" the original acquisition cost or current appraised value unfairly penalizes applicants for at-risk projects, USDA projects, and Housing Authorities trying to preserve affordable housing. This provision in the QAP is not consistent with Government Code Chapter Code 2306.6701, that requires that TDHCA "shall administer the low income housing Tax credit program to: (1) encourage the . . . preservation of appropriate types of rental housing for households that have difficulty finding suitable, affordable rental housing in the marketplace; . . . (3) prevent losses for any reason to the state's supply of suitable, affordable residential units . . . "

Section 49.9(i)(2)(A)(iv) Quantifiable Community Participation (page 46-47 of 82) – TDHCA continues to unfairly and without basis limit the rights of a Resident Council to "Rehabilitation or reconstruction of the property occupied by the residents." A Residents Council should be allowed to comment and appropriately be scored for new construction if the proposed new construction is within the boundaries of the property in which they

reside or within the boundaries of their organization. TDHCA should not penalize a Residents Council or consider them to have lesser rights as a neighborhood organization simply because they reside in Public Housing.

An example is a Public Housing development of 80 units that has about 7 acres of vacant land. The total site was acquired 30 or more years ago. The vacant can be developer for additional affordable housing for seniors or families.

Another example is a 60 unit Public Housing development situated on 10 acres. The development is obsolete, needs to be demolished, and can be replaced with a new100 unit development.

In the above examples, the proposed developments are considered new construction. A Resident Council should be permitted to support or oppose the proposed development and TDHCA should score their QCP accordingly.

Recommendation: In addition to rehabilitation or reconstruction of the property occupied by the residents, allow a Resident Council to support or oppose a new construction development if the proposed development is within the boundaries of the property in which they reside or within the boundaries of their organization and score their QCP accordingly.

Section 49.9(i)(6)(A)(iv) Support from State representative or State Senator (page 51 of 82) – Allows a State Senator or a State Representative to withdraw a letter submitted by the April 1st deadline on or before June 15, 2009.

Recommendation: A State Representative or a State Senator may withdraw a letter submitted by the April 1st deadline on or before May 31, 2009. If a letter of support is to be withdrawn, a State Representative or a State Senator must inform the Applicant in writing not less than two weeks before withdrawing the letter of support.

QAP (45)

Michele Atkins

From: Richard Herrington [rherrington@texarkanaha.org]
Sent: Monday, October 20, 2008 3:15 PM
To: tdhcarulecomments@tdhca.state.tx.us
Subject: 2009 QAP Comments

Attached are my comments for the 2009 draft QAP.

Richard Herington, Jr.

October 20, 2008

Texas Department of Housing and Community Affairs
2009 Rule Comments
P.O. Box 13941
Austin, Texas 78711 - 3941

To Whom It May Concern:

This letter is my official response to the Draft 2009 QAP.

Section 49.6(c), Scattered Site Limitations (page 18 of 82) - The staff determined that for reconstruction of a scattered site project, an Applicant proposing to rebuild the same number of units must do so by rebuilding on each scattered site. The staff provided the following example:

> Tracts A, B, and C each have 50 units for a total of 150 units. The reconstruction project may only consist of the 150 units if there is rebuilding on all three tracts.

Using the above example, if each tract has seven (7) acres, an Applicant is able to reconstruct the 150 units on Tracts A and B. However, the TDHCA staff requires that at least one unit must be built on Tract C to be eligible to reconstruct 150 units or the applicant can only rebuild 100 units. The requirement to reconstruct at least one unit on Tract C results in a wasteful use of land. Tract C can be used to provide much needed affordable housing rather than having a seven acre tract with a single unit.

We cannot find in the QAP any requirements that support the TDHCA staff requirement.

Recommendation: The Board should correct the implemented staff requirement that units must be reconstructed on each tract of a scattered site project, and allow the reconstruction on land sufficient to meet local and TDHCA density requirements.

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It is unfair not to prorate the credit amount allocated in all instances based on the percentage of ownership or percentage of the developer fee received. For example, a $1

million allocation for a property where the developer fee is received 25% to one party and 75% to a developer with no ownership interest, results in each party charged with $1 million, or a total of $2 million. If there is a Consultant that earns a fee (not a share of the developer fee) greater than 10% of the developer fee or $150,000, the Consultant is also charged with a $1 million allocation, resulting in the actual $1 million allocation now assessed by TDHCA at $3 million.

If the above property was for a nonprofit or a Housing Authority with an Executive Director and five Board members, these six individuals are each charged with a $1 million allocation, or a total of $6 million. TDHCA has then taken a $1 million allocation and assessed it as $9 million

Recommendation: In all instances the credit amount allocated should be based on the percentage of ownership or the percentage of developer fee received. Since Executive Directors and Board members of nonprofits and Housing Authorities have no ownership or receive any of the developer fee, a credit allocation should not be assessed against these individuals. A credit allocation should not apply to a consultant unless the consultant has an ownership interest in the proposed project or will be paid an actual share of the developer fees.

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"Affordable housing" should not be limited to "at-risk" developments as defined in the QAP. "Affordable housing," for example, should include Section 8 Moderate Rehabilitation developments that are now eligible for tax credits, Public Housing, and developments with project based Housing Choice Vouchers.

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independent appraisal and the QAP should allow the appraised value. Limiting property acquisition cost to "the lesser of" the original acquisition cost or current appraised value unfairly penalizes applicants for at-risk projects, USDA projects, and Housing Authorities trying to preserve affordable housing. This provision in the QAP is not consistent with Government Code Chapter Code 2306.6701, that requires that TDHCA "shall administer the low income housing Tax credit program to: (1) encourage the . . . preservation of appropriate types of rental housing for households that have difficulty finding suitable, affordable rental housing in the marketplace; . . . (3) prevent losses for any reason to the state's supply of suitable, affordable residential units . . . "
The QAP does not define "identity of interest" but does define "Related Party" (pages 11-12) as "more than 50%" that 50% factor matches related IRC provisions. In most, if not all, of the identity of interest transactions where the owner (or related entity) of property remains in the new owner entity, it is as the .01% general partner.

Section 49.9(i)(2)(A)(iv) Quantifiable Community Participation (page 46-47 of 82) – TDHCA continues to unfairly and without basis limit the rights of a Resident Council to "Rehabilitation or reconstruction of the property occupied by the residents." A Residents Council should be allowed to comment and appropriately be scored for new construction if the proposed new construction is within the boundaries of the property in which they reside or within the boundaries of their organization. TDHCA should not penalize a Residents Council or consider them to have lesser rights as a neighborhood organization simply because they reside in Public Housing.

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is to be withdrawn, a State Representative or a State Senator must inform the Applicant in writing not less than two weeks before withdrawing the letter of support.

Yours truly,

Richard Herrington, Jr.
Executive Director
Housing Authority of the City of Texarkana, Texas

QAP (46)

Michele Atkins

From: RHSHERMAN@aol.com
Sent: Friday, October 17, 2008 9:23 AM
To: tdhcarulecomments@tdhca.state.tx.us
Subject: Comments on the 2009 QAP below

Please enter the following comments for discussion and implementation in the 2009 QAP

Proposal for 2009 QAP.

Include as an ELIGIBLE BUILDING TYPE the following

Manufactured homes installed in a single family or duplex zoned (or otherwise permitted by the authority having jurisdiction) subdivision.

Manufactured homes, as are manufactured in accordance with 24 CFR Chapter XX, Part 3280, *Manufactured Home Construction and Safety Standards* (MHCSS), and are sited on a permanent foundation. All construction must meet HUD standards for this method of developing.

In the case of subdivisions with multiple phases allow subsequent phases to start when lease up of the first phase is substantial and demand is identified for the subsequent phases notwithstanding the 1 mile 3 year rule. Include this provision in the commitment documents for the first phase thereby deleting the 1 mile 3 year rule in such circumstances.

Please confirm receipt of this Email to:

Robert H. (Bob) Sherman
SBG Development Services, L.P.
2329 Ember Woods Dr.
Roanoke, TX 76262
P 817-741-2329
M 214-533-0937

QAP (46)

SBG Development Services, L. P.

rhsherman@aol.com

2329 Ember Woods Dr.
Roanoke, TX 76262
Dir. 817-741-2329
Mob 214-533-0937

10-21 A10:32 IN

October 20 2008

Fax to Misael Arroyo 512-475-1895 2 PAGES

From Bob Sherman Phone 817-741-2329

Dear Misael, Please confirm receipt of this fax or the subject Email as discussed.

Thanks for your help,

Bob Sherman

1 of 2

Subj: **Comments on the 2009 QAP below**
Date: 10/17/2008 9:22:43 A.M. Central Daylight Time
From: RHSHERMAN
To: tdhcarulecomments@tdhca.state.tx.us

8 A10:32 IN
10-20-08 A10:32 IN

Please enter the following comments for discussion and implementation in the 2009 QAP

Proposal for 2009 QAP.

Include as an ELIGIBLE BUILDING TYPE the following

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Please confirm receipt of this Email to:

Robert H. (Bob) Sherman
SBG Development Services, L.P.
2329 Ember Woods Dr.
Roanoke, TX 76262
P 817-741-2329
M 214-533-0937

2 of 2

QAP (47)

Michele Atkins

From: Bob Waggoner [Bob_Waggoner@saha.org]
Sent: Monday, October 20, 2008 4:59 PM
To: 'tdhcarulecomments@tdhca.state.tx.us'
Subject: 2009 Draft QAP Comments (4).doc

Attached are my comments.

COMMENTS ON 2009 DRAFT QAP

Section 49.6(c), Scattered Site Limitations (page 18 of 82) - The staff determined that for reconstruction of a scattered site project, an Applicant proposing to rebuild the same number of units must do so by rebuilding on each scattered site. The staff provided the following example:

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It is unfair not to prorate the credit amount allocated in all instances based on the percentage of ownership or percentage of the developer fee received. For example, a $1 million allocation for a property where the developer fee is received 25% to one party and 75% to a developer with no ownership interest, results in each party charged with $1 million, or a total of $2 million. If there is a Consultant that earns a fee (not a share of the developer fee) greater than 10% of the developer fee or $150,000, the Consultant is also charged with a $1 million allocation, resulting in the actual $1 million allocation now assessed by TDHCA at $3 million.

If the above property was for a nonprofit or a Housing Authority with an Executive Director and five Board members, these six individuals are each charged with a $1 million allocation, or a total of $6 million. TDHCA has then taken a $1 million allocation and assessed it as $9 million

Recommendation: **In all instances the credit amount allocated should be based on the percentage of ownership or the percentage of developer fee received. Since Executive Directors and Board members of nonprofits and Housing Authorities have no ownership or receive any of the developer fee, a credit allocation should not be assessed against these individuals. A credit allocation should not apply to a consultant unless the consultant has an ownership interest in the proposed project or will be paid an actual share of the developer fees.**

Section 49.6(h)(4) 30% Increase in Eligible Basis (page 20 of 82) –

Recommendation: Include the following as eligible pursuant to the authority granted by H.R. 3221:

1. Qualified elderly development
2. A development of single family homes that after the initial compliance period will convert the single family homes to home ownership.
3. Developments that preserve appropriate types of rental housing for households that have difficulty finding suitable, affordable housing in the private marketplace (i.e. prevent losses of the state's supply of affordable residential rental housing through rehabilitation or reconstruction).

"Affordable housing" should not be limited to "at-risk" developments as defined in the QAP. "Affordable housing," for example, should include Section 8 Moderate Rehabilitation developments that are now eligible for tax credits, Public Housing, and developments with project based Housing Choice Vouchers.

Section 49.9(h)(7)(A)iv), identity of interest transaction (page 37 of 82)

Unfairly limits acquisition costs to the lesser of initial acquisition costs plus costs of owning, holding, or improving the property or the as-is appraised value. The QAP needs to be revised to allow as acquisition costs the as-is appraised value because an applicant may have owned a property for a significant period of time, may not able to document the costs of owning, holding or improving the property, and fairness dictates allowing not less than the as-is appraised value. The correct and fair costs are as supported by an independent appraisal and the QAP should allow the appraised value. Limiting property acquisition cost to "the lesser of" the original acquisition cost or current appraised value unfairly penalizes applicants for at-risk projects, USDA projects, and Housing Authorities trying to preserve affordable housing. This provision in the QAP is not consistent with Government Code Chapter Code 2306.6701, that requires that TDHCA "shall administer the low income housing Tax credit program to: (1) encourage the . . . preservation of appropriate types of rental housing for households that have difficulty finding suitable, affordable rental housing in the marketplace; . . . (3) prevent losses for any reason to the state's supply of suitable, affordable residential units . . . "
The QAP does not define "identity of interest" but does define "Related Party" (pages 11-12) as "more than 50%" that 50% factor matches related IRC provisions. In most, if not

all, of the identity of interest transactions where the owner (or related entity) of property remains in the new owner entity, it is as the .01% general partner.

Section 49.9(i)(2)(A)(iv) Quantifiable Community Participation (page 46-47 of 82) – TDHCA continues to unfairly and without basis limit the rights of a Resident Council to "Rehabilitation or reconstruction of the property occupied by the residents." A Residents Council should be allowed to comment and appropriately be scored for new construction if the proposed new construction is within the boundaries of the property in which they reside or within the boundaries of their organization. TDHCA should not penalize a Residents Council or consider them to have lesser rights as a neighborhood organization simply because they reside in Public Housing.

An example is a Public Housing development of 80 units that has about 7 acres of vacant land. The total site was acquired 30 or more years ago. The vacant can be developer for additional affordable housing for seniors or families.

Another example is a 60 unit Public Housing development situated on 10 acres. The development is obsolete, needs to be demolished, and can be replaced with a new100 unit development.

In the above examples, the proposed developments are considered new construction. A Resident Council should be permitted to support or oppose the proposed development and TDHCA should score their QCP accordingly.

Recommendation: In addition to rehabilitation or reconstruction of the property occupied by the residents, allow a Resident Council to support or oppose a new construction development if the proposed development is within the boundaries of the property in which they reside or within the boundaries of their organization and score their QCP accordingly.

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48

DAP

FAX COVER SHEET

DATE: October 20, 2008 **FROM:** Cele Quesada

PHONE: (409) 982-6442, Ext. 221

TO: TDHCA, 2009 Rule Comments

PHONE: (409)

FAX#: (409) 512-475-3978

Thanks,
Cele

*** PLEASE DELIVER THIS FAX IMMEDIATELY ***
TOTAL PAGES (INCLUDING THIS SHEET): 4

IF THIS FAX DOES NOT FULLY TRANSMIT OR IS DIFFICULT TO READ, PLEASE NOTIFY SENDER

TDHCA, 2009 Rule Comments
P.O. Box 13941
Austin, TX 78711-3941

COMMENTS ON 2009 DRAFT QAP

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The next person to comment is Scott Marks.

MR. MARKS: Good morning. My name is Scott Marks. And I agree with Walter that the first draft of the QAP is really great first draft. And again, I really appreciate the work of the staff of the agency in incorporating the federal legislation that was just passed a couple of months ago into the QAP so quickly and so thoughtfully.

I have just a few comments -- four comments on the QAP first draft. The first is in the definition of bedroom. There's been a change to that definition that to me really just makes a loft-type downtown development not feasible. And I'm not sure why this was added to the QAP. There's a phrase that says that a bedroom has to be self-contained with a door. And that's -- that hasn't been in the definition of bedroom in the past. And I'm not sure why that was added.

So I would propose that that language should be deleted and we should go back to the definition of bedroom that we've had in the past.

There is also in the definition of unit, a deletion this year for the first time. There was great language on loft-type development for purposes of completing the rent schedule for loft units -- units of a certain square footage are considered to be a one-bedroom, two-bedroom, three-bedroom.

And that language -- that sentence has been

deleted in this draft. And I would propose that we continue to use the same language in the definition of unit that we've used in the past.

The third comment that I have is that the definition of urban core, which is a new definition this year, is very difficult to administer. I think it would be almost impossible for most developers to know what would constitute the urban core.

And I'll just read the definition quickly and then propose an alternative definition. The definition right now is, "A compact and contiguous geographical area composed of census tracts of a municipality in which at least 90 percent of the land is used or zoned for commercial purposes and that has historically been the primary location where business has been transacted, as well as the census tracts that are contiguous to such areas."

That data is not available, to my knowledge. I don't know how a developer would figure out -- you know, take a census tract, figure out where is 90 percent of the land, what's the zoning, what's the use. I mean, it would take an incredible GIS system to get that data and figure out what constitutes the urban core.

So my recommendation is that the definition of urban core should be "high-opportunity areas in municipalities with a population of 100,000 people or more."

And by changing the definition to high-opportunity areas in municipalities with a population of 100,000 people or more you're capturing both concepts. One is urban. I think urban means any municipality of 100,000 people or more. And the other is core, which means those areas where the tax credits haven't been used in the past in these cities.

And the high-opportunity areas definition is a really good definition. And, you know, I would encourage incorporating that into the urban core definition.

And then the fourth comment is in the cost of the development by square foot. And I really encourage the agency to make one very small change. It's just one sentence that needs to be revised in that area. But I'll -- I'd just like to talk generally about this.

By awarding points to developers for the cost of the development by square foot, you know, there are many problems with that, one of which is that the agency can't control markets. I mean, there's just no way you can control the cost of construction.

And you have an amendment process that says if the applicant has altered any selection criteria item for which it received points the Department shall require the applicant to file a formal, written request for an amendment to the application.

Well, that means if costs increase above the costs that were, you know, submitted in the application

for points, technically there should be an amendment. And I don't think that's the intent of the Department. I think that the intent of the Department is that the agency will cap the credits that are allocated to an applicant based on the amount of eligible basis they claim in their application.

And so the penalty for costs exceeding the costs that are in your application is simply that, that you don't get more tax credits. And that's the way the agency administers this rule. And I think the rule itself should be changed to reflect that.

And the way to make that revision is just to add the -- in the third sentence of that section of the QAP it says, "This calculation does not include indirect construction costs." And I would add, "Or any other construction costs that are excluded by the applicant from eligible basis."

So that gives the applicant the ability to exclude some costs from eligible basis voluntarily. Many other states allow applicants to do that. They're not getting tax credits for those costs that are excluded from eligible basis. That's the penalty for not claiming tax credits for those costs.

And I think that will strengthen the QAP. It addresses situations like the one Walter mentioned of structured parking where applicants do not want to get tax credits for those costs, but they also are concerned

that they won't have a competitive application if they propose that type of development.

Thank you.

MS. HULL: Thank you.

MS. MEYER: Thank you.

MS. HULL: V.A. Stephens?

QAP 49

Michele Atkins

From: Scott Marks [SMarks@coatsrose.com]

Sent: Monday, October 20, 2008 1:25 PM

To: tdhcarulecomments@tdhca.state.tx.us; michael.gerber@tdhca.state.tx.us; brooke.boston@tdhca.state.tx.us; robbye.meyer@tdhca.state.tx.us; Tom Gouris; sharon.gamble@tdhca.state.tx.us

Subject: 2009 QAP comments

I understand that only the first page of the letter was attached to my earlier email, so I'm sending the attachment again.

From: Scott Marks
Sent: Monday, October 20, 2008 1:11 PM
To: 'tdhcarulecomments@tdhca.state.tx.us'; 'michael.gerber@tdhca.state.tx.us'; 'brooke.boston@tdhca.state.tx.us'; 'robbye.meyer@tdhca.state.tx.us'; 'Tom Gouris'; 'sharon.gamble@tdhca.state.tx.us'
Subject: 2009 QAP comments

Comments on the 2009 draft QAP are attached. Thanks for providing an opportunity to comment.

Scott Marks

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A Professional Corporation

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HOUSTON
AUSTIN
DALLAS
SAN ANTONIO
CLEARLAKE/GALVESTON CO.
NEW ORLEANS

October 20, 2008

VIA FACSIMILE (512-475-3978) AND E-MAIL tdhcarulecomments@tdhca.state.tx.us
Mr. Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701

Re: 2009 Qualified Allocation Plan

Dear Mr. Gerber:

Thank you for allowing us to comment on the 2009 Qualified Allocation Plan. We commend you on proposing an excellent draft QAP and offer a few suggestions to improve several provisions.

49.3(15) – The Bedroom and Unit definitions should not exclude lofts.

The definitions of "Bedroom" and "Unit" in previous QAPs have allowed developers to build loft style units with the tax credit program. When a building such as a downtown warehouse is converted to apartments, the Adaptive Reuse apartments may be lofts that do not have the traditional layout of garden style apartments. In particular, the floor plans may be more open with higher ceilings and less drywall separating the living spaces. A proposed revision to the QAP's definition of "Bedroom" requires a bedroom to be self-contained with a door, which can be difficult and perhaps impossible to incorporate in loft-style developments. Similarly, the definition of "Unit" in the 2008 QAP included square footage ranges for a loft to be considered a two-bedroom, three-bedroom, etc. that have been deleted in the draft 2009 QAP. We propose that the definitions of "Bedroom" and "Unit" should remain the same as in the 2008 QAP so that loft-style developments remain feasible in the tax credit program.

49.3(105) – The Urban Core definition should be simplified.

The current definition of "Urban Core" is confusing because developers typically do not have access to information such as the percentage of land in a census tract with a particular zoning designation. Also, the requirement that census tracts must have "historically been the

primary location in the municipality where business has been transacted" will lead to disputes among developers that cannot be easily resolved by TDHCA. Census tracts are fairly large geographic areas. Is the "primary location" where business has been transacted to be based on the number of jobs in a census tract or in a group of census tracts? This information is not available to most developers, and the references to multiple census tracts, including those that are contiguous to the primary location, will be difficult for developers to understand and for TDHCA to administer. Does the Urban Core in a city such as Austin include the University of Texas, the IBM campus, or only the location of many of the state government agencies? The definition does not provide a clear answer.

We suggest the following revision, "Urban Core—a High Opportunity Area in a municipality with a population of 100,000 persons or more." This definition captures both the "urban" concept (notice that small towns could qualify as Urban under the current definition) and also "core" locations but only if they are "high opportunity." Also, the definition of High Opportunity Area should be moved from 49.6(h)(4)(D) to 49.3.

§49.9(i)(8) – Exclude certain costs from calculating cost per square foot.

When applying the selection criteria for the Cost of the Development by Square Foot points, it makes sense to calculate the cost per square foot of net rentable area in such a way that projects will be competing on the basis of the construction cost for the housing, and not the accouterments. For projects with sufficient land to permit surface parking, the cost of the land is not included in this calculation, which automatically and inappropriately lowers the per square foot cost of the development. This places projects with structured parking garages at a distinct disadvantage. Generally, structured parking facilities are required in communities where the land is either too expensive to use for surface parking, or is unavailable.

To provide equal treatment to all developments, the cost of any parking should be excluded from calculating cost per square foot. This would exclude both the cost of land and paving for surface parking lots and the cost of structured garages. Alternatively, TDHCA should allow developers to exclude hard costs from eligible basis and not receive tax credits for certain costs as a way for high-cost developments to earn the cost-per-square-foot points and compete on a level playing field. This revision will permit developments to compete for these points on the basis of the cost efficiency of the residential units, a more equitable way to allocate points.

Another problem with this section of the QAP is that TDHCA's practices in administering this provision conflict with another provision of the QAP, section 49.17(d)(1). If construction costs in the cost certification submission exceed the cost limits that the applicant claimed for points, 49.17(d)(1) requires an Application Amendment: "[I]f the Applicant has altered any selection criteria item for which it received points, the Department shall require the Applicant to file a formal, written request for an amendment to the Application."

In our experience, TDHCA does not require Application Amendments when actual construction costs exceed the cost limits. TDHCA should clarify that section 49.9(i)(8) imposes a limit on the construction costs that generate tax credits rather than a limit on total construction

costs. This clarification would not penalize applicants for being forthright about high construction costs and will lead to more realistic underwriting analysis of applications.

We suggest the following revision to the third sentence of 49.9(i)(8), "This calculation does not include indirect construction costs or any other construction costs that are excluded by the Applicant from eligible basis."

49.9(i)(16)(F) – Clarify Urban Core developments that qualify for Development Location points.

The current definition is vague regarding the types of Urban Core sites that qualify for points. We recommend a clarification of this provision to clarify that "infill" does not necessarily mean scattered sites and to clarify the zoning requirements for these points.

We suggest the following revision, "The proposed Development is located in an Urban Core on a site that is properly zoned for the intended use (or is not zoned) and is not restricted against the intended use. The proposed Development should provide infill housing, but need not be a scattered site project."

49.6(d) – Remove cap on credit allocation per Development.

The State Legislature has imposed a $2 million cap on the 9% tax credits that can be allocated to a single applicant, developer, related party or guarantor. TDHCA proposes in the 2009 QAP to impose a further cap of $1.4 million for a single Development. Given current market conditions in the tax credit investor market, we recommend that TDHCA impose only the statutory cap and remove the allocation cap on Developments.

Thank you for providing us with an opportunity to comment on the Qualified Allocation Plan. We appreciate the TDHCA staff's efforts to tailor each year's QAP to meet the State's current needs for affordable housing development and hope you will agree that the proposed changes will improve the 2009 QAP.

Sincerely,

Scott Marks

Scott A. Marks

cc: Ms. Brooke Boston
Ms. Robbye Meyer
Mr. Tom Gouris
Ms. Sharon Gamble

QAP (50)

CHRIS HARRIS
District 09

The Senate of
The State of Texas
Austin 78711

GOVERNOR'S ROW
2001 EAST LAMAR BLVD.
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ARLINGTON, TEXAS 76006

DENTON COUNTY OFFICE
522 S. EDMONDS LANE
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CAPITOL STATION
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AUSTIN, TEXAS 78711
(512) 463-0109

October 15, 2008

Mike Gerber
Executive Director
Texas Department of Housing and Community Affairs
P. O. Box 13941
Austin, TX 78711-3941

VIA FACSIMILE: (512) 469-9606

Re: Public Comment for the 2009 TDHCA QAP

Dear Mr. Gerber,

I am writing to request that the board of the Texas Department of Housing and Community Affairs [TDHCA] reconsider the proposed policy change to remove the Ex Urban concept from the QAP Selection Criteria Par 49.9(i)(17). This proposed action would make it difficult, if not impossible to provide affordable senior housing in the North Texas area outside urban centers. Older citizens from suburban and rural areas would not have this least restrictive housing alternative available in their community which would limit their options to more expensive and restrictive environments such as assisted living or nursing homes.

This proposed policy change would directly affect projects like Lewisville Evergreen in Denton County which currently has over 200 qualified citizens on their waiting list. It fills a growing need for affordable senior housing in a suburban area. The project provides the option of independent living for those 55 and older who can no longer live in their home but are not ready for assisted living or a nursing home.

Thank you for your consideration. If you need further information regarding this letter of support, please feel free to contact me or my District Director, Joan Holland at (817) 275-6699.

Sincerely

Chris Harris

QAP (51)

TEXAS NAHRO

P.O. BOX 416
OLNEY, TX 76374
800-617-2900
FAX: 940-873-4397

FACSIMILE TRANSMITTAL SHEET

TO:	FROM:
2009 Rule Comments	Shelli Scrogum
COMPANY:	DATE:
TDHCA	10/20/08
FAX NUMBER:	TOTAL NO. OF PAGES INCLUDING COVER:
512-475-3978	4
PHONE NUMBER:	SENDER'S FAX NUMBER:
	940-873-4397
RE:	SENDER'S PHONE NUMBER:
Comments on 2009 QAP Rule	800-617-2900

☐ URGENT ☑ FOR REVIEW ☐ PLEASE COMMENT ☐ PLEASE REPLY ☐ PLEASE RECYCLE

NOTES/COMMENTS:

Thanks
Shelli Scrogum
Texas NAHRO Service Officer
800-617-2900

Texas NAHRO

Texas Chapter of the National Association of Housing and Redevelopment Officials

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P.O. Box 416 – Olney, Texas 76374 – Phone 800-617-2900
Fax 940-873-4397 – shelli@brazosnet.com – www.txnahro.org

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"Affordable housing" should not be limited to "at-risk" developments as defined in the QAP. "Affordable housing," for example, should include Section 8 Moderate Rehabilitation developments that are now eligible for tax credits, Public Housing, and developments with project based Housing Choice Vouchers.

Section 49.9(h)(7)(A)iv), identity of interest transaction (page 37 of 82)

Unfairly limits acquisition costs to the lesser of initial acquisition costs plus costs of owning, holding, or improving the property or the as-is appraised value. The QAP needs to be revised to allow as acquisition costs the as-is appraised value because an applicant may have owned a property for a significant period of time, may not able to document the costs of owning, holding or improving the property, and fairness dictates allowing not less than the as-is appraised value. The correct and fair costs are as supported by an independent appraisal and the QAP should allow the appraised value. Limiting property acquisition cost to "the lesser of" the original acquisition cost or current appraised value unfairly penalizes applicants for at-risk projects, USDA projects, and Housing Authorities trying to preserve affordable housing. This provision in the QAP is not consistent with Government Code Chapter Code 2306.6701, that requires that TDHCA "shall administer the low income housing Tax credit program to: (1) encourage the . . . preservation of appropriate types of rental housing for households that have difficulty finding suitable, affordable rental housing in the marketplace; . . . (3) prevent losses for any reason to the state's supply of suitable, affordable residential units . . . "

Section 49.9(i)(2)(A)(iv) Quantifiable Community Participation (page 46-47 of 82) – TDHCA continues to unfairly and without basis limit the rights of a Resident Council to "Rehabilitation or reconstruction of the property occupied by the residents." A Residents Council should be allowed to comment and appropriately be scored for new construction if the proposed new construction is within the boundaries of the property in which they reside or within the boundaries of their organization. TDHCA should not penalize a Residents Council or consider them to have lesser rights as a neighborhood organization simply because they reside in Public Housing.

An example is a Public Housing development of 80 units that has about 7 acres of vacant land. The total site was acquired 30 or more years ago. The vacant can be developer for additional affordable housing for seniors or families.

Another example is a 60 unit Public Housing development situated on 10 acres. The development is obsolete, needs to be demolished, and can be replaced with a new100 unit development.

In the above examples, the proposed developments are considered new construction. A Resident Council should be permitted to support or oppose the proposed development and TDHCA should score their QCP accordingly.

Recommendation: In addition to rehabilitation or reconstruction of the property occupied by the residents, allow a Resident Council to support or oppose a new construction development if the proposed development is within the boundaries of the property in which they reside or within the boundaries of their organization and score their QCP accordingly.

Section 49.9(i)(6)(A)(iv) Support from State representative or State Senator (page 51 of 82) – Allows a State Senator or a State Representative to withdraw a letter submitted by the April 1st deadline on or before June 15, 2009.

Recommendation: A State Representative or a State Senator may withdraw a letter submitted by the April 1st deadline on or before May 31, 2009. If a letter of support is to be withdrawn, a State Representative or a State Senator must inform the Applicant in writing not less than two weeks before withdrawing the letter of support.

Respectfully submitted,

Steve Shorts, President

Richard Herrington, Jr., Sr. Vice President

QAP (52)

Michele Atkins

Enclosed please find comments on the draft Qualified Allocation Plan for 2009. Please let me know if you have any questions concerning my comments.

Thank you.

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October 20, 2008

By E-Mail: tdhcarulecomments@tdhca.state.tx.us
TDHCA, 2009 Rule Comments
P.O. Box 13941
Austin, TX 78711-3941

RE: Comments on Draft 2009 Qualified Allocation Plan.

Ladies and Gentlemen:

Thank you for giving us the opportunity to comment upon the proposed Qualified Allocation Plan ("QAP") for the 2009 Housing Tax Credit Program. Here are our suggestions with regard to the QAP, as currently drafted:

1. § 49.3(15) – The definition of a "Bedroom" now requires that it be self contained with a door. The very popular "loft" construction design does not generally include doors – the living area is one open space, which can be allocated to various living purposes through room dividers and furnishings. Recommendation – Revised to read: "...is self contained with a door (unless the unit is a "loft" design with open area of ___ square feet or more) ... ".

2. § 49.3(26) – The definition of "Control" references in its last line a "managing General Partner of a limited liability company." In Texas, limited liability companies have either members, managers or officers, but not partners. Recommendation – change the reference to "managing member or manager of a limited liability company."

3. § 49.3(27) – The definition of "Controlling or Managing General Partner" now requires ownership of 10 percent or more of the voting stock, and liability for all debts and other obligations of the venture. The words "managing General Partner" are used repeatedly in the QAP to refer to the general partner of the tax credit limited partnership – however the general partner of the tax credit limited partnership is unlikely to own 10% of the partnership. Additionally, the controlling persons in corporations and limited liability companies are not generally personally liable for the debts and obligations of their entities, and while

a general partner of a limited partnership is legally obligated for the debts and other obligations of the limited partnership, this obligation is routinely contractually abrogated in permanent financing documents. In order to avoid conflict with the customary structure of a tax credit limited partnership, and in order to avoid conflict with the concept of "Control" as defined in the QAP, we recommend that the definition be changed to read: "a co-owner of an entity who (i) owns, controls, or holds with power to vote 10 percent or more of the voting stock of a corporation, (ii) is the "Manager" or the "Managing Member" of a limited liability company, or (iii) is the general partner of a limited partnership; provided that such co-owner is empowered, acting alone, to take actions on behalf of the entity that are binding upon the other owners of such entity."

4. § 49.3(47) – The definition of "Governing Body" states "An elected city or county entity..." In reality, it is the members of the city or county entity that are elected, not the entity itself. Recommendation – Modify to read "A city or county entity with elected members that is responsible ...".

5. § 49.3(58)(I) – In the definition of "Ineligible Building Types", the word "either" in the first line of subsection (I) should be deleted.

6. § 49.3(93) – In the definition of "Single Room Occupancy", for clarity please substitute "need not" for "may not".

7. § 49.3(103) – The definition of "Unit" does not include the concept of an SRO, because of the requirement that it contain complete facilities for cooking. Recommendation – Add at the end of the current definition: "A residential rental unit in a SRO is also a "Unit.""

8. § 49.3(105) – The definition of "Urban Core" is problematical because the average developer will not have information readily available regarding the percentage of land in a census tract that is zoned or used for commercial purposes. Recommendation – Change the definition to: "Urban Core -- a High Opportunity Area in a municipality with a population of 100,000 persons or more." The definition of "High Opportunity Area" should be moved from § 49.6(h)(4)(D) to § 49.3.

9. § 49.6(d) – Rising construction costs and plummeting tax credit prices have resulted in financing gaps that make it extremely difficult to finance an affordable development. Recommendation - Proposed projects can be made more feasible by eliminating the $1,400,000 project cap to permit adequate equity financing for larger projects. The $2 million developer cap, which is statutorily required, will continue to enforce fairness in the distribution of the tax credits.

10. § 49.9(c) – The "Adherence to Obligations" penalties, as currently drafted, are too severe and can be out of proportion to the importance of the infraction, especially with regard to amendments requested after the modification has already been implemented. Frequently a responsible developer makes changes to the development plans but only realizes at the cost certification inspection that the Department regards such changes as modifying material representations made in the Application. Recommendation – Either implement a system of escalating penalties when the same developer has repeated offences, or alternatively, include in the Application a section in which all material "Representations" concerning the project are reflected, so that the developer can refer to that section whenever plan changes are anticipated in order to determine whether an amendment is needed.

11. § 49.9(i)(2)(A)(v) – The third sentence in this subsection should read: "The Neighborhood Organization letter must be signed by two officials or board members of the Neighborhood Organization and must include a contact name…".

12. § 49.9(i)(2)(A)(vi) – The next to the last sentence in this subsection should read: "Applicants may not provide delivery assistance or any communication …"

13. § 49.9(i)(8) - When applying the selection criteria for the Cost of the Development by Square Foot points, the type of parking provided can make a critical difference and is not always within the control of the developer. It makes sense to calculate the cost per square foot of net rentable area in such a way that projects will be competing on the basis of the construction cost for the housing, and not the accouterments, such as parking. For projects with sufficient land to permit surface parking, the cost of the land is not included in this calculation, which automatically and inappropriately lowers the per square foot cost of the development. This places projects with structured parking garages at a distinct disadvantage. Generally, structured parking facilities are required in communities where the land is either too expensive to use for surface parking, or is unavailable. Recommendation - To provide equal treatment to all developments, the cost of any parking should be excluded from calculating cost per square foot. This would exclude both the cost of land and paving for surface parking lots and the cost of structured garages. Alternatively, TDHCA should allow developers to exclude hard costs from eligible basis and not receive tax credits for certain costs as a way for high-cost developments to earn the cost-per-square-foot points and compete on a level playing field. This change will permit developments to compete for these points on the basis of the cost efficiency of the residential units, which is a more equitable way to allocate points.

14. § 49.9(i)(16)(F) – Points are awarded for infill housing in an Urban Core location that is properly zoned for the intended use. Does "infill housing" mean that the housing must be located on scattered sites, or is a single contiguous site

acceptable? Also, the zoning portion of the requirement may imply that sites in municipalities without zoning are not acceptable. Recommendation: Revise to read: "The proposed Development is located in an Urban Core on a site that is properly zoned for the intended use (or is not zoned) and is not restricted against the intended use. The proposed Development will provide infill housing, but need not be a scattered site project."

15. § 49.9(i)(18)(C) – The last sentence of this subsection should properly apply to the entire § 49.9(i)(18), instead of just subsection (C). Recommendation: Move the last sentence to the next line, flush left, so that it applies to all of the subsections.

16. § 49.9(i)(29)(A) – The Bonus Points available for acquiring site control by November 1, 2008, are unrealistic this year, due to the overall tax credit market conditions and the fact that 2008 projects will not even know whether they will qualify for additional tax credits under H.R. 3221 until November 3, 2008. Recommendation: Retain the bonus points but change the deadline to February 1, 2009, and let the developer provide proof of the deed in Volume 4 of the 2009 Application. Additionally, because the number of Bonus Points under § 49.9(i)(18) will not be known at the time the 2009 Applications are submitted, the Bonus Points should be excluded from the calculation of the Application score for Pre-Application Participation Incentive Points under § 49.9(i)(14)(E).

17. § 49.9(i)(29)(D) – Please note that there are two (2) subsections designated as "(D)" under § 49.9(i)(29) for Bonus Points. The later one should be redesignated "(E)". The later subsection creates an inequity among Applicants because deficiency notices are sent to the Applicants at varying times of day. An Applicant who receives a deficiency notice at 9:00 am on a Friday has a lot more time to respond within three (3) business days than an Applicant who receives a deficiency notice at 5:00 pm (or even later) on a Monday. When points are so very important in determining whether a project will succeed or fail, a big disparity should not be built into the scoring system this way. Also, it is not clear whether this is a one-time opportunity for a bonus point, or whether it applies to each of the Eligibility, Threshold, Selection and Underwriting reviews. Recommendation: Delete the provision providing bonus points for satisfaction of deficiencies on or before the third business day following the date of the deficiency notice.

18. § 49.13(c)(1) – It has never been clear what the TDHCA expects to receive in order to provide evidence that an entity has the authority to do business in Texas. Recommendation: Revise the subsection to read: "Evidence that the entity has the authority to do business in Texas in the form of a Certificate of Fact from the Secretary of State of Texas."

19. § 49.14(b)(4) – This subsection provides that in order to meet the 10% Test, the Developer must provide evidence of having commenced and continued substantial construction activities as defined in Chapter 60 of the title. Historically, a developer has been able to obtain an extension of the Commencement of Substantial Development Deadline (December 1st of year following Carryover Allocation), if needed. Under the draft QAP, the 10% Test is due eleven months from the Carryover Allocation Agreement (at latest, November 30th). If meeting the Commencement of Substantial Construction Deadline is part and parcel of the 10% Test, then the Commencement of Substantial Construction Deadline can only be extended until December 31st at the very most, because the 10% Test must be met within 12 months after the Carryover Allocation Agreement under the Internal Revenue Code. Including the Commencement of Substantial Construction Deadline as part of the 10% Test reduces flexibility for the developer. Recommendation: Delete § 49.14(b)(4) and references to that subsection in § 49.14(b)(5).

Again, we appreciate the opportunity to provide comments on the draft QAP. If you have any questions, please do not hesitate to call.

Very truly yours,

Tamea A. Dula

cc: Michael Gerber
Brooke Boston
Robbye Meyer

QAP (53)

MS. STEPHENS: Good morning. Is this all right?

MS. HULL: Uh-huh.

MS. STEPHENS: And you all have my form filled out correctly? Awesome.

My name is V.A. Stephens and I'm here representing Global Green USA. Global Green is a nonprofit environmental organization that works on improving the built environment through such initiatives as green affordable housing, green schools and local government green building programs.

Global Green was founded about 15 years ago, US affiliate of Green Cross International founded by Mikhail Gorbachev. The organization provides technical expertise, policy guidance and advocacy through things such as opening a sustainable building center in New Orleans post-Katrina for rebuilding of that area.

Global Green has been in conversations with Robbye and you all's staff on offering technical expertise and workshops as this process moves forward if that is appropriate and desired by the agency.

The organization really wants to thank the agency staff and the board for holding roundtables and workshops thus far. You all have gotten a lot of input.

As Walter said and others have said, it's a really good draft. As Walter mentioned, there's a small informal workgroup that's been meeting by conference call

and email with folks, developers and other nonprofits to try to find common ground on some of these issues.

You all have heard about the benefits of green building in the past so I won't repeat all of that. I will just say that I think the goal at this point between the draft and the final for this workgroup in particular is to hone the language to create a robust, clear and cost-effective green building menu as we move forward. We will also be providing staff written comments, hopefully in the next week or two.

Two areas in particular that we're looking to refine and improve, I guess: one, point allocations, to try to ensure that point allocations are signed in a way that encourages a comprehensive approach to green building, as well as awarding points in proportion to the impact of particular green building practices or products.

Second area -- and I think Walter touched on this, as well -- is language clarity, making sure that we have sort of performance-based and not prescriptive goals so that it's as easy as possible for people to meet these goals and provide, you know, meet the overall results.

Again, we believe that developers and nonprofits, environmental advocates have some common ground. And we hope to provide written comment reflecting that in the next week or two. And be happy to answer any questions or stand by to provide further

information, as needed.

MR. MOREAU: I'm Walter Moreau, the executive director of Foundation Communities. And I appreciate the opportunity to make comments on the QAP. I'm just going to make some general comments and then submit in writing detailed comments in the next couple days.

MS. HULL: Okay.

MR. MOREAU: First, I just want to compliment the draft -- the staff -- for a draft that includes some really monumental improvements.

First and foremost, that there's this whole category of high-opportunity areas. Fortunately, we now have the opportunity to reward additional credits to projects that are in the best part of town with good schools and good access to public transportation. And that's monumental for our industry after 20 years now to be able to make that kind of investment in projects in those locations. So I'm very excited about that.

I'm also excited about the inclusion of more incentives for green building practices. I think that's hugely important for efficiency of the operations of the properties in lowering utility bills and for a lower impact on the environment and some of the changes and tweaks to definitions for supportive housing for those projects. So thank you for taking in a lot of comments and incorporating those.

Some specific items -- on -- and I'll go by page number in the draft because it's too hard to read

the little specific sections. On page 20 there's an opportunity for additional credits for projects that include equipment that produces renewable energy and leverages the renewable energy credits.

And that maybe needs some tweaking because there's no application process. You -- if you include solar panels on your project that are qualified under the energy credit definition, then on your tax return you get to claim the credits. So there maybe needs to be an architect letter or contractor bid for evaluation in the application.

This is really an exciting thing to add because it leverages -- takes some additional housing credits and leverages the energy credits so that solar equipment may be 80 percent or more paid for. And there's a great opportunity then for developers and/or residents to have significantly lower utility bills. So I think it's a great thing to include.

In that same page there's a -- in the high-opportunity definition, projects that are close to public transportation are awarded. And I think the intention there is not just any old bus stop because that would include hopefully a lot of -- most projects, but projects that are very close to train stations and major bus transfer centers.

So I don't know how you word that or define that exactly. But those are the projects in TODS,

Transit Oriented Development Districts, that I think are really deserving of some additional funds.

On the -- in the threshold and the selection criteria, page 33 and 55, there's the inclusion of the new menu of points for green building practices. The general comment is that they need more specificity and clarity so they're very easy to track and measure. Developers know exactly what they can do to the points. You can follow up and make sure that's done.

So I've been working very closely with Global Green. We've had some conference calls and traded emails with other developers, members of TAP and really trying to all come together -- I think we're almost there -- around a set of recommendations we can give you, hopefully in the next week, that really spell out -- you know, if it's passive design this is how that would be defined; if you include solar panels this is how much solar in order to get how many points.

And there's some weighting of points that I think there's some consensus. Some of those items might be worth a little bit more and some a little bit less. But it's a great section to now have included.

On page 49 there's an increase in the minimum size of units. And I haven't had a chance to talk about -- with staff about why that's in there. I don't know that there's been a problem of having projects that are too small. In fact, I think there's actually

incentives because of the -- to build bigger units because you're limited by the construction cost per foot. So --

For example, economics work out a little bit better to build a two-bedroom elderly unit than a one-bedroom elderly unit because you've got more bedroom feet to boost your cost for the whole unit.

From a green building perspective smaller, more efficient, well-designed units use less building materials, are easier to heat and cool. So actually allowing slightly smaller units might be the thing to do.

So my hope is that either there's no change to the minimum unit size or even consider going the other direction and allowing projects to be 50 feet smaller.

I want to echo some other concerns that have been raised about -- I'm not sure where this fits in the QAP. I will talk to some other colleagues about it. But to build a more dense or medium-density project that's close to transportation probably means building a structured parking of some kind. And that extra ten, $15,000 or more per parking space -- hopefully, you build fewer of them because you're next to transit -- that eats into the overall construction cost limits.

The hope is that costs like structured parking would not count against you, against the cap per unit for the residential piece if you're not using credits for it. So you don't get extra credits to build parking. But if

you're able to, in overall sources of funds, squeeze that into the budget it ends -- you don't get penalized because you bump into your cost count.

The -- and I think finally, on page 60 there's -- it's six additional points, bonus points, for 2008 projects. And we didn't apply for a project in 2008. So if we apply in 2009 we can't get those six points. That seems completely discouraging and unfair. And I'm not sure how you can level that playing field.

I understand, I think, the intent of rewarding developers that in this market are still able to stay on schedule and so forth. But the way it's structured right now I strongly think that it has to come out because it's completely unfair to anybody who didn't apply or maybe applied and didn't succeed.

So those were -- oh, the -- and not but lastly -- last but not least, I want to compliment the supportive housing definitions that were tweaked and changed. We have a couple of comments that we'll submit in writing about taking out the word "elevator" and a couple of other things that clear up a couple questions that we have.

So thank you for the chance to comment and for a great draft.

MS. MEYER: Thank you.

MS. HULL: Thanks, Walter.

QAP (54)

Michele Atkins

From: Jennifer Hicks [jennifer.hicks@foundcom.org]
Sent: Tuesday, October 14, 2008 3:16 PM
To: tdhcarulecomments@tdhca.state.tx.us
Cc: Brenda Hull; Walter Moreau
Subject: TDHCA Rule Comments - Foundation Communities

Please find attached our comments for the 2009 TDHCA QAP and associated rules.

Please let me know if you have any questions – 512-447-2026 x.25.

Thanks much,
Jennifer Hicks

Jennifer Daughtrey Hicks
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October 14, 2008

Ms. Brooke Boston
Texas Department of Housing and Community Affairs
P.O. Box 13941
Austin, TX 78711-3941

Dear Brooke:

Thank you for the opportunity to comment on the 2009 Housing Tax Credit Draft Qualified Allocation Plan, Real Estate Analysis Guidelines, and associated rules. We would like to commend TDHCA staff for the inclusion of language that promotes supportive housing, green building, developments that target lower incomes, and developments located in urban areas.

Specifically, we are supportive of the following **QAP** sections as they are written and encourage TDHCA staff to leave the language as is in the draft:

- **Section 49.3 (93)** – definition of "Single Room Occupancy"
- **Section 49.3 (97)** – definition of "Supportive Housing" and FC encourages staff to utilize the same definition in the Real Estate Analysis Guidelines.
- **Section 49.6 (h)(4)(B) and (C)** – language adding developments proposing at least 50% of Units of Supportive Housing and developments proposing to provide 10% of the Low Income Units at 30% AMGI as eligible for the 30% increase in Eligible Basis.
- **Section 49.9 (i)(7)** –language added that encourages additional available units at or below 50% AMGI if an applicant qualifies for points under 49.9(i)(3)

While we are supportive of the following **QAP** sections, Foundation Communities recommends the following changes to the language to boost the effectiveness of these sections:

- **Section 49.6(h)(3)** – Foundation Communities supports the development types added to the 2009 Draft QAP to be eligible for the 30% increase in eligible basis. The following tweaks are recommended:
  - **Section 49.6(h)(3)** – The following replacement language is recommended: "*The Development qualifies for and receives federal renewable energy tax credits. For purposes of this paragraph, the Application will be required to include evidence from the project architect and contractor that documents the planned qualified energy equipment and the cost.*" The energy credit is often referred to as the solar energy credit or the business energy credit or the renewable energy credit – and this year it is up for renewal at Congress and might be called something else altogether. There is no application process. A business can install qualified renewable energy equipment (defined in the federal code) and they are automatically entitled to the 30% federal credit.
  - **Section 49.6 (h)(4)(D)(i)** – The following replacement language is recommended: "*A Development that is proposed to be located within one-quarter mile of existing major bus transfer centers and/or regional or local rail transport stations that are....*" FC thinks the current language would allow a majority of projects to get

the boost because they are located near a bus stop. Therefore, we recommend amending language to instead include "major bus transfer centers." In addition, "commuter rail" could be interpreted to mean trains from the suburbs into the City. We want to make sure that local rail is included as qualification for the boost.

- **Section 49.9(h)(4)(A)(ii)(XXV)** and **Section 49.9(i)(17)** – Foundation Communities commends TDHCA staff for including more detailed green building language in the "amenities" section of the Threshold Criteria and for the "scoring" section of the Selection Criteria. However, we feel that there are a few changes to both sets of language that will make it easier to understand and easier to implement. Therefore, FC supports the language proposed by Global Green that is clear and measurable.
- **Section 49.9(i)(8)** – Foundation Communities commends TDHCA staff for adding language that allows Single Room Occupancy Developments to include up to 50 square feet of common area per efficiency Unit in the cost per square foot calculation. There is just a small tweak we would recommend to the language: "If the proposed Development is a Single Room Occupancy Development, the NRA may include ~~elevator served~~ interior corridors and may include up to 50 square feet of common area per efficiency Unit. As it relates to this paragraph, an interior corridor is a corridor that is enclosed, heated and/or cooled and otherwise finished space." Many SROs will not be elevator served, but only one-story. In order for SROs to gain maximum benefit for the inclusion of this language, we recommend removing the requirement that corridors be "elevator–served."
- **Section 49.9(i)(8)** – Foundation Communities recommends making the following change to the third sentence of this paragraph: "*This calculation does not include indirect construction costs or any other construction costs that are excluded by the Applicant from eligible basis*." This change prevents developments in urban areas from being penalized from building parking garages that exceed the construction cost caps established for scoring points under this section.

Foundation Communities does not support the following additions to the QAP:

- **Section 49.3 (15)** – Foundation Communities does not support the addition of the language "is self-contained with a door" into the definition of "bedroom." This definition would not allow for loft style developments which are typical in urban developments.
- **Section 49.9(i)(29)** – Foundation Communities does not support the bonus points added to reward good behavior of Applicants based on 2008 deals. This is an unfair advantage to those 2009 applicants that did not pursue a 2008 deal.

Thanks so much for your time and consideration of our comments. Please do not hesitate to contact me with any questions – 512/447-2026 x. 16.

Sincerely,

Walter Moreau
Executive Director

Jennifer Daughtrey Hicks
Development Project Manager

Original TDHCA language indicated below in black.
Updated amendments from Global Green USA and Foundation Communities indicated below in blue:

Threshold & Selection Criteria Green Menu

Green Building Initiatives. Application may qualify to receive up to 6 points for providing green building amenities (points under this paragraph may not be requested for the same items utilized for points under subsection (h)(4)(A)(ii)(XXV), Threshold Amenities):

(A) evaporative coolers (for use in designated counties listed in the Application Materials, 2009 Housing Tax Credit Site Demographics Information)(1 point);

(B) passive solar heating/cooling (3 points);
Two points for completing both of the following (source: LEED-Homes)
a. The glazing area on the north- and south-facing walls of the building is at least 50% greater than the sum of the glazing area on the east- and west- facing walls.
b. The east-west axis of the building is within 15 degrees of due east-west.

One point for completing one of the following (source: LEED-Homes, Green Communities, and Foundation Communities)
a. In addition to the east-west axis of the building oriented within 15 degrees of due east-west, utilize a narrow floor plate (less than 40 feet), single loaded corridors and open floor plan to optimize daylight penetration and passive ventilation (note: to qualify for this particular point, application must also implement building orientation option b. above)
b. 100% of HVAC condenser units are shaded so they are fully shaded 75% of the time during summer months (May through August)
c. Solar screens or solar film on all East, West, and South Windows with building oriented to east-west axis within 15 degrees of due east-west, west-south axis within 15 degrees of due west-south, and south-east axis within 15 degrees of due south-east.

(C) water conservation fixtures (toilets using less than or equal to 1.6 gallons per flush, showerheads, kitchen faucets or bathroom faucets using less than or equal to 2.0 gallons per minute)(1 point for each);
a. 1.6 gallons/flush toilets are current code, high efficiency toilets (HET) or "green" toilets are 1.28 gallons/flush (note that within toilet manufacturing there is a jump from 1.6 to 1.28 without increments in between). To adhere to green standards, language should read "install high efficiency toilets (HETs) that use less than or equal to 1.28 gallons/flush" (1 point)
b. Install bathroom lavatory faucets and showerheads that do not exceed 2.0 gallons/minute and kitchen faucets that do not exceed 1.5 gallons/minute. Applies to all fixtures throughout development. Rehab projects may choose to install compliant faucet aerators instead of replacing entire faucets. (1 point)

(D) solar water heaters (2 points);
Solar water heaters designed to provide at least 25% of the average energy used to heat domestic water throughout the entire development. (2 points)

(D) water collection (at least 50%) for irrigation purposes [check health and safety issues](2 points);
See 1. Irrigation and landscaping discussion below**

(E) sub-metered utility meters (3 points);

Sub-metered utility meters on rehab project without existing sub-meters or new construction senior project (2 points); sub-metered utility meters on new construction project (excluding new construction senior project) (1 point)

(F) Energy-Star qualified windows and glass doors (2 points);
See 2. energy discussion below**

(G) thermally and draft efficient doors (SHGC of 0.40 and U-value specified by climate zone according to the 2006 IECC)(2 points);
Thermally and draft efficient doors (SHGC of 0.40 or lower and U-value specified by climate zone according to the 2006 IECC) (2 points)

(H) photovoltaic panels for electricity and design and wiring for use of such panels (4 points);
Photovoltaic panels that total 10 kW (1point); 20 kW (2 points); 30 kW (3 points)

(I) construction waste management and implementation of EPA's Best Management Practices for erosion and sedimentation control during construction (2 points);
Lower to 1 point

(J) recycle service provided throughout the compliance period (1 point);

(K) water permeable walkways and parking areas (at least 50% of walkways and parking)(3 points);
Water permeable walkways and parking areas (at least 20% of walkways and parking) (1 point)

(L) selection of native trees and plants that are appropriate to the site's soils and microclimate and locate them to provide shading in the summer and allow for heat gain in the winter (2 points);
See 1. Irrigation and landscaping discussion below**

(M) exterior envelope insulation, vapor barriers and air barriers greater than or equal to Energy Star air barrier and insulation criteria (2 points);
See 2. energy discussion below**

(N) HVAC, windows, domestic hot water heater or insulation that exceeds Energy Star standards or exceeds the IRC 2006 (2 points); or
See 2. energy discussion below**

(O) bamboo flooring, wool carpet, linoleum flooring, straw board, poplar OSB, or cotton batt insulation (2 points).
50% of flooring on the ground floor of the development must be finished concrete and/or ceramic tile. 50% of the flooring on upper floors must be ceramic tile and/or a flooring material that is Floor Score Certified (developed by the Resilient Floor Covering Institute), applied with a Floor Score Certified adhesive and comes with a minimum 7-year wear through warranty. (2 points)

Additional Discussions

1. Irrigation and Landscaping Discussion**

The irrigation and landscaping components to the green menu should be bundled into one sub-sectioned element that requires a baseline case comparison which will result in simpler and less expensive efforts on the part of developers and proposal approvers.

Original Language

(D) water collection (at least 50%) for irrigation purposes [check health and safety issues] (2 points);

(L) selection of native trees and plants that are appropriate to the site's soils and microclimate and locate them to provide shading in the summer and allow for heat gain in the winter (2 points);

Suggested Amendments

(L) Projects implement both of the following (2 points):
(i) 90% of planted plants and trees are chosen from the Texas Urban Landscape Guide according to the development's bio-region with an Earthkind Index rating of 6 or higher. http://urbanlandscapeguide.tamu.edu/selector3.html
(ii) 40% of irrigation water is designed to be sourced from non-potable sources including rainwater collection, reclaimed water and/or recycled site water during an average climactic year.

2. Energy Discussion**

First, each of the energy elements should be listed concurrently so as to have a more logical and therefore readable menu. Considering energy is the main thrust of our green building campaign, we should quasi-bundle these points where individually a developer can receive 1 point for completing each of these criteria for a maximum of 3 points **OR** they can meet the requirements of Energy Star for Homes for 4 points. Below lists the language as is and then our suggested amendments:

Original Language

(F) Energy-Star qualified windows and glass doors (2 points);

(M) exterior envelope insulation, vapor barriers and air barriers greater than or equal to Energy Star air barrier and insulation criteria (2 points);

(N) HVAC, windows, domestic hot water heater or insulation that exceeds Energy Star standards or exceeds the IRC 2006 (2 points;

Suggested Amendments

(A) Energy Efficiency.
(i) Energy-Star qualified windows and glass doors (1 point);
(ii) Exterior envelope insulation, vapor barriers and air barriers greater than or equal to Energy Star air barrier and insulation criteria (1 point);
(iii) HVAC, domestic hot water heater, and insulation that exceeds Energy Star standards or exceeds the IRC 2006 (1 point);
(please note that "windows" has been removed from (iii) because it was redundant with criteria (i))

OR

The project promotes energy efficiency by meeting the requirements of Energy Star for Homes by either complying with the appropriate builder option package or a HERS score of 85 (4 points)

QAP

55

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We cannot find in the QAP any requirements that support the TDHCA staff requirement.

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"Affordable housing" should not be limited to "at-risk" developments as defined in the QAP. "Affordable housing," for example, should include Section 8 Moderate Rehabilitation developments that are now eligible for tax credits, Public Housing, and developments with project based Housing Choice Vouchers.

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Unfairly limits acquisition costs to the lesser of initial acquisition costs plus costs of owning, holding, or improving the property or the as-is appraised value. The QAP needs to be revised to allow as acquisition costs the as-is appraised value because an applicant may have owned a property for a significant period of time, may not able to document the costs of owning, holding or improving the property, and fairness dictates allowing not less than the as-is appraised value. The correct and fair costs are as supported by an independent appraisal and the QAP should allow the appraised value. Limiting property acquisition cost to "the lesser of" the original acquisition cost or current appraised value unfairly penalizes applicants for at-risk projects, USDA projects, and Housing Authorities trying to preserve affordable housing. This provision in the QAP is not consistent with Government Code Chapter Code 2306.6701, that requires that TDHCA "shall administer the low income housing Tax credit program to: (1) encourage the . . . preservation of appropriate types of rental housing for households that have difficulty finding suitable, affordable rental housing in the marketplace; . . . (3) prevent losses for any reason to the state's supply of suitable, affordable residential units . . . "

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An example is a Public Housing development of 80 units that has about 7 acres of vacant land. The total site was acquired 30 or more years ago. The vacant can be developer for additional affordable housing for seniors or families.

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In the above examples, the proposed developments are considered new construction. A Resident Council should be permitted to support or oppose the proposed development and TDHCA should score their QCP accordingly.

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I am asking that the above recommendations be considered in your determinations concerning the QCP.

Respectfully,

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FLAT RENT DEVELOPMENT WORKSHEET

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Address (Development)	________ ________ ________	________ ________ ________	________ ________ ________	________ ________ ________
Quality of Unit	___ Excellent ___ Good ___ Fair ___ Poor	___ Excellent ___ Good ___ Fair ___ Poor	___ Excellent ___ Good ___ Fair ___ Poor	___ Excellent ___ Good ___ Fair ___ Poor
Size (Square Feet)	___ Large ___ Medium ___ Small ________ Approximate Sq. Ft.	___ Large ___ Medium ___ Small ________ Approximate Sq. Ft.	___ Large ___ Medium ___ Small ________ Approximate Sq. Ft.	___ Large ___ Medium ___ Small ________ Approximate Sq. Ft.
# Bedrooms				
# Bathrooms				
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Unit Type	___ Single Family ___ Duplex ___ Townhouse ___ Row House ___ High Rise ___ Garden/Walk-Up ___ Manufactured/Mobile	___ Single Family ___ Duplex ___ Townhouse ___ Row House ___ High Rise ___ Garden/Walk-Up ___ Manufactured/Mobile	___ Single Family ___ Duplex ___ Townhouse ___ Row House ___ High Rise ___ Garden/Walk-Up ___ Manufactured/Mobile	___ Single Family ___ Duplex ___ Townhouse ___ Row House ___ High Rise ___ Garden/Walk-Up ___ Manufactured/Mobile
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QAP (55)

FAX TRANSMISSION

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FAX: (956)541-7860

TO:	TDHCA	**DATE:**	October 20, 2008
	2009 Rule Comments	**FAX:**	(512) 475-3978
FROM:	Zeke Luna	**FAX:**	(956) 541-7860
	Executive Director	**NO. OF PAGES**	5

(INCLUDING THIS COVER SHEET)

SUBJECT: 2009 Rule Comments

COMMENTS:

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MR. JIMENEZ: Good afternoon. Demetrio Jimenez with Tropicana Properties. Specifically, I'd like to address the Housing and Economic Recovery Act of 2008 as implemented by the compliance staff. Specifically Section 310 of the Bill waves the annual recertifications requirements under Housing Tax Credit and the Tax-Exempt Bond Programs provided during such year no residential unit in the projects is occupied by a new resident whose income exceeds the applicable income limit.

They also go on to say that this waiver of the recertification is applicable to only 100 percent low-income communities. I venture to say that the spirit and intent of the law was that it was pertaining only to those buildings that were 100 percent. In other words, if you have a market unit within a building, that market unit cannot be transferred to any other building within that property.

So I would like the staff -- compliance staff to address the issue if you have 100 percent low-income building, this income waiver should apply to that specific building. Thank you.

MR. BOWLING: Yes. This is my comment. Again, Bobby Bowling, for the record.

My comment is on Section 49.14(b)(4), the definition of commencement of substantial construction or the category of commencement of substantial construction.

The current proposed change of the draft language in this section references Chapter 60, removing all dates or references to the definition of substantial construction from the QAP. Chapter 60 currently retains the old definition of substantial construction which we disagree with. The current definition is too onerous and burdensome and does not take into account the reality of phase construction.

Specifically, the current definition requires under Section 60.102, paragraph 21, paragraph a, number 2 -- that's 60.102, paragraph 21, subparagraph a, number 3, that the foundation of all residential buildings and the clubhouse be in place and that at least 50 percent of the framing is completed by December 1 of the year following the awarded tax credits.

We understand that the Department must ensure that construction is commenced and is proceeding in a manner that will ensure completion of the project. However, these requirements go too far in that respect. It is not uncommon in developments we have worked on to have 50 percent of the building finalized with certificates of occupancy before the last slab is poured,

which puts the project at 75 or 80 percent complete.

We suggest that the Department keep the current deadline, December 1 of the year following the award of credits but modify the definition of the term "substantial construction" by removing items 60.102 (21)(a)(2) and 60.102 (21)(a)(3). Items 60.102 (21)(a)(1) and 60.102 (21)(a)(4) allow plenty of safeguard to protect the Department's interest by requiring that all building permits are issues and that the project is at least 20 percent complete as certified by the project architect. That's it. Thank you.

MR. BOWLING: Brenda, on this I just would like to further the point that I made at the roundtable discussion about when projects are given back credits. I would like to see that formulated into the region that gave the credits back instead of the statewide kind of collapse system that I think we have now. So that's my comment on that.

MS. ROBERTS: And we need your name.

MR. BOWLING: Bobby Bowling.

QAP/REA (58)

Texas Supportive Housing Coalition

Michael Gerber
Executive Director
Texas Department of Housing & Community Affairs
221 East 11th Street
Austin, Texas 78701

Re: 2009 Qualified Allocation Plan & Real Estate Analysis Rules – Public Comment

Dear Mr. Gerber:

I would like to again thank you and the TDHCA staff for your support of supportive housing throughout the state. I am writing on behalf of the Texas Supportive Housing Coalition (TSHC), a coalition of housing and service providers focused on increasing the creation of supportive housing to prevent and end homelessness in our state.

Specifically, TSHC wanted to express its strong support for several additions to the 2009 Qualified Allocation Plan and Real Estate Analysis Rules. They are:

- Allowing for certain common areas to be included in the per net rentable square foot cost calculation for SRO housing;
- Supportive Housing being added as a state-designated building type eligible for the 30% increase in eligible basis;
- Points being added to encourage the availability of units at or below 50% AMGI;
- Adding a clear definition of "single room occupancy" to the QAP;
- Exempting SRO units from minimum unit size thresholds, and allowing for automatic award of 6 points for unit size on SRO units;
- Allowing SRO developments to utilize otherwise ineligible building types, such as nursing homes, dormitories, or hospitals;
- Waiving the maximum number of efficiency units for SRO developments; and
- Clarifying that larger funded reserves can be underwritten in cases where the requirement for such a reserve is documented by a lender or syndicator letter.

These are greatly needed and appreciated additions that will serve to help make more competitive projects targeted to our most vulnerable Texans.

In addition to the above, we wanted to provide public comment on one item – the definition of supportive housing.

- **Definition of supportive housing.** We would recommend that the currently proposed definition of supportive housing in the QAP "*...Residential Rental Developments intended for occupancy by individuals or households transitioning from homelessness, at risk of homelessness, or in need of specialized and specific social services, to more stable, productive lives by offering residents an array of supportive services...*" be amended to read "*...Units in Residential Rental Developments intended for occupancy by individuals or households transitioning from homelessness, at risk of homelessness, or in need of specialized and specific social services, in order to promote ~~to~~ more stable, productive lives by offering residents an array of supportive services...*" We believe that this amendment clarifies the definition of supportive housing and allows supportive housing to be considered more broadly as a type of housing that can be integrated into different types of developments. In addition, TSHC would request that this definition be made consistent with the supportive housing definition found in the REA guidelines.

On behalf of TSHC, I would like to thank you in advance for your consideration of our public comments and please do not hesitate to contact me if you have any questions.

Respectfully,

Frank Fernandez
Texas Supportive Housing Coalition Chair

Michele Atkins

From: Frank Fernandez [FFernandez@austinhomeless.org]
Sent: Monday, October 20, 2008 5:00 PM
To: michael.gerber@tdhca.state.tx.us
Cc: Brenda Hull; Robbye Meyer; tdhcarulecomments@tdhca.state.tx.us
Subject: TSHC QAP-REA Public Comment

Hi Michael,

I have attached the Texas Supportive Housing Coalition's official QAP-REA public comment letter for your review.

Thanks again for your agency's strong support of supportive housing.

Please do not hesitate to contact me if you have any questions.

Regards,

Frank

Frank Fernandez
Executive Director
Community Partnership for the Homeless
P.O. Box 685065
Austin, TX 78768
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512-469-0724 (Fax)
ffernandez@austinhomeless.org

HOME 59

EFC
Builders, Ltd. Co.
P.O. Box 628 Cedar Creek, TX 78612 Phone: 512/601-2316 Fax: 866/525-6638

August 29, 2008

Mr. Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
P.O. Box 13941
Austin, Texas 78711-3941

RE: Hard costs for Building Houses Under the HOME OCC Program

Dear Mr. Gerber:

My construction company is currently working with TDHCA's HOME Owner Occupied Program and has done so previously. I have been asked to provide information regarding the cost to build a home at this time. Currently, we are building the following for a number of HOME OCC contracts: a 860 s.f. home, four sides brick, three bedrooms, one bathroom. If my company were to bid this house today, we would bid between $69,000 and $64,500 per home to build this home one time. If we were to bid on a project with five to six homes together, we would bid between $57,000 and $62,000 per home because economies of scale would allow a cost savings. (These base bid costs do not include demolition of existing structure.)

It is our belief that the cost per home allowed under the HOME Program Rule should reflect the actual hard costs necessary to complete a home construction project at this time. Thank you for your consideration of these comments.

Sincerely,

Eric Christophe
Pres. Member, EFC Builders, Ltd. Co.

2009 HOME Rules Scenarios for Reconstruction of 6 houses:
(All amounts in tables below taken from Figure 10 TAC 53.85(a)(4) in 2009 Proposed HOME Rule.

Two tables below equal: $	**39,198.00**

	Soft (project) Costs	**(per activity)**
plans & specs ($2,000/6 houses)	333	
initial inspection	500	
work write-up/cost estimate	400	
schedule of values	100	
project document prep	100	
procurement of contractor	300	
preconstruction conference	300	
progress inspections (7 X 300)	2100	
final inspection	300	
punchlist verification inspection	300	
construction & disbursement docs	250	
TOTAL PER HOUSE	4983	
X6 HOUSES = TOTAL PER CONTRACT	**29898**	

Under a $65,000 per house limit, only $5,000 per house is available for soft costs because the house will cost at least $60,000.

3rd party costs (per activity)	
tax certs	20
lien search	250
legal office for closing	300
recording fees	200
house insurance	500
TOTAL	**1270**
X6 HOUSES	**7620**

These costs add $1,270 per house, but there are no funds left in a $65,000 house limit to cover this, see table and note to the left.

	Administrative costs	**(per contract)**
affirmative marketing plan	200	
financial management	200	
procurement of consultant	300	
recordkeeping	800	
application intake & processing	3600	(600X6 houses)
credit report	300	(50X6 houses)
environmental review	2400	(400X6 houses)
exempt administrative enviro	300	(50X6 houses)
information services	1200	(200X6 houses)
TOTAL PER CONTRACT	**9300**	

Under a $375,000 contract, approximately $15,000 is available for admin at a 4% level, but in the table above, you can only reach $9,300.

QAP/REA (60)

S2A DEVELOPMENT CONSULTING

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October 20, 2008

Mr. Tom Gouris
Ms. Robbye Meyer
TDHCA
221 East 11th Street
Austin, Texas 78701

Re: Comments to the 2009 Draft QAP and REA Rules

Dear Mr. Gouris and Ms. Meyer:

Thank you for this opportunity to comment on the proposed 2009 QAP and Real Estate Analysis Rules. As a consultant to numerous projects, I see a wide variety of situations that are impacted by the QAP. These comments are intended to address the broadest range of situations that arise when filing a tax credit application.

QUALIFIED ALLOCATION PLAN

At Risk Set Aside
We believe that an application that qualifies for the At-Risk Set-Aside should also be able to roll over into the Regional pool for consideration againsts other applicants in the region.

Green Building
Because rehabilitation projects have less flexibility than new projects when it comes to Green Building features, rehabilitation projects should received 1.5 points per Green Building item achieved. This would be consistent with the current scoring technique for amenities as it relates to rehab projects.

Bonus Point for 2008 Applicants
We believe that the "Bonus Points" that have been added under the selection criteria should be eliminated. Developers receiving an award in 2008 should not receive additional points for doing what is required. This proposed point unintentionally places developers who did not have a 2008 deal at a disadvantage. While this may not be the best time for new developers to enter the Tax Credit market, many experienced multi-family developers simply did not receive a 2008 award and would be penalized by this proposal. Further, developers who did apply for 2008 credits but did not receive an award and developers with tax credit experience outside of Texas are also disadvantaged by this proposal.

Points for No Deficiencies
Regarding the points for little or no deficiencies, we would like to summarize our experience. During the 2008 deficiency process, we received deficiency items that (a) the QAP and application materials did not require at time of application; (b) were actually in the application, but were overlooked by staff; (c) referenced items that were interpreted differently by reviewers, resulting in deficiency items for one application but not another (even if both applications were the same), and (d) late deficiencies due to a change in the way staff scored an item. While we appreciate the Department's desire to receive complete and correct applications, based on our experience, we believe that the Bonus Points will become an item of contention and may cause more work for the Department than

deficiencies. This item could lead to open records requests and challenges.

Satisfying Deficiencies Within Three Days
Regarding the points for satisfying deficiencies within 3 days. We appreciate your desire to move quickly through this process, however, we are concerned about how this would be implemented. For example, what happens when staff is out of the office during this period or a developer has difficulty reaching the right staff member until late in the time period? Would time needed to confer with senior staff be factored into the time period?

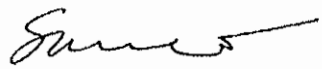
REAL ESTATE ANALYSIS RULES
Our primary concern in the proposed real estate analysis rules is that a number of the proposed changes create opportunity for subjective rather than objective analysis of a project's financial proposal. For example, under Section 1.32 (d) Operating Feasibility, (1) (A) Rental Income, the conservative basis for the rent in an unrestricted unit is the lesser of the Market Rent or the Applicants projected rent *where the Applicant's projected rent is reasonable to the underwriter.* This simply leaves too much room for negotiation on the part of the underwriter and more finite guidelines for this are recommended. A market study could be used, for example.

In this same section, under (2) Expenses, the rules propose that projections of utility savings from green building should be provided by a third party vendors who is not related to the contractor or component vendor. However, this will be extremely difficult and costly to find. Vendors are who are most familiar with the energy use of their products and an engineer will charge a substantial fee to make these calculations. We would like to see the department either provide some unbiased information regarding utility savings, or allow developers to use the lesser of three calculations provided by vendors.

Finally, with regard to the section on *Direct Construction Costs*, the proposed rules state that the Underwriter will use Marshall and Swift Residential Cost Handbook *or equivalent other comparable published third party cost estimating data source.* We would like the department to be specific in which published sources it intends to use and to provide that information to developers and applicants.

Thank you for your consideration of these comments and please do not hesitate to call or email me with any questions. I can be reached at 512/698-3369 or sarah@s2adevelopment.com.

Sincerely,



Sarah H. Andre

Michele Atkins

From: Brooke Boston
Sent: Wednesday, October 22, 2008 10:04 PM
To: Michele Atkins
Subject: FW: Comments to the QAP


2009 QAP nments.pdf (272 KB


ATT106355.txt (80 B)

Brooke Boston
Deputy Executive Director for Programs
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, TX 78701
512.475.3296
brooke.boston@tdhca.state.tx.us

-----Original Message-----
From: Sarah Andre [mailto:sarah@s2adevelopment.com]
Sent: Monday, October 20, 2008 4:58 PM
To: robbye.meyer@tdhca.state.tx.us; Tom Gouris
Cc: brooke.boston@tdhca.state.tx.us
Subject: Comments to the QAP

I apologize for how late these are.

Thanks for your consideration,

Sarah Andre

REA (61)

Michele Atkins

From: Barry Kahn [Bkahn@hettig-kahn.com]
Sent: Saturday, October 18, 2008 9:22 AM
To: 'Tom Gouris'
Subject: Public Comment on Real estate rule

1. In the introductory paragraph of Feasibility Conclusion on page 12 of 26 of the Real Estate Analysis Rules, please delete the second sentence and then make the next sentence to read: The Development will be characterized as infeasible if one or more of paragraphs of this subsection apply unless paragraph 6 of this subsection also applies.

This is a little broader than we discussed, however at a minimum please include at least paragraph 1 even if paragraph 2 is not included. The reason I am also requesting 2 is that this is ultimately an investor decision as to how long they are willing to live with the developer fee being deferred. If they are comfortable with a longer deferral and there are compelling reasons for the ED to override, then why exclude without an out.

Thank you for your consideration of this issue and your continued hard work.

Robbye Meyer QAP (62)

From: Michael Garrett
Sent: Monday, September 08, 2008 7:25 AM
To: Robbye Meyer
Subject: RE: "energy star lighting" 2008 QAP Clarification

2306.187: (3) the installation of Energy Star-labeled lighting in all interior units;

maybe we should just say "lighting" and look for either fixtures or bulbs. The one problem I see with bulbs is ensuing tenants use CF bulbs as replacements.

Mike

-----Original Message-----
From: Robbye Meyer
Sent: Friday, September 05, 2008 1:47 PM
To: Michael Garrett
Subject: RE: "energy star lighting" 2008 QAP Clarification

Thanks Mike. If I remember correctly, statute has the "Energy Star Lighting Fixtures" language. I will check to be sure. I know I tried to mirror statute when we changed the language last year. I will let you know.

-----Original Message-----
From: Michael Garrett
Sent: Friday, September 05, 2008 1:35 PM
To: Robbye Meyer
Subject: FW: "energy star lighting" 2008 QAP Clarification

Perhaps another change---drop the Energy Star fixture in favor of Energy Star bulbs. I think the change I sent had both listed.

thanks

Mike

-----Original Message-----
From: Kimbal Thompson
Sent: Friday, September 05, 2008 1:28 PM
To: Michael Garrett
Subject: FW: "energy star lighting" 2008 QAP Clarification

Mike. Here's a good argument for changing our recommendations for the 2009 QAP threshold requirement from "Energy Star rated lighting fixtures" to Energy Star light bulbs". Sounds like the fixtures will become obsolete some day and less universal.

I will respond to this architect to say since the 2008 QAP is not definitive, they can use what ever they want, but I agree with her that the efficient bulbs is probably a better idea.

-----Original Message-----
From: Jill Moody [mailto:moody@gnbarch.com]
Sent: Thursday, September 04, 2008 5:39 PM
To: Kimbal Thompson
Cc: gonzalez@gnbarch.com
Subject: "energy star lighting" 2008 QAP Clarification

Kimbal 9/4/08

QAP 2008, page 33 of 81 states as mandatory requirements:

(viii) Energy Star or Equivalently rated lighting in all units;

We are getting into the design aspects of our first projects under the QAP 2008. We have been conversing with our lighting consultants on the meaning of "Energy Star lighting".

The Energy star.gov web site has both energy star "bulbs" and energy star "fixtures".

It boils down to two approaches:

ENERGY STAR BULBS:
They make screw type compact florescent bulbs (CFB) that screw into the regular light fixtures originally designed for incandescent bulbs. The compact florescent bulbs are energy star rated and are readily available at grocery and department stores like HEB, Home Depot, Lowe's, Costco, etc. The bulbs are a little more expensive because the ballast is in the bulb, not the fixture. The prices are coming down. Within the last month I bought a 6-bulb package at Costco for about $2.50/each bulb, down from the $5-7 range just a year ago.

ENERGY STAR FIXTURES:
Then there are Energy Star Fixtures that have the ballast in the fixture and take the two prong compact florescent bulb without ballast. Since the ballast is in the fixture, the initial fixture cost is more. Replacement bulbs for these units are not readily available to tenants. You have to order them on line or go to lighting supply outlets, not the grocery store. I am told contractor cost of bulbs in bulk purchases are about $0.79 each, significantly less than the screw type. But I am also told that individually, like the tenant would buy them, they go to the $3 range. To be affordable and available, I think the landlord would have to stock the replacements and sell or provide them to the tenants.

The question is do we have an option on which route to take? Can we provide screw type fixtures with energy star bulbs, or do we have to use the energy star fixture with 2 prong bulbs?

We are leaning towards the screw type fixtures with screw type Compact Florescent Bulbs. The tenant knows how to change the bulb and they are readily available. Because of the inventory of existing housing with the screw type fixtures, we feel the CFB will be around for a long time to come, even after the incandescent bulb stops production in 2012. The two-prong florescent bulb fixture, on the other hand, is likely to be replaced by improved LED fixtures as they come down in price and increase in diversity of styles. Ultimately the LED is the way to go, because of the mercury in the CFBs.

Please verify our options in meeting this new requirement.

Thank you for your help as always.

Jill Moody

Jill Moody
GONZALEZ NEWELL BENDER, INC. ARCHITECTS
11550 IH 10 West, Suite 350
San Antonio, Texas 78230-1061
(210) 692-0331
(210) 692-3579 FAX
email: moody@gnbarch.com

Robbye Meyer

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Please verify our options in meeting this new requirement.

Thank you for your help as always.

Jill Moody

Jill Moody
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(210) 692-3579 FAX
email: moody@gnbarch.com

MS. HULL: Mr. Barnes, do you wish to speak now?

(No response.)

MS. HULL: We do have two microphones for those of you that wish to make comment, either here at the podium and there's also one available up here at the dais.

MR. BARNES: Good morning. Why I came over here is because I am disabled.

MS. HULL: If you'll just state your name, please.

MR. BARNES: Dennis Barnes.

MS. HULL: Thank you.

MR. BARNES: I live in Fort Worth, Texas. I'm a recipient of down payment and closing cost program funds through TDHCA. Back in 2004 I went through a program called Home of Your Own.

I'm mainly here not to make suggestions or comments about the program. I'm here to applaud the program. And I don't often speak enough. I was going to send in a written statement but I felt that I should let you all know about our program that we have with TDHCA because a lot of people don't know about it.

It's a direct program tied in for people with disabilities. It has a $15,000 maximum amount for down payment and closing costs.

Through the City of Fort Worth and the State of Texas we've helped over 61 families over the last eight years get into a house that probably wouldn't have been able to afford it otherwise. We've also been able to get modifications for those homeowners after they've closed on a house.

We received assistance through United Cerebral Palsy of Texas as being our lead organization and they have worked with us here locally for Tarrant, Parker and Johnson County. TDHCA has supported this program since '97. And we have had success with it. But the more visible the program is the more homeowners -- or homebuyers we can help.

I'm a home owner myself. I went through the City of Fort Worth. I did not receive the option of getting modifications. The need for that is very important for some of these homebuyers. Some buyers cannot buy a home unless they have the home modified for them.

So I have looked at the current program highlights. And I can just say as long as we're doing what we've been doing I applaud it and I applaud our partnership with TDHCA.

And at present I'm not representing my company or my organization. But I will say I am the director of housing for that program. And I did invite all of our 61 past homeowners to make comment, either written or public. And I feel that they fully support this program. Thank you.

MS. HULL: Thank you.

QAP (64)

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October 3, 2008

Mr. Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
P.O. Box 13941
Austin TX 78711-3941

Dear Mr. Gerber:

Our District supports your inclusion of language in the proposed 2009 Qualified Allocation Plan which provides for input from municipal management districts in the application review process.

We encourage quality affordable housing in our residential and commercial community and believe our participation will assist your department in achieving this shared goal.

Your commitment to seeking recommendations from our District as it represents thousands of residents and employees is very much appreciated.

Very truly yours,

Jack Drake
President

10-23-08 PC

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QAP (65)

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TELEPHONE 713-621-6721
FAX 713-621-5453

October 20, 2008

By e-mail to robbye.meyer@tdhca.state.tx.us

Ms. Robbye Meyer
Multifamily Finance Production Division
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701-2410

Re: Comments on Draft 2009 Qualified Allocation Plan (the "QAP")

Dear Robbye:

Our firm represents several developers involved in the 9% Housing Tax Credit Program. Therefore, we would like to comment on various aspects of the draft 2009 QAP.

1) Scattered Sites and reconstruction

TDHCA staff has taken the position that in order for a proposed project consisting of Scattered Sites to qualify for the reconstruction points, at least one Unit must be rebuilt on each of the Scattered Sites from which the units are demolished. An example will help illustrate this issue. Site A and Site B are each 7 acres and each have 50 units on them. In order to qualify for reconstruction points, TDHCA currently requires at least one Unit to be built on Site A or B even though all of the Units could be rebuilt on just one of these sites. If reconstruction is a goal of TDHCA which it clearly is because of the areas in the QAP that allow Applicants to pick up additional points for building reconstruction developments, efficient use of land should also be promoted. Another consequence of this decision by TDHCA is that valuable land that might otherwise be used for another affordable housing development cannot be used for a future development. As long as density rules are observed, TDHCA should not require every tract to have at least one Unit.

2) §49.6(d) – Credit Amount

With the $2 million cap being statutory, TDHCA needs to take action to allow developers to not be so limited in their development opportunities. Now that proposed developments are being allocated the full 9% credit, cap issue are much more restrictive. For example, we represent a developer in the 2008 round who without the capacity enhancement of inexperienced developers proration provisions of this section, would have been over the $2 million cap with an 80 unit project and a 100 unit project. TDHCA should allow the

credit amount to be prorated in all situations and not just to encourage capacity enhancement of inexperienced developers.

3) §49.9(h)(7)(A)(iv) – Identity of Interest Transactions and §49.9(i)(5) – Commitment of Development Funding by Local Political Subdivisions

On several of our developer's applications in the 2008 round, staff did not permit the applicants to take the value of the land being contributed by the LPS for points because the land contributions were characterized as identity of interest transactions which require a settlement statement or other verifiable costs of owning the properties. In each application, there was no settlement statement either because the land had been owned by the LPS for over 50 years or because the land was donated to the LPS. With each application an appraisal was prepared to determine the value of the contribution; however, because it was an identity of interest transaction and some of the information required in an identity of interest transaction could not be provided, staff would not recognize any value of the land that was contributed. This ruling completely ignores the fact that there is real value in getting land for free. An appraisal should be sufficient to justify the value of the land contribution even in identity of interest transactions.

4) §49.9(i)(8) – Cost of the Development by Square Foot and Demolition Issues

Staff reviews the development cost schedule in the application to determine if an applicant is eligible for these points. The problem with the application development cost schedule is that it includes demolition as part of the site work cost. REA does not include it as part of the site work cost since it is not a tax credit eligible item. In order to not be unfairly penalized for an item that it not eligible for tax credits, demolition costs should not be included in the calculation of the cost of the development per square foot calculation.

Thank you for the opportunity to comment on the draft QAP.

Sincerely,

CAMPBELL & RIGGS, P.C.

By: _____
Doak D. Brown

QAP

(66)

2009 Proposed Draft QAP Comments
Submitted by S. Anderson Consulting

Thank you for the opportunity to comment on the 2009 Draft QAP -- staff has done an excellent job cleaning the document up and clarifying issues. Below are additional clarifications and comments we would like to make the Department aware of before the rules are published for public comment.

(Definition) Page 3, Adaptive Re-Use:

Would be good to add clarification that a clubhouse or nonresidential building can be outside the original footprint and still be considered to be eligible.

(Definition) Page 6, Community Revitalization Plan:

Not every document adopted by a Governing Body is done by ordinance or resolution. Adoption/Approval by a vote by the Governing Body should suffice. See proposed language change below:

(23) ***Community Revitalization Plan--****A published document under any name, approved and adopted by the local Governing Body by ordinance, resolution,* ***or vote,*** *that targets specific geographic areas for revitalization and development of residential developments.*

Page 23, Proof of Notification by Applicant

Evidence of proof of delivery is demonstrated by signed receipt for mail or courier delivery and confirmation of receipt by the recipient for facsimile and electronic mail.

This language is problematic -- proof of delivery should suffice.

It will be almost impossible to get written confirmation from all of the recipients we are notifying, not to mention a logistical nightmare to get all of the entities to respond in writing for faxes and emails and the substantial cost of certified signed letters. It will also allow any municipality that opposes affordable housing to simply kill a deal by not replying to a fax or email, or by refusing to sign for the notification letter.

Green Building

Would like to see the addition of tankless hot water heaters for 3 points.

Scoring Bonus

We adamantly oppose this scoring item for the following reasons:

- The six possible points cannot be known and accounted for ahead of time by every participant would introduce too many unknowns into the process.

- While staff strives for consistency in its review, there is still variation in the way applications are reviewed. Identical applications reviewed by different people will often produce different deficiencies. Additionally, there are instances when deficiencies are actually in the application or are not required by the QAP, but are still requested by staff. We fear that every item identified as a deficiency will be open to an appeal and will significantly slow down the process.

- As written there could also be scoring advantages for applications that receive multiple deficiencies and are able to cure them – a contradiction to the concept of having "clean" applications.

- Lastly, the timing of the 3 day response will mean that staff simply cannot ever be out of the office, sick, leave early, or do anything that could cause an applicant to not qualify for those points if submitted timely.

Review and Revamping of the Uniform Application

The current application has been in use by TDHCA for approximately 7 years, with very few revisions. There have been considerable technological advances since its creation, which could make the application more user friendly and save both the applicant and staff a substantial number of work hours. I'd like to suggest a review of the application which at a minimum would result in the following:

- For items requested more than once (i.e. site acreage, developer name) – the item should self populate so you only have to enter it once. This will cut down on mistakes and inconsistencies.
- Should have additional page capability for the forms that have to be used several times.
- Certifications – should have one certification that covers all items.

QAP (67)

TAAHP

TEXAS AFFILIATION OF AFFORDABLE HOUSING PROVIDERS

September 3, 2008

C. Kent Conine, Chair
Board of Directors
Texas Department of Housing & Community Affairs
211 East 11th Street
Austin, TX 78701

Re: 2009 Qualified Allocation Plan

Dear Chairman Conine & Members of the Board:

On behalf of the Texas Affiliation of Affordable Housing Providers (TAAHP), I would like to submit to you comments on the 2009 Qualified Allocation Plan. TAAHP is a nonprofit trade association that represents more than 170 members, all of whom are active in the development, management, financing or promotion of affordable housing in the State of Texas.

First, let us thank TDHCA for its receptivity to the comments of our industry during work sessions held to discuss the 2009 QAP. We applaud the Staff's inclusionary process and as a result our comments are few:

§49.3 Definitions. Definition of Urban Core (Page 14).
We believe that this definition may be too narrowly defined and will work with our friends in Fort Worth, Houston, Austin, Corpus Christi, El Paso and other similar cities to assist TDHCA staff in coming up with a definition that defines Urban Core without using commercial zoning as part of its definition. We also recommend adding a definition of Infill Housing.

§49.6(d) Credit Amount (Page 19).
TAAHP supports an increase in Credit Cap for individual projects of $1.2M to $1.4M and would be supportive of a higher amount, such as a $1.5M Cap.

§49.6(h)(3) 30% Increase in Eligible Basis (Page 20).
TAAHP proposes the following change in these new areas proposed for the federal 30% boost in credits:

- (4)(a) Instead of limiting this to "rural developments located in a census tract that has not received an award of Housing Tax Credits or Tax-exempt Bonds (serving the same population type as proposed) in the last five years . . . "make *all* developments eligible, both urban and rural.

1st Tier counties

814 San Jacinto Boulevard, Suite 480, Austin, TX, 78701-2404
Phone: 512-476-9901 ❖ Fax: 512-476-9903 ❖ E-mail: jbrown@taahp.org ❖ Web Site: www.taahp.org

Additionally, TAAHP supports adding an additional category, as follows:

- Developments that are located in any of the First Tier Counties, as designated by the Texas Department of Insurance.

§49.9(i)(5)(B) Scoring of Commitment of Development Funding by Local Political Subdivisions (Page 51)

TAAHP applauds the department for reducing the percentage of LPS funds that need to be received for maximum points for projects in Rural areas. However, TAAHP requests that this be applicable to all Non Participating Jurisdictions, as small cities suffer the same lack of funding sources as do the rural areas.

§49.9(i)(7) Rent Level Units (Page 51)

TAAHP supports elimination of the percentage of Market Rate units in this category and supports the new language which encourages additional units marketed to families and seniors at 50%.

§49.9(i)(8) Cost of Development by Square Foot (Page 52)

TAAHP supports the increase of cost per square foot limits in recognition of skyrocketing construction prices.

§49.9(i)(29) Bonus Points (Page 60)

While TAAHP overall supports any rewards for good behavior, we have questions relating to the administration of these new bonus points. For instance, if an applicant did not receive an allocation in 2008, they would not be able to compete for points relating to early submissions of 2008 documents. Further, if an applicant received two awards, but only met early deadlines on one of them, would they be eligible for points? Also, if an application had absolutely no deficiencies, it would be deprived of a point by not being able to cure them early!

Again, on behalf of our membership, we thank the Board and Staff of TDHCA for working to achieve a QAP responsive to the needs of our industry.

Sincerely,

Mike Sugrue
President

Cc: TAAHP Board of Directors

814 San Jacinto Boulevard, Suite 480, Austin, TX, 78701-2404
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QAP 68

Housing and Community Services, Inc.

8610 North New Braunfels, Suite 500
San Antonio, Texas 78217-6397

Phone 210.821.4300
Fax 210.821.4303 • Toll Free 888.732.3394
Email: gilp@hcscorp.org

08-13-08 03:06 RCVD

August 29, 2008

Ms. Robbye Meyer
TDHCA
221 E. 11th St.
Austin, TX 78711-3941

Dear Ms. Meyer:

At the TCHCA roundtable discussion of the QAP last month I proposed an amendment to the QAP. My proposal suggested an addition to Section 50.3 (14) to allow a development to be designated as "At-Risk" if HUD had approved the transfer to such development of some or all project-based assistance, debt or use restrictions associated with a property that had become physically obsolete or economically non-viable.

Although I submitted a draft of the proposed amendment at the time of the roundtable I am submitting an identical copy with this letter to formally urge this amendment.

Thank you for your cooperation and please do not hesitate to contact me if you have any questions.

Sincerely,

Gilbert M. Piette
Executive Director

Att.

We recommend that Section 50.3(14) be amended to add a new subsection (F) to read as follows:

(F) Notwithstanding the foregoing, a Development is an At-Risk Development if it has received conditional approval from HUD for the transfer to such Development of some or all project-based assistance, debt or use restrictions associated with a multifamily housing project that has been determined physically obsolete or economically non-viable by HUD and therefore is eligible to transfer such assistance to the Development pursuant to Public Law 110-161, Division K, Title II, Section 215 (or any similar provision of a subsequent Appropriations Act) and regulations or directives issued thereunder.

CAP (CEAP) (69)

Michele Atkins

From: Annette Cornier
Sent: Monday, October 27, 2008 5:32 PM
To: Michele Atkins
Subject: FW: TAC

Annette Cornier
Community Affairs Division
☎ **512.475.3803**

-----Original Message-----
From: Stephen Jung
Sent: Tuesday, October 21, 2008 10:01 AM
To: Annette Cornier
Subject: FW: TAC

-----Original Message-----
From: Thelma Vasquez [mailto:tvasquez1@hotmail.com]
Sent: Friday, October 17, 2008 8:50 AM
To: Stephen Jung
Subject: TAC

Hey Stephen, I wanted to just point something out. In the proposed and current TAC. On the Definition for Families with Young Children says "a family unit that includes **a child not exceeding 6 years of age**." In the propsoed TAC in the CEAP section 5.402 Purpose and goals "young children" are identified as priority, then in Section 5.423 Energy Crisis Component (a) the last sentence says.... constitute a threat to the well-being of the household..... or very young children and then in section 5.426 Heating and Cooling (a) it states "The priority factors other than income....."Household energy need" takes into account the uniques situation of such household that results in having members of vulnerable populations, **including children under the age of six.....**" In the 2008 CEAP contract section 3. Subreceipients Performance it states, Subreceipient shall assist low-income persons with priority given to elderly..... **households with young children under 6 years of age**....". Are you confused that's the point I', trying to make. Its all so confusing and inconsistent. Which is it, child not exceeding 6 years of age or children under the age of 6?

Thelma Vasquez