SUPPLEMENTAL BOARD BOOK
OF
January 13, 2021

Leo Vasquez III, Chair

Paul Braden, Vice-Chair

Sharon Thomason, Member

Ajay Thomas, Member

Brandon Batch, Member

Kenny Marchant, Member

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
GOVERNING BOARD MEETING

A G E N D A
10:00 AM
January 13, 2022

John H. Regan Building, JHR 140
1400 Congress Ave
Austin, Texas 78701

CALL TO ORDER
ROLL CALL **Leo Vasquez, Chair**
CERTIFICATION OF QUORUM

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

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

CONSENT AGENDA

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

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

EXECUTIVE

a) Presentation, discussion, and possible action on Board meeting minutes summary for December 9, 2021 — **Beau Eccles**, Board Secretary

ASSET MANAGEMENT

b) Presentation, discussion, and possible action regarding a material amendment to the Housing Tax Credit Application — **Rosalio Banuelos**, Director of Asset Management

93121 The Life at Westpark I Houston

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

02009 Summit at Benavides Park San Antonio

BOND FINANCE

d) Presentation, discussion, and possible action on Inducement Resolution No. 22-014 for Multifamily Housing Revenue Bonds Regarding Authorization for Filing Applications for Private Activity Bond Authority — **Teresa Morales**, Director of Multifamily Bonds

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

22611 The Rhett Austin

RULES

e) Presentation, discussion, and possible action on an order adopting the repeal of 10 TAC Chapter 10 Subchapter E, Post Award and Asset Management Requirements, and an order adopting new 10 TAC Chapter 10 Subchapter E, Post Award and Asset Management Requirements, and directing their publication in the Texas Register — **Rosalio Banuelos**, Director of Asset Management

f) Presentation, discussion, and possible action on the proposed repeal of 10 TAC Chapter 8, Project Rental Assistance Program Rule, the proposed new 10 TAC Chapter 8, Project Rental Assistance Program Rule, and directing their publication for public comment in the Texas Register — **Spencer Duran**, Director Section 811

g) Presentation, discussion, and possible action on an order adopting the repeal of 10 TAC Chapter 13, Multifamily Direct Loan Rule, and an order adopting the new 10 TAC Chapter 13, Multifamily Direct Loan Rule, and directing its publication in the Texas Register for adoption — **Cody Campbell**, Director of Multifamily Programs

LEGAL

h) Presentation, discussion, and possible action regarding the adoption of an Agreed Final Order concerning Gateway Apartments (HTC 94093 / CMTS 1246) — **Jeff Pender**, Deputy General Counsel

CONSENT AGENDA REPORT ITEMS

ITEM 2: THE BOARD ACCEPTS THE FOLLOWING REPORTS:

a) Media Analysis and Outreach Report (November 2021) — **Michael Lyttle**, Director of External Affairs

b) Report on TDHCA One-Time or Temporary Allocations – Pandemic Response and Other Initiatives — **Brooke Boston**, Deputy Director of Programs

ACTION ITEMS

Executive Session: the Chair may call an Executive Session at this point in the agenda in accordance with the below-cited provisions[1] — **Leo Vasquez**, Chair

ITEM 3: EXECUTIVE

a) Executive Director's Report — **Bobby Wilkinson**, Executive Director, TDHCA

b) Report on the 2023 QAP Development Plan — **Brooke Boston**, Deputy Director of Programs

ITEM 4: RULES

Presentation, discussion, and possible action on an order proposing the repeal, and proposed new rule, for 10 TAC Chapter 1, Administration, Subchapter A, General Policies and Procedures, §1.5 Waiver Applicability in the Case of Federally Declared Disasters, and an order directing their publication for public comment in the Texas Register — **Brooke Boston**, Deputy Director of Programs

ITEM 5: HOME AMERICAN RESCUE PLAN

Presentation, discussion and possible action on approval of a Draft HOME-ARP Plan to be released for public comment and to release Notices of Funding Availability after Plan acceptance — **Naomi Cantu**, Director of HOME ARP

ITEM 6: HOMEOWNER ASSISTANCE FUND

Presentation, discussion, and possible action on delegation of authority to the Department's Executive Director or designee to make up to $10,000,000 in awards to HUD-Approved Housing Counseling Agencies to provide housing counseling and homebuyer education services for the Homeowner Assistance Fund — **Tanya Birks**, Director of Homeowner Assistance Fund

[1] Note: the Chair is not restricted by this item, and may call for an Executive Session at any time during the posted meeting.

ITEM 7: MULTIFAMILY FINANCE

Cody Campbell
Director of Multifamily Programs

a) Presentation, discussion, and possible action regarding a waiver of 10 TAC §11.1003(b) of the 2022 Qualified Allocation Plan relating to the Maximum Supplemental Request Limit for The Villas at Pine Grove (#19364) in Lufkin
b) Presentation, Discussion, and Possible Action regarding a Request for Rural Designation under 10 TAC §11.204(5)
c) Presentation, discussion, and possible action regarding awards from the Multifamily Direct Loan (MFDL) 2021-3 Notice of Funding Availability (NOFA), as amended

PUBLIC COMMENT ON MATTERS OTHER THAN ITEMS FOR WHICH THERE WERE POSTED AGENDA ITEMS

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

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

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

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

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

OPEN SESSION

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

ADJOURN

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

Individuals who require auxiliary aids, services or sign language interpreters for this meeting should contact Nancy Dennis, at 512-475-3959 or Relay Texas at 1-800-735-2989, at least five days before the meeting so that appropriate arrangements can be made. Non-English speaking individuals who require interpreters for this meeting should contact Kathleen Vale Castillo, 512-475-4144, at least five days before the meeting so that appropriate arrangements can be made.

Personas que hablan español y requieren un intérprete, favor de llamar a Kathleen Vale Castillo, al siguiente número 512-475-4144 por lo menos cinco días antes de la junta para hacer los preparativos apropiados.

1e

BOARD ACTION REQUEST

ASSET MANAGEMENT DIVISION

JANUARY 13, 2022

Presentation, discussion, and possible action on an order adopting the repeal of 10 TAC Chapter 10 Subchapter E, Post Award and Asset Management Requirements, and an order adopting new 10 TAC Chapter 10 Subchapter E, Post Award and Asset Management Requirements, and directing their publication in the *Texas Register*

RECOMMENDED ACTION

WHEREAS, at its meeting of October 14, 2021, the Board approved for publication and public comment in the *Texas Register* the proposed repeal and replacement of 10 TAC Chapter 10 Subchapter E concerning the Post Award and Asset Management Requirements;

WHEREAS, the proposed repeal and replacement were published in the October 29, 2021, issue of the *Texas Register* for public comment between October 29, 2021, and November 19, 2021; and

WHEREAS, public comment was received from three commenters, staff has prepared a reasoned response to those comments summarized in the preambles attached, and where applicable, proposed a responsive revision for adoption;

NOW, therefore, it is hereby

RESOLVED, that the final order adopting the repeal and replacement of 10 TAC Chapter 10 Subchapter E, together with the preambles presented to this meeting, is hereby adopted for publication in the *Texas Register*; and

FURTHER RESOLVED, that the Executive Director and his designees be and each of them are hereby authorized, empowered, and directed, for and on behalf of the Department, to cause the repeal of 10 TAC Chapter 10 Subchapter E, Post Award and Asset Management Requirements, and new 10 TAC Chapter 10 Subchapter E, Post Award and Asset Management Requirements, together with the preambles in the form presented to this meeting, to be published in the *Texas Register* for final adoption and, in connection therewith, make such non-substantive technical corrections, or preamble-related corrections, as they may deem necessary to effectuate the foregoing, including the preparation and requested revisions to the subchapter specific preambles.

BACKGROUND

Tex. Gov't Code §2306.053 provides for the Department to administer federal housing, community affairs, or community development programs, including the low income housing tax credit program. The Asset Management Division and its Rules, as a whole, are an integral part of administering the Department's federal housing programs, assisting in reviewing and ensuring the long-term affordability and safety of multifamily rental housing Developments in the Department's portfolio as required under Tex. Gov't Code §§2306.185 and 2306.186, performing the functions of processing amendments and

ownership transfers as required under §§2306.6712 and 2306.6713, and performing essential functions required under various federal program (HOME, NSP, NHTF, Exchange, TCAP) rules and under Section 42 of the Internal Revenue Code.

Staff recommends that these rules be retained and that this be accomplished through the repeal of the existing rules and adoption of new rules. The new rules proposed for adoption further clarify language and requirements on which questions are often received; correct references to processes, other rules and forms that have been updated; remove sections that have been relocated to the Qualified Allocation Plan; remove the reference to the cost certification required for NHTF Developments layered with HTCs since it is received and processed by the Multifamily Finance Division; provide guidance for requesting Subordination Agreements, HUD Amendments to Restrictive Covenants, and HUD Riders to Restrictive Covenants; increase the Non-Competitive HTC credit increase threshold that can be approved administratively at cost certification; and update the Right of First Refusal requirements in accordance with the change to Tex. Gov't Code §2306.6726(b).

Behind the adoption preamble, the rule is provided in blackline form reflecting the change being recommended since the time of publication for public comment.

Upon Board approval, the new 2022 Asset Management Rules will be published in the *Texas Register* for adoption.

Attachment 1: Preamble, including required analysis, for adopting the repeal of 10 TAC Chapter 10, Subchapter E, §§10.400-10.408, Post Award and Asset Management Requirements

The Texas Department of Housing and Community Affairs (the "Department") adopts the repeal of 10 TAC Chapter 10, Subchapter E, §§10.400 – 10.408, Post Award and Asset Management Requirements. The purpose of the repeal is to eliminate an outdated rule while adopting a new updated rule under separate action.

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

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

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

1. Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the repeal would be in effect, the repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous re-adoption making changes to an existing activity, concerning the post award activities of Low Income Housing Tax Credit (LIHTC) and other Department-funded multifamily Developments.

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

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

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

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

6. The action will repeal an existing regulation but is associated with the simultaneous re-adoption making changes to an existing activity, Post Award and Asset Management Requirements.

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

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

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

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

2. This rule relates to the procedures for the handling of post award and asset management activities of multifamily developments awarded funds through various Department programs. Other than in the case of a small or micro-business that is an owner or a party to one of the Department's properties, no small or micro-businesses are subject to the rule. If a small or micro-business is such an owner or participant, the new rule provides for a more clear, transparent process for doing so and do not result in a negative impact for those small or micro-businesses. There are not likely to be any rural communities subject to the rule because this rule is applicable only to the owners or operators of properties in the Department's portfolio, not municipalities.

3. The Department has determined that because this rule relates only to the process in use for the post award and asset management activities of the Department's portfolio, there will be no economic effect on small or micro-businesses or rural communities.

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

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

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

Texas Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule…" Considering that no impact is expected on a statewide basis, there are also no "probable" effects of the new rule on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the repeal of this rule is in effect, the public benefit anticipated as a result of the repealed sections will be unaffected as the repealed rule will be replaced with a similar rule. There will not be economic costs to individuals required to comply with the repealed section.

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

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comment between October 29, 2021 and November 19, 2021. No comments were received regarding the repeal.

The Board adopted the final order authorizing the repeal on January 13, 2022.

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

§10.400 Purpose
§10.401 General Commitment or Determination Notice Requirements and Documentation
§10.402 Housing Tax Credit and Tax Exempt Bond Developments
§10.403 Review of Annual HOME, NSP, TCAP-RF, and National Housing Trust Fund Rents
§10.404 Reserve Accounts
§10.405 Amendments and Extensions
§10.406 Ownership Transfers (§2306.6713)
§10.407 Right of First Refusal
§10.408 Qualified Contract Requirements

Attachment 2: Preamble, including required analysis, adopting new 10 TAC Chapter 10, Subchapter E, §§10.400-10.408, Post Award and Asset Management Requirements

The Texas Department of Housing and Community Affairs (the "Department") adopts new 10 TAC Chapter 10, Subchapter E, §§10.400 – 10.408, Post Award and Asset Management Requirements. The purpose of the new sections is to assist in reviewing and ensuring the long-term affordability and safety of multifamily rental housing Developments in the Department's portfolio as required under Tex. Gov't Code §§2306.185 and 2306.186, perform the functions of processing amendments and ownership transfers as required under §§2306.6712 and 2306.6713, and perform essential functions required under various federal program (HOME, NSP, NHTF, Exchange, TCAP) rules and under Section 42 of the Internal Revenue Code.

The updating of the rule through the new sections will further clarify language and requirements on which questions are often received, remove §10.401 General Commitment or Determination Notice Requirements and Documentation and subsections of §10.402 that have been relocated the Qualified Allocation Plan; relocate the remaining portion of what is currently §10.402 Housing Tax Credit and Tax Exempt Bond Developments to §10.401; allow for tax credit increases for Non-Competitive HTC Developments that do not exceed 120% of the credits reflected in the Determination Notice to be approved administratively by the Executive Director or designee; remove reference to NHTF cost certification requirement; replace §10.402 Housing Tax Credit and Tax Exempt Bond Developments with a new section named Requests for Subordination Agreements, HUD Amendments to Restrictive Covenants, or HUD Riders to Restrictive Covenants that will identify requirements to process such requests and specify that HTC Developments seeking to refinance within two years from the issuance of the IRS Form(s) 8609 must be re-evaluated to determine if the development would have been over sourced with the new financial structure, and if so, specify that the Development Owner may be required to fund a Special Reserve account; add a reference to §11.302(e)(12), which specifies the maximum amount that can be funded to the Special Reserve at cost certification; change amendments to the Right of First Refusal period in the LURA from material to non-material; clarify that amendments to remove the HUB prior to filing the IRS Form(s) 8609 are material; change "qualified buyers" to "prospective buyers" under the list of persons and entities required to receive a notice of intent to sell under a Right of First Refusal; and incorporate revisions to the definition of a qualified entity in §10.407 Right of First Refusal in accordance with revision to Tex. Gov't Code §2306.6726(b), effective September 1, 2022.

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

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

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

1. Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the new rule would be in effect, the new rule does not create or eliminate a government program, but relates to the re-adoption making changes to an existing activity, concerning the post award activities of Low Income Housing Tax Credit (LIHTC) and other Department-funded multifamily Developments.

2. The new rule does not require a change in work that would require the creation of new employee positions. Although a new section was added to the rules for Subordination Agreements, HUD Amendments to Restrictive Covenants, and HUD Riders to Restrictive Covenants, it does not add to the work currently done by staff. The rule changes do not reduce work load such that any existing employee positions could be eliminated.

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

4. The new rule does not result in an increase in fees paid to the Department. However, the Department does anticipate a nominal decrease in fees paid to the Department by changing amendments to the LURA to reduce the Right of First Refusal period from material to non-material. The addition in the rule that identifies LURA amendment requests to remove the HUB material participation prior to filing of IRS Form(s) 8609 as material does not affect the fees paid to the Department because it only provides clarification and is not a change from how this type of amendment has currently been processed.

5. The new rule is not creating a new regulation, but is replacing a rule being repealed simultaneously to provide for revisions. The new rule is an update to address sections relocated to the QAP, correct minor errors, provide additional clarification, reduce the number of material amendments, and updates the §10.407(d)(3) of the Right of First Refusal section in accordance to the revision to Tex. Gov't Code §2306.6726(b) by S.B. No. 403 passed by the House on May 25, 2021.

6. The new rule is not repealing an existing regulation but will reduce the number of items requiring board approval by increasing the Non-Competitive HTC Developments credit increase threshold that can be approved administratively by the Executive Director or designee from 110% to 120% in §10.401(d). This increase is to help address concerns from Development Owners over increased construction costs during the COVID-19 pandemic. The rule will also reduce the number of material amendments by changing amendments to the Right of First Refusal period in the LURA from material to non-material under §10.405(b).

7. The new rule will not increase or decrease the number of individuals subject to the rule's applicability. Though the rule §10.402 Requests for Subordination Agreements, HUD Amendments to Restrictive Covenants, or HUD Riders to Restrictive Covenants has been added, it clarifies the documentation currently requested to process the requests for these documents. It also addresses situations where the financing structure has changed significantly within two years from the issuance of the IRS Form(s) 8609 in order to ensure that the Department complies with the requirement in §42(m)(2)(a) of the Code that specifies the credit amount allocated to the project cannot exceed the amount the Department determines as necessary for the financial feasibility of the project.

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

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

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

2. This rule relates to the procedures for the handling of post award and asset management activities of multifamily Developments awarded funds through various Department programs. Other than in the case of a small or micro-business that is an owner or a party to one of the Department's properties, no small or micro-businesses are subject to the rule. If a small or micro-business is such an owner or participant, the new rule provides for a more clear, transparent process for doing so and do not result in a negative impact for those small or micro-businesses. There are not likely to be any rural communities subject to the rule because this rule is applicable only to the owners or operators of properties in the Department's portfolio, not municipalities.

3. The Department has determined that because this rule relates only to the process in use for the post award and asset management activities of the Department's portfolio, there will be no economic effect on small or micro-businesses or rural communities.

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

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

The Department has evaluated the new rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect there will be no economic effect on local employment; therefore no local employment impact statement is required to be prepared for the rule. Additionally, because this rule only provides for administrative processes required of properties in the Department's portfolio, no activities under this rule would support additional local employment opportunities. Alternatively, the rule would also not cause any negative impact on employment.

Texas Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule…" Considering that no impact is expected on a statewide basis, there are also no "probable" effects of the new rule on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of the new rule sections will be increased efficiency and clarity in post award requirements. The possible economic benefit to individuals required to comply with the new section will be a reduction to the amount of fees required to process amendments to reduce the Right of First Refusal period in the LURA.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the new sections are in effect, enforcing or administering the new rule does not have any foreseeable implications related to costs or revenues of the state or local government, as the costs to administer any additional requirements will potentially be offset by efficiency gains in other revised processes and will otherwise be absorbed by current Department resources.

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comment between October 29, 2021, and November 19, 2021. Comments regarding the new rule were accepted in writing and e-mail with comments received from: (1) Elizabeth Roehm, Staff Attorney for Texas Housers, (2) Patricia Murphy, and (3) Lora Myrick, President of BETCO Housing Lab. Comments were received on §10.400 – Purpose, 10.401(a)(1) – 10% Test (Competitive HTC Only), §10.401(d)(2) and §10.401(d)(3)(B) – Cost Certification (Competitive and Non-Competitive HTC, and related activities only), §10.404(d) - Reserve Accounts, and §10.407 – Right of First Refusal.

§10.400 – Purpose

COMMENT SUMMARY: Commenter (2) suggested amending §10.400(a) to clarify that action requested by the Development Owner would not be withheld in situations when there are uncorrectable issues. The Commenter proposed the following change to the language:

> "Therefore, unless otherwise indicated in the specific section of this subchapter, any uncorrected issues of noncompliance outside of the corrective action period <u>(with the exception of the events described in §1.301(c) of this Title)</u> or outstanding fees (related to the Development subject to the request) owed to the Department, must be resolved to the satisfaction of the Department before a request for any post award activity described in this subchapter will be acted upon."

STAFF RESPONSE: After further discussion with the Commenter to clarify their concern and the purpose of their proposed added language, it was determined that the requested reference to §1.301(c) - Previous Participation Reviews for Multifamily Awards and Ownership Transfers would not clearly address the Commenter's concern. During the discussion, the Commenter agreed with staff's recommendation to instead add a sentence to the section below, as reflected, to address their concerns:

> The purpose of this subchapter is to establish the requirements governing the post award and asset management activities associated with awards of multifamily Development assistance pursuant to Tex. Gov't Code, Chapter 2306 and its regulation of multifamily funding provided through the Texas Department of Housing and Community Affairs (the "Department") as authorized by the legislature. This subchapter is designed to ensure that Developers and Development Owners of low-income Developments that are financed or otherwise funded through the Department maintain safe, decent and affordable housing for the term of the affordability period. Therefore, unless otherwise indicated in the specific section of this subchapter, any uncorrected issues of noncompliance outside of the corrective action period or outstanding fees (related to the Development subject to the request) owed to the Department, must be resolved to the satisfaction of the Department before a request for any post award activity described in this subchapter will be acted upon. Non-compliance issues that cannot be corrected will be taken into account and will be reviewed by Asset Management staff to determine if additional action is required by the Development Owner.

Staff recommends adding the last sentence identified above to the rule section.

10.401(a)(1) – 10% Test (Competitive HTC Only)

COMMENT SUMMARY: Commenter (3) requested to remove the language regarding the Independent Accountant's Report and Taxpayer's Basis Schedule form that is required for the 10% Test package. The Commenter states that the reason for the change is that the Development Owner does not sign the report. The Commenter requested to remove the following:

> "The ~~Independent Accountant's Report and~~ Taxpayer's Basis Schedule form must be signed by the Development Owner."

STAFF RESPONSE: The complete name of the form referenced in the rule is "Independent Auditor's Report and Taxpayer's Basis Scheduled." Staff recognizes that the Development Owner does not sign the Independent Auditor's Report that is prepared and issued signed by the auditor. However, the Independent Auditor's Report and Taxpayer's Basis Schedule form is separate from the auditor's report. The Development Owner is required to sign the form in order certify that the information reported on the form is correct. Staff recommends no change to the rule section.

§10.401(d)(2) – Cost Certification (Competitive and Non-Competitive HTC, are related activities only.)

COMMENT SUMMARY: Commenter (3) requested to add language to §10.401(d)(2)(B) to specify when the cost certification documentation would be reviewed. The Commenter stated that the reason for the request is that it is critical for the process to be efficient for the financial feasibility of deals to avoid downward credit adjusters tied to the receipt of the IRS Forms 8609. The Commenter requested to add the following language:

> "Within 30 business days of receipt of all required documentation, the Department will review the submitted documents and notify the Development Owner of any deficiencies."

STAFF RESPONSE: Staff considers the Commenter's request to be related to internal processes rather than a requirement that should be specified in rule. It is staff's goal to comply with the Commenter's

requested timeline. However, adding the language in the rules is problematic because it does not take into consideration extenuating circumstances and it is not clear what action must be taken if the specified deadline is not met. Staff recommends no change to the rule section.

§10.401(d)(3)(B) – Cost Certification (Competitive and Non-Competitive HTC, and related activities only)

COMMENT SUMMARY: Commenter (2) requested to add language to §10.401(d)(3)(B) specifying that items already received by the Department are not required to be submitted again. The Commenter requested to add the following sentence to the section:

> "The Post Award Activities Manual shall not require owners to re-submit documents that the Department already has, such as recorded Land Use Restrictions Agreements, Determination Notices or Carryover Allocation Agreements."

STAFF RESPONSE: The requested change would require staff to spend additional time gathering the documents, which consequently would add time to the cost certification review process. Having the Development Owner submit all of the requested information into one consolidated cost certification package is more efficient for the review process. Staff recommends no change to the rule section.

§10.404(d) - Reserve Accounts

COMMENT SUMMARY: Commenter (1) expressed concerns that tenants are not "successfully accessing Special Reserve Account funds at all properties that have them." The Commenter requests to add the following items in the rules and address them through the Department's policies:

> Centrally track which properties have Special Reserve Accounts, either statewide or by region.
>
> Annually check for any Special Reserve Accounts that have not been used in the past year or that have been minimally used. Require owners at those properties to provide new notice to each of their tenants about the availability of the funds and how to access them. Notice should include a list of example uses that have been approved at other properties in the past or could be approved.
>
> Incentivize owners to use the funds.
>
> For future Special Reserve Agreements, ensure that any unspent funds do not return to the owner, but instead go to tenants or the property in some way. This will reverse the perverse incentive that is built in for any Agreements specifying the return of unused funds to the owner.

STAFF RESPONSE: Staff's goal is to improve internal tracking of Special Reserve Accounts as requested in the first item in the Commenter's list, but staff does not believe this is something would be appropriate to add to the rule because it is more applicable to internal procedures. Regarding the Commenter's third item listed requesting to incentivize Development Owners to use the Special Reserve fund, it is unclear what the recommended incentive should be and how it should be implemented. Regarding the Commenter's second and fourth listed items, additional public comment is needed for these proposed additions to the rule as it proposes a new concept not contemplated in the draft 2022 of the Post Award and Asset Management Requirements. Staff recommends no change at this time, but will consider this issue as a discussion item for future rule revision. Staff recommends no changes to the rule based on these comments.

§10.407 – Right of First Refusal

COMMENT SUMMARY: Commenter (3) requests to add language to the section regarding the right of first refusal to tenants that identifies guidelines for Developers. The following is the Commenter's request:

> Please add additional language to include guidelines for the right of first refusal to tenants as outlined in the draft qualified allocation plan, 10 TAC Chapter 11 Subchapter A §11.9(e)(7)(B), that will be presented before Governor Abbott for approval December 1, 2021.

STAFF RESPONSE: Additional public comment is needed for these proposed additions to the rule as it proposes a new concept not contemplated in the draft 2022 Post Award and Asset Management Requirements. The timing of the rule process does not allow for additional rounds of public comment as the changes are needed to reflect the legislative update to Tex. Gov't Code §2306.6726(b). Staff recommends no change at this time, but will consider this issue for future rule revision. Staff recommends no changes to the rule based on these comments.

STATUTORY AUTHORITY. The new sections are proposed pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules. Except as described herein the proposed new sections affect no other code, article, or statute. The rule proposed for adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

§10.400 Purpose

(a) The purpose of this subchapter is to establish the requirements governing the post award and asset management activities associated with awards of multifamily Development assistance pursuant to Tex. Gov't Code, Chapter 2306 and its regulation of multifamily funding provided through the Texas Department of Housing and Community Affairs (the "Department") as authorized by the legislature. This subchapter is designed to ensure that Developers and Development Owners of low-income Developments that are financed or otherwise funded through the Department maintain safe, decent and affordable housing for the term of the affordability period. Therefore, unless otherwise indicated in the specific section of this subchapter, any uncorrected issues of noncompliance outside of the corrective action period or outstanding fees (related to the Development subject to the request) owed to the Department must be resolved to the satisfaction of the Department before a request for any post award activity described in this subchapter will be acted upon. Non-compliance issues that cannot be corrected will be taken into account and will be reviewed by Asset Management staff to determine if additional action is required by the Development Owner.

(b) The capitalized terms in this subchapter shall have the meaning as defined in this title in Chapter 1 relating to Administration, Chapter 2 relating to Enforcement, Chapter 10 relating to Uniform Multifamily Rules, Chapter 11 relating to the Qualified Action Plan (QAP), Chapter 12 relating to the Multifamily Housing Revenue Bond Rules, Chapter 13 relating to the Multifamily Direct Loan Rule, Tex. Gov't Code Chapter 2306, Internal Revenue Code (the Code) §42, the HOME Final Rule, the NHTF Interim Rule, and other federal or Department rules, as applicable.

§10.401 Housing Tax Credit and Tax Exempt Bond Developments

(a) 10% Test (Competitive HTC Only). No later than July 1 of the year following the submission of the Carryover Allocation Agreement or as otherwise specified in the applicable year's Qualified Allocation Plan, documentation must be submitted to the Department verifying that the Development Owner has expended more than 10% of the Development Owner's reasonably expected basis, pursuant to §42(h)(1)(E)(i) and (ii) of the Code and Treasury Regulations, 26 CFR §1.42-6. The Development Owner must submit, in the form prescribed by the Department, documentation evidencing paragraphs (1) - (7) of this subsection, along with all information outlined in the Post Award Activities Manual. Satisfaction of the 10% Test will be contingent upon the submission of the items described in paragraphs (1) - (7) of this subsection as well as all other conditions placed upon the Application in the Commitment. Requests for an extension will be reviewed on a case by case basis as addressed in §10.405(c) of this subchapter and §11.2 of this title, as applicable, and a point deduction evaluation will be completed in accordance with Tex. Gov't Code §2306.6710(b)(2) and §11.9(f) of this title. Documentation to be submitted for the 10% Test includes:

(1) An Independent Accountant's Report and Taxpayer's Basis Schedule form. The report must be prepared on the accounting firm's letterhead and addressed to the Development Owner or an Affiliate of the Development Owner. The Independent Accountant's Report and Taxpayers Basis Schedule form must be signed by the Development Owner. If, at the time the accountant is reviewing and preparing their report, the accountant has concluded that the taxpayer's reasonably

expected basis is different from the amount reflected in the Carryover Allocation agreement, then the accountant's report should reflect the taxpayer's reasonably expected basis as of the time the report is being prepared;

(2) Any conditions of the Commitment or Real Estate Analysis underwriting report due at the time of 10% Test submission;

(3) Evidence that the Development Owner has purchased, transferred, leased, or otherwise has ownership of the Development Site and a current title policy. The Development Site must be identical to the Development Site that was submitted at the time of Application submission. For purposes of this paragraph, any changes to the Development Site acreage between Application and 10% Test must be addressed by written explanation or, as appropriate, in accordance with §10.405 of this subchapter (relating to Amendments and Extensions);

(4) A current survey or plat of the Development Site, prepared and certified by a duly licensed Texas Registered Professional Land Surveyor. The survey or plat must clearly delineate the flood plain boundary lines and show all easements and encroachments;

(5) For New Construction, Reconstruction, and Adaptive Reuse Developments, a certification from a Third Party civil engineer or architect stating that all necessary utilities will be available at the Development Site and that there are no easements, licenses, royalties, or other conditions on or affecting the Development that would materially or adversely impact the ability to acquire, develop, and operate as set forth in the Application. Copies of supporting documents may be required by the Department;

(6) For the Development Owner and on-site or regional property manager, training certificate(s) from a Department approved "property owner and manager Fair Housing trainer" showing that the Development Owner and on-site or regional property manager attended and passed at least five hours of Fair Housing training. For architects and engineers, training certificate(s) from a Department approved "architect and engineer Fair Housing trainer" showing that the lead architect or engineer responsible for certifying compliance with the Department's accessibility and construction standards has attended and passed at least five hours of Fair Housing training. Certifications required under this paragraph must not be older than two years from the date of submission of the 10% Test Documentation, and must verify that all parts or phases of the offered training have been completed; two certificates supplied for the same part or phase of an offered training will not be counted towards the five hour required minimum, even if they were attended on different dates; and

(7) A Certification from the lender and syndicator identifying all known Guarantors. If identified Guarantors have changed from the Guarantors or Principals identified at the time of Application, a non-material amendment may be required in accordance with §10.405 of this subchapter (relating to Amendments and Extensions), and the new Guarantors or Principals must be reviewed in accordance with Chapter 1, Subchapter C of this title (relating to Previous Participation and Executive Award Review and Advisory Committee).

(b) Construction Status Report (All Multifamily Developments). All multifamily developments must submit a construction status report. Construction status reports shall be due by the tenth day of the month following each reporting quarter's end (January, April, July, and October) and continue

on a quarterly basis until the entire Development is complete as evidenced by one of the following: Certificates of occupancy for each building, the Architect's Certificate(s) of Substantial Completion (AIA Document G704 or equivalent form) for the entire Development, the final Application and Certificate for Payment (AIA Document G702 and G703), or an equivalent form approved for submission by the construction lender and/or investor. For Competitive Housing Tax Credit Developments, the initial report must be submitted no later than October 10th following the year of award (this includes Developments funded with HTC and TDHCA Multifamily Direct Loans), and for Developments awarded under the Department's Multifamily Direct Loan programs only, the initial report must be submitted 90 calendar days after loan closing. For Tax Exempt Bond Developments, the initial construction status report must be submitted as part of the Post Bond Closing Documentation due no later than 60 calendar days following closing on the bonds. The initial report for all multifamily Developments shall consist of the items identified in paragraphs (1) - (6) of this subsection, unless stated otherwise. All subsequent reports shall contain items identified in paragraphs (4) - (6) of this paragraph and must include any changes or amendments to items in paragraphs (1) - (3) if applicable:

(1) The executed partnership agreement with the investor or, for Developments receiving an award only from the Department's Direct Loan Program, other documents setting forth the legal structure and ownership. If identified Guarantors or Principals of a Guarantor entity were not already identified as a Principal of the Owner, Developer, or Guarantor at the time of Application, a non-material amendment must be requested in accordance with §10.405 of this subchapter, and the new Guarantors and all of its Principals, as applicable, must be reviewed in accordance with Chapter 1, Subchapter C of this title (relating to Previous Participation and Executive Award Review and Advisory Committee);

(2) The executed construction contract for the General Contractor, prime subcontractor(s) and Affiliates or Related Party subcontractor(s);

(3) The construction loan agreement. If the loan has not closed, the anticipated closing date must be provided and, upon closing, the agreement must be provided to the Department;

(4) The most recent Application and Certificate for Payment (AIA Document G702 and G703) certified by the Architect of Record (or equivalent form approved for submission by the construction lender and/or investor) for the General Contractor, prime subcontractor(s) and Affiliates or Related Party subcontractor(s);

(5) All Third Party construction inspection reports not previously submitted. If the lender and/or investor does not require third party construction inspection reports, the Development Owner must hire a third party inspector to perform these inspections on a quarterly basis and submit the reports to the Department. Third Party construction inspection reports must include, at a minimum, a discussion of site conditions as of the date of the site visit, current photographs of the construction site and exterior and interior of buildings, an estimated percentage of construction completion as of the date of the site visit, identification of construction delays and other relevant progress issues, if any, and the anticipated construction completion date; and

(6) Minority Owned Business Report (HTC only) showing the attempt to ensure that at least 30% of the construction and management businesses with which the Applicant contracts in connection with the Development are Minority Owned Businesses as required and further described in Tex.

Gov't Code §2306.6734.

(c) LURA Origination.

(1) The Development Owner must request origination of the HTC LURA as directed in the Post Award Activities Manual. The Department will draft a LURA for the Development Owner that will impose the income and rent restrictions identified in the Development's final underwriting report and other representations made in the Application, including but not limited to specific commitments to provide tenant services, to lease to Persons with Disabilities, and/or to provide specific amenities. After origination, the Department executed LURA and all exhibits and addendums will be sent to the Development Owner to execute and record in the real property records for the county in which the Development is located. A copy of the fully executed, recorded LURA must be returned to the Department no later than the end of the first year of the Credit Period. In general, no Housing Tax Credits are allowed to be issued for a building unless there is a properly executed and recorded LURA in effect at the end of the first year of the Credit Period. Nothing in this section negates a Development Owner's responsibility for full compliance with §42(h)(6) of the Code. The Department will not issue IRS Form(s) 8609 until it receives a copy of the fully executed, recorded LURA.

(2) LURAs for Direct Loan awardees will be prepared by the Department's Legal Division and executed at loan closing.

(d) Cost Certification (Competitive and Non-Competitive HTC, and related activities only). The Department conducts a feasibility analysis in accordance with §42(m)(2)(C)(i)(III) of the Code and Chapter 11, Subchapter D of this title (relating to Underwriting and Loan Policy) to make a final determination on the allocation of Housing Tax Credits. For Non-Competitive HTC Developments, the amount of tax credits reflected in the IRS Form(s) 8609 may be greater or less than the amount set forth in the Determination Notice based upon the Department's determination as of each building's placement in service. Any increase of tax credits will only be permitted if it is determined necessary by the Department, as required by §42(m)(2)(D) of the Code through the submission of the Cost Certification package. Increases to the amount of tax credits that exceed 120% of the amount of credits reflected in the Determination Notice must be approved by the Board. Increases to the amount of tax credits that do not exceed 120% of the amount of credits reflected in the Determination Notice may be approved administratively by the Executive Director or designee. All credit increases are subject to the Tax-Exempt Bond Credit Increase Request Fee as described in Chapter 11, Subchapter E of this Part (relating to Fee Schedule, Appeals, and other Provisions). The requirements for cost certification include those identified in paragraphs (1) - (3) of this subsection.

(1) Development Owners must file cost certification documentation no later than January 15 following the first year of the Credit Period, as defined in §42(f)(1) of the Code.

(2) The Department will evaluate the cost certification documentation and notify the Development Owner of any additional required documentation needed to complete the review. The Department reserves the right to request additional documents or certifications as it deems necessary or useful in the determination of the Development's eligibility for a final Housing Tax Credit allocation amount. Any communication issued to the Development Owner pertaining to the cost certification documentation may also be sent to the syndicator.

(3) IRS Form(s) 8609 will not be issued until the conditions as stated in subparagraphs (A) - (G) of this paragraph have been met. The Development Owner has:

(A) Provided evidence that all buildings in the Development have been placed in service by:

(i) December 31 of the year the Commitment was issued;

(ii) December 31 of the second year following the year the Carryover Allocation Agreement was executed; or

(iii) the approved Placed in Service deadline;

(B) Provided a complete final cost certification package in the format prescribed by the Department. As used herein, a complete final cost certification package means a package that meets all of the Department's criteria with all required information and exhibits listed in clauses (i) - (xxxiv) of this subparagraph, and pursuant to the Post Award Activities Manual. If any item on this list is determined to be unclear, deficient, or inconsistent with the cost certification review completed by the Department, a Request for Information (RFI) will be sent to the Development Owner. Requirements include:

(i) Owner's signed and notarized Statement of Certification verifying the CPA firm's licenses and validity, including any restrictions;

(ii) Owner Summary & Organization Charts for the Owner, Developer, and Guarantors;

(iii) Evidence of Qualified Nonprofit or CHDO Participation;

(iv) Certification and evidence of Historically Underutilized Business (HUB) Participation;

(v) Development Team List;

(vi) Development Summary with Architect's Certification;

(vii) Development Change Documentation;

(viii) As Built Survey;

(ix) A copy of the fully executed Closing Statement for each parcel of land and/or buildings purchased and included in the Development;

(x) Development Owner's Title Policy for the Development;

(xi) Title Policy Update;

(xii) Placement in Service;

(xiii) Evidence of Placement in Service;

(xiv) Architect's Certification of Completion Date and Date Ready for Occupancy (for Developments located in areas where Certificates of Occupancy (COs) are not issued by a local government or rehabilitation Developments that cannot provide COs);

(xv) Auditor's Certification of Acquisition/Rehabilitation Placement in Service Election;

(xvi) Independent Auditor's Report;

(xvii) Independent Auditor's Report of Bond Financing;

(xviii) Development Cost Schedule;

(xix) Contractor's Application for Final Payment (G702/G703) for the General Contractor, all prime subcontractors, Affiliated Contractors, and Related Party Contractors;

(xx) Additional Documentation of Offsite Costs;

(xxi) Rent Schedule;

(xxii) Utility Allowances;

(xxiii) Annual Operating Expenses;

(xxiv) 30 Year Rental Housing Operating Pro Forma;

(xxv) Current Operating Statement in the form of a trailing twelve month statement;

(xxvi) Current Rent Roll;

(xxvii) Summary of Sources and Uses of Funds;

(xxviii) Final Limited Partnership Agreement with all amendments and exhibits;

(xxix) All Loan Agreements and Promissory Notes (except for Agreements and Notes issued directly by the Department);

(xxx) Architect's Certification of Accessibility Requirements;

(xxxi) Development Owner Assignment of Individual to Compliance Training;

(xxxii) TDHCA Compliance Training Certificate (not older than two years from the date of cost certification submission);

(xxxiii) TDHCA Final Inspection Clearance Letter or evidence of submitted final inspection request to the Compliance Division (IRS Form(s) 8609 will not be issued without a TDHCA Final Inspection Clearance Letter); and

(xxxiv) Other Documentation as Required, including but not limited to conditions to be satisfied at

cost certification as reflected in the Development's latest Underwriting Report;

(C) Informed the Department of and received written approval for all amendments, extensions, and changes in ownership relating to the Development in accordance with §10.405 of this subchapter (relating to Amendments and Extensions) and §10.406 of this subchapter (relating to Ownership Transfers (§2306.6713));

(D) Paid all applicable Department fees, including any past due fees;

(E) Met all conditions noted in the Department underwriting report, Determination Notice, and Commitment;

(F) Corrected all issues of noncompliance, including but not limited to noncompliance status with the LURA (or any other document containing an Extended Low-income Housing Commitment) or the program rules in effect for the subject Development, as described in this chapter. Developments in the corrective action period and/or with any uncorrected issues of noncompliance outside of the corrective action period will not be issued IRS Form(s) 8609s until all events of noncompliance are corrected or otherwise approved by the Executive Director or designee; and

(G) Completed an updated underwriting evaluation in accordance with Chapter 11, Subchapter D of this Part based on the most current information at the time of the review.

§10.402 Requests for Subordination Agreements, HUD Amendments to Restrictive Covenants, or HUD Riders to Restrictive Covenants

(a) Requests for Subordination Agreements, HUD Amendments to Restrictive Covenants or HUD Riders to Restrictive Covenants from the Department must be reviewed and approved by the Department's Asset Management Division and Legal Division prior to execution. The Development Owner must demonstrate that the Development will remain feasible with the proposed new debt. For HTC Developments seeking to refinance within two years from the issuance of the IRS Form(s) 8609, a review of the Development's cost certification will be conducted to determine if the change in the financing structure would have affected the credit award. If it is determined that the change to the financing structure, net of additional costs associated with the refinance, would have resulted in over sourcing the Development, thereby resulting in an adjustment to the credit award, the Development Owner may be required to fund a Special Reserve Account in accordance with §10.404 of this subchapter and in an amount as allowed under §11.302(e)(12) of Chapter 11, Subchapter D of this title (relating to Underwriting and Loan Policy). Approval from the Board will be required for loan amounts that would cause the Developments to be over-sourced after accounting for the additional costs associated with the refinance and the deposit into the Special Reserve Account. Subordinations or re-subordinations of Developments with Direct Loans from the Department are also subject to the requirements under §13.13(c)(2) of Chapter 13 of this title (relating to Multifamily Direct Loan Rule) and Chapter 11, Subchapter D of this title (relating to Underwriting and Loan Policy), including but not limited to §11.302(g)(4).

(b) All requests must include:

(1) Requested document on Department approved template, if available, and completed with the Development specific information;

(2) Documentation such as a loan commitment or application that identifies the proposed loan amount and terms;

(3) If the proposed legal description is different from the legal description in the Department's regulatory agreement, a survey, title commitment, or recorded plat that agrees with the legal description in the requested document. Changes to the Development Site may be subject to further review and approval under §10.405 of this Subchapter (relating to Amendments and Extensions); and

(4) Development's most recent 12-month trailing operating statement. If the financial statement indicates that the proposed new debt cannot be supported by the Development, the Development Owner must submit an operating pro forma and a written explanation for the differences from the actual performance of the Development.

§10.403 Review of Annual HOME, NSP, TCAP-RF, and National Housing Trust Fund Rents

(a) Applicability. For participants of the Department's Multifamily HOME and NSP Direct Loan program, where Commitment of Funds occurred on or after August 23, 2013, the Department is required by 24 CFR §92.252(f) and for all National Housing Trust Fund (NHTF) recipients by 24 CFR §93.302(c)(2), to review and approve or disapprove HOME/NSP/NHTF rents on an annual basis. The Department is also required by 24 CFR §92.219 and §92.252(d)(2) to approve rents where Multifamily Direct Loan funds (including TCAP-RF) are used as HOME match. Development Owners must submit documentation for the review of HOME/NSP/NHTF/TCAP-RF rents by no later than July 1st of each year as further described in the Post Award Activities Manual.

(b) Documentation for Review. The Department will furnish a rent approval request packet for this purpose that will include a request for Development information and an Owner's proposed rent schedule and will require submission of a current rent roll, the most recent 12-month operating statement for the Development, and utility allowance information. The Department may request additional documentation to perform a determination, as needed, including but not limited to annual operating statements, market surveys, or other information related to determining whether rents are sufficient to maintain the financial viability of a project or are in compliance with maximum rent limits.

(c) Review Process. Rents will be approved or disapproved within 30 days of receipt of all items required to be submitted by the Development Owner, and will be issued in the form of a signed letter from the Asset Management Division. Development Owners must keep copies of all approval letters on file at the Development site to be reviewed at the time of Compliance Monitoring reviews.

(d) Compliance. Development Owners for whom this section is applicable are subject to compliance under §10.622 of this chapter (relating to Special Rules Regarding Rents and Limit Violations) and may be subject to penalties under §10.625 of this chapter (relating to Events of Noncompliance). Approval of rents by the Asset Management Division will be limited to a review of the documentation submitted and will not guarantee compliance with the Department's rules or otherwise absolve an Owner of any past, current, or future non-compliance related to Department rules, guidance, Compliance Monitoring visits, or any other rules or guidance to which the Development or its Owner may be subject.

§10.404 Reserve Accounts

(a) Replacement Reserve Account (§2306.186). The Department will require Development Owners to provide regular maintenance to keep housing sanitary, safe and decent by establishing and maintaining a reserve for replacement account for the Development in accordance with Tex. Gov't Code, §2306.186. The reserve account must be established, in accordance with paragraphs (3) - (6) of this subsection, and maintained through annual or more frequent regularly scheduled deposits, for each Unit in a Development of 25 or more rental Units regardless of the amount of rent charged for the Unit. If the Department is processing a request for loan modification or other request under this subchapter and the Development does not have an existing replacement reserve account or sufficient funds in the reserve to meet future capital expenditure needs of the Development as determined by a history of uncorrected UPCS violations, ongoing issues related to keeping housing sanitary, safe, and decent, an account balance below the annual reserve deposit amount as specified in this section, or as indicated by the number or cost of repairs included in a third party Physical Needs Assessment (PNA), the Development Owner will be required to establish and maintain a replacement reserve account or review whether the amount of regular deposits to the replacement reserve account can be increased, regardless of the number of Units at the Development. The Department shall, through cooperation of its divisions responsible for asset management and compliance, ensure compliance with this section. The duties of the Development Owner under this section cease on the date of a change in ownership of the Development; however, the subsequent Development Owner of the Development is subject to the requirements of this section and any additional or revised requirements the Department may impose after reviewing a Development's compliance history, a PNA submitted by the Owner, or the amount of reserves that will be transferred at the time of any property sale.

(1) The LURA requires the Development Owner to begin making annual deposits to the replacement reserve account on the later of the:

(A) Date that occupancy of the Development stabilizes as defined by the First Lien Lender or, in the absence of a First Lien Lender other than the Department, the date the Property is at least 90% occupied; or

(B) The date when the permanent loan is executed and funded.

(2) The Development Owner shall continue making deposits into the replacement reserve account until the earliest of the:

(A) Date on which the owner suffers a total casualty loss with respect to the Development or the date on which the Development becomes functionally obsolete, if the Development cannot be or is not restored;

(B) Date on which the Development is demolished;

(C) Date on which the Development ceases to be used as a multifamily rental property; or

(D) End of the Affordability Period specified by the LURA, or if an Affordability Period is not specified and the Department is the First Lien Lender, then when the Department's loan has been fully repaid or as otherwise agreed by the Owner and Department.

(3) If the Department is the First Lien Lender with respect to the Development or if the establishment of a Reserve Account for repairs has not been required by the First Lien Lender or Bank Trustee, each Development Owner receiving Department assistance for multifamily rental housing shall deposit annually into a separate, Development-specific Reserve Account through the date described in paragraph (2) of this subsection as follows:

(A) For New Construction and Reconstruction Developments, not less than $250 per Unit. Withdrawals from such account will be restricted for up to five years following the date of award except in cases in which written approval from the Department is obtained relating to casualty loss, natural disaster, reasonable accommodations, or demonstrated financial hardship (but not for the construction standards required by the NOFA or program regulations); or

(B) For Adaptive Reuse and Rehabilitation Developments, the greater of the amount per Unit per year either established by the information presented in a Scope and Cost Review in conformance with Chapter 11, Subchapter D of this title (relating to Underwriting and Loan Policy) or $300 per Unit per year.

(4) For all Developments, a PNA must be conducted at intervals that are consistent with requirements of the First Lien Lender, other than the Department. If the Department is the First Lien Lender, or the First Lien Lender does not require a Third Party PNA, a PNA must be conducted at least once during each five-year period beginning with the 11th year after the awarding of any financial assistance from the Department. PNAs conducted by the Owner at any time or for any reason other than as required by the Department in the year beginning with the 11th year of award must be submitted to the Department for review within 30 days of receipt by the Owner.

(5) Where there is a First Lien Lender other than the Department or a Bank Trustee as a result of a bond trust indenture or tax credit syndication, the Development Owner shall comply with the lesser of the replacement reserve requirements of the First Lien Lender or the requirements in paragraph (3) of this subsection. In addition, the Department should be listed as a party to receive notice under any replacement reserve agreement entered into by the Development Owner. The Development Owner shall submit on an annual basis, within the Department's required Development Owner's Financial Certification packet, requested information regarding:

(A) The reserve for replacement requirements under the first lien loan agreement (if applicable) referencing where those requirements are contained within the loan documents;

(B) Compliance with the first lien lender requirements outlined in subparagraph (A) of this paragraph;

(C) If the Owner is not in compliance with the lender requirements, the Development Owner's plan of action to bring the Development in compliance with all established reserve for replacement requirements; and

(D) Whether a PNA has been ordered and the Owner's plans for any subsequent capital expenditures, renovations, repairs, or improvements.

(6) Where there is no First Lien Lender but the allocation of funds by the Department and Tex. Gov't Code, §2306.186 requires that the Department oversee a Reserve Account, the Development

Owner shall provide at their sole expense an escrow agent acceptable to the Department to act as Bank Trustee as necessary under this section. The Department shall retain the right to replace the escrow agent with another Bank Trustee or act as escrow agent at a cost plus fee payable by the Development Owner due to breach of the escrow agent's responsibilities or otherwise with 30 days prior notice of all parties to the escrow agreement.

(7) Penalties and Non-Compliance. If the Development Owner fails to comply with the replacement reserve account requirements stated in this paragraph, and request for extension or waiver of these requirements is not approved by the Department, then a penalty of up to $200 per dwelling Unit in the Development and/or characterization of the Development as being in default with this requirement, may be imposed. Causes include:

(A) A Reserve Account, as described in this section, has not been established for the Development;

(B) The Department is not a party to the escrow agreement for the Reserve Account, if required;

(C) Money in the Reserve Account:

(i) is used for expenses other than necessary repairs, including property taxes or insurance; or

(ii) falls below mandatory annual, monthly, or Department approved deposit levels;

(D) Development Owner fails to make any required deposits;

(E) Development Owner fails to obtain a Third-Party PNA as required under this section or submit a copy of a PNA to the Department within 30 days of receipt; or

(F) Development Owner fails to make necessary repairs in accordance with the Third Party PNA or §10.621 of this chapter (relating to Property Condition Standards).

(8) Department-Initiated Repairs. The Department or its agent may make repairs to the Development within 30 calendar days of written notice from the Department if the Development Owner fails to complete necessary repairs indicated in the submitted PNA or identified by Department physical inspection. Repairs may be deemed necessary if the Development Owner fails to comply with federal, state, and/or local health, safety, or building code requirements. Payment for necessary repairs must be made directly by the Development Owner or through a replacement Reserve Account established for the Development under this section. The Department or its agent will be allowed to produce a Request for Bids to hire a contractor to complete and oversee necessary repairs. In the event the circumstances identified in subparagraphs (A) or (B) of this paragraph occur, funds withdrawn must be replaced from Cash Flow after payment of Operating Expenses but before return to Development Owner or deferred Developer Fee until the mandatory deposit level is replenished. The Department reserves the right to re-evaluate payments to the reserve, increase such payments or require a lump sum deposit to the reserve, or require the Owner to enter into a separate Reserve Agreement if necessary to protect the long term feasibility of the Development. On a case-by-case basis, the Department may determine that the money in the Reserve Account may be used for expenses other than necessary repairs, including property taxes or insurance, if:

(A) Development income before payment of return to Development Owner or deferred Developer Fee is insufficient to meet operating expense and debt service requirements; or

(B) Development income after payment of operating expenses, but before payment of return to Development Owner or deferred developer fee is insufficient to fund the mandatory deposit levels.

(9) Exceptions to Replacement Reserve Account. This section does not apply to a Development for which the Development Owner is required to maintain a Reserve Account under any other provision of federal or state law.

(10) In the event of paragraph (7) or (8) of this subsection occurring, the Department reserves the right to require by separate Reserve Agreement a revised annual deposit amount and/or require Department concurrence for withdrawals from the Reserve Account to bring the Development back into compliance. Establishment of a new Bank Trustee or transfer of reserve funds to a new, separate and distinct account may be required if necessary to meet the requirements of such Agreement. The Agreement will be executed by the Department, Development Owner, and financial institution representative.

(b) Lease-up Reserve Account. A lease-up reserve funds start-up expenses in excess of the revenue produced by the Development prior to stabilization. The Department will consider a reasonable lease-up reserve account based on the documented requirements from a third-party lender, third-party syndicator, or the Department. During the underwriting at the point of the Cost Certification review, the lease-up reserve may be counted as a use of funds only to the extent that it represents operating shortfalls net of escrows for property taxes and property insurance. Funds from the lease-up reserve used to satisfy the funding requirements for other reserve accounts may not be included as a use of funds for the lease-up reserve. Funds from the lease-up reserve distributed or distributable as cash flow to the Development Owner will be considered and restricted as developer fee.

(c) Operating Reserve Account. At various stages during the application, award process, and during the operating life of a Development, the Department will conduct a financial analysis of the Development's total development costs and operating budgets, including the estimated operating reserve account deposit required. For example, this analysis typically occurs at application and cost certification review. The Department will consider a reasonable operating reserve account deposit in this analysis based on the needs of the Development and requirements of third-party lenders or investors. The amount used in the analysis will be the amount described in the project cost schedule or balance sheet, if it is within the range of two to six months of stabilized operating expenses plus debt service. The Department may consider a greater amount proposed or required by the Department, any superior lien lender, or syndicator, if the detail for such greater amount is reasonable and well documented. Reasonable operating reserves in this chapter do not include capitalized asset management fees, guaranty reserves, or other similar costs. In no instance will operating reserves exceed 12 months of stabilized operating expenses plus debt service (exclusive of transferred replacement reserves for USDA or HUD financed rehabilitation transactions). Operating reserves are generally for the term of the permanent loan. In no instance will operating reserves released within five years be included as a cost.

(d) Special Reserve Account. If the funding program requires or allows for the establishment and maintenance of a Special Reserve Account for the purpose of assisting residents at the

Development with expenses associated with their tenancy, this will be established in accordance with a written agreement with the Development Owner.

(1) The Special Reserve Account is funded through a one-time payment or annually through an agreed upon percentage of net cash flow generated by the Development, excess development funds at completion as determined by the Department, or as otherwise set forth in the written agreement. For the purpose of this account, net cash flow is defined as funds available from operations after all expenses and debt service required to be paid have been considered. This does not include a deduction for depreciation and amortization expense, deferred developer fee payment, or other payments made to Related Parties or Affiliates, except as allowed by the Department for property management. Proceeds from any refinancing or other fund raising from the Development will be considered net cash flow for purposes of funding the Special Reserve Account unless otherwise approved by the Department. Deposits to a Special Reserve at cost certification will be limited in accordance with §11.302(e)(12) of this title (relating to Underwriting Rules and Guidelines). The account will be structured to require Department concurrence for withdrawals.

(2) All disbursements from the account must be approved by the Department.

(3) The Development Owner will be responsible for setting up a separate and distinct account with a financial institution acceptable to the Department. A Special Reserve Account Agreement will be drafted by the Department and executed by the Department and the Development Owner.

(4) The Development Owner must make reasonable efforts to notify tenants of the existence of the Special Reserve Account and how to submit an application to access funds from the Special Reserve. Documentation of such efforts must be kept onsite and made available to the Department upon request.

(e) Other Reserve Accounts. Additional reserve accounts may be recognized by the Department as necessary and required by the Department, superior lien lender, or syndicator.

§10.405 Amendments and Extensions

(a) Amendments to Housing Tax Credit (HTC) Application or Award Prior to Land Use Restriction Agreement (LURA) recording or amendments that do not result in a change to the LURA (§2306.6712). The Department expects the Development Owner to construct or rehabilitate, operate, and own the Development consistent with the representations in the Application. The Department must receive notification of any amendments to the Application. Regardless of development stage, the Board shall re-evaluate a Development that undergoes a material change, as identified in paragraph (3) of this subsection at any time after the initial Board approval of the Development (§2306.6731(b)). The Board may deny an amendment request and subsequently may rescind any Commitment or Determination Notice issued for an Application, and may reallocate the credits to other Applicants on the waiting list.

(1) Requesting an amendment. The Department shall require the Applicant to file a formal, written request for an amendment to the Application. Such request must include a detailed explanation of the amendment request and other information as determined to be necessary by the Department, and the applicable fee as identified in Chapter 11, Subchapter E of this title (relating to Fee

Schedule, Appeals, and other Provisions) in order to be received and processed by the Department. Department staff will evaluate the amendment request to determine if the change would affect an allocation of Housing Tax Credits by changing any item that received points, by significantly affecting the most recent underwriting analysis, or by materially altering the Development as further described in this subsection.

(2) Notification Items. The Department must be notified of the changes described in subparagraphs (A) - (F) of this paragraph. The changes identified are subject to staff agreement based on a review of the amendment request and any additional information or documentation requested. Notification items will be considered satisfied when an acknowledgment of the specific change(s) is received from the Department and include:

(A) Changes to Development Site acreage required by the City or other local governmental authority, or changes resulting from survey discrepancies, as long as such change does not also result in a modification to the residential density of more than 5%;

(B) Minor modifications to the site plan that will not significantly impact development costs, including, but not limited to, relocation or rearrangement of buildings on the site (as long as the number of residential and non-residential buildings remains the same), and movement, addition, or deletion of ingress/egress to the site;

(C) Increases or decreases in net rentable square footage or common areas that do not result in a material amendment under paragraph (4) of this subsection;

(D) Changes in amenities that do not require a change to the recorded LURA and do not negatively impact scoring, including changes to outdated amenities that could be replaced by an amenity with equal benefit to the resident community;

(E) Changes in Developers or Guarantors (notifications for changes in Guarantors that are also the General Contractor or are only providing guaranties during the construction period are not required) with no new Principals (who were not previously checked by Previous Participation review that retain the natural person(s) used to meet the experience requirement in Chapter 11 of this title (relating to Qualified Allocation Plan)); and

(F) Any other amendment not identified in paragraphs (3) and (4) of this subsection.

(3) Non-material amendments. The Executive Director or designee may administratively approve all non-material amendments, including, but not limited to:

(A) Any amendment that is determined by staff to exceed the scope of notification acknowledgement, as identified in paragraph (2) of this subsection but not to rise to a material alteration, as identified in paragraph (4) of this subsection;

(B) Changes in the natural person(s) used to meet the experience requirement in Chapter 11, §11.204(6) of this title provided that an appropriate substitute has been approved by the Multifamily Division prior to receipt of the amendment request (relating to Required Documentation for Application Submission);

(C) Changes in Developers or Guarantors (excluding changes in Guarantors that are also the General Contractor or are only providing guaranties during the construction period) not addressed in §10.405(a)(2)(E). Changes in Developers or Guarantors will be subject to Previous Participation requirements as further described in Chapter 11 of this title and the credit limitation described in §11.4(a) of this title; and

(D) For Exchange Developments only, requests to change elections made on line 8(b) of the IRS Form(s) 8609 to group buildings together into one or more multiple building projects. The request must include an attached statement identifying the buildings in the project. The change to the election may only be made once during the Compliance Period.

(4) Material amendments. Amendments considered material pursuant to this paragraph must be approved by the Board. When an amendment request requires Board approval, the Development Owner must submit the request and all required documentation necessary for staff's review of the request to the Department at least 45 calendar days prior to the Board meeting in which the amendment is anticipated to be considered. 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 Department staff regarding the amendment will be posted to the Department's website and the Applicant will be notified of the posting (§2306.6717(a)(4)). Material Amendment requests may be denied if the Board determines that the modification proposed in the amendment would materially alter the Development in a negative manner or would have adversely affected the selection of the Application in the Application Round. 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 at least 5%;

(G) A request to implement a revised election under §42(g) of the Code prior to filing of IRS Form(s) 8609;

(H) Exclusion of any requirements as identified in Chapter 11, Subchapter B of this title (relating to Site and Development Requirements and Restrictions) and Chapter 11, Subchapter C of this title (relating to Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules); or

(I) Any other modification considered material by the staff and therefore required to be presented to the Board as such.

(5) Amendment requests will be denied if the Department finds that the request would have

changed the scoring of an Application in the competitive process such that the Application would not have received a funding award or if the need for the proposed modification was reasonably foreseeable or preventable by the Applicant at the time the Application was submitted, unless good cause is found for the approval of the amendment.

(6) This section shall be administered in a manner that is consistent with §42 of the Code. If a Development has any uncorrected issues of noncompliance outside of the corrective action period (other than the provision being amended) or otherwise owes fees to the Department, such non-compliance or outstanding payment must be resolved to the satisfaction of the Department before a request for amendment will be acted upon.

(7) In the event that an Applicant or Developer seeks to be released from the commitment to serve the income level of tenants identified in the Application and Credit Underwriting Analysis Report at the time of award and as approved by the Board, the procedure described in subparagraphs (A) and (B) of this paragraph will apply to the extent such request is not prohibited based on statutory and/or regulatory provisions:

(A) For amendments that involve a reduction in the total number of Low-Income Units, or a reduction in the number of Low-Income Units at any rent or income level, as approved by the Board, evidence noted in either clause (i) or (ii) of this subparagraph must be presented to the Department to support the amendment:

(i) In the event of a request to implement (rent to a household at an income or rent level that exceeds the approved AMI limits established by the minimum election within the Development's Application or LURA) a revised election under §42(g) of the Code prior to an Owner's submission of IRS Form(s) 8609 to the IRS, Owners must submit updated information and exhibits to the Application as required by the Department and all lenders and the syndicator must submit written acknowledgement that they are aware of the changes being requested and confirm any changes in terms as a result of the new election; or

(ii) For all other requests for reductions in the total number of Low-Income Units or reductions in the number of Low-Income Units at any rent or income level, prior to issuance of IRS Form(s) 8609 by the Department, the lender and syndicator must submit written confirmation 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 Department staff that the Unit adjustment is necessary for the continued financial feasibility of the Development; and

(B) If it is determined by the Department that the loss of low-income targeting points would have resulted in the Application not receiving an award in the year of allocation, and the amendment is approved by the Board, the approved amendment will carry a penalty that prohibits the Applicant and all 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.

(b) Amendments to the LURA. Department approval shall be required for any amendment to a LURA in accordance with this section. An amendment request shall be submitted in writing,

containing a detailed explanation of the request, the reason the change is necessary, the good cause for the change, financial information related to any financial impact on the Development, information related to whether the necessity of the amendment was reasonably foreseeable at the time of application, and other information as determined to be necessary by the Department, along with any applicable fee as identified in Chapter 11, Subchapter E of this title (relating to Fee Schedule, Appeals, and other Provisions). The Department may order or require the Development Owner to order a Market Study or appraisal at the Development Owner's expense. If a Development has any uncorrected issues of noncompliance outside of the corrective action period (other than the provision being amended) or otherwise owes fees to the Department, such non-compliance or outstanding payment must be resolved to the satisfaction of the Department, before a request for amendment will be acted upon. The Department will not approve changes that would violate state or federal laws including the requirements of §42 of the Code, 24 CFR Part 92 (HOME Final Rule), 24 CFR Part 93 (NHTF Interim Rule), Chapter 1 of this title (relating to Administrative Requirements), Chapter 11 of this title (relating to Qualified Allocation Plan), Chapter 12 of this title (relating to Multifamily Housing Revenue Bond Rules), Chapter 13 of this title (relating to Multifamily Direct Loan Rule), Tex. Gov't Code, Chapter 2306, and the Fair Housing Act. For Tax-Exempt Bond Developments, compliance with their Regulatory Agreement and corresponding bond financing documents. Prior to staff taking a recommendation to the Board for consideration, the procedures described in paragraph (3) of this subsection must be followed.

(1) Non-Material LURA Amendments. The Executive Director or designee may administratively approve all LURA amendments not defined as Material LURA Amendments pursuant to paragraph (2) of this subsection. A non-material LURA amendment may include but is not limited to:

(A) HUB participation removal. Removal of a HUB participation requirement will only be processed as a non-material LURA amendment after the issuance of IRS Form(s) 8609 and requires that the Department find that:

(i) the HUB is requesting removal of its own volition or is being removed as the result of a default under the organizational documents of the Development Owner;

(ii) the participation by the HUB has been substantive and meaningful, or would have been substantive or meaningful had the HUB not defaulted under the organizational documents of the Development Owner, enabling it to realize not only financial benefit but to acquire skills relating to the ownership and operating of affordable housing; and

(iii) where the HUB will be replaced as a general partner or special limited partner that is not a HUB and will sell its ownership interest, an ownership transfer request must be submitted as described in §10.406 of this subchapter;

(B) A change resulting from a Department work out arrangement as recommended by the Department's Asset Management Division;

(C) A change in the Right of First Refusal period as described in amended §2306.6726 of the Tex. Gov't Code;

(D) Where the Board has approved a de minimis modification of the Unit Mix or bedroom mix of Units to increase the Development’s accessibility; or

(E) A correction of error.

(2) Material LURA Amendments. Development Owners seeking LURA amendment requests that require Board approval must submit the request and all required documentation necessary for staff's review of the request to the Department at least 45 calendar days prior to the Board meeting at which the amendment is anticipated to be considered. 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 Department staff regarding the amendment will be posted to the Department's website and the Applicant will be notified of the posting. (§2306.6717(a)(4)). The Board must consider the following material LURA amendments:

(A) Reductions to the number of Low-Income Units;

(B) Changes to the income or rent restrictions;

(C) Changes to the Target Population;

(D) The removal of material participation by a Nonprofit Organization as further described in §10.406 of this subchapter;

(E) The removal of material participation by a HUB prior to filing of IRS Form(s) 8609;

(F) Any amendment that affects a right enforceable by a tenant or other third party under the LURA; or

(G) Any LURA amendment deemed material by the Executive Director.

(3) Prior to staff taking a recommendation to the Board for consideration, the Development Owner must provide notice and hold a public hearing regarding the requested amendment(s) at least 20 business days prior to the scheduled Board meeting where the request will be considered. Development Owners will be required to submit a copy of the notification with the amendment request. If a LURA amendment is requested prior to issuance of IRS Form(s) 8609 by the Department, notification must be provided to the recipients described in subparagraphs (A) - (E) of this paragraph. If an amendment is requested after issuance of IRS Form(s) 8609 by the Department, notification must be provided to the recipients described in subparagraph (A) - (B) of this paragraph. Notifications include:

(A) Each tenant of the Development;

(B) The current lender(s) and investor(s);

(C) The State Senator and State Representative of the districts whose boundaries include the Development Site;

(D) The chief elected official for the municipality (if the Development Site is within a municipality or its extraterritorial jurisdiction); and

(E) The county commissioners of the county in which the Development Site is located (if the

Development Site is located outside of a municipality).

(4) Contents of Notification. The notification must include, at a minimum, all of the information described in subparagraphs (A) - (D) of this paragraph:

(A) The Development Owner's name, address and an individual contact name and phone number;

(B) The Development's name, address, and city;

(C) The change(s) requested; and

(D) The date, time and location of the public hearing where the change(s) will be discussed.

(5) Verification of public hearing. Minutes of the public hearing and attendance sheet must be submitted to the Department within three business days after the date of the public hearing.

(6) Approval. Once the LURA Amendment has been approved administratively or by the Board, as applicable, Department staff will provide the Development Owner with a LURA amendment for execution and recording in the county where the Development is located.

(c) HTC Extensions. Extensions must be requested if the original deadline associated with Carryover, the 10% Test (including submission and expenditure deadlines), construction status reports, or cost certification requirements will not be met. Extension requests submitted at least 30 calendar days in advance of the applicable deadline will not be required to submit an extension fee as described in §11.901 of this title. Any extension request submitted fewer than 30 days in advance of the applicable deadline or after the applicable deadline will not be processed unless accompanied by the applicable fee. Extension requests will be approved by the Executive Director or designee, unless, at staff's discretion it warrants Board approval due to extenuating circumstances stated in the request. The extension request must specify a requested extension date and the reason why such an extension is required. If the Development Owner is requesting an extension to the Carryover submission or 10% Test deadline(s), a point deduction evaluation will be completed in accordance with Tex. Gov't Code, §2306.6710(b)(2), and §11.9(f) of this title (relating to Factors Affecting Scoring and Eligibility in current and future Application Rounds). Therefore, the Development Owner must clearly describe in their request for an extension how the need for the extension was beyond the reasonable control of the Applicant/Development Owner and could not have been reasonably anticipated. Carryover extension requests will not be granted an extended deadline later than December 1st of the year the Commitment was issued.

§10.406 Ownership Transfers (§2306.6713)

(a) Ownership Transfer Notification. All multifamily Development Owners must provide written notice and a completed Ownership Transfer packet, if applicable, to the Department at least 45 calendar days prior to any sale, transfer, or exchange of the Development or any portion of or Controlling interest in the Development. Except as otherwise provided herein, the Executive Director's prior written approval of any such transfer is required. The Executive Director may not unreasonably withhold approval of the transfer requested in compliance with this section.

(b) Exceptions. The exceptions to the ownership transfer process in this subsection are applicable.

(1) A Development Owner shall be required to notify the Department but shall not be required to obtain Executive Director approval when the transferee is an Affiliate of the Development Owner with no new Principals or the transferee is a Related Party who does not Control the Development and the transfer is being made for estate planning purposes.

(2) Transfers that are the result of an involuntary removal of the general partner by the investment limited partner do not require advance approval but must be reported to the Department as soon as possible due to the sensitive timing and nature of this decision. In the event the investment limited partner has proposed a new general partner or will permanently replace the general partner, a full Ownership Transfer packet must be submitted.

(3) Changes to the investment limited partner, non-Controlling limited partner, or other non-Controlling partners affiliated with the investment limited partner do not require Executive Director approval. A General Partner's acquisition of the interest of the investment limited partner does not require Executive Director approval, unless some other change in ownership is occurring as part of the same overall transaction.

(4) Changes resulting from foreclosure do not require advance approval but acquiring parties must notify the Department as soon as possible of the revised ownership structure and ownership contact information.

(c) General Requirements.

(1) Any new Principal in the ownership of a Development must be eligible under §11.202 of Subchapter C (relating to Ineligible Applicants and Applications). In addition, Persons and Principals will be reviewed in accordance with Chapter 1, Subchapter C of this title (relating to Previous Participation and Executive Award Review and Advisory Committee).

(2) Changes in Developers or Guarantors must be addressed as non-material amendments to the application under §10.405 of this Subchapter.

(3) To the extent an investment limited partner or its Affiliate assumes a Controlling interest in a Development Owner, such acquisition shall be subject to the Ownership Transfer requirements set forth herein. Principals of the investment limited partner or Affiliate will be considered new Principals and will be reviewed as stated under paragraph (1) of this subsection.

(4) Simultaneous transfer or concurrent offering for sale of the General Partner's and Limited Partner's control and interest will be subject to the Ownership Transfer requirements set forth herein and will trigger a Right of First Refusal, if applicable.

(d) Transfer Actions Warranting Debarment. If the Department determines that the transfer, involuntary removal, or replacement was due to a default by the General Partner under the Limited Partnership Agreement, or other detrimental action that put the Development at risk of failure or the Department at risk for financial exposure as a result of non-compliance, staff will refer the matter to the Enforcement Committee for debarment consideration pursuant to §2.401 of this title (relating to Enforcement, Debarment from Participation in Programs Administered by the Department). In addition, a record of transfer involving Principals in new proposed awards will be reported and may be taken into consideration in accordance with Chapter 1, Subchapter C of this

title (relating to Previous Participation and Executive Award Review and Advisory Committee), prior to recommending any new financing or allocation of credits.

(e) Transfers Prior to 8609 Issuance or Construction Completion. Prior to the issuance of IRS Form(s) 8609 (for Housing Tax Credits) or the completion of construction (for all Developments funded through other Department programs), an Applicant may request an amendment to its ownership structure to add Principals. The party(ies) reflected in the Application as having Control must remain in the ownership structure and retain Control, unless approved otherwise by the Executive Director. A development sponsor, General Partner or Development Owner may not sell the Development in whole or voluntarily end their Control prior to the issuance of 8609s.

(f) Nonprofit Organizations. If the ownership transfer request is to replace a nonprofit organization within the Development ownership entity, the replacement nonprofit entity must adhere to the requirements in paragraph (1) or (2) of this subsection.

(1) If the LURA requires ownership or material participation in ownership by a Qualified Nonprofit Organization, and the Development received Tax Credits pursuant to §42(h)(5) of the Code, the transferee must be a Qualified Nonprofit Organization that meets the requirements of §42(h)(5) of the Code and Tex. Gov't Code §2306.6706, if applicable, and can demonstrate planned participation in the operation of the Development on a regular, continuous, and substantial basis.

(2) If the LURA requires ownership or material participation in ownership by a nonprofit organization or CHDO, the Development Owner must show that the transferee is a nonprofit organization or CHDO, as applicable, that complies with the LURA. If the transferee has been certified as a CHDO by TDHCA prior to 2016 or has not previously been certified as a CHDO by TDHCA, a new CHDO certification package must be submitted for review. If the transferee was certified as a CHDO by TDHCA after 2016, provided no new federal guidance or rules concerning CHDO have been released and the proposed ownership structure at the time of review meets the requirements in 24 CFR Part 92, the CHDO may instead submit a CHDO Self-Certification form with the Ownership Transfer package.

(3) Exceptions to paragraphs (1) and (2) of this subsection may be made on a case by case basis if the Development (for MFDL) is past its Federal Affordability Period or (for HTC Developments) is past its Compliance Period, was not reported to the IRS as part of the Department's Nonprofit Set Aside in any HTC Award year, and follows the procedures outlined in §10.405(b)(1) - (5) of this subchapter. The Board must find that:

(A) The selling nonprofit is acting of its own volition or is being removed as the result of a default under the organizational documents of the Development Owner;

(B) The participation by the nonprofit was substantive and meaningful during the full term of the Compliance Period but is no longer substantive or meaningful to the operations of the Development; and

(C) The proposed purchaser is an affiliate of the current Owner or otherwise meets the Department's standards for ownership transfers.

(g) Historically Underutilized Business (HUB) Organizations. If a HUB is the general partner or

special limited partner of a Development Owner and it determines to sell its ownership interest, after the issuance of IRS Form(s) 8609, the purchaser of that partnership interest or the general or special limited partner is not required to be a HUB as long as the LURA does not require it or the procedure described in §10.405(b)(1) of this chapter (relating to Non-Material LURA Amendments) has been followed and approved. The removal of a HUB requirement prior to filing of IRS Form(s) 8609 is subject to the procedure described in §10.405(b)(2) of this Chapter (relating to Material LURA Amendments).

(h) Documentation Required. A Development Owner must submit documentation requested by the Department to enable the Department to understand fully the facts and circumstances pertaining to the transfer and the effects of approval or denial. Documentation must be submitted as directed in the Post Award Activities Manual, which includes but is not limited to:

(1) A written explanation outlining the reason for the request;

(2) Ownership transfer information, including but not limited to the type of sale, terms of any new financing introduced as a result of the transfer, amount of Development reserves to transfer in the event of a property sale, and the prospective closing date;

(3) Pre and post transfer organizational charts with TINs of each organization down to the level of natural persons in the ownership structure as described in §11.204(13)(B) of Subchapter C of this title (relating to Required Documentation for Application Submission);

(4) A list of the names and contact information for transferees and Related Parties;

(5) Previous Participation information for any new Principal as described in §11.204(13)(C) of this title (relating to Required Documentation for Application Submission);

(6) Agreements among parties associated with the transfer;

(7) Owners Certifications with regard to materials submitted as further described in the Post Award Activities Manual;

(8) Detailed information describing the organizational structure, experience, and financial capacity of any party holding a controlling interest in any Principal or Controlling entity of the prospective Development Owner;

(9) Evidence and certification that the tenants in the Development have been notified in writing of the proposed transfer at least 30 calendar days prior to the date the transfer is approved by the Department. The ownership transfer approval letter will not be issued until this 30-day period has expired; and

(10) Any required exhibits and the list of exhibits related to specific circumstances of transfer or Ownership as detailed in the Post Award Activities Manual.

(i) Once the Department receives all necessary information under this section and as required under the Post Award Activities Manual, staff shall initiate a qualifications review of a transferee, in accordance with Chapter 1, Subchapter C of this title (relating to Previous Participation and

Executive Award Review and Advisory Committee), to determine the transferee's past compliance with all aspects of the Department's programs, LURAs and eligibility under this chapter and §11.202 of this title (relating to Ineligible Applicants and Applications).

(j) Credit Limitation. As it relates to the Housing Tax Credit amount further described in §11.4(a) of this title (relating to Tax Credit Request and Award Limits), the credit amount will not be applied in circumstances described in paragraphs (1) and (2) of this subsection:

(1) 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

(2) 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.

(k) Penalties, Past Due Fees and Underfunded Reserves. The Development Owner must comply with any additional documentation requirements as stated in Subchapter F of this chapter (relating to Compliance Monitoring) and Subchapter G of this chapter (relating to Affirmative Marketing Requirements and Written Policies and Procedures). The Development Owner on record with the Department will be liable for any penalties or fees imposed by the Department (even if such penalty can be attributable to the new Development Owner) unless an ownership transfer has been approved by the Department. In the event a transferring Development has a history of uncorrected UPCS violations, ongoing issues related to keeping housing sanitary, safe, and decent, an account balance below the annual reserve deposit amount as specified in §10.404(a) (relating to Replacement Reserve Accounts), or that appears insufficient to meet capital expenditure needs as indicated by the number or cost of repairs included in a PNA or SCR, the prospective Development Owner may be required to establish and maintain a replacement reserve account or increase the amount of regular deposits to the replacement reserve account by entering into a Reserve Agreement with the Department. The Department may also request a plan and timeline relating to needed repairs or renovations that will be completed by the departing and/or incoming Owner as a condition to approving the Transfer. A PNA or SCR may be requested if one has not already been received under §10.404 of this section (relating to Reserve Accounts).

(l) Ownership Transfer Processing Fee. The ownership transfer request must be accompanied by the corresponding ownership transfer fee as outlined in §11.901 of this title (relating to Fee Schedule).

§10.407 Right of First Refusal

(a) General. This section applies to Development Owners that agreed to offer a Right of First Refusal (ROFR) to a Qualified Entity or as applicable a Qualified Nonprofit Organization, as memorialized in the applicable LURA. For the purposes of this section, a Qualified Nonprofit Organization also includes an entity 100% owned by a Qualified Nonprofit Organization pursuant to §42(h)(5)(C) of the Code and operated in a similar manner. The purpose of this section is to provide administrative procedures and guidance on the process and valuation of properties under the LURA. All requests for ROFR submitted to the Department, regardless of existing regulations, must adhere to this process.

(1) The Development Owner may market the Property for sale and enter into an agreement to sell

the Property to a Qualified Entity, or as applicable a Qualified Nonprofit Organization without going through the ROFR process outlined in this section, unless otherwise restricted or prohibited and only in the following circumstances:

(A) The LURA includes a 90-day ROFR and the Development Owner is selling to a Qualified Nonprofit Organization;

(B) The LURA includes a two-year ROFR and the Development Owner is selling to a Qualified Nonprofit Organization that meets the definition of a Community Housing Development Organization (CHDO) under 24 CFR Part 92, as approved by the Department; or

(C) The LURA includes a 180-day ROFR, and the Development Owner is selling to a Qualified Entity that meets the definition of a CHDO under 24 CFR Part 92, or that is controlled by a CHDO, as approved by the Department.

(2) A ROFR request must be made in accordance with the LURA for the Development. If there is a conflict between the Development's LURA and this subchapter, every effort will be made to harmonize the provisions. If the conflict cannot be resolved, requirements in the LURA will supersede this subchapter. If there is a conflict between the Development's LURA and Tex. Gov't Code Chapter 2306, every effort will be made to harmonize the provisions. A Development Owner may request a LURA amendment to make the ROFR provisions in the LURA consistent with Tex. Gov't Code Chapter 2306 at any time.

(3) If a LURA includes the ROFR provision, the Development Owner may not request a Preliminary Qualified Contract (if such opportunity is available under the applicable LURA and §10.408 of this Subchapter) until the requirements outlined in this section have been satisfied.

(4) The Department reviews and approves all ownership transfers pursuant to §10.406 of this subchapter. Thus, if a proposed purchaser is identified by the Owner in accordance with paragraph (1) of this subsection or in the ROFR process, the Development Owner and proposed purchaser must complete the ownership transfer process. A Development Owner may not transfer a Development to a Qualified Nonprofit Organization or Qualified Entity that is considered an ineligible entity under the Department's rules. In addition, ownership transfers to a Qualified Entity or as applicable a Qualified Nonprofit Organization pursuant to the ROFR process are subject to Chapter 1, Subchapter C of this title (relating to Previous Participation and Executive Award Review and Advisory Committee).

(5) Satisfying the ROFR requirement does not terminate the LURA or the ongoing application of the ROFR requirement to any subsequent Development Owner.

(6) If there are multiple buildings in the Development, the end of the 15th year of the Compliance Period will be based upon the date the last building(s) began their credit period(s). For example, if five buildings in the Development began their credit periods in 2007 and one in 2008, the 15th year would be 2022. The ROFR process is triggered upon:

(A) The Development Owner's determination to sell the Development to an entity other than as permitted in paragraph (1) of this subsection; or

(B) The simultaneous transfer or concurrent offering for sale of a General Partner's and limited partner's interest in the Development Owner's ownership structure.

(7) The ROFR process is not triggered if a Development Owner seeks to transfer the Development to a newly formed entity:

(A) That is under common control with the Development Owner; and

(B) The primary purpose of the formation of which is to facilitate the financing of the rehabilitation of the Development using assistance administered through a state financing program.

(8) This section applies only to a Right of First Refusal memorialized in the Department's LURA. This section does not authorize a modification of any other agreement between the Development Owner and a Qualified Nonprofit Organization or Qualified Entity. The enforceability of a contractual agreement between the Development Owner and a Qualified Nonprofit Organization or Qualified Entity may be impacted by the Development Owner's commitments at Application and recorded LURA.

(b) Right of First Refusal Offer Price. There are two general expectations of the ROFR offer price identified in the outstanding LURAs. The descriptions in paragraphs (1) and (2) of this subsection do not alter the requirements or definitions included in the LURA but provide further clarification as applicable:

(1) Fair Market Value is established using either a current appraisal (completed within three months prior to the ROFR request and in accordance with §11.304 of this title (relating to Appraisal Rules and Guidelines)) of the Property or an executed purchase offer that the Development Owner would like to accept. In either case the documentation used to establish Fair Market Value will be part of the ROFR property listing on the Department's website. The purchase offer must contain specific language that the offer is conditioned upon satisfaction of the ROFR requirement. If a subsequent ROFR request is made within six months of the previously approved ROFR posting, the lesser of the prior ROFR posted value or new appraisal/purchase contract amount must be used in establishing Fair Market Value;

(2) Minimum Purchase Price, pursuant to §42(i)(7)(B) of the Code, is the sum of the categories listed in subparagraphs (A) and (B) of this paragraph:

(A) The principal amount of outstanding indebtedness secured by the project (other than indebtedness incurred within the five year period immediately preceding the date of said notice); and

(B) All federal, state, and local taxes incurred or payable by the Development Owner as a consequence of such sale. If the Property has a minimum Applicable Fraction of less than one, the offer must take this into account by multiplying the purchase price by the applicable fraction and the fair market value of the non-Low-Income Units. Documentation submitted to verify the Minimum Purchase Price calculation will be part of the ROFR property listing on the Department's website.

(c) Required Documentation. Upon establishing the ROFR offer price, the ROFR process is the same

for all types of LURAs. To proceed with the ROFR request, documentation must be submitted as directed in the Post Award Activities Manual, which includes:

(1) ROFR fee as identified in §11.901 of this title (relating to Fee Schedule);

(2) A notice of intent to the Department;

(3) Certification that the Development Owner has provided, to the best of their knowledge and ability, a notice of intent to all additional required persons and entities in subparagraph (A) of this paragraph and that such notice includes, at a minimum the information in subparagraph (B) of this paragraph;

(A) Copies of the letters or emailed notices provided to all persons and entities listed in clauses (i) to (vi) of this subparagraph as required by this paragraph and applicable to the Development at the time of the submission of the ROFR documentation must be attached to the Certification:

(i) All tenants and tenant organizations, if any, of the Development;

(ii) Mayor of the municipality (if the Development is within a municipality or its extraterritorial jurisdiction);

(iii) All elected members of the Governing Body of the municipality (if the Development Site is within a municipality or its extraterritorial jurisdiction);

(iv) Presiding officer of the Governing Body of the county in which the Development is located;

(v) The local housing authority, if any; and

(vi) All prospective buyers maintained on the Department's list of prospective buyers.

(B) Letters must include, at a minimum, all of the information required in clauses (i) to (vii) of this subparagraph and must not contain any statement that violates Department rules, statute, Code, or federal requirements:

(i) The Development's name, address, city, and county;

(ii) The Development Owner's name, address, individual contact name, phone number, and email address;

(iii) Information about tenants' rights to purchase the Development through the ROFR;

(iv) The length of the ROFR posting period;

(v) The ROFR offer price;

(vi) A physical description of the Development, including the total number of Units and total number of Low-Income Units; and

(vii) Contact information for the Department staff overseeing the Development's ROFR application.

(4) Documentation evidencing any contractual ROFR between the Development Owner and a Qualified Nonprofit Organization or Qualified Entity, along with evidence that such Qualified Nonprofit Organization or Qualified Entity is in good standing in the state of its organization;

(5) Documentation verifying the ROFR offer price of the Property:

(A) If the Development Owner receives an offer to purchase the Property from any buyer other than a Qualified Entity or Qualified Nonprofit Organization that the Development Owner would like to accept, the Development Owner may execute a sales contract, conditioned upon satisfaction of the ROFR requirement, and submit the executed sales contract to establish fair market value; or

(B) If the Development Owner chooses to establish fair market value using an appraisal, the Development Owner must submit an appraisal of the Property completed during the last three months prior to the date of submission of the ROFR request, establishing a value for the Property in compliance with Chapter 11, Subchapter D of this title (relating to Underwriting and Loan Policy) in effect at the time of the request. The appraisal should take into account the existing and continuing requirements to operate the Property under the LURA and any other restrictions that may exist. Department staff will review all materials within 30 calendar days of receipt. If, after the review, the Department does not agree with the fair market value proposed in the Development Owner's appraisal, the Department may order another appraisal at the Development Owner's expense; or

(C) If the LURA requires valuation through the Minimum Purchase Price calculation, submit documentation verifying the calculation of the Minimum Purchase Price as described in subsection (b)(2) of this section regardless of any existing offer or appraised value;

(6) Description of the Property, including all amenities;

(7) Copies of all documents imposing income, rental and other restrictions (non-TDHCA), if any, applicable to the operation of the Property;

(8) A current title commitment or policy not older than six months prior to the date of submission of the ROFR request or the most recent title policy along with a title endorsement or nothing further certificate not older than six months prior to the date of submission of the ROFR request;

(9) The most recent Physical Needs Assessment, pursuant to Tex. Gov't Code §2306.186(e) conducted by a Third-Party. If the PNA/SCR identifies the need for critical repairs that significantly impact habitability and tenant safety, the identified repairs and replacements must be resolved to the satisfaction of the Department before the Development will be considered eligible to proceed with a Right of First Refusal Request;

(10) Copy of the monthly operating statements, including income statements and balance sheets for the Property for the most recent 12 consecutive months (financial statements should identify amounts held in reserves);

(11) The three most recent consecutive annual operating statements (audited would be preferred);

(12) Detailed set of photographs of the Property, including interior and exterior of representative units and buildings, and the Property's grounds;

(13) Current and complete rent roll for the Property; and

(14) If any portion of the land or improvements is leased for other than residential purposes, copies of the commercial leases.

(d) Posting and offers. Within 30 business days of receipt of all required documentation, the Department will review the submitted documents and notify the Development Owner of any deficiencies. During that time, the Department will notify any Qualified Entity or as applicable any Qualified Nonprofit Organization identified by the Development Owner as having a contractual ROFR of the Development Owner's intent to sell. Once any deficiencies are resolved and the Development Owner and Department come to an agreement on the ROFR offer price of the Property, the Department will list the Property for sale on the Department's website and notify entities registered to the email list maintained by the Department of the availability of the Property at a price as determined under this section. The Department will notify the Development Owner when the Property has been listed. The ROFR posting period commences on the date the Property is posted for sale on the Department's website. During the ROFR posting period, a Qualified Nonprofit Organization or Qualified Entity can submit an offer to purchase as follows:

(1) if the LURA requires a 90 day ROFR posting period with no priority for any particular kind of Qualified Nonprofit Organization or tenant organization, any Qualified Nonprofit Organization or tenant organization may submit an offer to purchase the property; or

(2) If the LURA requires a two year ROFR posting period, a Qualified Nonprofit Organization may submit an offer to purchase the Property as follows:

(A) During the first six months of the ROFR posting period, only a Qualified Nonprofit Organization that is a Community Housing Development Organization (CHDO) under 24 CFR Part 92, or that is 100% owned by a CHDO, as approved by the Department, may submit an offer;

(B) During the next six months of the ROFR posting period, only a Qualified Nonprofit Organization as described by Tex. Gov't Code §2306.6706, or that is 100% owned by Qualified Nonprofit Organization as described by Tex. Gov't Code §2306.6706, or a tenant organization may submit an offer; and

(C) During the final 12 months of the ROFR posting period, any Qualified Nonprofit Organization may submit an offer; or

(3) If the LURA requires a 180-day ROFR posting period, a Qualified Entity may submit an offer to purchase the Property consistent with the subparagraphs of this paragraph.

(A) During the first 60 days of the ROFR posting period, only a Qualified Entity that is:

(i) a CHDO under 24 CFR Part 92, or that is controlled by CHDO, as approved by the Department, may submit an offer;

(ii) if the public housing authority or public facility corporation owns the fee title to the Development Owner's leasehold estate:

(I) a public housing authority; or

(II) a public facility corporation created by a public housing authority under Chapter 303, Local Government Code; or

(iii) controlled by an entity described by either clause (i) or (ii) of this subparagraph.

(B) During the second 60 days of the ROFR posting period, only a Qualified Entity as described by Tex. Gov't Code §2306.6706, or that is controlled by Qualified Entity as described by Tex. Gov't Code §2306.6706, or a tenant organization such may submit an offer.

(C) During the final 60 days of the ROFR posting period, any Qualified Entity may submit an offer.

(4) If the LURA does not specify a required ROFR posting timeframe or is unclear on the required ROFR posting timeframe and the required ROFR value is determined by the Minimum Purchase Price method, any Development that received a tax credit allocation prior to September 1, 1997, is required to post for a 90-day ROFR period, and any Development that received a tax credit allocation on or after September 1, 1997, and until September 1, 2015, is required to post for a two year ROFR, unless the LURA is amended under §10.405(b), or after September 1, 2015, is required to post for a 180-day ROFR period as described in Tex. Gov't Code, §2306.6726.

(e) Acceptance of offers. A Development Owner may accept or reject any offer received during the ROFR posting period; provided however, that to the extent the LURA gives priority to certain classifications of Qualified Nonprofit Organizations or Qualified Entities to make offers during certain portions of the ROFR posting period, the Development Owner can only negotiate a purchase contract with such classifications of entities during their respective periods. For example, during the CHDO priority period, the Development Owner may only accept an offer from and enter into negotiations with a Qualified Nonprofit Organization or Qualified Entity in that classification. A property may not be transferred under the ROFR process for less than the Minimum Purchase Price, but if the sequential negotiation created by statute yields a higher price, the higher price is permitted.

(f) Satisfaction of ROFR.

(1) A Development Owner that has posted a Property under the ROFR process is deemed to have satisfied the ROFR requirements in the following circumstances:

(A) The Development Owner does not receive any bona fide offers at or above the posted ROFR offer price (or, in the case of a posted minimum purchase price, at the price yielded by the sequential negotiation) from a Qualified Nonprofit Organization or Qualified Entity during the required ROFR posting period;

(B) A bona fide offer from a Qualified Nonprofit Organization or Qualified Entity is received at or above the posted ROFR offer price (or, in the case of a posted minimum purchase price, at the price yielded by the sequential negotiation), the Development Owner accepts the offer, the Qualified

Nonprofit Organization or Qualified Entity fails to close the purchase, the failure is determined to not be the fault of the Development Owner, and the Development Owner received no other bona fide offers from a Qualified Nonprofit Organization or Qualified Entity during the required ROFR posting period;

(C) A bona fide offer from a Qualified Nonprofit Organization or Qualified Entity is received at or above the posted ROFR offer price (or, in the case of a posted minimum purchase price, at the price yielded by the sequential negotiation), the Qualified Nonprofit Organization or Qualified Entity is not approved by the Department during the ownership transfer review due to issues identified during the Previous Participation Review process pursuant to Chapter 1, Subchapter C of this title (relating to Previous Participation and Executive Award Review and Advisory Committee), and the Development Owner received no other bona fide offers at or above the posted ROFR offer price (or, in the case of a posted minimum purchase price, at the price yielded by the sequential negotiation) from a Qualified Nonprofit Organization or Qualified Entity during the required ROFR posting period; or

(D) An offer from a Qualified Nonprofit Organization or Qualified Entity is received at a price below the posted ROFR offer price, and the Development Owner received no other bona fide offers from a Qualified Nonprofit Organization or Qualified Entity during the required ROFR posting period at or above the posted ROFR offer price; or

(2) A Development Owner with a LURA that identifies a specific Qualified Nonprofit Organization or Qualified Entity to be the beneficiary of the ROFR will satisfy the ROFR if:

(A) The identified beneficiary is in existence and conducting business;

(B) The Development Owner offers the Development to the identified beneficiary pursuant to the terms of the ROFR;

(C) If the ROFR includes a priority for a certain type of Qualified Entity (such as a CHDO) to have the first opportunity make an offer to acquire the Development, the identified beneficiary meets such classification; and

(D) The identified entity declines to purchase the Development in writing, and such evidence is submitted to and approved by the Department.

(g) Non-Satisfaction of ROFR. A Development Owner that has posted a Property under the ROFR process does not satisfy the ROFR requirements in the following circumstances:

(1) A bona fide offer from a Qualified Nonprofit Organization or Qualified Entity is received at or above the posted ROFR offer price (or, in the case of a posted minimum purchase price, at the price yielded by the sequential negotiation), and the Development Owner does not accept the offer;

(2) The LURA identifies a specific Qualified Nonprofit Organization or Qualified Entity to be the beneficiary of the ROFR, and such entity no longer exists or is no longer conducting business and the Development Owner received other bona fide offers at or above the posted ROFR offer price (or, in the case of a posted minimum purchase price, at the price yielded by the sequential negotiation) from a Qualified Nonprofit Organization or Qualified Entity during the ROFR posting

period and fails to accept any of such other offers;

(3) A bona fide offer from a Qualified Nonprofit Organization or Qualified Entity is received at or above the posted ROFR offer price (or, in the case of a posted minimum purchase price, at the price yielded by the sequential negotiation), the Development Owner accepts the offer, the Qualified Nonprofit Organization or Qualified Entity fails to close the purchase, the failure is determined to not be the fault of the Development Owner, the Development Owner received other bona fide offers from a Qualified Nonprofit Organization or Qualified Entity during the ROFR posting period and then fails to accept any of such other offers;

(4) A bona fide offer from a Qualified Nonprofit Organization or Qualified Entity is received at or above the posted ROFR offer price (or, in the case of a posted minimum purchase price, at the price yielded by the sequential negotiation), the Development Owner accepts the offer, the Qualified Nonprofit Organization or Qualified Entity fails to close the purchase, and such failure is determined to be the fault of the Development Owner;

(5) A bona fide offer from a Qualified Nonprofit Organization or Qualified Entity is received at or above the posted ROFR offer price (or, in the case of a posted minimum purchase price, at the price yielded by the sequential negotiation), the Qualified Nonprofit Organization or Qualified Entity is not approved by the Department during the ownership transfer review due to issues identified during the Previous Participation Review process pursuant to Chapter 1, Subchapter C of this title (relating to Previous Participation and Executive Award Review and Advisory Committee), the Development Owner received other bona fide offers from a Qualified Nonprofit Organization or Qualified Entity during the ROFR posting period and fails to accept any of such other offers; or

(6) An offer from a Qualified Nonprofit Organization or Qualified Entity is received at a price below the posted ROFR offer price, the Development Owner received other bona fide offers from a Qualified Nonprofit Organization or Qualified Entity during the ROFR posting period at or above the posted ROFR offer price (or, in the case of a posted minimum purchase price, at the price yielded by the sequential negotiation), and the Development Owner fails to accept any of such offers.

(h) Activities Following ROFR.

(1) If a Development Owner satisfies the ROFR requirement pursuant to subsection (f)(1) - (2) of this section, it may request a Preliminary Qualified Contract (if such opportunity is available under §10.408 of this Subchapter) or proceed with the sale to an entity that is not a Qualified Nonprofit Organization or Qualified Entity at or above the ROFR offer price (or, in the case of a posted minimum purchase price, at the price yielded by the sequential negotiation).

(2) Following notice that the ROFR requirement has been met, if the Development Owner does not post the Property for Qualified Contract in accordance with §10.408 of this Subchapter or sell the Property to an entity that is not a Qualified Nonprofit Organization or Qualified Entity within 24 months of the Department's written indication that the ROFR has been satisfied, the Development Owner must follow the ROFR process for any subsequent transfer.

(3) If the Department determines that the ROFR requirement has not been met during the ROFR posting period, the Owner may not re-post under this provision at a ROFR offer price that is higher than the originally posted ROFR offer price until 24 months has expired from the Department's

written indication that the ROFR has not been satisfied. The Development Owner may market the Property for sale and sell the Property to a Qualified Nonprofit Organization or Qualified Entity during this 24 month period in accordance with subsection (a)(1) of this section.

(i) Sale and closing.

(1) Prior to closing a sale of the Property, the Development Owner must obtain Department approval of the transfer through the ownership transfer process in accordance with §10.406 of this Subchapter (relating to Ownership Transfers (§2306.6713)). The request should include, among other required transfer documents outlined in the Post Award Activities Manual, the final sales contract with all amendments.

(2) If the closing price is materially less than the ROFR offering price or the terms and conditions of the sale change materially from what was submitted in the ROFR posting, in the Department's sole determination, the Development Owner must go through the ROFR process again with a revised ROFR offering price equal to the reduced closing price or adjusted terms and conditions based upon the revised terms, before disposing of the Property.

(j) Appeals. A Development Owner may appeal a staff decision in accordance with §11.902 of this title (relating to Appeals Process).

§10.408 Qualified Contract Requirements

(a) General. Pursuant to §42(h)(6) of the Code, after the end of the 14th year of the Compliance Period, the Development Owner of a Development utilizing Housing Tax Credits can request that the allocating agency find a buyer at the Qualified Contract Price. If a buyer cannot be located within one year, the Extended Use Period will expire. This section provides the procedures for the submittal and review of a Qualified Contract Request.

(b) Eligibility. Development Owners who received an award of credits on or after January 1, 2002, are not eligible to request a Qualified Contract prior to the 30 year anniversary of the date the property was placed in service (§2306.185); if the property's LURA indicates a commitment to an Extended Use Period beyond 30 years, the Development Owner is not eligible to request a Qualified Contract until the expiration of the Extended Use Period. Development Owners awarded credits prior to 2002 may submit a Qualified Contract Request at any time after the end of the year preceding the last year of the Initial Affordability Period, provided it is not precluded by the terms of the LURA, following the Department's determination that the Development Owner is eligible. The Initial Affordability Period starts concurrently with the credit period, which begins at placement-in-service or is deferred until the beginning of the next tax year, if there is an election. Unless the Development Owner has elected an Initial Affordability Period longer than the Compliance Period, as described in the LURA, this can commence at any time after the end of the 14th year of the Compliance Period. References in this section to actions which can occur after the 14th year of the Compliance Period shall refer, as applicable, to the year preceding the last year of the Initial Affordability Period, if the Development Owner elected an Initial Affordability Period longer than the Compliance Period.

(1) If there are multiple buildings placed in service in different years, the end of the Initial Affordability Period will be based upon the date the last building placed in service. For example, if

five buildings in the Development began their credit periods in 2005 and one began in 2006, the 15th year would be 2020.

(2) If a Development received an allocation in multiple years, the end of the Initial Affordability Period will be based upon the last year of a multiple allocation. For example, if a Development received its first allocation in 2004 and a subsequent allocation and began the credit period in 2006, the 15th year would be 2020.

(c) Preliminary Qualified Contract Request. All eligible Development Owners must file a Preliminary Qualified Contract Request.

(1) In addition to determining the basic eligibility described in subsection (b) of this section, the pre-request will be used to determine that:

(A) The Development does not have any uncorrected issues of noncompliance outside the corrective action period;

(B) There is a Right of First Refusal (ROFR) connected to the Development that has been satisfied; and

(C) The Compliance Period under the LURA has expired; and

(2) In order to assess the validity of the pre-request, the Development Owner must submit:

(A) Preliminary Request Form;

(B) Qualified Contract Pre-Request fee as outlined in §11.901 of this title (relating to Fee Schedule);

(C) Copy of all regulatory agreements or LURAs associated with the Property (non-TDHCA); and

(D) Copy of a Physical Needs Assessment (PNA), conducted by a Third Party, that is no more than 12 months older than the request date. If the PNA identifies the need for critical repairs that significantly impact habitability and tenant safety, the identified repairs and replacements must be resolved to the satisfaction of the Department before the Development will be considered eligible to submit a Qualified Contract Request.

(3) The pre-request will not bind the Development Owner to submit a Qualified Contract Request and does not start the One Year Period (1YP). A review of the pre-request will be conducted by the Department within 90 days of receipt of all documents and fees described in paragraph (2) of this subsection. If the Department determines that this stage is satisfied, a letter will be sent to the Development Owner stating that they are eligible to submit a Qualified Contract (QC) Request.

(d) Qualified Contract Request. A Development Owner may file a QC Request any time after written approval is received from the Department verifying that the Development Owner is eligible to submit the Request.

(1) Documentation that must be submitted with a Request is outlined in subparagraphs (A) - (P) of this paragraph:

(A) A completed application and certification;

(B) The Qualified Contract price calculation worksheets completed by a licensed Third-Party certified public accountant (CPA). The CPA shall certify that they have reviewed annual partnership tax returns for all years of operation, loan documents for all secured debt, and partnership agreements. They shall also certify that they are not being compensated for the assignment based upon a predetermined outcome;

(C) A thorough description of the Development, including all amenities;

(D) A description of all income, rental and other restrictions (non-TDHCA), if any, applicable to the operation of the Development;

(E) A current title report;

(F) A current appraisal with the effective date within six months of the date of the QC Request and consistent with Chapter 11, Subchapter D of this title (relating to Underwriting and Loan Policy);

(G) A current Phase I Environmental Site Assessment (and Phase II, if necessary) with the effective date within six months of the date of the QC Request and consistent with Chapter 11, Subchapter D of this title (relating to Underwriting and Loan Policy);

(H) A copy of the most recent Physical Needs Assessment of the property conducted by a Third Party, if different from the assessment submitted during the preliminary qualified contract request, consistent with Chapter 11, Subchapter D of this title;

(I) A copy of the monthly operating statements for the Development for the most recent 12 consecutive months;

(J) The three most recent consecutive annual operating statements (audited would be preferred) for the Development;

(K) A detailed set of photographs of the Development, including interior and exterior of representative units and buildings, and the property's grounds;

(L) A current and complete rent roll for the Development;

(M) A certification that all tenants in the Development have been notified in writing of the request for a Qualified Contract. A copy of the letter used for the notification must also be included;

(N) If any portion of the land or improvements is leased, copies of the leases;

(O) The Qualified Contract Fee as identified in §11.901 of this title (relating to Fee Schedule); and

(P) Additional information deemed necessary by the Department.

(2) Unless otherwise directed by the Department pursuant to subsection (g) of this section, the Development Owner shall contract with a broker to market and sell the Property. The Department

may, at its sole discretion, notify the Owner that the selected Broker is not approved by the Department. The fee for this service will be paid by the seller, not to exceed 6% of the QC Price.

(3) Within 90 days of the submission of a complete Request, the Department will notify the Development Owner in writing of the acceptance or rejection of the Development Owner's QC Price calculation. The Department will have one year from the date of the acceptance letter to find a Qualified Purchaser and present a QC. The Department's rejection of the Development Owner's QC Price calculation will be processed in accordance with subsection (e) of this section and the 1YP will commence as provided therein.

(e) Determination of Qualified Contract Price. The QC Price calculation is not the same as the Minimum Purchase Price calculation for the ROFR. The CPA contracted by the Development Owner will determine the QC Price in accordance with §42(h)(6)(F) of the Code taking the following into account:

(1) Outstanding indebtedness secured by, or with respect to, the building;

(2) Distributions to the Development Owner of any and all cash flow, including incentive management fees, capital contributions not reflected in outstanding indebtedness or adjusted investor equity, and reserve balance distributions or future anticipated distributions, but excluding payments of any eligible deferred developer fee. These distributions can only be confirmed by a review of all prior year tax returns for the Development;

(3) All equity contributions will be adjusted based upon the lesser of the consumer price index or 5% for each year, from the end of the year of the contribution to the end of year fourteen or the end of the year of the request for a QC Price if requested at the end of the year or the year prior if the request is made earlier than the last month of the year; and

(4) These guidelines are subject to change based upon future IRS Rulings and/or guidance on the determination of Development Owner distributions, equity contributions and/or any other element of the QC Price.

(f) Appeal of Qualified Contract Price. The Department reserves the right, at any time, to request additional information to document the QC Price calculation or other information submitted. If the documentation does not support the price indicated by the CPA hired by the Development Owner, the Department may engage its own CPA to perform a QC Price calculation and the cost of such service will be paid for by the Development Owner. If a Development Owner disagrees with the QC Price calculated by the Department, a Development Owner may appeal in writing in accordance with §11.902 of this title (relating to Appeals Process). A meeting will be arranged with representatives of the Development Owner, the Department and the CPA contracted by the Department to attempt to resolve the discrepancy. The 1YP will not begin until the Department and Development Owner have agreed to the QC Price in writing. Further appeals can be submitted in accordance with §11.902 of this title (relating to Appeals Process) and Tex. Gov't Code §2306.0321 and §2306.6715.

(g) Marketing of Property. By submitting a Request, the Development Owner grants the Department the authority to market the Development and provide Development information to interested parties. Development information will consist of pictures of the Development, location,

amenities, number of Units, age of building, etc. Development Owner or broker contact information will also be provided to interested parties. The Development Owner is responsible for providing staff any requested information to assist with site visits and inspections. Marketing of the Development will continue until such time that a Qualified Contract is presented or the 1YP has expired. Notwithstanding subsection (d)(2) of this section, the Department reserves the right to contract directly with a Third Party in marketing the Development. Cost of such service, including a broker's fee, will be paid for by the existing Development Owner. The Department must have continuous cooperation from the Development Owner. Lack of cooperation will cause the process to cease and the Development Owner will be required to comply with requirements of the LURA for the remainder of the Extended Use Period. Responsibilities of the Development Owner include but are not limited to the items described in paragraphs (1) - (3) of this subsection. The Development Owner must:

(1) Allow access to the Property and tenant files;

(2) Keep the Department informed of potential purchasers; and

(3) Notify the Department of any offers to purchase.

(h) Presentation of a Qualified Contract. If the Department finds a Qualified Purchaser willing to present an offer to purchase the property for an amount at or above the QC Price, the Development Owner may accept the offer and enter into a commercially reasonable form of earnest money agreement or other contract of sale for the property and provide a reasonable time for necessary due diligence and closing of the purchase. If the Development Owner chooses not to accept the QC offer that the Department presents, the QC request will be closed and the possibility of terminating the Extended Use Period through the Qualified Contract process is eliminated; the Property remains bound by the provisions of the LURA for the remainder of the Extended Use Period. If the Development Owner decides to sell the development for the QC Price pursuant to a QC, the purchaser must complete all requirements of an ownership transfer request and be approved by the Department prior to closing on the purchase, but the consummation of such a sale is not required for the LURA to continue to bind the Development for the remainder of the Extended Use Period.

(1) The Department will attempt to procure a QC only once during the Extended Use Period. If the transaction closes under the contract, the new Development Owner will be required to fulfill the requirements of the LURA for the remainder of the Extended Use Period.

(2) If the Department fails to present a QC before the end of the 1YP, the Department will file a release of the LURA and the Development will no longer be restricted to low-income requirements and compliance. However, in accordance with §42(h)(6)(E)(ii) of the Code, for a three-year period commencing on the termination of the Extended Use Period, the Development Owner may not evict or displace tenants of Low-Income Units for reasons other than good cause and will not be permitted to increase rents beyond the maximum tax credit rents. Additionally, the Development Owner should submit to the Department a request to terminate the LURA and evidence, in the form of a signed certification and a copy of the letter, to be approved by the Department, that the tenants in the Development have been notified in writing that the LURA will be terminated and have been informed of their protections during the three-year time frame.

(3) Prior to the Department filing a release of the LURA, the Development Owner must correct all instances of noncompliance at the Development.

(i) Compliance Monitoring during Extended Use Period. For Developments that continue to be bound by the LURA and remain affordable after the end of the Compliance Period, the Department will monitor in accordance with the applicable requirements in Subchapters F and G of this chapter (relating to Uniform Multifamily Rules).

1f

BOARD ACTION REQUEST

SECTION 811 PROGRAM

JANUARY 13, 2022

Presentation, discussion, and possible action on the proposed repeal of 10 TAC Chapter 8, Project Rental Assistance Program Rule, the proposed new 10 TAC Chapter 8, Project Rental Assistance Program Rule, and directing their publication for public comment in the Texas Register

RECOMMENDED ACTION

WHEREAS, the U.S. Department of Housing and Urban Development (HUD) awarded the Texas Department of Housing and Community Affairs (the Department) with awards of Section 811 Project Rental Assistance Program (811 PRA Program) funds, to provide rental assistance for extremely low-income Texans with disabilities;

WHEREAS, the Department administers the 811 PRA Program in a specific manner that necessitates this Project Rental Assistance Program Rule;

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

WHEREAS, such proposed rulemaking will be published for public comment in compliance with the State Administrative Procedures Act in the *Texas Register* from January 28, 2022, through February 28, 2022, and subsequently returned to the Board for final adoption; and

NOW, therefore, it is hereby

RESOLVED, that the proposed repeal of 10 TAC Chapter 8, and proposed new 10 TAC Chapter 8, Project Rental Assistance Program Rule, together with the preambles presented to this meeting, are hereby approved for publication in the *Texas Register* for public comment; and

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

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

BACKGROUND

Attached to this Board Action Request is the staff draft of the Project Rental Assistance Program Rule (811 Rule), which reflects staff's recommendations for the Board's consideration. The 811 Rule identifies the differences between the existing 811 Rule in the Texas Administrative Code and the proposed new 811 Rule in blackline format. The 811 Rule submitted to the *Texas Register* will be a proposed new version of the 811 Rule, and will not identify changes between the current rule and the proposed new rule. The Department's Public Comment page will also include a blackline version of the proposed 811 Rule as approved by the Board to facilitate stakeholders' engagement with the changes.

This rule considers staff and stakeholder input establishing greater clarity in program operations for properties that will result in fewer compliance findings and a better experience for participating households. Specifically, it provides additional guidance on how to comply with federal requirements, updates definitions used by the US Department of Housing and Urban Development, and aligns with changes that have been made to other Department rules since the 811 Rule was first adopted.

Upon Board approval, the proposed 811 Rule will be posted to the Department's website and published in the *Texas Register*. In accordance with the State Administrative Procedures Act, public comment will be accepted upon the rule's publication in the *Texas* Register from January 28, 2022, through February 28, 2022.

Staff will consider and prepare reasoned responses to public comment as part of the final action on the 811 Rule that will be brought before the Board on March 10, 2022, for approval, adoption, and subsequent publication in the *Texas Register*.

Attachment A: Preamble, including required analysis, for proposed repeal of 10 TAC Chapter 8, the Project Rental Assistance Rule

The Texas Department of Housing and Community Affairs (the Department) proposed the repeal of 10 TAC Chapter 8, Project Rental Assistance Program Rule, §§ 8.1, 8.2, 8.3, 8.4, 8.5, 8.6, and 8.7. The purpose of the proposed repeal is to provide clarification of the existing rule through new rulemaking action.

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

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.
1. Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the proposed repeal would be in effect, the proposed repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous readoption making changes to an existing activity, administration of the Section 811 PRA Program.

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

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

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

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

6. The proposed action will repeal an existing regulation, but is associated with a simultaneous readoption making changes to an existing activity, administration of the Section 811 Program.

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

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

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

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

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

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).
The Department has evaluated the proposed repeal as to its possible effects on local economies and has determined that for the first five years the proposed repeal would be in effect there would be no economic effect on local employment; therefore no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5).
Mr. Wilkinson has determined that, for each year of the first five years the proposed repeal is in effect, the public benefit anticipated as a result of the repealed section would be increased clarity and improved access to the 811 Program. There will not be economic costs to individuals required to comply with the repealed section.

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

REQUEST FOR PUBLIC COMMENT. The public comment period will be held January 28, 2022, through February 28, 2022, to receive input on the proposed repealed section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Spencer Duran, Director of Section 811 Program, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or email spencer.duran@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. Austin local time February 28, 2022.

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

Attachment B: Preamble, including required analysis, for proposed new 10 TAC Chapter 8, the Project Rental Assistance Rule

The Texas Department of Housing and Community Affairs (the Department) proposed new 10 TAC Chapter 8, Project Rental Assistance Program Rule, §§ 8.1, 8.2, 8.3, 8.4, 8.5, 8.6, and 8.7. The purpose of the proposed action is to provide clarification of the existing rule through new rulemaking action.

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

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.
1. Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the proposed new rule would be in effect, the rule does not create or eliminate a government program, but relates to the repeal, and simultaneous readoption making changes to an existing activity, administration of the Section 811 PRA Program.

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

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

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

5. The proposed new rule is not creating a new regulation, except that it is replacing the existing rule simultaneously to provide for revisions.

6. The proposed action will repeal an existing regulation, but is associated with a simultaneous readoption making changes to an existing activity, administration of the Section 811 Program.

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

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

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

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

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

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).
The Department has evaluated the new rule as to its possible effects on local economies and has determined that for the first five years the new rule would be in effect there would be no economic effect on local employment; therefore no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5).
Mr. Wilkinson has determined that, for each year of the first five years the new rule is in effect, the public benefit anticipated as a result of the new rule would be increased clarity and improved access to the 811 Program. There will not be economic costs to individuals required to comply with the new rule.

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

REQUEST FOR PUBLIC COMMENT. The public comment period will be held January 28, 2022, through February 28, 2022, to receive input on the proposed new rule. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Spencer Duran, Director of Section 811 Program, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or email spencer.duran@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. Austin local time February 28, 2022.

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

TITLE 10 COMMUNITY DEVELOPMENT

PART 1 TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 8, PROJECT RENTAL ASSISTANCE PROGRAM RULE

§8.1 Purpose

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

§8.2 Definitions

Terms defined in this chapter apply to the 811 PRA Program administered by the Department. Any capitalized terms not specifically mentioned in this section or any section referenced in this document shall have the meaning ascribed to them in or for the purposes of the Program Requirements or in Chapters 1, 2, 10, or 11 of the Texas Administrative Code, as applicable.

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

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

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

(4) Eligible Applicant--an Extremely Low-Income Person with Disabilities, between the ages of 18 and ~~62~~61 and~~,~~ who meets the requirements of the Target Population, and Extremely Low Income Families, which includes at least one Person with a Disability, who is between the ages of 18 and ~~62~~ 61 and who meets the requirements of the Target Population, at the time of admission. The Person with a Disability must be eligible for community-based, long-term care services as provided through Medicaid waivers, Medicaid state plan options, comparable state funded services or other appropriate services related to the type of disability(ies) targeted under the Inter-Agency Partnership Agreement.

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

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

(7) Eligible Tenant--an Eligible Applicant, also referred to as an Eligible Family, who is being referred to available Assisted Units in accordance with the Inter-Agency Partnership Agreement and for whom community-based, long-term care services are available at time of referral. Such services are voluntary; referral shall not be based on willingness to accept such services. Eligible Tenant also means an Extremely Low-Income Person with a Disability, between the ages of 18 and ~~62~~ 61 at the time of referral, who meets the requirements of the Target Population and Extremely Low-Income Families, which includes at least one Person with a Disability, who is between the ages of 18 and ~~62~~ 61 at the time of referral and who meets the requirements of the Target Population. ~~Also referred to as an Eligible Family.~~

(8) Enterprise Income Verification System (EIV)--a HUD web-based application which provides Owners with employment, unemployment and Social Security benefit information for tenants participating in U.S. Department of Housing and Urban Development assisted housing programs.

(9~~8~~) Existing Development--for purposes of 811 PRA Program participation, a property within the Department's Multifamily Program ~~Department's~~ Applicant's portfolio that is not actively applying for multifamily ~~funds~~ award at the time, and is being considered to serve as the Eligible Multifamily Property as part of an Applicant's or an Affiliate's current multifamily application. For full applications made on or after January 1, 2018, Existing Developments do not include properties for which the only Ownership interest is through the participation of a Historically Underutilized Business, which owns less than 50% of an Existing Development.

(10~~9~~) Extremely Low-Income--a household whose annual income does not exceed thirty percent (30%) of the median income for the area, as determined by HUD's Extremely-Low Income Limit: families whose incomes do not exceed the higher of The Federal Poverty Level; or 30 percent of Area Median Income~~.~~, as determined by HUD, with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than thirty percent (30%) of the median income for the area if HUD finds that such variations are necessary because of unusually high or low family incomes. HUD's income exclusions, as defined under 24 CFR §5.609 (as amended), apply in determining income eligibility and Eligible Tenant's rent. ~~a household whose annual income does not exceed thirty percent (30%) of the median income for the area, as determined by HUD, with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than thirty percent (30%) of the median income for the area if HUD finds that such variations are necessary because of unusually high or low family incomes. HUD's income exclusions, as defined under 24 CFR §5.609 (as amended), apply in determining income eligibility and Eligible Tenant's rent.~~

(11~~0~~1) HUD--the U. S. Department of Housing and Urban Development.

(12~~1~~1) Inter-Agency Partnership Agreement--the Inter-Agency Partnership Agreement between TDHCA and State Health and Human Services Medicaid Agency(ies) that provides a formal structure for collaboration to participate in TDHCA's Section 811 Project Rental Assistance

Program to develop permanent supportive housing for Extremely Low-Income Persons with Disabilities.

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

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

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

(165) Participation Agreement--(also known as Property Agreement) that agreement to be executed by the Owner and the Department reflecting the agreement of participation in the Section 811 Project Rental Assistance Program with regards to a given number of assisted housing units on a certain multifamily rental housing property~~ies~~.

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

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

(198) Program Requirements--means but is not limited to: the Participation Agreement ~~(sometimes called the Property Agreement)~~; Tex. Gov't Code Ann. Chapter 2306; the applicable state program rules under Title 10, Chapters 1, 2, and 8~~Parts 1, 2, and 8~~ of the Texas Administrative Code; the Owner & Property Management ~~Manual;~~ Manual; the Cooperative Agreement~~Part I of the Rental Assistance Contract attached as Exhibit 8 to the Cooperative Agreement; Part II of the Rental Assistance Contract attached as Exhibit 9 to the Cooperative Agreement; the Use Agreement; Program Guidelines attached as Exhibit 5 to the Cooperative Agreement~~; HUD Notice 2013-24 issued on August 23, 2013; Section 811 of the Cranston-Gonzales National Affordable Housing Act (42 U.S.C. §8013(b)(3)(A)), as amended by the Frank Melville Supportive Housing Act of 2010 (Public Law 111-374; Consolidated and Further Continuing Appropriations Act of 2012 (Public Law 112-55); Notice of Funding Availability (NOFA) for Fiscal Year 2012 Section 811 Project Rental Assistance Program published on May 15, 2012; ~~Notice of Funding Availability~~ (NOFA) for Fiscal Year~~s~~ 2013 Section 811 Project Rental Assistance Program published on March 4, 2014, for Fiscal Year 2019 Project Rental Assistance Section 811 Program for Persons with Disabilities published on October 8, 2019, and Technical Corrections to NOFA; and all laws applicable to the Program.

(20~~19~~) Proposed Development--the Development proposes to be awarded funds or an allocation as part of a Multifamily application.

(21~~0~~) Rental Assistance Contract (RAC)--the HUD contract (form HUD-92235-PRA and form HUD-92237-PRA) by and between ~~TDHCA~~ the Department and the Owner of the Eligible Multifamily Property which sets forth additional terms, conditions and duties of the Parties with respect to the Eligible Multifamily Property and the Assisted Units.

(22~~1~~) Rental Assistance Payments--the payment made by ~~TDHCA~~ the Department to Owners as provided in the Rental Assistance Contract. Where the Assisted Units are leased to an Eligible Tenant, the payment is the difference between the Contract Rent and the Tenant Rent. An additional payment is made to the Eligible Tenant when the Utility Allowance is greater than the Total Tenant Payment. A vacancy payment may be made to the Owner when an Assisted Unit~~s~~ is vacant, in accordance with the RAC and other Program Requirements.

(23~~2~~) Target Population--the specific group or groups of Eligible Applicants and Eligible Tenants described in ~~TDHCA's~~ the Department's Inter-Agency Partnership Agreement who are intended to be solely served or to be prioritized under ~~TDHCA's~~ the Department's Program.

(24~~3~~) Tenant Rent--the rent as defined in 24 CFR Part 5.

(25~~4~~) Total Tenant Payment--the payment as defined in 24 CFR Part 5.

(26~~5~~) Use Agreement--an agreement by and between ~~TDHCA~~ the Department and Owner in the form prescribed by HUD under Exhibit 10 of the Cooperative Agreement (form HUD-92238-PRA) encumbering the Eligible Multifamily Property with restrictions and guidelines under the Program for operating Assisted Units during a thirty (30) year period, to be recorded in the official public property records in the county where the Eligible Multifamily Property is located.

§8.3 Participation as a Proposed Development

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

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

(2) The Development Site must be located in one of the following areas: Austin-Round Rock MSA, Brownsville-Harlingen MSA, Corpus Christi MSA; Dallas-Fort Worth-Arlington MSA; El Paso MSA; Houston-The Woodlands-Sugar Land MSA; McAllen-Edinburg-Mission MSA; or San Antonio-New Braunfels MSA; and

(3) No new construction of structures shall be located in the mapped 500-year floodplain or in the 100-year floodplain according to FEMA's Flood Insurance Rate Maps (FIRM). Rehabilitation

Developments that have previously received HUD funding or obtained HUD insurance do not have to follow subparagraphs (A) - (C) of this paragraph. Except for sites located in coastal high hazard areas (V Zones) or regulatory floodways, existing structures are eligible in these areas, but must meet the following requirements:

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

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

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

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

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

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

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

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

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

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

§8.4 Qualification Requirements for Existing Developments

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

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

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

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

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

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

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

~~**§8.5 List of Qualified Existing Developments**~~

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

§8.5~~6~~ Disposition of Conflicts with other Department Rules

To the extent that any conflicts arise between this rule and the rules provided in Chapter 1, Administration, Chapter 2 Enforcement, Chapter 10, Uniform Multifamily Rules, Chapter 11, Qualified Allocation Plan, and Chapter 13, Multifamily Direct Loan Rule, federal requirements will first prevail, after which the requirements of the other Multifamily Rules will take precedence.

§8.6~~7~~ Program Regulations and Requirements

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

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

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

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

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

(2) H 2012-26, Extension of Housing Notice 2011-25, Enterprise Income Verification (EIV) & You Brochure-Requirements for Distribution and Use;

(3) H 2012-22, Further Encouragement for O/As to Adopt Optional Smoke-Free Housing Policies;

(4) H 2012-11, State Registered Lifetime Sex Offenders in Federally Assisted Housing;

(5) H 2012-09, Supplemental Information to Application for Assistance Regarding Identification of Family Member, Friend or Other Persons or Organization Supportive of a Tenant for Occupancy in HUD Assisted Housing; ~~or~~

(6) H 2017-05, Violence Against Women Act (VAWA) Reauthorization Act of 2013, Additional Guidance for Multifamily Owners and Management Agents; or~~.~~

(7) H 2013-24, Section 811 Project Rental Assistance (PRA) Occupancy Interim Notice.

(e) Use Agreements. The Owner must execute the Use Agreement~~, as found in Exhibit 10 of the Cooperative Agreement, before~~ at the execution of the RAC and comply with the following:

(1) Use Agreement ~~should~~ must be properly recorded according to local laws in the official public records on the Eligible Multifamily Property. The Owner shall provide to ~~TDHCA~~ the Department within 30 days of its receipt of the recorded Use Agreement, a copy of the executed, recorded Use Agreement.

(2) From the date the Property Agreement is entered into, the Owner shall not enter into any future use agreements or other subsidy programs that would diminish the number of Assisted Units that can be placed on the Eligible Multifamily Property.

(3) ~~TDHCA~~ The Department will enforce the provisions of the Use Agreement and RAC consistent with HUD's internal control and fraud monitoring requirements.

(f) TRACS & EIV, ~~Tenant Certifications,~~ Reporting, Tenant Certifications and Compliance.

(1) TRACS & EIV Systems. The Owner shall have appropriate ~~software~~ methods to access the Tenant Rental Assistance Certification System (TRACS) and the EIV System. The Owner shall be responsible for ensuring Program information is entered into these systems. TRACS is the only system by which an Eligible Multifamily Property can request Project Rental Assistance payments.

(2) EIV Policies and Procedures. Upon the execution of a RAC, the Owner must submit a copy of the property's EIV Policies and Procedures to the Department for review. If deficiencies are identified, the Owner will be required to correct and resubmit to the Department until all deficiencies have been properly corrected.

(~~2~~3) Outside Vendors. The Owner has the right to refuse assistance from outside vendors hired by ~~TDHCA~~the Department, but is still required to satisfy the Program Requirements.

(~~3~~4) Tenant Certification. The Owner shall transmit Eligible Tenant's certification and recertification data, transmit voucher data, and communicate errors electronically in a form consistent with HUD reporting requirements for HUD Secure Systems.

(5) Compliance Reviews. The Department's Compliance Division will conduct a monitoring review in conjunction with the review of any other Department administered housing program layered with the Development. If the Development is layered with Housing Tax Credits and has exceeded the 15-year Federal Compliance Period, monitoring reviews of the Program will still be conducted at least every three years.

(g) Tenant Selection and Screening.

(1) Target Population. ~~TDHCA~~ The Department will screen Eligible Applicants for compliance with ~~TDHCA's~~ the Department's Program Target Population criteria and do an initial screening for Program Requirements. The Inter-Agency Partnership Agreement describes the specific Target Population eligible for ~~TDHCA's~~ the Department's Program. The Target Population may be revised, with HUD approval.

(2) Tenant Selection Plan. Upon the execution of the Participation Agreement, the Owner will submit the Eligible Multifamily Property's Tenant Selection Criteria, as defined by and in accordance with 10 TAC §10.~~610~~ 8.02~~(relating to Written Policies and Procedures)~~, to ~~TDHCA~~ the Department for approval. ~~TDHCA will review the Tenant Selection Plan for compliance with existing Tenant Selection Criteria requirements, and consistent with TDHCA's Section 811 PRA Participant Selection Plan.~~

(3) Tenant Eligibility and Selection. The Owner is responsible for ultimate eligibility and selection of an Eligible Tenant and will comply with the following:

(A) The Owner must accept referrals of an Eligible Tenant from ~~TDHCA~~ the Department and retain copies of all applications received. The Owner is responsible for notifying the prospective Eligible Tenant and ~~TDHCA~~ the Department in writing regarding any denial of a prospective Eligible Tenant's application to an Eligible Multifamily Property and the reason for said denial. In the notice of denial, the Owner is responsible for notifying the Eligible Tenant of the right to dispute a denial, as outlined in HUD Handbook 4350.3. The results of the dispute must be sent to the Eligible Tenant and ~~TDHCA~~ the Department in writing.

(B) The Owner is responsible for determining age of the qualifying member of the Eligible Families. Eligible Family member must be at least 18 years of age and under the age of 62.

(C) The Owner is responsible for criminal background screening as required by HUD Handbook 4350.3.

(D) Verification of Income, Assets, and Deductions. The Owner is responsible for determining income of Eligible Families. The Owner shall verify income through the Enterprise Income Verification (EIV) System per HUD Handbook 4350.3 and HUD Notices. The Owner must certify an Eligible Tenant and Eligible Families at least annually and verify their income. Use of the EIV system as third party verification is not acceptable for the Housing Tax Credit or Multifamily Direct Loan Program ~~If the household is also designated under the Housing Tax Credit or other Department administered program, the Owner must obtain third party, or first hand, verification of income in addition to using the EIV system~~.

(h) Rental Assistance Contracts.

(1) Applicability. If requested by ~~TDHCA~~the Department, the Owner shall enter into a RAC. Not all properties with an Owner Participation Agreement will have a RAC, but when notified by ~~TDHCA~~the Department, the Eligible Multifamily Property must enter into a RAC(s) and begin serving Eligible Applicants.

(2) Notice. The Department ~~TDHCA~~ will provide written notice to the Owner if and when it intends to enter into a RAC with the Owner.

(3) Assisted Units. The Department ~~TDHCA~~ will determine the number of Units (up to the maximum listed in the Property Agreement) to place in the RAC(s) which may be fewer than the number of Units identified in the Property Agreement.

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

(5) If no additional applicants are referred to the Development, the Department may begin a RAC amendment to reduce the number of Assisted Units. An Owner who has an amended, executed RAC must continue to notify the Department of units that become vacant that are committed under the Agreement.~~If no additional applicants are referred to the property, the RAC may be amended to reduce the number of Assisted Units. Owners who have an executed RAC must continue to notify TDHCA of any vacancies for units not under a RAC if additional units were committed under the Agreement. For instance, if the Owner has committed 10 units under the Agreement and only has a RAC for five Assisted Units, the Owner must continue to notify TDHCA of all vacancies until there is a RAC for 10 Assisted Units.~~

(6) Amendments. The Owner agrees to amend the RAC(s) upon request of the Department~~TDHCA~~. Some examples are amendments that may either increase or decrease the total number of Assisted Units or increase or decrease the associated bedroom sizes; multiple amendments to the RAC may occur over time. The total number of Assisted Units in the RAC will not exceed the number of Assisted Units committed in the Participation Agreement, unless by request of the Owner.

(7) Contract Term. The Department~~TDHCA~~ will specify the effective date of the RAC. During the first year of the RAC and with approval from HUD, the Owner may request to align the anniversary date of the RAC with existing federal or state housing programs layered on the Eligible Multifamily Property.

(8) Rent Increase. Owners must submit a written request to the Department ~~TDHCA~~ 30 days prior to the anniversary date of the RAC to request an annual increase.

(9) Utility Allowance. The RAC will identify the ~~TD~~Department~~HCA~~ approved Utility Allowance ~~being~~ used for the Assisted Units for the Eligible Multifamily Property. The Owner must notify the Department ~~TDHCA~~ if there are changes to the Utility Allowance calculation methodology being used.

(10) Termination. Although the Department ~~TDHCA~~ has discretion to terminate a RAC due to good cause, an Owner cannot opt-out of a RAC. The RAC survives a foreclosure, assignment, sale in lieu of foreclosure, or sale of the Eligible Multifamily Property to the extent allowed by law.

(11) Foreclosure of Eligible Multifamily Property. Upon foreclosure, assignment, sale in lieu of foreclosure, or sale of the Eligible Multifamily Property to the extent allowed by law:

(A) The RAC shall be transferred to new owner by contractual agreement or by the new owner's consent to comply with the RAC, as applicable;

(B) Rental Assistance Payments will continue uninterrupted in accordance with the terms of the RAC; and

(C) Voluntary and involuntary transfers or conveyances of property must adhere to the ownership transfer process in 10 TAC §10.406~~,~~ (as amended), regarding Ownership Transfer requests.

(i) Advertising and Affirmative Marketing.

(1) Advertising Materials. Upon the execution of the Property Agreement, the Owner must provide materials for the purpose of advertising the Eligible Multifamily Property, including but not limited to:

(A) Depictions of the units including floor plans;

(B) Brochures;

(C) Tenant selection criteria;

(D) House rules;

(E) Number and size of available units;

(F) Number of units with accessible features (including, but not limited to units designed to meet Uniform Federal Accessibility Standards, the Fair Housing Act, or the Americans with Disabilities Act);

(G) Documentation on access to transportation and commercial facilities; and

(H) A description of onsite amenities.

(2) Affirmative Marketing. The Department ~~TDHCA~~ and its service partners ~~will be~~are responsible for affirmatively marketing the Program to Eligible Applicants.

(3) At any time, ~~TDHCA~~ the Department may choose to advertise the Eligible Multifamily Property, even if the Eligible Multifamily Property has not yet entered into a RAC.

(j) Leasing Activities.

(1) Segregation of Assisted Units. The Owner must take actions or adopt procedures to ensure that the Assisted Units are not segregated to one area of a building (such as on a particular floor or part of a floor in a building) or in certain sections within the Eligible Multifamily Property.

(2) Form of Lease. The Owner will use the HUD Section 811 PRA Model Lease (HUD-92236-PRA), Exhibit 11 of the Cooperative Agreement and any Department approved Addendums, for all Eligible Families once a RAC is signed. The initial lease will be for not less than one year.

(3) Communication. Owners are required to document in writing all communication between the Eligible Tenant and the Owner, or Owner-designated agent regarding applications, notifications, evictions, complaints, non-renewals and move outs.

(4) Lease Renewals and Changes. The Owner must notify the Department ~~TDHCA~~ of renewals of leases with Eligible Families and any changes to the terms of the lease.

(5) Development Policies. Upon the execution of the RAC, an Owner is required to submit a copy of the Development Policies (House Rules) to the Department for review. If deficiencies are noted, the Development will be required to correct and resubmit to the Department until all deficiencies have been properly corrected. The Owner is required to send a copy of amendments to the House Rules to the Department before implementing changes.

(k) Rent.

(1) Tenant Rent Payment. ~~The Owner is responsible for remitting any Tenant Rent payment due to the Eligible Tenant if the Utility Allowance exceeds the Total Tenant Payment~~. The Owner will determine the Tenant Rent payment of the Eligible Tenant, based on HUD Handbook 4350.3 and HUD Notices, and is responsible for collecting the Tenant Rent payment.

(2) Utility Reimbursement. The Owner is responsible for remitting any Tenant Rent payment due to the Eligible Tenant if the Utility Allowance exceeds the Total Tenant Payment no later than the 5th day of each month, beginning 30 days after initial move in.

(3~~2~~) Rent Increase. Owner must provide the Eligible Tenant with at least 30 days notice before increasing rent, in accordance with HUD Handbook 4350.3.

(4~~3~~) Rent Restrictions. Owner will comply with the following rent restrictions:

(A) If ~~the~~ a Unit at the Development has a ~~TDHCA~~ Department enforced rent restriction that is equal to or lower than Fair Market Rent (FMR), the initial rent is the maximum ~~TDHCA~~ Department enforced rent restriction ~~at the Development~~for that Unit, not to exceed the 60% Area Median Family Income limit.

(B) If there is no existing ~~TDHCA~~ Department enforced rent restriction on the Unit, or the existing ~~TDHCA~~ Department enforced rent restriction is higher than FMR, the Department ~~TDHCA~~ will work with the Owner to conduct a market analysis of the Eligible Multifamily Property to support that a rent higher than FMR is attainable.

(C) After the signing of the original RAC with the Department~~TDHCA~~, the Owner may request a new anniversary date to be consistent with other rent restrictions on the Eligible Multifamily Property allowed by the Department~~TDHCA~~.

(D) After the signing of the original RAC, upon request from the Owner to the Department~~TDHCA~~, Rents may be adjusted on the anniversary date of the RAC.

(E) Adjustments may not result in higher rents charged for an Assisted Unit as compared to a non-assisted unit. The calculation or methodology used for the annual increase amount will be identified in the Eligible Multifamily Property's RAC.

(F) Owner can submit a request for a rent increase or to change the contract anniversary date using HUD Form 92458.

(l) Vacancy; ~~Transfers; Eviction;~~ Household Changes; Transfers; Eviction.

(1) Holding Assisted Units. Once an Owner signs a RAC, the Eligible Multifamily Property must hold an available Assisted Unit for 60 days while a qualified Eligible Applicant applies for and moves into the Assisted Unit.

(2) Notification. Owner will notify the Department ~~TDHCA~~ of determination of ineligibility or the termination of any participating Eligible Families or any member of a participating Eligible Family.

(3) Initial Lease-up. Owners of a newly constructed, acquired and/or rehabilitated Eligible Multifamily Property must notify the Department ~~TDHCA~~ no later than 180 days before the Eligible Multifamily Property will be available for initial move-in. Failure to reserve the agreed upon number of Assisted Units for Eligible Families will be cited as noncompliance, be referred for administrative penalties, and be considered possible grounds for Debarment.

(4) Vacancy. ~~Once a RAC is executed~~Upon execution of the RAC, the Owner must notify the Department ~~TDHCA~~ of ~~the~~ any vacancy of ~~any~~ an Assisted Unit~~, including those that have not previously been occupied by an Eligible Tenant,~~at the Eligible Multifamily Property as soon as possible, ~~not to exceed seven calendar days from when the Owner learns that an Assisted Unit will become available~~becomes aware of the eligible Unit availability. ~~TDHCA will acknowledge receipt of the notice by responding to the Owner in writing within three business days from when the notice is received by the Department stating whether or not TDHCA will be accepting the available Unit, and making a subsequent referral for the Unit.~~ Once the Department acknowledges receipt of the notice, the Department will notify the Owner within three business days if the Unit is acceptable and submit a referral. If the qualifying Eligible Tenant vacates the Assisted Unit, ~~TDHCA~~ the Department will determine if the remaining family member(s) is~~are~~ eligible for continued assistance from the Program.

(5) Vacancy Payment. ~~An Owner of an Eligible Multifamily Property that is not under a RAC may not receive a vacancy payment. TDHCA may make vacancy payments not to exceed 80% of the Contract Rent, during this time to the Eligible Multifamily Property, potentially for up to 60 days. After 60 days, the Owner may lease that Assisted Unit to a non-Eligible Tenant.~~ The Department may provide vacancy payments that cannot exceed 80% of the Contract Rent for up to 60 days from the effective date of the RAC. After the 60 days, the Owner may lease the Assisted Unit to a non-Eligible Tenant. Developments without an executed RAC are not eligible for vacancy payments.

(6) Household Changes~~; Transfers~~. ~~Owners must notify TDHCA if the Eligible Tenant requests an Assisted Unit transfer.~~ Owner will notify the Department ~~TDHCA~~ of any ~~household~~ changes in family composition in an Assisted Unit within three business days. If the change results in the Assisted Unit being smaller or larger than is appropriate for the Eligible Family size, the Owner must refer to the Department's written policies regarding family size, unit transfers and waitlist management.

~~If the Owner determines that, because of a change in household size, an Assisted Unit is smaller than appropriate for the Eligible Tenant to which it is leased or that the Assisted Unit is larger than appropriate, the Owner shall refer to TDHCA's written policies regarding family size, unit transfers, and waitlist management.~~ If the Department discovers the Eligible Family is ineligible for the size of the Assisted Unit, the Owner will be notified but Rental Assistance Payments will not be reduced or terminated until the Eligible Family can be transferred to an appropriate sized Assisted Unit. ~~If the household is determined by TDHCA to no longer be eligible, TDHCA will notify the Owner. Rental Assistance Payments with respect to the Assisted Unit will not be reduced or terminated until the eligible household has been transferred to an appropriately sized Assisted Unit.~~

(7) Transfers. Owner~~s~~ must ~~-~~ notify the Department if the Eligible Family requests a transfer to another Assisted Unit within the Development. The Department will determine if the Eligible Family qualifies for the unit transfer, if the new Unit is eligible as an Assisted Unit and then notify the Owner. If the Department determines the Eligible Family is ineligible for the size of the Assisted Unit, the Department -will notify the Owner and Rental Assistance Payments will not be reduced or terminated until the Eligible Family can be transferred to an appropriate sized Assisted Unit.

(~~8~~7) Notice to Vacate and~~Eviction and~~ Nonrenewal. Owners are required to notify the Department at least three calendar days prior to issuing a Notice to Vacate or a Notice of Non-Renewal to the Eligible Family. Notices must be compliance with HUD Handbook 4350.3 8-13(B)(2) and HUD Notices. A copy of the applicable Notice must be submitted via email to 811info@tdhca.state.tx.us.

(A) Owner is required to notify the Department within seven calendar days of when the Development is notified that the Eligible Family will vacate or in the event that the Eligible Family vacates without notice, upon discovery that the Assisted Unit is vacant. Notification of vacancy must be submitted to 811info@tdhca.state.tx.us.

(B) Upon move out, Owner must submit a move out disposition to the Department to ensure proper processing of the security deposit per HUD Handbook 4350.3 6-18.

~~by sending a copy of the applicable notice via email to the 811 TDHCA Point of Contact, as identified in the Owner Participation Agreement, at least three calendar days before providing a Notice to Vacate or a Notice of Nonrenewal to the Tenant.~~

(m) Construction Standards, ~~Accessibility,~~ Inspections, Repair and Maintenance, and Accessibility ~~and Monitoring~~.

(1) Construction Standards. Upon execution of a RAC, the Eligible Multifamily Property shall be required to conform to Uniform Physical Conditions Standards (UPCS) which are uniform national standards established by HUD for housing that is decent, safe, sanitary, and in good repair. The site, building exterior, building systems, dwelling units and common areas of the Eligible Multifamily Property, as more specifically described in 24 CFR §5.703, must be inspected in any physical inspection of the property.

(2) Inspection. Prior to occupancy, the Eligible Tenant must be given the opportunity to be present for the move-in unit inspection.

(3) Repair and Maintenance. Owner will perform all repair and maintenance functions, including ordinary and extraordinary maintenance; will replace capital items; and will maintain the premises and equipment, appurtenant thereto, in good repair, safe and sanitary condition consistent with HUD and ~~TDHCA~~ Department requirements.

(4) Accessibility. Owner must ensure that the Eligible Multifamily Property ~~will~~ meets or exceeds the accessibility requirements under 24 CFR Part 8, which implements Section 504 of the Rehabilitation Act of 1973; the Fair Housing Act Design Manual; Titles II and III of the Americans with Disabilities Act (42 U.S.C. §§12131 - 12189), as implemented by the U.S. Department of Justice regulations at 28 CFR Parts 35 and 36; and the Federal Fair Housing Act as implemented by HUD at 24 CFR Part 100. However, Assisted Units can consist of a mix of accessible units for those persons with physical disabilities and non-accessible units for those persons without physical disabilities.

(n) Owner Training. The Owner is ~~obligated~~ required to train all property management staff engaging with Eligible Families on the requirements of the Program. ~~The Owner will ensure that any new property management staff who is involved in serving Eligible Families review training materials found on the Program's webpage including webinars, manuals and checklists.~~ Owner training must include, but is not limited to the HUD Handbook 4350.3 and the Department's webpage at https://www.tdhca.state.tx.us/section-811-pra/index.htm.

(o) Reporting Requirements. Owner shall submit to ~~TDHCA~~ the Department such reports on the operation and performance of the Program as required by the Participation Agreement and as may be required by ~~TDHCA~~the Department. Owner shall provide ~~TDHCA~~ the Department with all reports necessary for ~~TDHCA's~~ the Department's compliance with 24 CFR Part 5, or any other federal or state law or regulation.

(p) Environmental Laws and Regulations.

(1) Compliance with Laws and Regulations. Owner must comply with, as applicable, any federal, state, or local law, statute, ordinance, or regulation, whether now or hereafter in effect, pertaining to health, industrial hygiene, or the environmental conditions on, under, or about the Land or the Improvements, including without limitation, the following, as now or hereafter amended:

(A) Hazardous Materials Transportation Act (49 U.S.C.A. §1801 et seq.);

(B) Insecticide Fungicide and Rodenticide Act (7 U.S.C.A. §136 et seq.);

(C) National Environmental Policy Act (42 U.S.C. §4321 et seq.) (NEPA);

(D) Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C.A. §9601 et seq.) (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (Pub. L. No. 99-499, 100 Stat. 1613, as amended Pub. L. No. 107-377) (Superfund or SARA);

(E) Resource, Conservation and Recovery Act (24 U.S.C.A. §6901 et seq.) (RCRA);

(F) Toxic Substances Control Act, (15 U.S.C.A. §2601 et seq.);

(G) Emergency Planning and Community Right to Know Act of 1986 (42 U.S.C.A. §1101 et seq.);

(H) Clean Air Act (42 U.S.C.A. §7401 et seq.) (CAA);

(I) Federal Water Pollution Control Act and amendments (33 U.S.C.A. §1251 et seq.) (Clean Water Act or CWA);

(J) Any corresponding state laws or ordinances including but not limited to Chapter 26 of the Texas Water Code regarding Water Quality Control;

(K) Texas Solid Waste Disposal Act (Chapter 361 of the Texas Health & Safety Code, formerly Tex. Rev. Civ. Stat. Ann. Art. 4477-7);

(L) Comprehensive Municipal Solid Waste Management, Resource Recovery, and Conservation Act (Chapter 363 of the Texas Health & Safety Code);

(M) County Solid Waste Control Act (Chapter 364 of the Texas Health & Safety Code);

(N) Texas Clean Air Act (Chapter 382 of the Texas Health & Safety Code);

(O) Hazardous Communication Act (Chapter 502 of the Texas Health & Safety Code); and

(P) Regulations, rules, guidelines, or standards promulgated pursuant to such laws, statute and regulations, as such statutes, regulations, rules, guidelines, and standards, as amended from time to time.

(2) Environmental Review. The environmental effects of each activity carried out with funds provided under this Agreement must be assessed in accordance with the provisions of the Program Requirements, National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. §432 et seq.). Each such activity must have an environmental review completed and support documentation prepared in accordance with 10 TAC §10.305 complying with the NEPA, including screening for vapor encroachment following American Society for Testing and Materials (ASTM) 2600-10.

(q) Labor Standards.

(1) Owner understands and acknowledges that every contract for the construction (rehabilitation, adaptive reuse, or new construction) of housing that includes 12 or more units assisted with Program funds must contain provisions in accordance with Davis-Bacon Regulations.

(2) Owner understands and acknowledges that every contract involving the employment of mechanics and laborers of said construction shall be subject to the provisions, as applicable, of the Contract Work Hours and Safety Standards Act, as amended (40 U.S.C. §§3701 to 3708), Copeland (Anti-Kickback) Act (40 U.S.C. §3145), the Fair Labor Standards Act of 1938, as amended (29 U.S.C. §201, et seq.) and Davis-Bacon and Related Acts (40 U.S.C. §§3141 - 3148).

(3) Owner further acknowledges that if more housing units are constructed than the anticipated 11 or fewer housing units, it is the Owner's responsibility to ensure that all the housing units will comply with these federal labor standards and requirements under the Davis-Bacon Act as supplemented by the U.S. Department of Labor regulations ("Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction" at 29 CFR Part 5).

(4) Owner also understands that structuring the proposed assistance for the rehabilitation or construction of housing under this Agreement to avoid the applicability of the Davis-Bacon Act is prohibited.

(5) Construction contractors and subcontractors must comply with regulations issued under these federal acts described herein, with other federal laws, regulations pertaining to labor standards, including but not limited to "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction" at 29 CFR Part 5, HUD Federal Labor Provisions (HUD form 4010).

(r) Lead-Based Paint. Housing assisted with Program funds is subject to the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4821 - 4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. §§4851 - 4856), and implementing regulations Title X of the 1992 Housing and Community Development Act at 24 CFR Part 35, (including subparts A, B, J, K, M and R). Owner shall also comply with the Lead: Renovation, Repair, and Painting Program Final Rule, 40 CFR Part 745 and

Response to Children with Environmental Intervention Blood Lead Levels. Failure to comply with the lead-based paint requirements may be subject to sanctions and penalties pursuant to 24 CFR §35.170.

(s) Limited English Proficiency. Owner shall comply with the requirements in Executive Order 13166 of August 11, 2000, reprinted at 65 FR 50121, August 16, 2000, Improving Access to Services for Persons with Limited English Proficiency and 67 FR 41455. To ensure compliance the Owner must take reasonable steps to insure that LEP persons have meaningful access to the program and activities. Meaningful access may entail providing language assistance services, including oral and written translation, where necessary.

(t) Procurement of Recovered Materials. Owner, its subrecipients, and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired by the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

(u) Drug-Free Workplace. Owner will follow the Drug-Free Workplace Act of 1988 (41 U.S.C §701, et seq.) and HUD's implementing regulations at 2 CFR Part 2429. Owner affirms by executing the Certification Regarding Drug-Free Workplace Requirements attached hereto as Addendum B, that it is implementing the Drug-Free Workplace Act of 1988.

(v) ~~Nondiscrimination~~Equal Opportunity, Fair Housing, Nondiscrimination, and Equal Access ~~and Equal Opportunity~~.

(1) Equal Opportunity. The Owner agrees to carry out an Equal Employment Opportunity Program in keeping with the principles as provided in President's Executive Order 11246 of September 24, 1965, as amended, and its implementing regulations at 41 CFR Part 60.

(2) Fair Housing Poster. The Owner is required to place a fair housing poster (HUD-928.1 and HUD-9281.A) provided by ~~TDHCA~~ the Department in the leasing office, online, or anywhere else rental activities occur pursuant to 24 CFR §200.620(e). A copy of the poster in Spanish and in English can be found at http://www.tdhca.state.tx.us/section-811-pra/participating-agents.htm.

(3) Nondiscrimination Laws. Owner shall ensure that no person shall, on the grounds of race, color, religion, sex, disability, familial status, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any Program or activity funded in whole or in part with funds provided under this Agreement. Owner shall follow Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. §2000d et seq.), the Age Discrimination Act of 1975 (42 U.S.C. §6101 et seq.) and its implementing regulations at 24 CFR Part 146, Titles II and III of the Americans with Disabilities Act (42 U.S.C. §§12131 - 12189; 47 U.S.C. §§155, 201,

218 and 255) as implemented by U.S. Department of Justice at 28 CFR Parts 35 and 36, Section 527 of the National Housing Act (12 U.S.C. §1701z-22), the Equal Credit Opportunity Act (15 U.S.C. §1691 et seq.), the Equal Opportunity in Housing (Executive Order 11063 as amended by Executive Order 12259) and its implementing regulations at 24 CFR Part 107 and The Fair Housing Act (42 U.S.C. §3601 et seq.), as implemented by HUD at 24 CFR Part 100-115.

(4) Affirmatively Furthering Fair Housing. By Owner's execution of the Agreement and pursuant to Section 808(e)(5) of the Fair Housing Act, Owner agrees to use funds in a manner that follows the State of Texas' "Analysis of Impediments" or "Assessment of Fair Housing", as applicable and as amended, and will maintain records in this regard.

(5) Protections for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking. Subpart L of 24 CFR part 5 shall apply to the Assisted Units in Eligible Multifamily Properties.

(w) Security of Confidential Information.

(1) Systems Confidentiality Protocols. Owner must undertake customary and industry standard efforts to ensure that the systems developed and utilized under this Agreement protect the confidentiality of every Eligible Applicant's and Eligible Tenant's personal and financial information, both electronic and paper, including credit reports, whether the information is received from the Eligible Applicants, Tenants or from another source. Owner must undertake customary and industry standard efforts so that neither they nor their systems vendors disclose any Eligible Applicant's or Tenant's personal or financial information to any third party, except for authorized personnel in accordance with this Agreement.

(2) Protected Health Information. If Owner collects or receives documentation for disability, medical records or any other medical information in the course of administering the Program, Owner shall comply with the Protected Health Information state and federal laws and regulations, as applicable, under 10 TAC §1.24, (relating to Protected Health Information), Chapter 181 of the Texas Health and Safety Code, the Health Insurance Portability and Accountability Act of 1996 (HIPAA) (Pub. L. 104-191, 110 Stat. 1936, enacted August 21, 1996), and the HIPAA Privacy Rules (45 CFR Part 160 and Subparts A and E of 45 CFR Part 164). ~~When accessing confidential information under this Program, Owner hereby acknowledges and further agrees to comply with the requirements under the Interagency Data Use Agreement between TDHCA and the Texas Health and Human Services Agencies dated October 1, 2015, as amended.~~

(x) Real Property Acquisition and Relocation. Except as otherwise provided by federal statute, HUD-assisted programs or projects are subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Uniform Act or URA) (42 U.S.C. §4601), and the government wide implementing regulations issued by the U.S. Department of Transportation at 49 CFR Part 24. The Uniform Act's protections and assistance apply to acquisitions of real property and displacements resulting from the acquisition, rehabilitation, or demolition of real property for federal or federally assisted programs or projects. With certain limited exceptions, real property acquisitions for a HUD-assisted program or project must comply with 49 CFR Part 24, Subpart B. To be exempt from the

URA's acquisition policies, real property acquisitions conducted without the threat or use of eminent domain, commonly referred to as voluntary acquisitions, the Owner must satisfy the applicable requirements of 49 CFR §24.101(b)(1) - (5). Evidence of compliance with these requirements must be maintained by the recipient. The URA's relocation requirements remain applicable to any tenant who is displaced by an acquisition that meets the requirements of 49 CFR §24.101(b)(1) - (5). The relocation requirements of the Uniform Act, and its implementing regulations at 49 CFR Part 24, cover any person who moves permanently from real property or moves personal property from real property as a direct result of acquisition, rehabilitation, or demolition for a program or project receiving HUD assistance. While there are no statutory provisions for temporary relocation under the URA, the URA regulations recognize that there are circumstances where a person will not be permanently displaced but may need to be moved from a project for a short period of time. Appendix A of the URA regulation (49 CFR §24.2(a)(9)(ii)(D)) explains that any tenant who has been temporarily relocated for a period beyond one year must be contacted by the displacing agency and offered URA relocation assistance.

(y) Dispute Resolution; Conflict Management.

(1) Eligible Tenant Disputes. The Owner or Owner's representative is required to participate in a Dispute Resolution process, as required by HUD, to resolve an appeal of an Eligible Tenant dispute with the Owner.

(2) Agreement Disputes. In accordance with Tex. Gov't Code 2306.082, it is ~~TDHCA's~~ the Department's policy to encourage the use of appropriate alternative dispute resolution procedures (ADR) under the Governmental Dispute Resolution Act and the Negotiated Rulemaking Act (Chapters 2009 and 2006 respectively, Tex. Gov't Code), to assist in the fair and expeditious resolution of internal and external disputes involving the ~~TDHCA~~ Department and the use of negotiated rulemaking procedures for the adoption of ~~TDHCA~~ Department rules. As described in Chapter 154, Civil Practices and Remedies Code, ADR procedures include mediation. Except as prohibited by ~~TDHCA's~~ the Department's ex parte communications policy, ~~TDHCA~~ the Department encourages informal communications between ~~TDHCA~~ Department staff and the Owner, to exchange information and informally resolve disputes. ~~TDHCA~~ The Department also has administrative appeals processes to fairly and expeditiously resolve disputes. If at any time the Owner would like to engage ~~TDHCA~~ the Department in an ADR procedure, the Owner may send a proposal to ~~TDHCA's~~ the Department's Dispute Resolution Coordinator. For additional information on ~~TDHCA's~~ the Department's ADR policy, see ~~TDHCA's~~ the Department's Alternative Dispute Resolution and Negotiated Rulemaking at 10 TAC §1.17.

(3) Conflict Management. The purpose of the Conflict Management process is to address any concerns that Owner or Owner's agent or representative may have with an Eligible Family. At any time, an Eligible Family may choose to give consent to their Section 811 service coordinator to work directly with the property manager of the Eligible Multifamily Property. However, such consent cannot be made a condition of tenancy.

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BOARD ACTION REQUEST

MULTIFAMILY FINANCE DIVISION

JANUARY 13, 2022

Presentation, discussion, and possible action on an order adopting the repeal of 10 TAC Chapter 13, Multifamily Direct Loan Rule, and an order adopting the new 10 TAC Chapter 13, Multifamily Direct Loan Rule, and directing its publication in the *Texas Register* for adoption

RECOMMENDED ACTION

WHEREAS, the Texas Department of Housing and Community Affairs (the Department) is authorized to make awards of loans or grants to developers for the State of Texas;

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

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

WHEREAS, public comment was accepted on this rule and such rulemaking is being adopted without substantive changes for publication in the *Texas Register*;

NOW, therefore, it is hereby

RESOLVED, that the final order adopting the repeal of 10 TAC Chapter 13, Multifamily Direct Loan Rule, and adopting new 10 TAC Chapter 13, Multifamily Direct Loan Rule, together with the preamble presented to this meeting, is hereby ordered and approved for publication in the *Texas Register* and its adoption; and

FURTHER RESOLVED, that the Executive Director and his designees be and each of them are hereby authorized, empowered, and directed, for and on behalf of the Department, to cause the 10 TAC Chapter 13, Multifamily Direct Loan Rule, together with the preamble in the form presented to this meeting, to be published in the *Texas Register* and, in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing, including requested revisions to the preambles.

BACKGROUND

Attached to this Board Action Request is the final 10 TAC Chapter 13, Multifamily Direct Loan Rule. Changes to the Multifamily Direct Loan Rule are generally clarifications that staff identified as necessary to provide clear information to Applicants.

The Board approved the proposed repeal and replacement of 10 TAC Chapter 13, Multifamily Direct Loan Rule, at the Board meeting on October 14, 2021, as published in the *Texas Register* for public comment on October 29, 2021. Public comment, in accordance with the Citizen Participation Plan requirements in 24 CFR §91.105, was accepted between 8:00 a.m. Austin local time on October 18, 2021, and 5:00 p.m. Austin local time on November 18, 2021. Staff has reviewed all comments received and provided a reasoned response to these comments in the attached preamble. The Department also made several non-substantive grammar corrections in the version that is presented in the Board Book and if adopted today, that will be sent to the *Texas Register* as final.

Preamble, including required analysis, for adoption of the repeal of 10 TAC Chapter 13, the Multifamily Direct Loan Rule

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of 10 TAC Chapter 13, Multifamily Direct Loan Rule, §§ 13.1, 13.2, 13.3, 13.4, 13.5, 13.6, 13.7, 13.8, 13.9, 13.10, 13.11, 13.12, and 13.13. The purpose of the repeal is to provide for clarification of the existing rule through new rulemaking action.

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

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

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

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

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

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

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

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

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

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

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.
The Department has evaluated this repeal and determined that the repeal will not create an economic effect on small or micro-businesses or rural communities.

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

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).
The Department has evaluated the repeal as to its possible effects on local economies and has determined that for the first five years the repeal would be in effect there would be no economic effect on local employment; therefore no local employment impact statement is

required to be prepared for the rule.

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

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

SUMMARY OF PUBLIC COMMENT. The public comment period was held from October 18 to November 18, 2021, to receive input on the proposed repealed section. No comments on the repeal were received.

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

10 TAC Chapter 13, Multifamily Direct Loan Rule

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

Preamble, including required analysis, for adoption of new 10 TAC Chapter 13, Multifamily Direct Loan Rule

The Texas Department of Housing and Community Affairs (the Department) adopts with changes new 10 TAC Chapter 13, Multifamily Direct Loan Rule, §§ 13.1, 13.2, 13.3, 13.4, 13.5, 13.6, 13.7, 13.8, 13.9, 13.10, 13.11, 13.12, and 13.13. The purpose of the new sections is to provide compliance with Tex. Gov't Code §2306.111 and to update the rule to: clarify program requirements in multiple sections, codify in rule practices of the division, and change citations to align with changes to other multifamily rules. In general, most changes are corrective in nature, intended to gain consistency with state or federal rules, delete duplicative language or provisions, correct or update rule references, and clarify language or processes to more adequately communicate the language or process.

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

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

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

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

1. The rule does not create or eliminate a government program, but relates to the readoption of this rule which makes changes to an existing activity, administration of the Multifamily Direct Loan Program.

2. The new rule does not require a change in work that would require the creation of new employee positions nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.

3. The rule changes do not require additional future legislative appropriations.

4. The rule changes will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

5. The rule is not creating a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions.

6. The rule will not expand, limit, or repeal an existing regulation.

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

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

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002. The Department, in drafting this rule, has attempted to reduce any adverse economic effect on small or micro-

business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code §2306.111.

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

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

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

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

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

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

The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the rule may provide a possible positive economic effect on local employment in association with this rule since MFDL

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

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

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

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

SUMMARY OF PUBLIC COMMENT. The public comment period was held from October 18, 2021, to November 18, 2021, to receive input on the proposed new sections. Comment was received from: Zimmerman Properties (Commenter 1) and Foundation Communities (Commenter 2). A summary of the comments and the Department's response is provided.

§13.2(14) - Qualifying Unit (Commenter 1)
SUMMARY OF COMMENT: Commenter requests that a case-by-case determination be made when applicants are combining assistance from Project-Based Vouchers with MFDL Units.
STAFF RESPONSE: Though layering 24 CFR Part 983 Project-Based Vouchers on MFDL-funded units is generally prohibited by federal rules, the Department agrees that when such cases arise, it will evaluate each Application on a case-by-case basis. A responsive change to the rule has been made.

13.3(e) - Ineligible Costs (Commenter 2)

SUMMARY OF COMMENT: Commenter requests clarity around added language concerning other federal funds' inclusion in the subsidy limit calculation performed for each application.
STAFF RESPONSE: Other federal sources, as defined by the applicable fund source, have to be taken into consideration when determining the required amount of MFDL Units. Staff concurs with this suggestion, but the clarity requested is more appropriately addressed in the Multifamily Direct Loan Calculator; responsive adjustments have been made to the Calculator available on the Department's website. Additional reference to the calculator has been added to the rule in response to this comment.

13.3(e)(4) - Ineligible Costs for Equipment required for construction (Commenter 2)
SUMMARY OF COMMENT: Commenter requests clarity on ineligibility of equipment required for construction.
STAFF RESPONSE: Guidance on this federal requirement is available in the citations listed, but more specifically, at 24 CFR 571.207(b)(1)(iii). No changes to the rule are recommended in response to this comment.

13.3(e)(15) - Ineligible Costs from another source (Commenter 2)
SUMMARY OF COMMENT: Commenter requests explanation of how the ineligible costs in this section do not conflict with §13.3(e)(14) which allows costs incurred up to 24 months prior to Contract.
STAFF RESPONSE: The ineligible costs noted in this section are prohibited by federal regulation regardless of the time they were incurred. No changes to the rule are recommended in response to this comment.

§13.4(a)(1)(A) - Soft Repayment Set-Aside (Commenter 1)
SUMMARY OF COMMENT: Commenter requests more flexibility in the Soft Repayment Set-Aside by including requirements in the NOFA instead of the rule, and removing the requirement that eligibility be limited to Supportive Housing Applications or those without subsidy unrestricted by another fund source, including HTC.
STAFF RESPONSE: Staff concurs. The rule has been revised to reflect that all MFDL Applications will be able to access more flexible payment terms formerly limited to the Soft Repayment Set-Aside Applications, and both NHTF and HOME funds may be layered on HTC units.

13.11(c)(2) - Required Site Control Agreement Provisions
SUMMARY OF COMMENT: Commenter requests clarification that NHTF does not prohibit choice limiting activities prior to the environmental clearance.
STAFF RESPONSE: Clarification language has been included.

STATUTORY AUTHORITY. The new sections are proposed pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules. Except as described herein the proposed new sections affect no other code, article, or statute. The rule has been reviewed by legal counsel and found to be a valid exercise of the Department's legal authority.

CHAPTER 13 MULTIFAMILY DIRECT LOAN RULE

§13.1. Purpose.

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

(b) General. This chapter applies to Applications submitted for, and award of, MFDL funds by the Department and establishes the general requirements associated with the application and award process for such funds. Applicants pursuing MFDL assistance from the Department are required to certify, among other things, that they have familiarized themselves with all applicable rules that govern that specific program including, but not limited to this chapter, Chapter 1 of this title (relating to Administration), Chapter 2 of this title (relating to Enforcement), Chapter 10 of this title (relating to Uniform Multifamily Rules), Chapter 11 of this title (relating to Qualified Allocation Plan (QAP)), and Chapter 12 of this title (relating to Multifamily Housing Revenue Bond Rules) as applicable. The Applicant is also required to certify that it is familiar with the requirements of any other federal, state, or local financing sources that it identifies in its Application. Any conflict with rules, regulations, or statutes will be resolved on a case by case basis that allows for compliance with all requirements. Conflicts that cannot be resolved may result in Application ineligibility, with the right to an Appeal as provided in 10 TAC §1.7 of this title (relating to Appeals Process) or 10 TAC §11.902 of this title (relating to Appeals Process for the Housing Tax Credit program), as applicable.

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

(1) Waivers for Layered Developments. For Direct Loan Developments layered with Competitive Housing Tax Credits, an Applicant may request, at the latest at Application submission, that the Department amend its NOFA, amend its Consolidated Plan or One Year Action Plan, or ask HUD to grant a waiver of its regulations, if such request will not impact the timing of the Application's

review, nor alter the scoring or satisfaction of threshold requirements for the Competitive Housing Tax Credits. Such requests will be presented to the Department's Board. The Board may not waive rules that are federally required, or that have been incorporated as a required part of the Department's Consolidated Plan or One Year Action Plan (OYAP) to the U.S. Department of Housing and Urban Development (HUD), unless those Plans are so amended by the earlier of a date the NOFA stops accepting Applications or by an earlier date that is identified by the Board;

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

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

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

§13.2. Definitions.

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

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

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

expenses from the CHDO (e.g., a voting board member cannot also be a paid executive).

(3) Construction Completion or Development Period--The Development Period is the time allowed to complete construction, which includes, without limitation, that necessary title transfer requirements and construction work has been fully performed, the certificate(s) of occupancy (if New Construction or reconstruction), Certificate of Substantial Completion (AIA Form G704), Form HUD-92485 (for instances in which a federally insured HUD loan is utilized), or equivalent notice has been issued.

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

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

(6) HOME--the HOME Investment Partnership Program, authorized by Title II of the Cranston-Gonzalez National Affordable Housing Act,

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

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

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

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

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

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

Owner;

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

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

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

(11) NHTF--National Housing Trust Fund.

(12) NOFA--Notice of Funding Availability.

(13) NSP--Neighborhood Stabilization Program.

(14) Qualifying Unit--means a Unit designated for Multifamily Direct Loan use and occupancy in compliance with State and federal regulations, as set forth in the Contract. Qualifying Units may not also have a Project-Based Voucher issued under 24 CFR Part 983, unless the Application contains permission from the Public and Indian Housing Division of HUD for the layered units to use a utility allowance that is not the Public Housing Utility Allowance, or the Applicant has received permission from the Community Planning and Development Division of HUD for the layered units to use the Public Housing Utility Allowance.

(15) Relocation Plan--A residential anti-displacement and relocation assistance plan and budget in an Application that addresses residential and non-residential displacement and complies with the Uniform Relocation Assistance and Real Property Act as implemented at 49 CFR Part 24, HUD Handbook 1378, and the TDHCA Relocation Handbook. Additionally, some HOME and NSP funded Developments must comply with Section 104(d) of the Housing and Community Development Act of 1974 (as amended), and 24 CFR Part 42 (as modified for NSP and HOME American Rescue Plan (ARP) funds), which requires a one-for-one replacement of occupied and vacant, occupiable low- and moderate-income dwelling units demolished or converted. Guidance is on the Department's website at https://www.tdhca.state.tx.us/multifamily/home/index.htm. The Relocation Plan must be in form and substance consistent with requirements of the Department.

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

(17) Site and Neighborhood Standards--HUD requirements for New Construction or

reconstruction Developments funded by NHTF (24 CFR §93.150) or New Construction Developments funded by HOME (24 CFR §92.202). Proposed Developments must provide evidence that the Development will comply with these federal regulations in the Application. Guidance for successful submissions is provided on the Department website at https://www.tdhca.state.tx.us/multifamily/apply-for-funds.htm. Applications that are unable to comply with requirements in 24 CFR §983.57(e)(2) and (3) will not be eligible for HOME or NHTF.

(18) State Affordability Period--The LURA Term as described in the MFDL contract and loan documents and as required by the Department in accordance with the Chapter 2306, Texas Gov't Code which may be an additional period after the Federal Affordability Period.

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

(A) After the payment of:

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

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

(iii) Operating expenses actually incurred by the borrower for the Development during the period with an appropriate adjustment for an allocable share of property taxes and insurance premiums;

(iv) Recurring maintenance expenses actually incurred by the borrower for the Development during the period; and

(v) All other obligations of the Development approved by the Department; and

(B) After the segregation of an amount equal to the aggregate of all special funds required to be maintained for the Development; and

(C) Excluding payment of:

(i) All sums due or currently required to be paid under the terms of any subordinate liens against the property;

(ii) Any development fees that are deferred including those in eligible basis; and

(iii) Any payments or obligations to the borrower, ownership entities of the borrower, related party entities; any payment to the management company exceeding 5% of the effective gross income; incentive management fee; asset management fees; or any other expenses or payments that shall be negotiated between the Department and borrower.

(20) TCAP Repayment Funds--(TCAP RF) the Tax Credit Assistance Payment program funds.

§13.3. General Loan Requirements.

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

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

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

(d) Eligible and Ineligible Activities.

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

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

(A) Adaptive Reuse Developments subject to the requirements of 36 CFR 67, implementing Section 47 of the Internal Revenue Code;

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

(C) Except as specifically described in the NOFA, Developments in which the Applicant will not be directly leasing Units to residents.

(e) Ineligible Costs. All costs associated with the Development and known by the Applicant must be disclosed as part of the Application. Other federal funds will be included in the Final Direct Loan Eligible Costs located in Table 1 of the Direct Loan Calculator as part of the required per-

unit subsidy limit calculation. Costs ineligible for reimbursement with Direct Loan funds in accordance with 24 CFR Parts 91, 92, 93, and 570, and 2 CFR Part 200, as federally required or identified in the NOFA, include but are not limited to:

(1) Offsite costs;

(2) Stored Materials;

(3) Site Amenities, such as swimming pools and decking, landscaping, playgrounds, and athletic courts;

(4) The purchase of ~~E~~equipment required for construction;

(5) Furnishings and Furniture, Fixtures and Equipment (FF&E) required for the Development;

(6) Detached Community Buildings;

(7) Carports and/or parking garages, unless attached as a feature of the Unit;

(8) Commercial Space costs;

(9) Personal Property Taxes;

(10) TDHCA fees;

(11) Syndication and organizational costs;

(12) Reserve Accounts, except Initial Operating Deficit Reserve Accounts;

(13) Delinquent fees, taxes, or charges;

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

(15) Costs that have been allocated to or paid by another fund source (except for soft costs that are attributable to the entire project as specifically identified in the applicable federal rule, or for TCAP RF if specifically allowed by the NOFA), including but not limited to, contingency, including soft cost contingency, and general partner loans and advances;

(16) Deferred Developer Fee;

(17) Texas Bond Review Board (BRB) fees;

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

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

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

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

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

(1) Fixed Set-Asides:

(A) General / Soft Repayment Set-Aside. ~~The Soft Repayment Set-Aside will be funded primarily with NHTF allocations received by the Department. The Soft Repayment Set-Aside is reserved for Developments providing Supportive Housing and/or extremely low income and rent restrictions that would not exist otherwise.~~

(i) Applicants seeking to qualify for NHTF under this set-aside must propose Developments in which all Units assisted with MFDL funds are available for households earning the greater of the poverty rate or 30% AMI, and have rents no higher than the rent limits for extremely low-income tenants in 24 CFR §93.302(b)~~, and meet the requirements of clause (i) or (ii) of this subparagraph:~~

(ii) Applicants seeking to qualify for HOME under this set-aside must propose Developments in which all Units assisted with MFDL funds are available to households earning no more than 80% AMI and have rents no higher than the rent limits 24 CFR §92.2.

(iii) A portion of the General / Soft Repayment Set-Aside may be reallocated into the CHDO Set-Aside in order to fully fund a CHDO award that exceeds the remaining amount in the CHDO Set-Aside.

~~(i) The Supportive Housing requirements in 10 TAC §11.1(d)(1242); or~~
~~(ii) The requirements in subclauses (I) - (III) of this clause, for which all Units assisted with MFDL funds:~~
~~(I) May not also be receiving any project-based subsidy;~~
~~(II) May not be receiving tenant-based voucher or tenant-based rental assistance, to the extent that there are other available Units within the Development that the voucher-holder may occupy; and~~

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

(B) CHDO Set-Aside. Unless waived or reduced by HUD, a portion of the Department's annual HOME allocation, will be set aside for eligible CHDOs meeting the requirements of the definition of Community Housing Development Organization in 24 CFR §92.2 and 10 TAC §13.2(2) of this chapter. Applicants under the CHDO Set-Aside must be proposing to develop housing on Development Sites located outside Participating Jurisdictions (PJ), unless the award is made within a Persons with Disabilities (PWD) Set-Aside, or the requirement under Tex. Gov't Code §2306.111(c)(1) has been waived by the Governor. A grant for CHDO operating expenses may be awarded in conjunction with an award of MFDL funds under this Set-Aside, if no other CHDO operating grants have been awarded to the Applicant in the same Calendar year, in accordance with 24 CFR §92.208. Applications under the CHDO Set-Aside may not have a for profit special limited partner within the ownership organization chart.

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

(2) Flexible Set-Asides:

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

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

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

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

(b) Regional Allocation and Collapse. All funds subject to Tex. Gov't Code §2306.111 or as described to HUD in planning documents will be allocated to regions and potentially subregions

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

(1) After funds have been made available regionally and the period for regional allocation has expired, remaining funds within each respective Set-Aside may collapse and be pooled together on a date identified in the NOFA. All Applications received prior to these collapse dates will continue to hold their priority unless they are withdrawn, terminated, suspended, or funded.

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

(3) In instances where the RAF would result in regional or subregional allocations insufficient to fund an Application, the Department may use an alternative method of distribution, including an early collapse, revised formula or other methods as approved by the Board, and reflected in the NOFA.

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

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

(1) Priority 1. Applications not layered with current year Competitive Housing Tax Credits (HTC) that are received prior to the Market Analysis Delivery Date as described in 10 TAC §11.2 of this

title (relating to Program Calendar for Housing Tax Credits). Priority 1 Applications may be prioritized based on score within their respective Set-Aside for a certain time period, for certain populations, or for certain geographical areas, as further described in the NOFA.

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

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

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

§13.5. Application and Award Process.

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

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

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

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

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

(2) "The Buyer does not have the power of eminent domain relating to the purchase and acquisition of the Property. The Buyer may use federal funds from the U.S. Department of Housing and Urban Development (HUD) to complete this purchase. HUD will not use eminent domain authority to condemn the Property. All parties entered this transaction voluntarily and the Buyer has notified the Seller of what it believes the value of the Property to be in accordance with 49 CFR Part 24 Appendix A. If negotiations between both parties fail, Buyer will not take further action to acquire the Property."

(e) Oversubscribed Funds for Competitive HTC-Layered Applications. Should MFDL funds be oversubscribed in a Set-Aside or for a fund source that has geographic limitations within a Set-Aside, Applications concurrently requesting Competitive HTC will be notified and may amend their Application to accommodate another fund source and make changes that still meet threshold requirements in 10 TAC Chapters 11 and 13 of this title, if such changes do not impact scoring under 10 TAC §11.9 (relating to Competitive HTC Selection Criteria). The Department will provide notice to all impacted Applicants in the case of over-subscription, which will include a deadline by which the Applicant must respond to the Department. Multiple Applications from a single or affiliated Applicants do not constitute oversubscription, and the Applicant(s) will not be able to amend their Applications as described in this subsection. If MFDL funds become available between the Market Analysis Delivery Date, and the date of the Department’s Board meeting at which final Competitive HTC awards are made, the MFDL funds will not be reserved for Competitive HTC-layered Applications, unless the reservation is described in the NOFA.

(f) Availability of funds for Non-Competitive HTC-layered Applications. If an Application requesting layered Non-Competitive HTC and Direct Loan funds is terminated under 10 TAC §11.201(2)(E) (relating to Withdrawal of Certificate of Reservation), the Application will receive a new Application Acceptance Date for purposes of Direct Loan funds upon submission to the Department of the new Certificate of Reservation. Direct Loan funds will not be reserved for

terminated Applications, and may not be available for the Application with a new Reservation.

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

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

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

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

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

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

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

(4) The Department will make the final decision regarding the fund source to be recommended for an award (within a Set-Aside that has multiple fund sources), and this recommendation may be not be appealed.

(h) Eligibility Criteria and Determinations. The Department will evaluate Applications received under a NOFA for eligibility and threshold pursuant to the requirements of this chapter and Chapter 11 of this title (relating to the Qualified Allocation Plan). The Department may terminate the Application if there are changes at any point prior to MFDL loan closing that would have had an adverse effect on the score and ranking order of the Application that would have resulted in the Application not being recommended for an award or being ranked below another Application received prior to the subject Application.

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

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

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

the Application.

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

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

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

(3) An Application that requires an eligibility determination in accordance with paragraph (2) of this subsection must identify that fact prior to, or in their Application so that an eligibility determination may be made subject to the Applicant's appeal rights under 10 TAC §11.902 or 10 TAC §1.7 of this title (both relating to Appeals), as applicable. A finding of eligibility under this paragraph does not guarantee an award. Applications requiring eligibility determinations generally will not be funded with HOME or NSP funds, unless a 24 CFR Part 58 review was done by another fund source.

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

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

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

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

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

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

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

(1) Proposed Developments must provide evidence that the Development will comply with Site and Neighborhood Standards, which can be in the form of narrative with supporting documentation, accompanied by required census data found in American Community Survey Table DP-05.

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

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

§13.6. Scoring Criteria.

The criteria identified in paragraphs (1) - (6) of this section will be used in the evaluation and ranking of Applications if other Applications have the same Application Acceptance Date, within the same Set-Aside, and having the same prioritization. There is no rounding of numbers in this section, unless rounding is explicitly indicated for that particular calculation or criteria. Changes to Applications where scoring is utilized under Chapter 13 will not be allowed between submission and award. The scoring items used to calculate the score for a Competitive HTC-Layered Application will be utilized for scoring for an MFDL Application, and evaluated in the same manner, except as specified below. Scoring criteria in Chapter 11 of this title (relating to the Qualified Allocation Plan) will always be superior to Scoring Criteria in this chapter if an MFDL Application is also concurrently requesting Competitive HTC.

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

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

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

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

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

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

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

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

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

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

(C) At least 5% of all low-income Units at 30% or less of AMI (7 points).

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

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

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

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

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

(d) Minimum Number of MFDL Units. The minimum required number of MFDL Units will be determined by the MFDL per-Unit subsidy limits and the cost allocation analysis, which will ensure that the amount of MFDL Units as a percentage of total Units is equal to or greater than the percentage of MFDL funds requested as a percentage of total eligible MFDL Development costs. Applicants may be able to estimate the minimum number of MFDL Units by entering

Application information into the Direct Loan Unit Calculator Tool available on the Department's website, but this tool may not cover the specific requirements of every Application. A larger number of MFDL Units may also be required if scoring is utilized.

§13.8 Loan Structure and Underwriting Requirements

(a) Loan Structures. Loan structures must meet the criteria described in this section and as further described in a NOFA. The interest rate, amortization period, and term for the loan will be fixed by the Board at the time of award, and can only be amended prior to loan closing by the process in 10 TAC §13.12 (relating to Pre-Closing Amendments to Direct Loan Terms).

(b) Criteria for Construction-to-Permanent Loans. Direct Loans awarded through the Department must adhere to the criteria as identified in paragraphs (1) - (7) of this subsection if being requested as construction-to-permanent loans, for which the interest rate will be specified in the NOFA and approved by the Board:

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

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

(3) The loan term shall be no less than 15 years and no greater than 40 years and six months, and the amortization period shall be between 30 to 40 years and six months. The Department's loan must mature at the same time or within six months of the shortest term of any senior debt, so long as neither exceeds 40 years and six months. The loan term commences following the end of the construction term;

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

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

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

(B) Evidence of a line of credit or equivalent tool in the sole determination of the Department

equal to at least 10% of the Total Housing Development Cost from a financial institution that is available for use during the proposed Development activities;

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

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

(i) An Applicant for Direct Loan funds may request Board approval to have an equity requirement of less than 10% that would not have to meet the waiver requirements in 10 TAC §11.207 of this title (relating to Waiver of Rules0. The request must specify the proposed equity that will be provided and provide support for why that reduced level of equity will be sufficient to provide reasonable assurance that such owner will be able to complete construction and stabilization timely; and

(ii) "Sweat equity" or other forms of equity that cannot be readily accessed will not be allowed to count toward the equity requirement; and

(B) Evidence submitted with the Application must show the Direct Loan amount is not greater than 80% of the Total Housing Development Costs; and

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

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

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

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

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

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

(e) Evaluations. All Direct Loan Applicants in which third-party financing entities are part of the sources of funding must include a pro forma and lender approval letter evidencing review of the

Development and the Principals, as described in 10 TAC §11.9(e)(1) of this title (relating to Competitive HTC Selection Criteria). Where no third-party financing exists, the Department reserves the right to procure a third-party evaluation which will be required to be prepaid by the Applicant.

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

§13.9. Construction Standards.

All Developments financed with Direct Loans will be required to meet at a minimum the applicable requirements in Chapter 11 of this title (relating to the Qualified Allocation Plan). In addition, Developments must meet all applicable state and local codes, ordinances, and standards; the 2021 International Existing Building Code (IEBC) or International Building Code (IBC), as applicable. Should IEBC be more restrictive than local codes, or should local codes not exist, then the Development must meet the requirements imposed by IEBC or IBC, as applicable. Developments must also meet the requirements in paragraphs (1) - (5) of this section:

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

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

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

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

(5) Minimum Construction Standards. Rehabilitation Developments funded with federal sources may also be required to meet Minimum Rehabilitation Standards, as required by HUD. Rehabilitation Developments funded by the national Housing Trust Fund are required to meet the Multifamily Minimum Rehabilitation Standards approved by HUD, as posted on the Department’s website at https://www.tdhca.state.tx.us/multifamily/home/index.htm, in addition to the Department’s rules and NOFA requirements.

§13.10. Development and Unit Requirements.

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

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

(1) For HOME, NSP, and TCAP RF, Direct Loan Units must float throughout the Development unless the Development also contains public housing Units that will receive Operating Fund or Capital Fund assistance under Section 9 of the 1937 Act as defined in 24 CFR §5.100.

(2) For NHTF, Direct Loan Units must float throughout the Development, except as prohibited by 24 CFR §93.203, concerning public housing units.

(c) Unit Match Requirements.

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

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

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

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

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

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

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

§13.11. Post-Award Requirements.

(a) Direct Loan awardees must satisfactorily complete the Post-Award Requirements identified in this section after the Board approval date.

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

(c) Benchmarks. Extensions to the benchmarks in paragraphs (1) - (8) of this subsection may only be approved by the Executive Director or authorized designee in accordance with §13.12 or §13.13 of this chapter (relating to Pre-Closing and Post-Closing Amendments), as applicable.

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

(2) Environmental Clearance. In order to obtain environmental clearance required by the National Environmental Policy Act (NEPA) and other related Federal and state environmental laws (if applicable), Direct Loan Applicants, including those previously awarded HTC, ~~–~~must submit a fully completed environmental review, including any applicable reports to the Department, within 30 calendar days of the Board approval date. If the awardee was contemporaneously awarded 9% HTC and selected Readiness to Proceed points under 10 TAC §11.9(c)(8), this period is within 14 calendar days of the Board approval date. If the awardee receives an allocation of 9% HTC from the waitlist after the July Board meeting, the fully completed environmental review must be submitted within 30 calendar days of receipt of the Carryover Allocation Agreement. Applicants ~~or direct loan awardees that~~ awarded HOME or NSP funds may not commit any choice limiting activities as defined by HUD in 24 CFR Part 58 prior to obtaining environmental clearance may be subject to termination of the Direct Loan award. ~~-~~For an Applicant awarded NHTF funds, choice limiting activities prior to full execution of a Contract with the Department are not prohibited, but the eligibility of costs associated with these

activities will be impacted in keeping with 24 CFR §93.201(h) and all applicable federal regulations. Furthermore, certain activities may cause the Development to be ineligible because environmental mitigation could no longer be performed.

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

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

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

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

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

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

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

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

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

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

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

(v) If layered with Housing Tax Credits, a substantially final draft limited partnership agreement between the General Partner and the tax credit investor entity.

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

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

(ii) Site and Neighborhood clearance from the Department;

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

(iv) Title Insurance Commitment or Policy showing the Department as Lender, with copies of all Schedule B documents; and

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

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

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

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

(B) Loan terms and conditions may vary based on the type of Development, Real Estate Analysis

Underwriting Report, and the Set-Aside under which the award was made. (7) Quarterly Construction Status Reports. The Development Owner is required to submit quarterly Construction Status Reports to the Asset Management Division as described and by the deadlines specified in 10 TAC §10.402(h) of this title (relating to Construction Status Report).

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

(9) Construction Completion. Construction must be completed, as reflected by the Development's certificate(s) of occupancy (if new construction and/or reconstruction) and Certificate of Substantial Completion (AIA Form G704) or Form HUD-92485 for instances in which a federally insured HUD loan is being utilized, within the construction term of any superior construction loan(s) or 24 months of the actual loan closing date if no superior construction loan(s) exists.

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

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

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

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

(14) Disbursement of Funds. The Borrower must comply with the requirements in subparagraphs

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

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

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

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

(D) Table Funding (the wiring of Direct Loan funds to the title company at loan closing) may be permitted at the time of closing, for disbursement of funds related to eligible acquisition costs and eligible softs costs incurred, and in an amount not to exceed 50% of the total funds. Table Funding must be requested in writing at least 30 calendar days prior to the anticipated closing date, and will not be considered unless the Direct Loan Contract has been executed and all necessary documentation has been submitted to and accepted by the Department at least 10 calendar days prior to the anticipated closing date;

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

(F) The initial draw request for the Development (excluding Table Funding) must be entered into the Department's Housing Contract System no later than180 days after loan closing, and may not be submitted prior to submission of all architectural drawings;

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

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

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

(ii) For Developments in which the loan is not secured by a first lien deed of trust or the Development is also utilizing Housing Tax Credits, Developer Fees will not be reimbursed by the Department, except as follows. If all other lenders and syndicator in a Housing Tax Credit Development (if applicable) provide written confirmation that they do not have an existing or planned agreement to govern the disbursement of Developer Fees and expect that Department funds shall be used to fund Developer Fees, they shall be reimbursed in the same manner as described in subparagraph (A) of this paragraph; and

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

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

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

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

(ii) A down date endorsement to the Direct Loan title policy or Nothing Further Certificate dated at least 30 calendar days after the date of completion as certified on the Certificate of Substantial Completion (AIA Form G704) or Form HUD-92485;

(iii) For Developments not layered with Housing Tax Credits, a Closed Final Development Inspection Letter from the Department;

(iv) For NHTF Developments layered with HTCs, a separate, additional cost certification form completed by an independent, licensed, certified public accountant of all Development costs (including project costs), subject to the conditions and limitations set forth in the executed Direct Loan Contract, commonly known as a cost certification;
(v) For Developments subject to the Davis-Bacon Act, evidence from the Department's Senior Labor Standards Specialist that the Department's Notice to Proceed that serves to lock in the Department of Labor's worker prevailing wage mandates at the development and authorizes start of construction was sent and final wage compliance report was received and approved or confirmation that HUD or other entity maintains Davis-Bacon oversight;

(vi) Certificate(s) of Occupancy (for New Construction or Reconstruction Units);

(vii) Development completion reports, which includes, but is not limited to, documentation of full compliance with the Uniform Relocation Act/104(d), Match Documentation requirements, and Section 3 of the Housing and Urban Development Act of 1968, as applicable to the Development, and any other applicable requirement; and

(viii) If applicable to the Development, certification from Architect or a licensed engineer that all HUD environmental mitigation conditions have been met;

(K) No disbursement of funds will be approved without receipt of all closing documents in the form and substance required by the Department's Legal Division;

(L) The final draw request must be submitted within the construction term as determined in accordance with 10 TAC §13.8(c)(1) or (d)(1) as applicable, unless the construction term has been extended in accordance with 10 TAC §13.12 or 10 TAC §13.13 of this chapter, as applicable; and

(M) Annually, Borrowers must submit at least one draw, and may not submit more than four draws, unless previously approved by the Executive Director or designee.

(15) Annual Audits and Cost Certifications under 24 CFR §93.406(b).

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

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

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

(ii) HTC-Layered Developments. With the Cost Certification required by the Low Income Housing Tax Credit Program, the Development Owner must submit to the Department a cost certification completed by an independent licensed certified public accountant of all Development costs (including NHTF project eligible costs), subject to the conditions and limitations set forth in the executed Direct Loan Contract.

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

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

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

(1) Extensions of up to six months to the loan closing date required in 10 TAC §13.11(c)(4) of this chapter (relating to Post-Award Requirements) may be approved prior to closing. An Applicant must submit sufficient evidence documenting good cause, including but not limited to,

documented delays caused by circumstances outside the control of the applicant or constraints in arranging a multiple fund source closing. An extension will not be available if an Applicant has:

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

(i) The process of finalizing all equity and debt financing;

(ii) The environmental clearance process; or

(iii) The due diligence processing requirements; or

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

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

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

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

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

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

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

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

(a) Good Cause Extensions. The Executive Director or authorized designee may approve

extensions of up to 12 months under 10 TAC §13.11(c)(7) - (8) or (14)(L) of this chapter (relating to Post-Award Requirements) based on documentation that there is good cause for the extension.

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

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

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

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

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

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

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

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

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

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

(E) The subordination or re-subordination request does not include a request to subordinate or resubordinate any MFDL LURA, with the exception of partial subordination or re-subordination

of receivership rights (subject to the prosed receiver entity or Affiliate not having been Debarred by the Department or on the Federal Suspended or Debarred Listing).

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

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

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

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

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

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

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

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BOARD ACTION REQUEST

PROGRAMS DIVISION

JANUARY 13, 2022

Presentation, discussion, and possible action on an order proposing the repeal, and proposed new rule, for 10 TAC Chapter 1, Administration, Subchapter A, General Policies and Procedures, §1.5 Waiver Applicability in the Case of Federally Declared Disasters, and an order directing their publication for public comment in the *Texas Register*

RECOMMENDED ACTION

WHEREAS, the current rule relating to the applicability of waivers in the case of disasters is in need of revisions to address instances where waivers by the Governor or state legislature have been authorized, and to include state declared disasters;

WHEREAS, such revisions are being proposed through the repeal of the current rule and a simultaneous new rule to be proposed in its place; and

WHEREAS, such proposed rulemaking will be published in the *Texas Register* for public comment from January 28, 2022, through February 28, 2022, and subsequently returned to the Board for final adoption;

NOW, therefore, it is hereby

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

BACKGROUND

Staff has identified that 10 TAC §1.5 Waiver Applicability in the Case of Federally Declared Disasters needs revisions. Currently this rule provides that when a federal waiver, suspension, or contract amendment relating to a federal regulation is granted, and that requirement has been codified in the Department's rules, the Executive Director can then also waive, suspend or modify the rule to conform to the federal action. This is conditioned on the fact that the Executive Director must determine that not performing the waiver, suspension or modification would negatively affect program recipients; that the waiver suspension or modification to the rule, is limited to the waiver, suspension or modification federally provided; and that the action would not negatively affect selecting awardees of Department programs.

The proposed revisions expand this authority for the Executive Director to identify waivers, suspensions, or contract modifications made to state statutes so that state requirements – which may be applicable to state programs or to state-added requirements on federal programs – in this Title can also be waived. An example of this would be the Governor waiving a statutory requirement in Chapter 2306, Texas Government Code relating to the state Housing Trust Fund or to the Housing Tax Credit Program that had also been included in our TAC rule. The Executive Director would be authorized to extend that waiver of statute to those parts of the rules that complied with the statute.

The revision also expands these provisions to state declared disasters. While a federal agency would be unlikely to waive, suspend, or modify a contract based on a state declared disaster, the Governor may elect to do so based on a state declared disaster.

A condition is also added that in the case of state waivers, or in response to state disasters, the Executive Director must determine that waiving the requirement in rule is not inconsistent with any applicable federal regulations or requirements.

The rule, as proposed, will be released for public comment from January 28, 2022, to February 28, 2022, and returned to the Board for final approval.

Attachment 1: Preamble, including required analysis, for proposed repeal of 10 TAC Chapter 1, Administration, Subchapter A, General Policies and Procedures, §1.5 Waiver Applicability in the Case of Federally Declared Disasters

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of 10 TAC Chapter 1, Administration, Subchapter A, General Policies and Procedures, §1.5 Waiver Applicability in the Case of Federally Declared Disasters. The purpose of the proposed repeal is to clarify the rule's applicability in the case of state waivers and state declared disasters.

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

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

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

Mr. Bobby Wilkinson has determined that, for the first five years the proposed repeal would be in effect:

1. The repeal does not create or eliminate a government program but relates to the handling of waivers in the case of a declared disaster.

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

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

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

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

6. The repeal will expand the applicability of an existing regulation. The current rule limits its applicability to federal waivers and federally declared disasters. The proposed rule expands this applicability to state waivers and state declared disasters as well.

7. The repeal will not increase or decrease the number of individuals subject to the rule's applicability as the rule itself is not applicable to individuals, but to state rules and procedures.

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

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.
The Department has evaluated the proposed repeal and determined that the proposed repeal will not create an economic effect on small or micro-businesses or rural communities.

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

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).
The Department has evaluated the proposed repeal as to its possible effects on local economies and has determined that for the first five years the proposed repeal would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the proposed repeal is in effect, the public benefit anticipated as a result of the repealed and new sections would be an updated and more germane rule. There will not be economic costs to individuals required to comply with the repealed section.

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

REQUEST FOR PUBLIC COMMENT. The public comment period will be held January 28, 2022, to February 28, 2022, to receive input on the proposed action. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Brooke Boston, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or by email to bboston@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, February 28, 2022.

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

§1.5. Waiver Applicability in the Case of Federally Declared Disasters.

Attachment 2: Preamble, including required analysis, for proposed new 10 TAC Chapter 1, Administration, Subchapter A, General Policies and Procedures, §1.5 Waiver Applicability in the Case of State or Federally Declared Disasters

The Texas Department of Housing and Community Affairs (the Department) proposes new 10 TAC Chapter 1, Administration, Subchapter A, General Policies and Procedures, §1.5 Waiver Applicability in the Case of State or Federally Declared Disasters.

The purpose of the proposed rule is to clarify the rule's applicability in the case of state waivers and state declared disasters.

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

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

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

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

1. The new section does not create or eliminate a government program but relates to the handling of waivers in the case of a declared disaster.

2. The new section does not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.

3. The new section does not require additional future legislative appropriations.

4. The new section will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

5. The new section does not creating a new regulation, except that they are replacing sections being repealed simultaneously to provide for revisions.

6. The new section will expand the applicability of an existing regulation. The current rule limits its applicability to federal waivers and federally declared disasters. The proposed rule expands this applicability to state waivers and state declared disasters as well.

7. The new section will not increase or decrease the number of individuals subject to the rule's applicability as the rule itself is not applicable to individuals, but to state rules and procedures.

8. The new section will not negatively or positively affect the state's economy.

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

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

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

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6). The Department has evaluated the proposed new section as to its possible effect on local economies and has determined that for the first five years the proposed new section would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the proposed new section is in effect, the public benefit anticipated as a result of the new section would be an updated and more germane rule. There will not be economic costs to individuals required to comply with the new section.

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

REQUEST FOR PUBLIC COMMENT. The public comment period will be held January 28, 2022, to February 28, 2022, to receive input on the proposed action. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Brooke Boston, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or by email to bboston@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, February 28, 2022.

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

10 TAC Chapter 1, Subchapter A, §1.5 Waiver Applicability in the Case of State or Federally Declared Disasters

(a) When the federal government has provided the Department a waiver, suspension, or contract amendment of a federal programmatic regulation, federal statute, or contract term in response to a state or federally declared disaster, and the requirement waived, suspended, or amended had been codified in this Title, the Executive Director or designee may waive, suspend, or modify the rule within this Title, if:

(1) the Executive Director or designee has determined that not doing so may negatively affect the health, safety, or welfare of program recipients;

(2) such waiver, suspension, or modification to the rule within this Title is clearly related ~~is limited~~ to the federally provided waiver, suspension, or modification; and

(3) such waiver or suspension would not have negatively affected the selection of an award of Department resources.

(b) When the state government has provided the Department a waiver or suspension of a state statute in response to a state or federally declared disaster, and the requirement waived or suspended had been codified in this Title, the Executive Director or designee may waive, suspend, or modify the rule within this Title, if:

(1) the Executive Director or designee has determined that not doing so may negatively affect the health, safety, or welfare of program recipients;

(2) such waiver, suspension, or modification to the rule within this Title must be clearly related to the state provided waiver or suspension;

(3) such waiver or suspension would not have negatively affected the selection of an award of Department resources; and

(4) the Executive Director or designee has determined that doing so is not inconsistent with any applicable federal statute, regulations or contract requirements.

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BOARD ACTION REQUEST

HOME-ARP DIVISION

JANUARY 13, 2022

Presentation, discussion and possible action on approval of a Draft HOME-ARP Plan to be released for public comment and to release Notices of Funding Availability after Plan acceptance

RECOMMENDED ACTION

WHEREAS, under Section 3205 of the American Rescue Plan Act (ARPA), the Texas Department of Housing and Community Affairs (TDHCA) was allocated $132,969,147 of HOME-ARP Program funds from the U.S. Department of Housing and Urban Development (HUD);

WHEREAS, HUD requires that prior to receiving its HOME-ARP allocation, TDHCA must develop a plan and gather public comment on that plan for the proposed uses of those funds;

WHEREAS, staff has hosted nine consultations to garner input on the development of its HOME-ARP Plan;

WHEREAS, upon Board approval of the Draft HOME-ARP Plan, the Plan will be made available for at least 15 days of public comment and TDHCA will host two public hearings;

WHEREAS, in the interest of expediency, if the comment received on the HOME-ARP Plan does not require significant revisions of the Plan, staff requests the authority to make appropriate revisions and proceed with submission of the Plan to HUD without returning to the Board; and

WHEREAS, after acceptance of the Draft Plan by HUD, staff will release Notices of Funding Availability (NOFAs) for HOME-ARP Rental Housing and HOME-ARP Non-Congregate Shelter, with associated capacity building and nonprofit operating cost assistance;

NOW, therefore, it is hereby

RESOLVED that the Draft HOME-ARP Plan is approved to be released for public comment;

FURTHER RESOLVED, that should the comment received on the HOME-ARP Plan not require significant revisions of the Plan, staff is hereby authorized to make appropriate revisions and proceed with submission of the Plan to HUD without returning to the Board; and

FURTHER RESOLVED, that the Executive Director and his designees be and each of them hereby are authorized, empowered, and directed, for and on behalf of the Department, to post on the Department's website and to publish a notification in the Texas Register, the NOFAs for the activities within the HOME-ARP Draft Plan.

BACKGROUND

TDHCA was allocated $132,969,147 of funds from the U.S. Department of Housing and Urban Development (HUD) under Section 3205 of the American Rescue Plan Act, which HUD has called the HOME-ARP Program. HUD issued waivers and new activities from HOME annual funds for HUD-ARP per CPD Notice 21-10. Funds are authorized broadly for tenant based rental assistance, development of affordable rental housing, supportive services, non-congregate emergency shelter, supportive housing, and operating costs and capacity building for eligible nonprofit organizations.

Qualifying populations for HOME-ARP include:

- Households that are experiencing homelessness;
- Households at-risk of homelessness, with waiver to allow for income up to 50% AMI (previously 30% AMI);
- Households fleeing or attempting to flee domestic violence, dating violence, sexual assault, stalking, or human trafficking;
- Households with 30% AMI with severe housing cost burden of paying more than 50% of monthly household income toward housing costs;
- Households who have qualified for homelessness previously, are currently housed with temporary/emergency assistance, and who need additional housing assistance or supportive services to avoid a return to homelessness; or
- Veterans (and their families) that meet one of the above definitions.

TDHCA is required to implement a plan for the funds. HUD requires that prior to the planning of the funds initial consultation be held with providers whose clientele include the HOME-ARP qualifying populations to identify unmet needs and gaps in housing or service delivery systems. Nine consultations were held and are described in detail in the attached Draft Plan.

TDHCA received input during the consultations that would support programming into all activities. However, the overwhelming support in the consultations was for capital funds for rental housing and non-congregate shelter, with associated operating and capacity building funds. In response to public input, funds are proposed to be programmed into acquisition/development or rehabilitation of non-congregate shelters, development of affordable rental housing including capitalized operating reserves, nonprofit operating funds, non-profit capacity building funds, and administration/planning. The nonprofit operating and capacity building funds applications will be available to nonprofits awarded funds or in control of Developments or shelters awarded funds under the non-congregate shelter or rental housing activities. Note that the Draft Plan attached is based on a specific template provided by HUD.

Upon Board approval, the Draft Plan will be released for public comment for 17 days and two public hearings will be held – one virtual and one in-person. The public comment period will be

from January 14, 2022, to January 31, 2022. Upon review of all public comment received, the Draft Plan will be finalized. If comments do not substantiate the need for extensive revisions to the Plan, staff is requesting that the Executive Director be authorized to proceed with submission of the Plan to HUD without further Board action. If comment is extensive or staff suggests significant revisions to the Plan, the Plan will be returned to the Board for final approval prior to submission to HUD.

After HUD approval of the Plan, staff will develop NOFAs for HOME-ARP Rental Housing and HOME-ARP Non-Congregate Shelter. Both NOFAs are anticipated to include capacity building and nonprofit operating cost assistance. Staff requests approval to release HOME-ARP NOFAs in this action to expedite the HOME-ARP application cycles.

Texas Department of Housing and Community Affairs

HOME-ARP

Allocation Plan

DRAFT

January 13, 2022

TDHCA was allocated $132,969,147 of funds from the U.S. Department of Housing and Urban Development (HUD) under Section 3205 of the American Rescue Plan Act, which HUD has called the HOME-ARP Program. Funds are authorized for tenant based rental assistance, development of affordable housing, supportive services, non-congregate emergency shelter, supportive housing, and operating costs for eligible nonprofit organizations. However, prior to receiving its HOME-ARP allocation, TDHCA must develop a plan and gather public comment on that plan. The following document is the Draft Plan for that purpose which, upon approval of the TDHCA Board, will be released for public comment.

Items in the Plan in *italics* are instructions from HUD for a given section or item.

Participating Jurisdiction: Texas Dept. of Housing and Community Affairs (TDHCA)
Date: *[To Be Added Date of Submission]*

I. CONSULTATION PROCESS AND INPUT

Consultation

Before developing its plan, a PJ must consult with the CoC(s) serving the jurisdiction's geographic area, homeless and domestic violence service providers, veterans' groups, public housing agencies (PHAs), public agencies that address the needs of the qualifying populations, and public or private organizations that address fair housing, civil rights, and the needs of persons with disabilities, at a minimum. State PJs are not required to consult with every PHA or CoC within the state's boundaries; however, local PJs must consult with all PHAs (including statewide or regional PHAs) and CoCs serving the jurisdiction.

Summarize the consultation process:

TDHCA held 9 consultations to garner initial input on the state's planning of HOME-ARP funds. The consultations were held from October 7 to October 22, 2021. In all consultations information on the program was shared with those attending and often many questions were asked and answered. In the interest of brevity, the consultation feedback summaries following the table below do not include questions posed or answers provided, but focus on summarizing input and comments made.

List the organizations consulted, and summarize the feedback received from these entities.

Agency/Org Consulted	Type of Agency/Org	Method of Consultation	Feedback
Mobile Loaves and Fishes – Community First Village	Nonprofit Homeless Provider	Video Conference (October 7)	See summary below
Haven for Hope	Nonprofit Homeless Provider	Video Conference (October 7)	See summary below
Multiple (see below)	Continuums of Care and Domestic Violence Providers	Video Conference (October 13)	See summary below
Foundation Communities and New	Nonprofit Perm. Supp. Housing	Video Conference (October 15)	See summary below
Multiple (see below)	Public Housing Authorities	Webinar (October 15)	See summary below

Agency/Org Consulted	Type of Agency/Org	Method of Consultation	Feedback
Multiple (see below)	TX Interagency Council for Homelessness	TICH Meeting also hosted as consultation (October 19)	See summary below
Multiple (see below)	Fair Housing and Disability Advocates	Webinar (October 20)	See summary below
Multiple (see below)	Veterans Services Providers	Webinar (October 22)	See summary below
Multiple (see below)	Homelessness Services Providers	Webinar (October 22)	See summary below

Consultation with Mobile Loaves and Fishes

Mobile Loaves and Fishes (MLF) operates Community First! Village, a master planned community that provides affordable, permanent housing and a supportive community for men and women coming out of chronic homelessness in Austin.

- MLF shared that they are expanding their village of RV/park homes and micro-homes; they estimate that 80% of the population will fall into the definition of chronically homeless. They estimate it will take approximately $150 million of capital investment; some of those funds have been committed already by Travis County. MLF indicated that most of their referrals come from CoCs or other referring agencies but not all come through Coordinated Entry (CE).
- MLF has a successful model in place in which households pay a flat monthly rent for a specific unit type, and that amount is often more than 30% of their income. They indicated they would likely not find these funds attractive for their plans if households were limited to paying only 30% of their income.
- Uses of the Funds: MLF supported a focus on capital investment with the funds. They would like to see that capital investment is used for both tiny home models and associated congregate facilities (kitchens, baths). It was discussed that varied types of units have varying levels of kitchen or bathroom facilities (with robust shared facilities) such that HOME-ARP may able to be used for some unit types but perhaps not others. It was also discussed that TDHCA would need to confirm with HUD that such models would be allowable. MLF also supported some funds for capacity building as they ramp up operations.
- Populations/Preferences: MLF indicated they would like to see the most vulnerable populations assisted with these funds; they suggested that a preference should be allowed for the chronically homeless and that funds not just go to the households that could be seen as more sympathetic, such as families with children and veterans.
- Use of Coordinated Entry (CE): MLF did not want to be limited to only taking those households that score the highest in the CE assessment. They tend to assist persons with

a variety of vulnerability levels and do not prefer that all housed with HOME-ARP be referred only through CE.

Consultation with Haven for Hope

Haven for Hope (HFH) is a San Antonio nonprofit operating as a "one stop" campus for people who are experiencing homelessness, bringing together service providers in a single location.

- HFH shared that doing NCS as an activity is a challenge without operating expenses being provided to help support it, but did note that they would be interested if in fact operating funds could be assured. They indicated that HFH most needed flexible spending to use on housing for households that don't qualify for CE, particularly for older persons with disabilities, who are awaiting a voucher or other benefits, something that could be an extension of rapid rehousing.
- HFH discussed the unique role some of their shelter staff play as they are both operational staff, but also trained in client-facing assistance roles such as case work and other services identified in 24 CFR §578.53. These Life Safety Officers also have access to HMIS and HFH would hope to classify these staff as case management and service provision, although they are also serving in an operational role.
- HFH discussed that the reason for not being more interested in NCS with hotel conversions as an activity is that the maintenance and upkeep is extreme, they feel it is preferable to just do new construction. They also feel that hotel conversions are better for Permanent Supportive Housing (PSH), and that while there is a need for PSH, only a fraction of their clients go to PSH.
- HFH provided that past criminal eviction history hurts clients seeking units and suggested that any HOME-ARP funds used for rental housing should require a lower standard for entry into the housing.
- When discussing the possible idea of serving the role of a sponsor who could access a block of units through a master lease, they felt that while this would be attractive to have a guarantee, it was not ideal because it adds undue risk for the nonprofit and also does not allow the person being housed to establish a direct lease relationship with the landlord, which they find important.
- Services needed include housing specialists, intake, housing navigation and bridge psychiatric services that can provide a quick diagnosis and access to medications on an outpatient basis in close coordination with the local Mental Health Authority. HFH specifically noted that funds for these needs would not be fully addressed through the ERA2 Housing Stability Services funds, of which there is approximately $84 million being released for competition through TDHCA in the fall of 2021. They thought some of the HOME-ARP funds should be used for this purpose also to address the long term effects of the pandemic.
- Uses of the Funds: As noted in the bullets above, HFH felt for them the best use of funds would be for TBRA and supportive services with long contract terms, such as at least a 3 year contract for TBRA to serve as a bridge to households accessing a permanent voucher.

- Populations/Preferences: HFH felt that high priority groups included older persons currently homeless or at risk of homeless, often with disabilities, who don't qualify for CE and those awaiting vouchers or benefits. Shelters are not the most appropriate place for these persons. They have about 30 people who need a nursing home in terms of the level of care required but don't qualify for Medicaid. They also felt that families are the biggest unmet need because many are newly homeless or doubled up so don't rank as high need on CE.
- Use of Coordinated Entry (CE): HFH did not support being restricted to only allowing CE and feels it is very important for these housing funds to be able to assist those not in CE, or not ranking highly in CE.

Consultation with Continuums of Care (CoCs) and Domestic Violence (DV) Providers

Representatives from the San Antonio/Bexar County CoC; Dallas City and County, Irving CoC; Fort Worth, Arlington/Tarrant County CoC; the El Paso City and County CoC; the Houston, Pasadena, Conroe/Harris, Fort Bend, Montgomery Counties CoC; the Balance of State CoC represented by the Texas Homeless Network (THN); and the Texas Council on Family Violence were in attendance.

- Significant focus has been on rapid rehousing and bridging folks to permanent housing (Houston, El Paso, Dallas) and some noted an interest in more rental assistance to support these efforts (Houston), or to support gaps in services (Houston, El Paso). Houston discussed going from homelessness to housed and not needing to use shelter facilities.
- However, other CoCs felt they had sufficient funds for the vouchers/rental assistance and services, and felt the highest need was in actual production of units (PSH) as there are challenges in finding units for voucher holders (Tarrant, Dallas, San Antonio). Some noted interest in allowing small acquisition/rehabilitation developments that they thought could be brought online more quickly and others were specific that the PSH should include units for large families and deeply affordable units (below 30%). There was discussion of use of HOME-ARP to bring units up to Uniform Physical Condition Standards.
- There was support for funds to support capacity building for homeless services providers, especially in rural areas of the state.
- Several CoCs felt that a priority/scoring preference should include that the applicant is connected to housing authority resources and other subsidies (Houston, Dallas) although the BoS noted that this would be more challenging since they have less access to other funds. There was also discussions in how to use HOME-ARP to address racial disparities.
- Commenters felt there needed to be ways to incentivize the developers to give second chances for poor rental and credit/criminal history and these funds should not allow anything more restrictive than the local housing authority. Others felt the housing authority's barriers were too high.
- There was possible interest in NCS if it could be 'flexed' for use as PSH and interest in NCS for the domestic violence (DV) population.

- They wanted to be able to consider those At-Risk as a broader definition than that provided by HUD, also noting that often DV cases do not classify as At-Risk but need housing to leave their abuser.
- There was fairly unanimous support that having at least coordinated with the CoC should be an application requirement.

  Uses of the Funds: Because the needs of the CoCs varied there was interest in keeping the funds flexible. The most common request for the uses of HOME-ARP was development of supportive housing and NCS. There was greatest interest in NCS and development of units from the Balance of State (BoS) CoC. There were also requests to use the funds for TBRA and services and capacity building, though requests for these activities were not as common as for capital funds.
- Populations/Preferences: There was support for allowing subrecipients to establish preferences, but not limiting the funds at the state policy level to only certain populations. Preferences suggested included: persons experiencing literal homelessness, persons with disabilities, persons fleeing Domestic Violence, unsheltered homeless, and those with a history of homelessness.
- Use of Coordinated Entry (CE): CoCs from larger areas preferred CE be used and felt it ensured there is coordination and alignment. Alternatively for DV and the BoS they did not want to see the program limited to only CE.

Consultation with Developers of Permanent Supportive Rental Housing

Foundation Communities and New Hope Housing are two of the primary PSH developers in the state. The summary below also include comments received in writing from a PSH consultant, True Casa Consulting, who could not attend the session.

- Providers felt that the 70% of rental units that are required to serve qualified households would have to be underwritten as zero income so felt the biggest challenges related to operating. While they realized and appreciated that HOME-ARP allows for capitalized operating expenses they felt it would need to be for the whole affordability period. Additionally, they voiced concern for the residents of those units at the end of the 15-year HUD affordability period; as soon as the HUD operating subsidy and LURA restriction ends, for the properties to support operations on the units they would have to increase the rents on those households from 30% of their income to either market rate or the rent level of any other affordability term (likely housing tax credits).
- Two of the commenters also noted that their models of housing did not generally support having market rate units at the property to subsidize the other units (due to lack of interest by market rate tenants).
- Commenters raised concern and felt strongly that to do such transactions requires significant experience not just with supportive housing development, but also in serving the specific populations, and they felt there should be a standard or requirement relating to experience.
- Regarding leasing criteria they noted that their fair housing counsel advises that they not have different leasing criteria for some units, so whatever criteria they would have for HOME-ARP would need to be the same as all the units and therefore acceptable to

the other funders as well. They did not want to see the state dictate what the leasing criteria should be. One commenter did suggest that barriers for criminal history should be reduced.

- Regarding sizes of the developments, commenters felt that smaller size properties for PSH are not able to achieve sufficient economies of scale with the ideal size being 120-150 units. They note that because of local processes, smaller deals do not necessarily get done any faster, and that a small deal would almost certainly need a more robust subsidy.
- While not specifying that funds should be used for services, one commenter did note that gaps in services include behavioral health, transportation, health and dental, peer support, case management and housing subsidies.
- It was noted that clients should not have burdensome documentation requirements.
- Uses of the Funds: Commenters supported use of the funds for rental housing development. They provided input that the program would need to have no debt requirements. They supported the possibility of the funds being grants, or allowing the funds to be passed through to a sponsor entity to limit the tax event for the property. The one activity they proposed other than rental and capitalized operating, was to possibly allow for capitalized services as they will have to guarantee to the investor sufficient funds for service provision (capitalized service reserves).
- Populations/Preferences: Because these types of developments often have to layer financing from different funders, each with their own priorities and preferences, they felt it would be important for the funds to not limit preferences at the state level, but allows preferences at the property level. Preferences contemplated for the plan would include older adults with one or more ADL needs, adults with disabilities, chronically homeless, unstably housed and at-risk of homelessness and low income (at 200% or below federal poverty level).
- Use of Coordinated Entry (CE): They would find a preference for CE acceptable, or having it as an option, but not as a requirement as they want to see a range of tenants gaining access to their properties, not only chronically homeless.

Consultation with Public Housing Authorities

Outreach for this consultation was targeted to public housing authorities; more than 62 registered to attend the virtual session, and 34 actually logged on to the session. The summary below includes several comments received in writing from PHAs who could not attend the session.

- Across the PHAs on the call, there was support for capital development for more rental units in good condition. There was support for these funds to be used to 'buy down' 60% HTC units to 30% units or to add soft financing, as well as off-site costs. There was interest in layering with RAD conversions, allowing sponsorship structures, and for giving an award preference for those rehabilitating large properties to make them deeply affordable. Others asked if there could be point preferences for larger developments, and if HOME-ARP could be used for infrastructure to the development. For rental development there was interest in making sure that PHAs could use these funds in

conjunction with issuing 'Faircloth' vouchers on a private development or other public housing and that it was important to make funds available for rural areas.

- There was support voiced for the funds to be used as rental assistance like HOME TBRA and TDHCA's COVID TBRA Program, for services such as security deposit assistances, furnishings and appliances, youth employment programs, job searches, assistance accessing benefits, financial literacy, parenting skills and scholarships for trade schools.
- There was not support for adding any state-required leasing criteria, or making them more lenient, but rather that it be flexible so it could be layered with other funding sources. One commenter suggested allowing alternate means for lowering barriers such as the tenant attending rehab classes, or being flexible on references.
- Uses of the Funds: As noted above the primary interest was for rental development, as well as more limited support for TBRA and services.
- Populations/Preferences: Support no preferences, or if any, persons experiencing homelessness and Domestic Violence households. There was interest in prioritizing any households below 80% AMI since those are often quick to become unstable.
- Use of Coordinated Entry (CE): There was not support for CE to be a requirement; in some areas CE is not readily available, and such a requirement would harm properties and those in need.

Consultation with Texas Interagency Council for the Homeless (TICH)

The TICH is a statutorily created council supported by TDHCA with public and private membership. The TICH meets quarterly and at its quarterly meeting in October 2021, a presentation was made on the HOME-ARP funds, and the opportunity for input was extended. While questions were asked, no specific comments were received in regards to planning of the funds.

Consultation with Fair Housing and Disability Advocates

Outreach for this consultation was targeted to fair housing and disability providers and advocates. More than 185 registered to attend the virtual session, and 91 actually logged on to the session. The summary below includes several comments received in writing from disability or fair housing advocates who could not attend the session or followed up with more information in writing.

- Most of the attendees that spoke indicated a significant need for more permanent supportive rental housing, most speaking of the need specifically for those with those with Intellectual or Development Disabilities (IDD) and Mental Health disorders (MH) to be stably housed in the community. Attendees emphasized the importance of services. There was support that such housing needs to be in high opportunity areas so that it was close to transportation, jobs, stores, services, and medical supports. Several commenters mentioned the needs of adult children with IDD/MH who the parents are no longer able to care for them. It was noted that any funds used for PSH should have robust targets for accessibility and visitability and a higher percentage of units built as fully accessible for physical disabilities than is required in the Housing Tax Credit (HTC) program. Commenters noted that housing should be for low income housing (not

workforce housing). They noted that it was important that capitalized operating subsidies be provided. There was also interest that the funds be able to be used for recovery housing.

- Alternatively, one commenter noted that because the need is pressing and urgent now, that some of the funds should go to 'right now' solutions such as rental assistance for persons with disabilities.
- Several comments also supported use of the funds for NCS and a focus on best practices that would allow NCS to transition to other uses.
- One comment supported use for TBRA and several supported use for services specifically service coordinators, resident coordinators, and landlord incentives.
- One commenter felt the funds should allow shared housing (roommate arrangements) and noted successes with that model in Connecticut; there was discussion around risk, leases, and the fact that currently this has not been used in affordable housing or with voucher holders.
- This group voiced frustration at landlord's unwillingness to accept voucher holders, the challenges in landlords not accepting those with criminal/credit history, and unreasonable minimum income requirements. One commenter felt the funds should be used for providing the payments needed to meet minimum income requirements.
- They suggested that the NOFA have an award preference for those with lowest barrier policies for those with justice involvement.
- Uses of the Funds: Most support for PSH and limited support for NCS, TBRA, and services.
- Populations/Preferences: There was interest for the provider to be able to identify preferences, but that the state should not do so which would limit flexibility. Wide support among the group for preferences for those with dual diagnoses (Mental Health Disorder (MH) and Intellectual/Developmental Disabilities (IDD)) and for seniors with disabilities, as they are seeing increases in IDD and MH folks that senior centers and Medicaid are not able to assist. Also interest in young adults aging out of foster care and veterans. There was also interest in allowing properties to grant a preference on their fully accessible units for those with a physical disability, in having a preference for those getting discharged for rehabilitation centers, psychiatric hospitals or released from incarceration to prevent them from exiting into homelessness. It was requested that these funds should definitely be allowed for seniors, particularly since 811 Program does not allow older than age 62.
- Use of Coordinated Entry (CE): There was some support of using CE but not as a mandatory requirement. Several speakers gave examples of where CE is not effective and would greatly limit the ability to assist including those in state hospitals for more than 90 days are no longer considered homeless upon exit under CE, many who need housing who don't get ranked highly enough in CE. Alternatively one commenter did think CE should be required and that CE assessments address racial inequities.

Consultation with Veterans Services Providers

(Outreach for this consultation was targeted to the Texas Veterans Commission and veteran's services providers; 21 persons registered to attend the virtual session, and 12

actually logged on to the session.)

- This session focused significantly on answering questions including eligible uses of the funds, allowable service activities, and length of assistance. One commenter was interested in uses of the funds that were not eligible.
- It was noted that the funds should not require veterans to have a DD 214 or require that the veteran must be honorably discharged. There was discussion of different military discharge statuses. There was interest in assisting vets re-entering the community from incarceration.
- It was suggested that priority in awards be given to those willing to take those perceived as higher risk tenants.
- Uses of the Funds: Interest in capital investment for rental and NCS and in making sure funds are available rurally.
- Populations/Preferences: Veterans.
- Use of Coordinated Entry (CE): They wanted to be sure funds are not limited to those in CE as many in need will get overlooked.

Consultation with Homelessness Service Providers

Outreach for this consultation was targeted to providers of homeless services; more than 158 registered to attend the virtual session, and 117 actually logged on to the session. The summary below includes several comments received in writing from providers who could not attend the session or who followed up with more detail after the session.

- There was strong interest to use funds for one time capital investments for PSH and NCS. There was input that NCS is especially helpful for families, those fleeing domestic violence and those with MH or Post Traumatic Stress Disorder (PTSD) where congregate care can be detrimental to treatment. Most speakers felt there are sufficient resources for rental assistance, and there are those in need with vouchers in hand who can't find units; there is particularly need for the deepest income units. There was emphasis that the rental housing needed to come with operating reserves and allow for sponsorship structures. Commenters encouraged the construction funds be flexible so recipients can try to fund smaller properties or respond flexibly to families in crisis. Several attendees emphasized the importance of funds being made available for rural areas and that they not have to compete against urban areas.
- Several commenters noted that it would be important to not just fund capital investment, but to focus on long term supports including operations, homelessness prevention, case management, employment services, and landlord incentives (with thoughtful consideration relating to fair housing issues).
- One commenter supported sober living beds/transitional beds and some Single Room Occupancy (SRO) design.
- Because of the urgent need now, there was also interest from several providers for TBRA since other rental funds are starting to end. They also note that accessing rental assistance should not first require having an eviction status which is what is often required from other funding sources.
- One commenter supported the funds for nonprofit development and black-led

organizations.

- One commenter suggested that awarding of projects should be prioritized for long term (20-30 year) shelter assistance.
- Uses of the Funds: While varied, there was strong support for PSH and NCS, with less significant support for TBRA, services, and nonprofit operations and capacity building.
- Populations/Preferences: Chronically homeless, disabled, and homeless youth (18-24 years old).
- Use of Coordinated Entry (CE): Most attendees felt strongly that CE should not be a requirement. However two commenters did think CE should be required. Because CE prioritizes persons with the highest scores, those with the greatest needs are getting assisted, but many who could be rapidly assisted are not captured in CE and have lower scores, including those activity working with case workers and in school.

II. PUBLIC PARTICIPATION PROCESS AND INPUT

PJs must provide for and encourage citizen participation in the development of the HOME-ARP allocation plan. Before submission of the plan, PJs must provide residents with reasonable notice and an opportunity to comment on the proposed HOME-ARP allocation plan of ***no less than 15 calendar days****. The PJ must follow its adopted requirements for "reasonable notice and an opportunity to comment" for plan amendments in its current citizen participation plan. In addition, PJs must hold* ***at least one public hearing*** *during the development of the HOME-ARP allocation plan and prior to submission.*

For the purposes of HOME-ARP, PJs are required to make the following information available to the public:

- *The amount of HOME-ARP the PJ will receive,*
- *The range of activities the PJ may undertake.*

Describe the public participation process, including information about and the dates of the public comment period and public hearing(s) held during the development of the plan:

Upon approval of a draft Plan by the TDHCA Board, the draft plan will be released for a 17 day public comment period from January 14, 2022 to January 31, 2022. TDHCA will adhere to its citizen participation plan. Two hearings will be held during the comment period.

Virtual Hearing
Friday, January 21, 2022
Registration is available online at
https://attendee.gotowebinar.com/register/577565081687108622

In-Person Hearing
Thursday, January 27, 2022
2:00 pm Austin Local Time
Health and Human Services Winters Building
701 W 51st Street, Room 560W
Austin, TX 78751

If comment received during the public comment period does not suggest significant plan revisions, the plan will not be returned for approval to TDHCA's Board. If comment is significant, the plan is anticipated to be presented to the TDHCA Board for final approval on February 10, 2022.

Describe any efforts to broaden public participation:
TDHCA plans to hold both an in-person hearing in Austin and a virtual hearing to accept comment. The in-person hearing will allow for a more traditional method of receiving comment; the virtual hearing will allow for broader outreach. In addition, the hearings will be published in the Texas Register and notice of the hearings will be sent via TDHCA's subscription email lists to the homeless-focused topics and the multifamily topics. Comments will also be accepted via mail or email. Finally, the plan will be posted online for ease of access during the public comment period.

A PJ must consider any comments or views of residents received in writing, or orally at a public hearing, when preparing the HOME-ARP allocation plan.

Summarize the comments and recommendations received through the public participation process:
[To be updated after the public comment period.]

Summarize any comments or recommendations not accepted and state the reasons why:
[To be updated after the public comment period.]

III. NEEDS ASSESSMENT AND GAPS ANALYSIS

PJs must evaluate the size and demographic composition of qualifying populations within its boundaries and assess the unmet needs of those populations. In addition, a PJ must identify any gaps within its current shelter and housing inventory as well as the service delivery system. A PJ should use current data, including point in time count, housing inventory count, or other data available through CoCs, and consultations with service providers to quantify the individuals and families in the qualifying populations and their need for additional housing, shelter, or services. The PJ may use the optional tables provided below and/or attach additional data tables to this template.

Homeless Needs Inventory and Gap Analysis Table - 1

Homeless													
	Current Inventory					Homeless Population				Gap Analysis*			
	Family		Adults Only		Vets	Family HH (at least 1 child)	Adult HH (w/o child)	Vets	Victims of DV	Family		Adults Only	
	# of Beds	# of Units	# of Beds	# of Units	# of Beds					# of Beds	# of Units	# of Beds	# of Units
Emergency Shelter	5,385	1,463	8,285	N/A	972								
Transitional Housing	2,190	618	1,916	N/A	1,916								
Permanent Supportive Housing	4,847	1,695	9,950	N/A	5,633								
Other Permanent Housing						N/A	N/A	N/A	N/A				
Sheltered Homeless						5,783	8,234	1,117	2,242				
Unsheltered Homeless						506	12,686	831	744				
Current Gap										#	#	#	#

Data Sources: 1. 2020 Point in Time Count (PIT); 2. 2020 Continuum of Care Housing Inventory Count (HIC)

*There may not be a direct correlation between the types of housing offered in this chart and the number of people experiencing homelessness, as not every person experiencing homelessness would need or want to use emergency shelter, transitional housing, or permanent supportive housing. Therefore, the gap analysis is not reflected in this chart, but possible gaps are discussed below.

Housing Needs Inventory and Gap Analysis Table - 2

Non-Homeless			
	Current Inventory	**Level of Need**	**Gap Analysis***
	# of Units	# of Households	# of Households
Total Rental Units	3,686,845		
Rental Units Affordable to HH at 30% AMI (At-Risk of Homelessness)	340,420		
Rental Units Affordable to HH at 50% AMI (Other Populations)	546,190		
0%-30% AMI Renter HH w/ 1 or more severe housing problems (At-Risk of Homelessness)		501,880	
30%-50% AMI Renter HH w/ 1 or more severe housing problems (Other Populations)		268,065	
Current Gaps			#

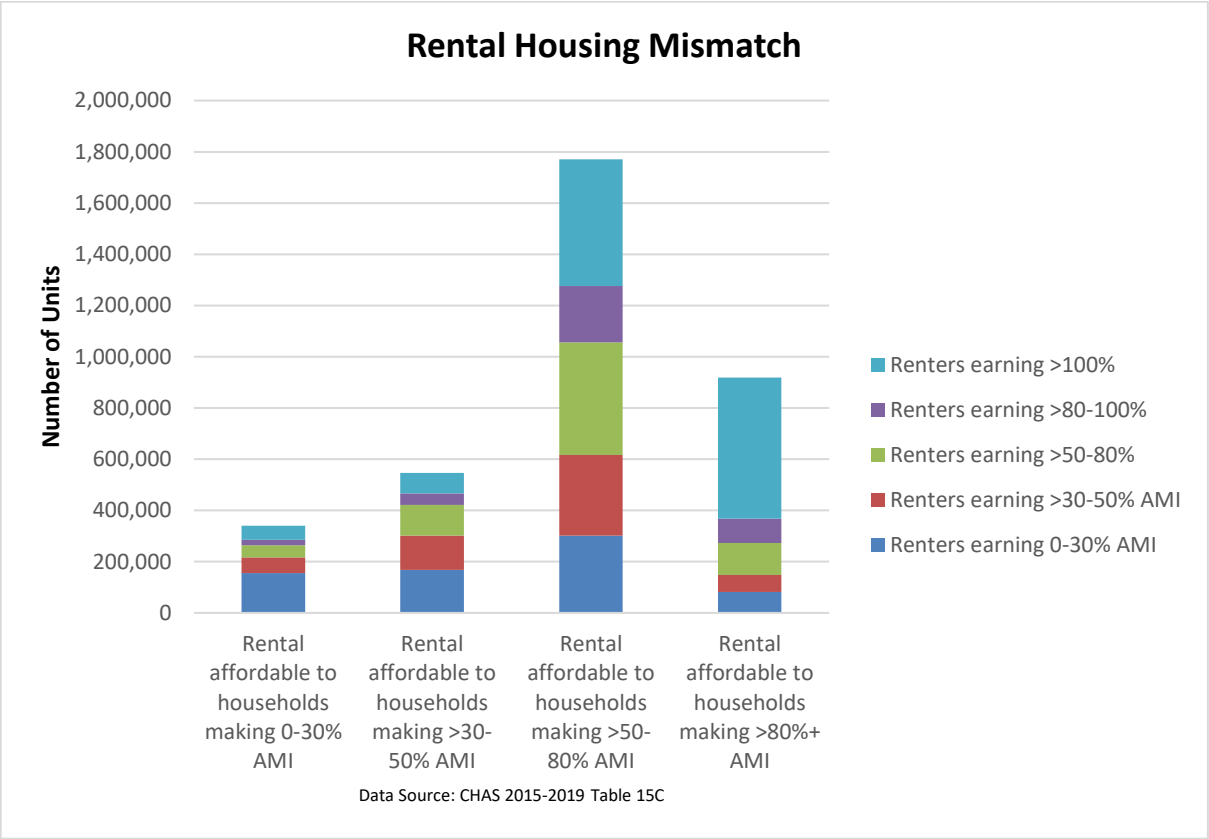
Data Sources: 1. 2015-2019 American Community Survey (ACS); 2. 2014-2018 Comprehensive Housing Affordability Strategy (CHAS)

*There may not be a direct correlation between the affordable rental units and the households with a housing problem at that income level; this chart does not reflect the housing mismatch, which shows the difference between the households that can afford the rental units and the households living in the rental units. A further analysis of this mismatch is discussed below.

Rental Housing Mismatch Table – 3

Rental Housing Mismatch	**Renters earning 0-30% AMI**	**Renters earning >30-50% AMI**	**Renters earning >50-80%**	**Renters earning >80-100%**	**Renters earning >100%**	**Total**
Rental affordable to households making 0-30% AMI	155,585	61,075	47,650	21,135	54,975	340,420
Rental affordable to households making >30-50% AMI	167,530	134,250	119,555	44,755	80,100	546,190
Rental affordable to households making >50-80% AMI	301,075	315,540	439,685	219,140	495,335	1,770,775
Rental affordable to households making >80%+ AMI	81,435	66,655	124,645	95,715	550,090	918,540
Total	705,625	577,520	731,535	380,745	1,180,500	

Data Source: 2014-2018 CHAS Data



1. ***Describe the size and demographic composition of qualifying populations within the PJ's boundaries:***

Homeless

For HOME ARP, two of the qualifying populations are persons/households experiencing homelessness, and households who have previously been qualified as "homeless" as defined in 24 CFR §91.5 who are housed due to temporary or emergency assistance and need additional housing assistance or supportive services to avoid a return to homelessness. According to HUD's 2020 Point-in-Time count for Texas, there were approximately 22,544 Homeless Households comprised of 27,229 Homeless Persons. This is an increase of 5%, from 2019, of Homeless Persons in the State of Texas.

58% of the counted homeless population in Texas in 2020 identified as White, 37% identified as Black or African American, 0.75% identified as Asian, 1.3% identified as American Indian or Alaska Native, 0.32% identified as Native Hawaiian or Other Pacific Islander and 3% identified as being of multiple races.

Individuals who are identified as chronically homeless make up 14.8% of the State's homeless population. Through consultation with stakeholders around the State of Texas it was noted that this segment of the population is often the hardest to reach and hardest to assist. It was also noted through consultation that often the chronically homeless are the most visible

segment of the homeless population as they often make up a large portion of unsheltered homeless individuals.

In addition, there were 1,948 homeless Veterans making up 7.2% of the State's homeless population and 1,408 unaccompanied youth making up 5.2% of the homeless population.

The table below shows each Continuum of Care (CoC) in the State of Texas and the number of homeless individuals in the areas covered by each respective CoC based on data from the HUD 2020 Point-in-Time count.

Table 4 – Population of Homeless Individuals by CoC

Metropolitan Area	Continuum of Care	Number of Homeless Individuals	Percent of all Homeless Individuals in the State
Amarillo	Amarillo CoC	600	2.2%
Austin	Austin/Travis County	2,506	9.2%
Bryan/College Station	Bryan, College Station/Brazos Valley CoC	109	0.4%
Dallas	Dallas City & County, Irving CoC	4,471	16.4%
El Paso	El Paso City & County CoC	843	3.1%
Fort Worth	Fort Worth, Arlington/Tarrant County CoC	2,126	7.8%
Houston	Houston, Pasadena, Conroe/Harris, Fort Bend, Montgomery Counties CoC	3,974	14.6%
San Antonio	San Antonio/Bexar County CoC	2,932	10.8%
Waco	Waco/McLennan County	234	0.9%
Wichita Falls	Wichita Falls/Wise, Palo Pinto, Wichita, Archer Counties CoC	236	.09%
All other areas of Texas	Texas Balance of State CoC	9,198	33.7%
Total Homeless Individuals in the State		**27,229**	**100%**

As can be seen in Table 4 just under 60% of the State's homeless population (58.8%) is located in the five largest Metropolitan areas, Austin, Dallas, Fort Worth, Houston and San Antonio. This is expected due to the large concentration of general population in these areas, close

proximity to public services, such as transportation, hospitals/clinics, other social services as well as a greater lack of affordable housing and increased cost of housing in these areas.

At-risk of homelessness

For HOME-ARP an individual or family is considered at-risk of homelessness if their income is below 50% area median family income, do not have sufficient resources or support networks, and have experienced housing instability. Below is an analysis of 0-30% AMI renters and 30-50% AMI renters.

Individuals or families with extremely low incomes (30% or below area median income) are often service sector workers, including those who earn minimum wage. Individuals or families at risk of homelessness are also often straining the willingness of their social networks to provide housing supports over an extended period, such as living with family or friends over an extended period.

There are 705,625 Renter Households in the State of Texas earning between 0 and 30% of Area Median Income (AMI) according to 2014-2018 HUD Comprehensive Housing Affordability Strategy (CHAS) data. This is roughly 20% of all Texas Renter Households. Of those 705,625, roughly 501,880 Households also have one or more of the four severe housing problems identified by HUD which are: 1. Lacks complete kitchen facilities, 2. Lacks complete plumbing facilities, 3. More than 1.5 persons per room (overcrowding), and 4. Cost burden over 50%. This means that 71% of 0-30% AMI renters are living with one of these serious housing problems that impact their daily lives in addition to being low income. 28% of renters with one or more of the severe housing problems identify as White, 24% identify as Black/African American and 42% identify as Hispanic.

There are an additional 577,520 Renter Households in the State of Texas earning between 30 and 50% of AMI according to 2014-2018 CHAS data. This is roughly 16% of all renter households. 46% or roughly 268,065 households have one or more of the four severe housing problems noted above. For renters at 30-50% AMI with one or more of the severe housing problems, 33% identify as White, 20% identify as Black/African America and 42% identify as Hispanic.

According to the data, there are currently 340,420 units of rental housing affordable to households making 0 to 30% AMI in the State of Texas and an additional 546,190 units of rental housing affordable to households making 30-50% AMI.

A qualifying population highlighted by the HOME-ARP program is households making 0-30% of AMI that are also severely cost burdened (paying 50% or more of their income in rent). There are 417,345 or roughly 60% of all 0-30% AMI renters paying more than 50% of their income in rent. According to 2014-2018 CHAS data 48% of all 0-50% AMI renter households in the state are paying more than 50% of their income in rent.

Individual or family fleeing, or attempting to flee, domestic violence, dating violence, sexual assault, stalking, or human trafficking

It is recognized that domestic violence is one of the main factors of homelessness or being at-risk of homelessness for families. Texas Council on Family Violence provided consultation on the State of Texas 2020-2024 Consolidated Plan noting, "90% of survivors accessing family violence services experienced homelessness as a result of fleeing an abusive relationship at least once".

Domestic violence contributes to homelessness. When a person decides to leave an abusive relationship, they often have nowhere to go. This is particularly true of women with few resources. Lack of affordable housing and long waiting lists for assisted housing mean that many women and their children are forced to choose between abuse at home and life on the streets. Approximately 63% of homeless women have experienced domestic violence by an intimate partner in their adult lives according to the National Network to End Domestic Violence. Statistics released in the 2020 Domestic Violence Counts Report by National Network to End Domestic Violence show that Texas emergency shelters or transitional housing provided by local domestic violence programs served 5,950 victims of domestic violence in one day. 3,712 adult and child victims of domestic violence found refuge in emergency shelters, transitional housing, or other housing provided by local domestic violence programs. On this day, 948 Texas survivor's request for services went unmet, 341 of which were for housing and emergency shelter.

The State of Texas is not suggesting expanding the program eligibility beyond the populations noted above and those at greatest risk of housing instability (under 30% AMI and severely cost burdened), as provided by HUD.

2. ***Describe the unmet housing and service needs of qualifying populations, including but not limited to:***
   - ***Sheltered and unsheltered homeless populations;***
   - ***Those currently housed populations at risk of homelessness;***
   - ***Other families requiring services or housing assistance or to prevent homelessness; and,***
   - ***Those at greatest risk of housing instability or in unstable housing situations:***

Through analysis of the data presented in Tables 1, 2 and 3 above we can identify the unmet housing needs of the HOME-ARP qualifying populations.

As identified in Table 1 there are 12,686 unsheltered homeless adults without children and 506 unsheltered homeless families in the State of Texas at a point in time in January. This appears to indicate that there is a gap in housing options of at least 13,192 beds. This could be emergency shelter beds, transitional housing beds, permanent supportive housing beds, beds in private rental units, or beds in private rental units supported by rental assistance. Likewise, there are 8,234 sheltered adults without children and 5,783 sheltered families with

children, which could indicate a gap in housing options for transitional housing beds, permanent supportive housing beds, beds in private rental units, or beds in private rental units supported by rental assistance in order to move the households out of emergency shelter into housing.

During the consultations noted above there were noted gaps in services, but the greatest need was in actual units for persons experiencing homelessness, primarily the need for deeply affordable Supportive Housing units. The need for more supportive housing is of course not the need for every community. Through consultation, it was noted that some of the state's more rural communities may have a greater need for non-congregate shelter to help get people off the street and provide services so they can get back on their feet and then be able to transition to affordable units in their community. It should be noted, that a common theme through all consultations was the need for more affordable units.

The need for more affordable units can be seen in the data in tables 2 and 3 above as well as in the Housing Mismatch Chart. As noted above there are 705,625 renter households in the state earing between 0-30% of the Area Median Income, of those 0-30% AMI renter households only 155,585 or 22% are living in a unit that is affordable to households making 0-30% AMI. In the state, according to 2015-2019 CHAS data there are only 340,402 units affordable to households making 0-30% AMI, this is only enough units to house 48% of all households in the state with incomes between 0-30% AMI. 54% of housing stock that is affordable to households at 0-30% AMI is being occupied by households making between 30-100%+ of AMI, this is due to naturally occurring affordable housing that is not restricted by income being rented by households that can afford a more expensive unit. It is also due to the location of naturally occurring affordable housing, which is primarily found in areas with a lower cost of living. In Texas this equates to locations that are not near the largest metro areas in the state. Higher numbers of low-income households can be found in urban areas due to relative proximity to service jobs. This lack of affordable housing in metro areas leads to a majority of households in the 0-30% AMI range (78%) renting units that are not affordable to them with many in the state (43%) renting units that are considered affordable to households in the 50-80% AMI range, as seen in the housing mismatch chart above. This overall leads to a need of 520,790 units that are available to only renters making 0-30% of AMI.

As noted above 43% of the 0-30% AMI households are renting units affordable to households making 30-50% AMI, these lower income renters are occupying 30% of the housing stock intended for 30-50% AMI renters. This helps contribute to 66% of 30-50% AMI households renting housing that is not affordable to them. 28% of all rental housing affordable to 50%+ AMI households is occupied by households earning 0-50% of AMI. If all units affordable to 30-50% AMI households were occupied by households in the same income bracket only an additional 31,330 units would be needed for 30-50% AMI renter households.

One of the largest unmet needs of renter households in the state is the lack of efficiency or one-bedroom housing units. According to the 2015-2019 ACS, 26% of households in the state are non-family one-person households. Meaning for these persons to be housed efficiently

and affordable they would only need access to efficiency and one-bedroom units. Currently, there are 1,206,627 efficiency and one-bedroom units being occupied, if all of those units were being occupied by a single person only 47% of one-person households would be living in a unit suitable to their needs. We know this is not the case and that multiple person households reside in efficiency and one-bedroom units, leading to a majority of one-person households to rent units that are larger and more expensive.

3. ***Identify and consider the current resources available to assist qualifying populations, including congregate and non-congregate shelter units, supportive services, TBRA, and affordable and permanent supportive rental housing:***

Currently in the State of Texas, there is an unprecedented level of funding for Homeless related services and rental assistance. The State of Texas alone received $97,792,616 in Emergency Solutions Grants (ESG) funding from the Coronavirus Aid Relief and Economic Security (CARES) Act, in addition to the roughly $8 to 9 million annual appropriation received by the state. These amounts do not include funding provided to local Participating Jurisdictions directly from HUD. The state also received roughly $2 billion as part of both the Consolidated Appropriations Act of 2021 and the American Rescue Plan Act to provide Emergency Rental Assistance and Housing Stability Services (HSS), which the state is currently providing through its Texas Rent Relief and Housing Stability Services Program.

This increased amount of ESG and HSS funding provides local subrecipients crucial funds to help keep individuals and families housed through rapid rehousing and rental assistance for individuals and families who would have become homeless without the assistance and street outreach which has assisted local providers in reaching more unsheltered homeless during the pandemic. Currently, the State of Texas does not primarily use its annual allocation of ESG funds for shelter rehabilitation purposes, but does allocate funds to Emergency Shelter activities that help subrecipients operate shelters and continue to provide emergency shelter services to homeless individuals and families.

In addition to ESG funds the state also receives an annual allocation of HOME funds of which the state dedicates on average between $6 and 8 million for Tenant Based Rental Assistance (TBRA), which is used to help low income individuals with rent and security deposits. During the pandemic additional funds from the state's annual allocation were added to support TBRA activities to assist households that were affected by the pandemic.

The primary method used by the state to fund Permanent Supportive Housing (PSH) is through the Low-Income Housing Tax Credit (LIHTC) program. This has helped fund 877 units of PSH in the State of Texas in the last two program cycles 2020 and 2021, and 2,385 units since 2012.

These elevated levels of funding received over the previous 18 months have been focused on prevention related activities to ensure that households that are have lost a job, seen a decrease in hours, lost a home, or are sick with no pay do not fall into homelessness. As can

be seen from the analysis of shelter and housing inventory, more units are needed to help house more of the homeless and provide more affordability to those at-risk of homelessness.

4. ***Identify any gaps within the current shelter and housing inventory as well as the service delivery system:***

See response to #2 above.

5. ***Identify the characteristics of housing associated with instability and an increased risk of homelessness if the PJ will include such conditions in its definition of "other populations" as established in the HOME-ARP Notice:***

The State of Texas is not suggesting expanding the program eligibility beyond the populations noted above and those at greatest risk of housing instability (under 30% AMI and severely cost burdened) as provided by HUD in CPD Notice 21-10.

6. ***Identify priority needs for qualifying populations:***

Based on the consultations, priority needs include:

- Deeply affordable quality housing (particularly for those with 0-30% MFI);
- Accessible units;
- Housing subsidies so that no more than 30% of income goes to housing (not housing cost burdened);
- Reduced barriers to entry to rental housing;
- Mental Health and Behavioral Health services;
- Transportation services;
- Health and dental care; and
- Case management (geriatric case management, crisis case management, housing stability case management, financial case management, coordinating basic needs).

7. ***Explain how the level of need and gaps in its shelter and housing inventory and service delivery systems based on the data presented in the plan were determined:***

The level of need and gaps in housing inventory and service delivery systems were determined through careful review and analysis of Census and CHAS data. In addition, qualitative information was provided at all the consultations noted in this plan that assisted in determining the focus of the State of Texas's HOME-ARP funds.

IV. HOME-ARP ACTIVITIES

1. Describe the method for soliciting applications for funding and/or selecting developers, service providers, subrecipients and/or contractors and whether the PJ will administer eligible activities directly:

TDHCA will primarily solicit applications through several NOFAs seeking developers or subrecipients. At this time, TDHCA does not plan to administer activities directly, but would do so if directed by its Board of Directors.

Rental Housing and Supportive Housing

HOME-ARP Rental Housing and Supportive Housing (RHSH) funds will be made available as follows and as further described in a NOFA:

- Funds will be made available competitively statewide. The allocations may include a set-aside, allocation, or priority for rural applications.
- Applications may be for Supportive Housing or for HOME-ARP Units within Multifamily Developments, including Developments with any Target Population, as defined in 10 TAC §11.1. If Applicants apply for Rental Housing, the NOFA may include additional points for the inclusion of services.
- Applications may be able to be layered with other local, state, or federal funds, including but not limited to HTC (both 9% and 4% credits). National Environmental Protection Act (NEPA) requirements are applicable for these funds.
- Units serving Qualified Populations are only able to charge a household 30% of the tenant's income.
- Applications may request and be awarded capitalized operating reserves. Amounts for operating reserves will be established by TDHCA and if approved, the costs may be capitalized at the time of closing or with the first draw. While the operating reserve per unit is not established based on the amount of rent 'lost' by only charging the household 30% of their income, it is estimated that roughly 80% or more of the expenses that would have been covered by those rents are eligible costs to be included in the capitalized operating reserves. Operating reserves for a unit will be for administrative expenses, property management fees, insurance, utilities, property taxes, maintenance of a unit, and other expenses described in HUD CPD notice 21-10. Operating costs cannot cover debt service for the HOME-ARP units.
- Applications must follow TDHCA's existing rules and policies for rental housing and/or Supportive Housing, unless otherwise described in the NOFA.
- At the end of the HOME-ARP affordability period and depletion of the capitalized operating reserves, units will not be required to only charge 30% of tenant's income, but will still have a state-required affordability period.
- Up to 30% of the HOME-ARP units may be for low-income households that are not Qualified Populations, as allowed by the HUD CPD Notice 21-10.
- TDHCA may adopt the utility allowance schedule for Developments in which awarded Applicants are using the PHA utility allowances. Applicants may choose to use the

TDHCA maximum allowances for utilities and services, or may adopt the local Public Housing Authority's utility allowance schedule. TDHCA's maximum allowances for utilities and services will be updated annually. The Applicant must inform TDHCA of the PHA's allowances to be adopted and, if the Applicant is awarded, ensure that the most recent PHA allowance schedules are used. Awarded Applicants may choose to use the PHA utility allowance after notification to TDHCA during the compliance period.

- Minimum Request Amount: $500,000
- Maximum Request Amount: $10 million, up to 100% of the HOME-ARP eligible costs.
- Eligible award amounts will be capped at the proportional share of HOME eligible costs for the HOME-ARP units.
- Must designate at least the lesser of 50% of units or 10 units for HOME-ARP assistance.

Non-Congregate Shelter

- HOME-ARP NCS funds will be made available competitively statewide. The allocations may include a set-aside or priority for rural applications.
- Applications must show that there are sufficient non-governmental operating funds to support any NCS activity, as further described in the NOFA.
- Minimum Request Amounts: $200,000
- Maximum Request Amount: $10 million, but not to exceed 100% of the HOME-ARP eligible costs.
- Must designate at least the lesser of 50% of units or 10 units for HOME-ARP assistance.

Nonprofit Capacity and Operations Assistance

Each of the above NOFAs will include provisions that allow nonprofit applicants to request funds for capacity and/or operations. Only Nonprofits awarded funds or in control of Developments or shelters awarded funds under NCS or RHSH will be eligible for nonprofit capacity and operating funds. The maximum amount of Nonprofit Capacity and Operations awards will be $50,000 each, or a total of $75,000 if applying for both funding sources.

If any portion of the PJ's HOME-ARP administrative funds were provided to a subrecipient or contractor prior to HUD's acceptance of the HOME-ARP allocation plan because the subrecipient or contractor is responsible for the administration of the PJ's entire HOME-ARP grant, identify the subrecipient or contractor and describe its role and responsibilities in administering all of the PJ's HOME-ARP program:

Not applicable

PJs must indicate the amount of HOME-ARP funding that is planned for each eligible HOME-ARP activity type and demonstrate that any planned funding for nonprofit organization operating assistance, nonprofit capacity building, and administrative costs is within HOME-ARP limits. The following table may be used to meet this requirement.

Use of HOME-ARP Funding

	Approx. Funding Amount*	Percent of the Grant	Statutory Limit
Non-Congregate Shelters	$56,511,887	42.5%	n/a
Affordable Rental Housing Incl. Capitalized Operating Reserves	$56,511,887	42.5%	n/a
Non-Profit Operating/Non-Profit Capacity Building	$6,648,458	5%	5%
Administration and Planning	$13,296,915	10%	15%
Total HOME ARP Allocation	$132,969,147	100%	

* Based on the applications received, these amounts and percentages may fluctuate.

Additional narrative, if applicable:

While TDHCA agrees with much of the public input on the need for the variety of requested or suggested activities, unfortunately there is greater need than there are funds available. The consultation input was widely supportive of the need for development of Rental Housing with services, Supportive Housing and Non-Congregate Shelter and the data supports this need. TDHCA feels these unique one-time funds will have the greatest long-term impact for Texans by being used for acquisition and development of Non-Congregate Shelter (NCS), development of rental housing, and development of Supportive Housing (SH) with associated capitalized operating subsidies. After excluding the funds for Administration/Planning and Non-Profit Capacity/Operating, funds will initially be made available equally proportioned between Non-Congregate Shelter and Rental Housing; if applications received do not fully utilize those funds, funds may be shifted between those two categories.

NP Operating and Capacity Building Assistance will only be provided to those organizations receiving funds under either NCS or RHSH.

TDHCA will consider revising its rules to provide for a portion of its annual allocation of ESG to be used to support NCS shelter operations funded by HOME-ARP and such planning will be reflected in future One Year Action Plan submissions.

If all funds are not obligated for the activities reflected in the table above, TDHCA may reprogram the funds into Supportive Services and/or TBRA activities; however, it should be noted that any funds obligated later in the performance period with HUD will likely only be available in non-Participating Jurisdictions based on state law.

Describe how the characteristics of the shelter and housing inventory, service delivery system, and the needs identified in the gap analysis provided a rationale for the plan to fund eligible activities:

As noted in the Data Analysis section, Texas has significant need for both shelter and rental housing inventory to serve the eligible population for HOME-ARP. This was supported by the comments heard in the consultations.

HOME-ARP Production Housing Goals

Estimate the number of affordable rental housing units for qualifying populations that the PJ will produce or support with its HOME-ARP allocation:

TDHCA estimates that with the funds programmed as reflected in the table above, 565 units of non-congregate shelter and 202units of Rental Housing or Supportive Housing (including funded operating reserves) can be produced or supported.

Describe the specific affordable rental housing production goal that the PJ hopes to achieve and describe how it will address the PJ's priority needs:

TDHCA's goal will be to produce or support 202 units of Rental Housing or Supportive Housing, and 565 units of non-congregate shelter helping to create or support more housing across the state.

Preferences

Other qualifying criteria

TDHCA does not intend to establish other qualifying criteria for persons to qualify for HOME-ARP.

Identify whether the PJ intends to give preference to one or more qualifying populations or a subpopulation within one or more qualifying populations for any eligible activity or project:

- Preferences cannot violate any applicable fair housing, civil rights, and nondiscrimination requirements, including but not limited to those requirements listed in 24 CFR §5.105(a).
- PJs are not required to describe specific projects to which the preferences will apply.

TDHCA will not require any specific set-asides or preferences that must be applied to all applicants, but may allow each NCS applicant to utilize any one or more of the following preference categories, including combining categories if so reflected in their application and approved by TDHCA:

- Families with Children
- Persons Fleeing Domestic Violence
- Veterans (all discharges except dishonorable)

- Youth Aging Out of the Foster Care System
- Chronically Homeless
- At Risk of Homelessness
- Seniors with Disabilities
- Persons Exiting Institutions/Reentry

For Rental housing and SH, Applicants may request to establish a preference to serve the following special needs populations:

- Persons With Disabilities
- Persons With Substance Use Disorders
- Persons Living With HIV/AIDS (PLWH)
- Persons With Violence Against Woman Act (VAWA) Protections
- Colonia Residents
- Farmworkers
- Homeless Populations
- Veterans
- Wounded Warriors (As Defined By The Caring For Wounded Warriors Act Of 2008)
- Public Housing Residents
- Persons Transitioning Out Of Incarceration
- Persons Impacted By A State Or Federally Declared Disaster
- Persons Transitioning Out Of Foster Care and Nursing Facilities.

HOME-ARP will allow development of housing that meets requirements under the Housing for Older Persons Act. TDHCA may also consider permitting rental housing owners to give a preference or limitation as indicated in this section and may allow a preference or limitation that is not described in this section to encourage leveraging of federal or state funding, provided that another federal or state funding source for the rental housing requires a limitation or preference.

For NCS, and RHSH, no otherwise eligible individuals with disabilities or families including an individual with a disability who may benefit from the services provided may be excluded on the grounds that they do not have a particular disability.

If a preference was identified, explain how the use of a preference or method of prioritization will address the unmet need or gap in benefits and services received by individuals and families in the qualifying population or category of qualifying population, consistent with the PJ's needs assessment and gap analysis:

Consultations revealed that those populations listed above for a preference are often challenging to serve in a congregate shelter setting and are best able to be housed in NCS.

If a preference was identified, describe how the PJ will use HOME-ARP funds to address the unmet needs or gaps in benefits and services of the other qualifying populations that

are not included in the preference:

The state is not establishing a statewide preference and across all providers different preferences will be utilized. Other state and local funds will assist other low-income households including, but not limited to, Housing Tax Credits, HOME, ESG, ERA2 Housing Stability Services funds, and 811 PRA.

HOME-ARP Refinancing Guidelines

If the PJ intends to use HOME-ARP funds to refinance existing debt secured by multifamily rental housing that is being rehabilitated with HOME-ARP funds, the PJ must state its HOME-ARP refinancing guidelines in accordance with 24 CFR 92.206(b). The guidelines must describe the conditions under with the PJ will refinance existing debt for a HOME-ARP rental project, including:

- ***Establish a minimum level of rehabilitation per unit or a required ratio between rehabilitation and refinancing to demonstrate that rehabilitation of HOME-ARP rental housing is the primary eligible activity***

  TDHCA will follow its guidelines found in 10 TAC Chapters 10, 11, and 13 for any rental housing or SH involving refinancing, unless otherwise described in the NOFA.

- ***Require a review of management practices to demonstrate that disinvestment in the property has not occurred; that the long-term needs of the project can be met; and that the feasibility of serving qualified populations for the minimum compliance period can be demonstrated.***

  The TDHCA staff review of HOME-ARP RHSH applicants involving refinancing and rehabilitation of an existing property will include a review of management practices and establish feasibility for the HUD-ARP affordability period.

- ***State whether the new investment is being made to maintain current affordable units, create additional affordable units, or both.***

  The TDHCA HOME-ARP RHSH program will support both creation of new affordable units, and acquisition and rehab of current affordable units.

- ***Specify the required compliance period, whether it is the minimum 15 years or longer.***

  The minimum HUD affordability periods will be used for NCS and RHSH, and HUD compliance requirements will be considered satisfied at the end of that term. For RHSH, TDHCA will require the property to remain affordable for at least a 30 year state affordability period per Texas Gov't Code §2306.185(c). The level of affordability required for the portion of the state affordability period that follows after the HOME-ARP period is over will be provided for in the NOFA.

- ***State that HOME-ARP funds cannot be used to refinance multifamily loans made or insured by any federal program, including CDBG***.

  TDHCA will not allow HOME-ARP funds to be used to refinance multifamily loans made or insured by any federal program including CDBG.

- ***Other requirements in the PJ's guidelines, if applicable:***

  RHSH Properties will be allowed to use methods other than Coordinated Entry for selecting tenants.

  Tiny homes are not prohibited in and of themselves, but must meet all requirements of either being NCS, rental housing, or SH (including not charging more than 30% of household's income).

  Units cannot receive HOME-ARP operating subsidy on units that are receiving an operating subsidy or project-based rental assistance from another source.