



**Multifamily Finance Division
2005 Multifamily Housing Revenue Bond Program**

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TITLE 10. COMMUNITY DEVELOPMENT
PART I. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
CHAPTER 35. MULTIFAMILY HOUSING REVENUE BOND RULES
10 TAC §§35.1 – 35.10

§35.1. Introduction

The purpose of this Chapter 35 is to state the Texas Department of Housing and Community Affairs (the "Department") requirements for issuing Bonds, the procedures for applying for multifamily housing revenue Bond financing, and the regulatory and land use restrictions imposed upon Developments financed with the issuance of Bonds for the 2005 Private Activity Bond Program Year. The rules and provisions contained in Chapter 35, of this title are separate from the rules relating to the Department's administration of the Housing Tax Credit Program. Applicants seeking a tax credit allocation should consult the Department's Qualified Allocation Plan and Rules ("QAP"), in effect for the program year for which the Housing Tax Credit application will be submitted.

§35.2. Authority

The Department receives its authority to issue Bonds from Chapter 2306 of the Texas Government Code (the "Act"). All Bonds issued by the Department must conform to the requirements of the Act. Notwithstanding anything herein to the contrary, tax-exempt Bonds which are issued to finance the Development of multifamily rental housing are specifically subject to the requirements of the laws of the State of Texas, including but not limited to the Act, Chapter 1372 of the Texas Government Code relating to Private Activity Bonds, and to the requirements of the Code (as defined in this chapter).

§35.3. Definitions.

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

- (1) **Applicant**--means any Person or Affiliate of a Person who is a member of the General Partner, who files a Pre-Application or full Application with the Department requesting the Department issue Bonds to finance a Development.
- (2) **Application**--means an Application, in the form prescribed by the Department, filed with the Department by an Applicant, including any exhibits or other supporting material.
- (3) **Board**--means the Governing Board of the Department.
- (4) **Bond**--means an evidence of indebtedness or other obligation, regardless of the sources of payment, issued by the Department under the Act, including a bond, note, or bond or revenue anticipation note, regardless of whether the obligation is general or special, negotiable, or nonnegotiable, in bearer or registered form, in certified or book entry form, in temporary or permanent form, or with or without interest coupons.
- (5) **Code**--means the Internal Revenue Code of 1986, as amended from time to time, together with any applicable regulations, rules, rulings, revenue procedures, information statements or other official pronouncements issued by the United States Department of the Treasury or the Internal Revenue Service.
- (6) **Development**--means property or work or a development, building, structure, facility, or undertaking, whether existing, new construction, remodeling, improvement, or rehabilitation, that meets or is designed to meet minimum property standards required by the Department for the primary purpose of providing sanitary, decent, and safe dwelling accommodations for rent, lease, or use by individuals and families of Low Income and Very Low Income and Families of Moderate Income in need of housing. The term includes:
 - (A) buildings, structures, land, equipment, facilities, or other real or personal properties that are necessary, convenient, or desirable appurtenances, including streets, water, sewage facilities, utilities, parks, site preparation, landscaping, stores, offices, and other non-

- housing facilities, such as administrative, community, and recreational facilities the Department determines to be necessary, convenient, or desirable appurtenances; and
- (B) multifamily dwellings in rural and urban areas.
- (7) **Development Owner**--means an Applicant that is approved by the Department as qualified to own, construct, acquire, rehabilitate, operate, manage, or maintain a Development subject to the regulatory powers of the Department and other terms and conditions required by the Department and the Act.
- (8) **Eligible Tenants**--means
- (A) individuals and families of Extremely Low, Very Low and Low Income,
- (B) Families of Moderate Income (in each case in the foregoing subparagraph (A) and (B) of this paragraph as such terms are defined by the Issuer under the Act), and
- (C) Persons with Special Needs, in each case, with an Anticipated Annual Income not in excess of 140% of the area median income for a four-person household in the applicable standard metropolitan statistical area; provided that all Low-Income Tenants shall count as Eligible Tenants.
- (9) **Extremely Low Income**--means the income received by an individual or family whose income does not exceed thirty percent (30%) of the area median income or applicable federal poverty line, as determined by the Act.
- (10) **Family of Moderate Income**--means a family:
- (A) that is determined by the Board to require assistance taking into account
- (i) the amount of total income available for the housing needs of the individuals and family,
- (ii) the size of the family,
- (iii) the cost and condition of available housing facilities,
- (iv) the ability of the individuals and family to compete successfully in the private housing market and to pay the amounts required by private enterprise for sanitary, decent, and safe housing, and
- (v) standards established for various federal programs determining eligibility based on income; and
- (B) that does not qualify as a family of Low Income.
- (11) **Ineligible Building Type**--as defined in the Department's QAP and Rules in effect for the program year for which the Bond and Housing Tax Credit applications are submitted.
- (12) **Institutional Buyer**--means
- (A) an accredited investor as defined in Regulation D promulgated under the Securities Act of 1933, as amended (17 CFR Sec. 230.501(a)), but excluding any natural person or any director or executive officer of the Department (17 CFR §§ 230.501(a)(4) through (6)) or
- (B) a qualified institutional buyer as defined by Rule 144A promulgated under the Securities Act of 1935, as amended (17 CFR Sec. 230.144A).
- (13) **Low Income**--means the income received by an individual or family whose income does not exceed eighty percent (80%) of the area median income or applicable federal poverty line, as determined by the Act.
- (14) **Land Use Restriction Agreement (LURA)**--means an agreement between the Department and the Development Owner which is binding upon the Development Owner's successors in interest that encumbers the Development with respect to the requirements of law, including this title, the Act and Section 42 of the Code.
- (15) **Owner**--means an Applicant that is approved by the Department as qualified to own, construct, acquire, rehabilitate, operate, manage, or maintain a Development subject to the regulatory powers of the Department and other terms and conditions required by the Department and the Act.
- (16) **Persons with Special Needs**--means persons who

- (A) are considered to be disabled under a state or federal law,
 - (B) are elderly, meaning 60 years of age or older or of an age specified by an applicable federal program,
 - (C) are designated by the Board as experiencing a unique need for decent, safe housing that is not being met adequately by private enterprise, or
 - (D) are legally responsible for caring for an individual described by subparagraph (A), (B) or (C) of this paragraph above and meet the income guidelines established by the Board.
- (17) **Private Activity Bonds**--means any Bonds described by §141(a) of the Code.
 - (18) **Private Activity Bond Program Scoring Criteria**--means the scoring criteria established by the Department for the Department's Multifamily Housing Revenue Bond Program, §35.6(d) of this title.
 - (19) **Private Activity Bond Program Threshold Requirements**--means the threshold requirements established by the Department for the Department's Multifamily Housing Revenue Bond Program, §35.6(c) of this title.
 - (20) **Program**--means the Department's Multifamily Housing Revenue Bond Program.
 - (21) **Proper Site Control**--Regarding the legal control of the land to be used for the Development, means the earnest money contract is in the name of the Applicant (principal or member of the General Partner); fully executed by all parties and escrowed by the title company.
 - (22) **Property**--means the real estate and all improvements thereon, whether currently existing or proposed to be built thereon in connection with the Development, and including all items of personal property affixed or related thereto.
 - (23) **Qualified 501(c)(3) Bonds**--means any Bonds described by §145(a) of the Code.
 - (24) **Tenant Income Certification**--means a certification as to income and other matters executed by the household members of each tenant in the Development, in such form as reasonably may be required by the Department in satisfaction of the criteria prescribed by the Secretary of Housing and Urban Development under §8(f)(3) of the Housing Act of 1937 ("the Housing Act") (42 U.S.C. 1437f) for purposes of determining whether a family is a lower income family within the meaning of the §8(f)(1) of the Housing Act.
 - (25) **Tenant Services**--means social services, including child care, transportation, and basic adult education, that are provided to individuals residing in low income housing under Title IV-A, Social Security Act (42 U.S.C. §601 et seq.), and other similar services.
 - (26) **Tenant Services Program Plan**--means the plan, subject to approval by the Department, which describes the Tenant Services to be provided by the Development Owner in a Development.
 - (27) **Trustee**--means a national banking association organized and existing under the laws of the United States, as trustee (together with its successors and assigns and any successor trustee).
 - (28) **Unit**--means any residential rental Unit in a Development consisting of an accommodation, including a single room used as an accommodation on a non-transient basis, that contains complete physical facilities and fixtures for living, sleeping, eating, cooking and sanitation.
 - (29) **Very Low Income**--means the income received by an individual or family whose income does not exceed sixty percent (60%) of the area median income or applicable federal poverty line as determined under the Act.

§35.4. Policy Objectives & Eligible Developments

The Department will issue Bonds to finance the preservation or construction of decent, safe and affordable housing throughout the State of Texas. Eligible Developments may include those which are constructed, acquired, or rehabilitated and which provide housing for individuals and families of Low Income, Very Low Income, or Extremely Low Income, and Families of Moderate Income.

§35.5. Bond Rating and Investment Letter

- (a) Bond Ratings. All publicly offered Bonds issued by the Department to finance Developments shall have and be required to maintain a debt rating the equivalent of at least an "A" rating assigned to long-term obligations by Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc. or Moody's Investors Service, Inc. If such rating is based upon credit enhancement provided by an institution other than the Applicant or Development Owner, the form and substance of such credit enhancement shall be subject to approval by the Board, which approval shall be evidenced by adoption by the Board of a resolution authorizing the issuance of the credit-enhanced Bonds. Remedies relating to failure to maintain appropriate credit ratings shall be provided in the financing documents relating to the Development.
- (b) Investment Letters. Bonds rated less than "A" or Bonds which are unrated must be placed with one or more Institutional Buyers and must be accompanied by an investment letter acceptable to the Department. Subsequent purchasers of such Bonds shall also be qualified as Institutional Buyers and shall sign and deliver to the Department an investment letter in a form acceptable to the Department. Bonds rated less than "A," and Bonds which are unrated shall be issued in physical form, in minimum denominations of one hundred thousand dollars (\$100,000), and shall carry a legend requiring any purchasers of the Bonds to sign and deliver to the Department an investment letter in a form acceptable to the Department.

§35.6. Application Procedures, Evaluation and Approval

- (a) Application Costs, Costs of Issuance, Responsibility and Disclaimer. The Applicant shall pay all costs associated with the preparation and submission of the Application – including costs associated with the publication and posting of required public notices – and all costs and expenses associated with the issuance of the Bonds, regardless of whether the Application is ultimately approved or whether Bonds are ultimately issued. At any stage during the Application process, the Applicant is solely responsible for determining whether to proceed with the Application, and the Department disclaims any and all responsibility and liability in this regard.
- (b) Pre-application. An Applicant who requests financing from the Department for a Development shall submit a pre-application in a format prescribed by the Department. Within fourteen (14) days of the Department's receipt of the pre-application, the Department will be responsible for federal, state, and local community notifications of the proposed Development. Upon review of the pre-application, if the Development is determined to be ineligible for Bond financing by the Department, the Department will send a letter to the Applicant explaining the reason for the ineligibility. If the Development is determined to be eligible for Bond financing by the Department, the Department will score and rank the pre-application based on the Private Activity Bond Program Scoring Criteria as described in subsection (d) of this section. The Department will score and rank the pre-application with higher scores ranking higher within each priority defined by §1372.0321, Texas Government Code. All Priority 1 Applications will be ranked above all Priority 2 Applications which will be ranked above all Priority 3 Applications, regardless of score. This ranking will be used throughout the calendar year. In the event two or more Applications receive the same score, the Department will use, as a tie-breaking mechanism, the number of points awarded for Quality and Amenities for the Development. If a tie still exists, the Department will grant preference to the pre-application with the lower number of net rentable square feet per bond amount requested. Pre-Applications must meet the threshold requirements as stated in the Private Activity Bond Program Threshold Requirements as set out in subsection (c) of this section. The Private Activity Bond Program Threshold Requirements will be posted on the Department's website. After scoring, the Development and the proposed financing structure will be presented to the Department's Board for consideration of a resolution declaring the Department's intent to issue Bonds (the "inducement resolution") with respect to the Development. After Board approval of the inducement resolution, the scored and ranked Applications will be submitted to the Texas Bond Review Board for its lottery processing. The Texas Bond Review Board will draw the number of lottery numbers that equates to the number of

eligible Applications submitted by the Department. The lottery numbers drawn will not equate to a specific Development. The Texas Bond Review Board will thereafter assign the lowest lottery number drawn to the highest scored and ranked Application as previously determined by the Department. The criteria by which a Development may be deemed to be eligible or ineligible are explained below in subsection (g) of this section, entitled Evaluation Criteria. The Private Activity Bond Program Scoring Criteria will be posted on the Department's website. The pre-application shall consist of the following information:

- (1) Completed Uniform Application forms in the format required by the Department;
- (2) Texas Bond Review Board's Residential Rental Attachment;
- (3) Relevant Development Information;
- (4) Public Notification Information;
- (5) Certification and agreement to comply with the Department's rules;
- (6) Agreement of responsibility of all cost incurred;
- (7) An organizational chart showing the structure of the Applicant and the ownership structure of any principals of the Applicant;
- (8) Evidence that the Applicant and principals are registered with the Texas Secretary of State, or if the Applicant has not yet been formed, evidence that the name of the Applicant is reserved with the Secretary of State;
- (9) Organizational documents such as partnership agreements and articles of incorporation, as applicable, for the Applicant and its principals;
- (10) Documentation of non-profit status if applicable; Evidence of good standing from the Comptroller of Public Accounts of the State of Texas for the Applicant and its principals; Corporate resumes and individual resumes of the Applicant and any principals;
- (11) A copy of an executed earnest money contract between the Applicant and the seller of the Property. This earnest money contract must be in effect at the time of submission of the application and expire no earlier than December 1 of the year preceding the applicable program year. The earnest money contract must stipulate and provide for the Applicant's option to extend the contract expiration date through March 1 of the program year, subject only to the seller's receipt of additional earnest money or extension fees, so that the Applicant will have site control at the time a reservation is granted. If the Applicant owns the Property, a copy of the recorded warranty deed is required;
- (12) Evidence of zoning appropriate for the proposed use, application for the appropriate zoning or statement that no zoning is required;
- (13) A local map showing the location of the proposed Property site;
- (14) A boundary survey or subdivision plat which clearly identifies the location and boundaries of the subject Property;
- (15) Name, address and telephone number of the Seller of the Property;
- (16) Construction draw and lease-up proforma for Developments involving new construction;
- (17) Past two years' operating statements for existing Developments;
- (18) Current market information which includes rental comparisons;
- (19) Documentation of local Section 8 utility allowances;
- (20) Verification/Evidence of delivery of federal, state, and local community notifications;
- (21) Self-Scoring Criteria; and
- (22) Such other items deemed necessary by the Department per individual application.

(c) Pre-Application Threshold Requirements.

- (1) As the Department reviews the Application, the Department will use the following assumptions, even if not reflected in the Application. Prequalification Assumptions:
 - (A) Development Feasibility:
 - (i) Debt Coverage Ratio must be greater than or equal to 1.10;

- (ii) Annual Expenses must be at least \$3,800 per Unit or \$3.75 per square foot;
 - (iii) Deferred Developer Fees are limited to 80% of Developer's Fees;
 - (iv) Contractor Fee are limited to 6% of direct costs plus site work cost;
 - (v) Overhead are limited to 2% of direct costs plus site work cost;
 - (vi) General Requirements are limited to 6% of direct costs plus site work cost;
 - (vii) Developer Fees cannot exceed 15% of the project's Total Eligible Basis
- (B) Construction Costs Per Unit Assumption. The acceptable range is \$47 to \$61 per Unit (Acquisition / Rehab developments are exempt from this requirement);
 - (C) Interest Rate Assumption. 6.00% for 30 year financing and 6.75% for 40 year financing;
 - (D) Size of Units (Acquisition / Rehab developments are exempt from this requirement);
 - (i) One bedroom Unit must be greater than or equal to 650 square feet for family and 550 square feet for senior Units.
 - (ii) Two bedroom Unit must be greater that or equal to 900 square feet for family and 750 square feet for senior Units.
 - (iii) Three bedroom Unit must be greater than or equal to 1,000 square feet for family.
- (2) Appropriate Zoning. Evidence of appropriate zoning for the proposed use or evidence of application made and pending decision;
 - (3) Executed Site Control. Properly executed and escrow receipted site control through 12/1/04 with option to extend through 3/1/05;
 - (4) Previous Participation and Authorization to Release Credit Information (located in the uniform application);
 - (5) Current Market Information (must support affordable rents);
 - (6) Completed TDHCA Uniform Application and application exhibits;
 - (7) Completed Multifamily Rental Worksheets;
 - (8) Public Notification Information (see application package);
 - (9) Relevant Development Information (see application package);
 - (10) Completed 2004 Bond Review Board Residential Rental Attachment;
 - (11) Signed letter of Responsibility for All Costs Incurred;
 - (12) Signed MRB Program Certification Letter;
 - (13) Evidence of Paid Application Fees (\$1,000 to TDHCA, \$1,500 to Vinson and Elkins and \$5,000 to Bond Review Board);
 - (14) Boundary Survey or Plat;
 - (15) Local Area map showing the location of the Property and Community Services / Amenities within a three (3) mile radius;
 - (16) Utility Allowance from the Appropriate Local Housing Authority;
 - (17) Organization Chart with evidence of Entity Registration or Reservation with the Secretary of State; and
 - (18) Required Notification. Evidence of notifications shall include a copy of the exact letter and other materials that were sent to the individual or entity and proof of delivery in the form of a signed certified mail receipt, signed overnight mail receipt or confirmation letter from each official. Each notice must include the information required for "Community Notification" within the Application Package. Notification must be sent to all the following individuals and entities (*If the QAP and Rules in effect for the program year for which the Bond and Housing Tax Credit applications are submitted reflect a notification process that is different from the process listed below, then the QAP and Rules will override the notification process listed below*):
 - (A) State Senator and Representative that represents the community containing the development;

- (B) Presiding Officer of the governing body of any municipality containing the development and **all** elected members of that body (Mayor, City Council members);
- (C) Presiding Officer of the governing body of the county containing the development and **all** elected members of that body (County Judge and/or Commissioners);
- (D) School District Superintendent of the school district containing the development;
- (E) Presiding Officer of the School Board of Trustees of the school district containing the development;
- (F) City and County Clerks (Evidence must be provided that a letter, meeting the requirements of the "Clerk Notification" letter in the application materials, was sent to the city clerk and county clerk no later than August 9, 2004. A copy of the return letter from the city and county clerks must be provided); and
- (G) Neighborhood Organizations on record with the state or county whose boundaries contain the development (All entities identified in the letters from the city and county clerks must be provided with written notification and evidence of that notification must be provided. If the Applicant can provide evidence that the proposed Development is not located within the boundaries of an entity on a list from the clerk(s), then such evidence in lieu of notification may be acceptable. If no letter is received from the city or county clerk by seven (7) days prior to the date of Application submission, the Applicant must submit a statement attesting to the fact that no return letter was received. If the Applicant has knowledge of neighborhood organizations on record with the state or county within whose boundaries the development is located, written notification must be provided to them. If the Applicant has no knowledge of such neighborhood organizations within whose boundaries the Development is located, they must submit a statement to that effect with the Application).

(d) Pre-Application Scoring Criteria.

- (1) Construction Cost Per Unit includes: site work, contractor profit, overhead, general requirements and contingency. Calculation will be hard costs per square foot of net rentable area. Must be greater than or equal to \$60 per square foot (1point) (Acquisition / Rehab will automatically receive (1 point)).
- (2) Size of Units. Average size of all Units combined in the development must be greater than or equal to 950 square foot for family and must be greater than or equal to 750 square foot for elderly (5 points). (Acquisition / Rehab developments will automatically receive 5 points).
- (3) Period of Guaranteed Affordability for Low Income Tenants.
Add 10 years of affordability after the extended use period for a total affordability period of 40 years (1 point).
- (4) Quality and Amenities ((maximum 34 points) Acquisition / Rehab (with no demolition / new construction) will receive double points not to exceed 34 points)). (If there are changes to the Application prior to closing that have an adverse affect on the score and ranking order and that would have resulted in the Application being placed below another Application in the ranking, the Department will terminate the Application and return the reservation to the Texas Bond Review Board (with the exception of changes to deferred developer's fees and support or opposition points). Substitutions in amenities will be allowed as long as the overall score is not affected). Applications in which Developments provide specific qualities and amenities at no extra charge to the tenant will be awarded points as follows:
 - (A) Washer / Dryer Connections (1 point);
 - (B) Microwave Ovens (in each Unit) (1 point);
 - (C) Storage Room (outside the Unit) (1 point);

- (D) Covered Parking (at least one per Unit) (3 points);
- (E) Garages (equal to at least 35% of Units) (5 points);
- (F) Ceiling Fans (living rooms and bedrooms) (1 point);
- (G) Ceramic Tile Flooring (entry way and all bathroom) (2 points);
- (H) 75% or Greater Masonry (includes rock, stone, brick, stucco and cementious board product; excludes EFIS) (5 points);
 - (I) Playground and Equipment or Covered Community Porch (3 points);
 - (J) BBQ Grills and Tables (one each per 50 Units) or Walking Trail (minimum length of ¼ mile) (3 points);
 - (K) Full Perimeter Fencing and Gated (3 points);
 - (L) Computers with internet access / Business Facilities (8 hour availability) (2 points);
 - (M) Game Room or TV Lounge (2 points);
 - (N) Workout Facilities or Library (with comparable square footage as workout facilities) (2 points).
- (5) Tenant Services (Tenant Services shall include only direct costs (tenant services contract amount, supplies for services, internet connections, initial cost of computer equipment, etc...). Indirect costs such as overhead and utility allocations may not be included).
 - (A) \$10.00 per Unit per month (10 points);
 - (B) \$7.00 per Unit per month (5 points);
 - (C) \$4.00 per Unit per month (3 points).
- (6) Zoning appropriate for the proposed use or no zoning required (appropriate zoning for the intended use must be in place at the time of application submission date, August 30,2004, in order to receive points) (5 points).
- (7) Proper Site Control (as defined in §35.3(21) of this title control through 12/01/04 with option to extend through 03/01/05 and all information correct at the time of application submission date, August 30, 2004, in order to receive points) (5 points).
- (8) Development Support / Opposition (Maximum net points of +12 to -12. Each letter will receive a maximum of +1.5 to -1.5. All letters received by by 5:00 PM, October 22, 2004 will be used in scoring).
 - (A) Texas State Senator and Texas State Representative (maximum +3 to -3 points);
 - (B) Presiding officer of the governing body of any municipality containing the Development and the elected district member of the governing body of the municipality containing the Development (maximum +3 to -3 points);
 - (C) Presiding officer of the governing body of the county containing the Development and the elected district member of the governing body of the county containing the Development (if the site is not in a municipality, these points will be doubled) (maximum +3 to -3 points);
 - (D) Local School District Superintendent and Presiding Officer of the Board of Trustees for the School district containing the Development (maximum +3 to -3 points).
- (9) Penalties for Missed Deadlines in the Previous Year's Bond and / or Tax Credit program year. (This includes approved and used extensions) (-1 point with maximum 3 point deduction).
- (10) Local Political Subdivision Development Funding Commitment that enables additional Units for the Very Low Income (CDBG, HOME or other funds through local political subdivisions) (must be greater than or equal to 2% of the bond amount requested and must provide at least 5% of the total Development Units at or below 30% AMFI or an additional 5% of the total Development Units if the Applicant has chosen category Priority 1B on the residential rental attachment) (2 points).
- (11) Proximity to Community Services / Amenities (Community services / amenities within three (3) miles of the site. A map must be included with the Application showing a three (3) mile radius notating where the services / amenities are located) (maximum 12 points)

- (A) Grocery Store (1 point);
 - (B) Pharmacy (1 point);
 - (C) Convenience store (1 point);
 - (D) Retail Facilities (Target, Wal-Mart, Home Depot, etc...) (1 point);
 - (E) Bank / Financial Institution (1 point);
 - (F) Restaurant (1 point);
 - (G) Public Recreation Facilities (park, civic center, YMCA) (1 point);
 - (H) Fire / Police Station (1 point);
 - (I) Medical Facilities (hospitals, minor emergency, etc...) (1 point);
 - (J) Public Library (1 point);
 - (K) Public Transportation (1/2 mile from site) (1 point);
 - (L) Public School (only one school required for point (1 point).
- (12) Proximity to Negative Features (within 300 feet of any part of the Development site boundaries. A map must be included with the application showing where the feature is located. Developer must provide a letter stating there are none of the negative features listed below within the stated area if that is correct. (maximum -20 points)
- (A) Junkyards (5points);
 - (B) Active Railways (excluding light rail) (5 points);
 - (C) Interstate Highways / Service Roads (5 points);
 - (D) Solid Waste / Sanitary Landfills (5 points);
 - (E) High Voltage Transmission Towers (5 points).
- (13) Acquisition / Rehabilitation Developments will receive ten (10) points. This will include the demolition of old buildings and new construction of the same number of units if allowed by local codes or less units to comply with local codes (not to exceed 250 total units).
- (e) Financing Commitments. After approval by the Board of the inducement resolution, and before submission of a final application, the Applicant will be solely responsible for making appropriate arrangements with financial institutions which are to be involved with the issuance of the Bonds or the financing of the Development, and to begin the process of obtaining firm commitments for financing from each of the financial institutions involved.
- (f) Final Application. An Applicant who elects to proceed with submitting a final Application to the Department must provide a final Application and such supporting material as is required by the Department at least sixty (60) days prior to the scheduled meeting of the Board at which the Development and the Bond issuance are to be considered, unless the Department directs the Applicant otherwise in writing. The final application must adhere to the Department's QAP and Rules in effect for the program year for which the Bond and Housing Tax Credit applications are submitted. The Department may determine that supporting materials listed in paragraphs (1) through (42) of this subsection shall be provided subsequent to the final Application deadline in accordance with a schedule approved by the Department. Failure to provide any supporting materials in accordance with the approved schedule may be grounds for terminating the Application and returning the reservation to the Texas Bond Review Board. The final application and supporting material shall consist of the following information:
- (1) A Public Notification Sign shall be installed on the Development site no later than fourteen (14) days after the submission of Volume I and II of the Tax Credit Application to the Department (pictures and invoice receipts must be submitted as evidence of installation within fourteen (14) days of the submission). The sign must be at least four (4) feet by eight (8) feet in size and be located within twenty (20) feet of, and facing, the main road adjacent to the site. The sign shall be continuously maintained on the site until the day the TDHCA Board takes final action on the Application for the development. The information

and lettering on the sign must meet the requirements identified in the Application. As an alternative to installing a Public Notification Sign and at the same required time, the Applicant may instead, at the Applicant's Option, mail written notification to all addresses located within the footage distance required by the local municipality zoning ordinance or 1,000 feet, if there is no local zoning ordinance or if the zoning ordinance does not require notification, of any part of the proposed Development site. This written notification must include the information otherwise required for the sign. If the Applicant chooses to provide this mailed notice in lieu of signage, the final Application must include a map of the proposed Development site and mark the 1,000 foot or local ordinance area showing street names and addresses; a list of all addresses the notice was mailed to; an exact copy of the notice that was mailed; and a certification that the notice was mailed through the U.S. Postal Service and stating the date of mailing. In addition (within the 14 days), the Applicant must notify any public official that has changed since the submission of the pre-application and any neighborhood organizations that are known and were not notified at the time of the pre-application submission.

- (2) Completed Uniform Application forms in the format required by the Department;
- (3) Certification of no changes from the pre-application to the final application. If there are changes to the Application that have an adverse affect on the score and ranking order and that would have resulted in the application being placed below another application in the ranking, the Department will terminate the Application and return the reservation to the Texas Bond Review Board (with the exception of changes to deferred developer's fees and support or opposition points);
- (4) Certification and agreement to comply with the Department's rules;
- (5) A narrative description of the Development;
- (6) A narrative description of the proposed financing;
- (7) Firm letters of commitment from any lenders, credit providers, and equity providers involved in the transaction;
- (8) Documentation of local Section 8 utility allowances;
- (9) Site plan;
- (10) Unit and building floor plans and elevations;
- (11) Complete construction plans and specifications;
- (12) General contractor's contract;
- (13) Completion schedule;
- (14) Copy of a recorded warranty deed if the Applicant already owns the Property, or a copy of an executed earnest money contract between the Applicant and the seller of the Property if the Property is to be purchased;
- (15) A local map showing the location of the Property;
- (16) Photographs of the Site;
- (17) Survey with legal description;
- (18) Flood plain map;
- (19) Evidence of zoning appropriate for the proposed use from the appropriate local municipality that satisfies one of these subparagraphs (A) through (C) of this paragraph:
 - (A) no later than fourteen (14) days before the Board meets to consider the transaction, the Applicant must submit to the Department written evidence that the local entity responsible for initial approval of zoning has approved the appropriate zoning and that they will recommend approval of the appropriate zoning to the entity responsible for final approval of zoning decisions;
 - (B) provide a letter from the chief executive officer of the political subdivision or another local official with appropriate jurisdiction stating that the Development is located within the boundaries of a political subdivision which does not have a zoning ordinance;

- (C) a letter from the chief executive officer of the political subdivision or another local official with appropriate jurisdiction stating the Development is permitted under the provision of the zoning ordinance that apply to the location of the Development or that there is not a zoning requirement.
 - (20) Evidence of the availability of utilities;
 - (21) Copies of any deed restrictions which may encumber the Property;
 - (22) A Phase I Environmental Site Assessment performed in accordance with the Department's Environmental Site Assessment Rules and Guidelines (§1.35 of this title);
 - (23) Title search or title commitment;
 - (24) Current tax assessor's valuation or tax bill;
 - (25) For existing Developments, current insurance bills;
 - (26) For existing Developments, past two (2) fiscal year end development operating statements;
 - (27) For existing Developments, current rent rolls;
 - (28) For existing Developments, substantiation that income-based tenancy requirements will be met prior to closing;
 - (29) A market study performed in accordance with the Department's Market Analysis Rules and Guidelines (§1.33 of this title);
 - (30) Appraisal of the existing or proposed Development performed in accordance with the Department's Underwriting Rules and Guidelines (§1.32 of this title);
 - (31) Statement that the Development Owner will accept tenants with Section 8 or other government housing assistance;
 - (32) An organizational chart showing the structure of the Applicant and the ownership structure of any principals of the Applicant;
 - (33) Evidence that the Applicant and principals are registered with the Texas Secretary of State, as applicable;
 - (34) Organizational documents such as partnership agreements and articles of incorporation, as applicable, for the Applicant and its principals;
 - (35) Documentation of non-profit status if applicable;
 - (36) Evidence of good standing from the Comptroller of Public Accounts of the State of Texas for the Applicant and its principals;
 - (37) Corporate resumes and individual resumes of the Applicant and any principals;
 - (38) Latest two (2) annual financial statements and current interim financial statement for the Applicant and its principals;
 - (39) Latest income tax filings for the Applicant and its principals;
 - (40) Resolutions or other documentation indicating that the transaction has been approved by the general partner;
 - (41) Resumes of the general contractor's and the property manager's experience; and
 - (42) Such other items deemed necessary by the Department per individual application.
- (g) Evaluation Criteria. The Department will evaluate the Development for eligibility at the time of pre-application, and at the time of final Application. If there are changes to the Application that have an adverse affect on the score and ranking order and that would have resulted in the Application being placed below another Application in the ranking, the Department will terminate the Application and return the reservation to the Texas Bond Review Board (with the exception of changes to deferred developer's fees and support or opposition point). The Development and the Applicant must satisfy the conditions set out in paragraphs (1) through (6) of this subsection in order for a Development to be considered eligible:
- (1) The proposed Development must further the public purposes of the Department as identified in the Act.

- (2) The proposed Development and the Applicant and its principals must satisfy the Department's Underwriting Rules and Guidelines (§1.32 of this title). The pre-application must include sufficient information for the Department to establish that the Underwriting Guidelines can be satisfied. The final Application will be thoroughly underwritten according to the Underwriting Rules and Guidelines (§1.32 of this title).
 - (3) The Development must not be located on a site determined to be unacceptable for the intended use by the Department.
 - (4) Any Development in which the Applicant or principals of the Applicant have an ownership interest must be found not to be in Material Non-Compliance under the compliance Rules in effect at the time of pre-application submission. Any corrective action documentation affecting the Material Non-compliance status score must be submitted to the Department no later than thirty (30) days prior to final application submission.
 - (5) Neither the Applicant nor any principals of the Applicant is, at the time of Application:
 - (A) barred, suspended, or terminated from procurement in a state or federal program or listed in the List of Parties Excluded from Federal Procurement or Non-Procurement Programs; or
 - (B) has been convicted of a state or federal crime involving fraud, bribery, theft, misrepresentation, misappropriation of funds, or other similar criminal offenses within fifteen (15) years; or
 - (C) is subject to enforcement action under state or federal securities law, action by the NASD, subject to a federal tax lien, or the subject of an enforcement proceeding with any governmental entity; or
 - (D) neither applicant nor any principals of the applicant have a development under their ownership or control with a Material Non-compliance score of 30 or more; or
 - (E) otherwise disqualified or debarred from participation in any of the Department's programs.
 - (6) Neither the Applicant nor any of its principals may have provided any fraudulent information, knowingly false documentation or other intentional or negligent misrepresentation in the Application or other information submitted to the Department.
- (h) Bond Documents. After receipt of the final Application, bond counsel for the Department shall draft Bond documents which conform to the state and federal laws and regulations which apply to the transaction.
- (i) Public Hearings; Board Decisions. For every Bond issuance, the Department will hold a public hearing in accordance with §2306.0661, Texas Government Code and §147(f) of the Code, in order to receive comments from the public pertaining to the Development and the issuance of the Bonds. Publication of all notices required for the public hearing shall be at the sole expense of the Applicant. The Board's decisions on approvals of proposed Developments will consider all relevant matters. Any topics or matters, alone or in combination, may or may not determine the Board's decision. The Department's Board will consider the following topics in relation to the approval of a proposed Development:
- (1) The Development Owner market study;
 - (2) The location, including supporting broad geographic dispersion;
 - (3) The compliance history of the Development Owner;
 - (4) The financial feasibility;
 - (5) The Development's proposed size and configuration in relation to the housing needs of the community in which the Development is located and the needs of the area, region and state;
 - (6) The Development's proximity to other low income Developments including avoiding over concentration;

- (7) The availability of adequate public facilities and services;
- (8) The anticipated impact on local school districts, giving due consideration to the authorized land use;
- (9) Zoning and other land use considerations;
- (10) Fair Housing law, including affirmatively furthering fair housing;
- (11) Any matter considered by the Board to be relevant to the approval decision and in furtherance of the Department's purposes and the policies of Chapter 2306, Texas Government Code.

(j) Approval of the Bonds.

- (1) Subject to the timely receipt and approval of commitments for financing, an acceptable evaluation for eligibility, the satisfactory negotiation of Bond documents, and the completion of a public hearing, the Board, upon presentation by the Department's staff, will consider the approval of the Bond issuance, final Bond documents and, in the instance of privately placed Bonds, the pricing of the Bonds. The process for appeals and grounds for appeals may be found under §§1.7 and 1.8 of this title. The Department's conduit housing transactions will be processed in accordance with the Texas Bond Review Board rules Title 34, Part 9, Chapter 181, Subchapter A. The Bond issuance must receive an approving opinion from the Department's bond counsel with respect to the legality and validity of the Bonds and the security therefore, and in the case of tax-exempt Bonds, with respect to the excludability from gross income for federal income tax purposes of interest on the Bonds.
- (2) Alternative Dispute Resolution Policy. In accordance with Section 2306.082, Texas Government Code, it is the Department's policy to encourage the use of appropriate alternative dispute resolution procedures ("ADR") under the Governmental Dispute Resolution Act, Chapter 2009, Texas Government Code, to assist in resolving disputes under the Department's jurisdiction. As described in Chapter 154, Civil Practices and Remedies Code, ADR procedures include mediation. Except as prohibited by the Department's ex parte communications policy, the Department encourages informal communications between Department staff and applicants, and other interested persons, to exchange information and informally resolve disputes. The Department also has administrative appeals processes to fairly and expeditiously resolve disputes. If at anytime an applicant or other person would like to engage the Department in an ADR procedure, the person may send a proposal to the Department's Dispute Resolution Coordinator (fax: (512) 475-3978). For additional information on the Department's ADR Policy, see the Department's General Administrative Rule on ADR at 10 Texas Administrative Code §1.17.

(k) Local Permits. Prior to the closing of the Bonds, all necessary approvals, including building permits, from local municipalities, counties, or other jurisdictions with authority over the Development must have been obtained or evidence that the permits are obtainable subject only to payment of certain fees must be provided to the Department.

(l) Closing. Once all approvals have been obtained and Bond documents have been finalized to the respective parties' satisfaction, the Bond transaction will close. Upon satisfaction of all conditions precedent to closing, the Department will issue Bonds in exchange for payment thereof. The Department will then loan the proceeds of the Bonds to the Applicant and disbursements of the proceeds may begin.

§ 35.7. Regulatory and Land Use Restrictions.

- (a) Filing and Term of LURA. A Regulatory and Land Use Restriction Agreement or other similar instrument (the "LURA"), will be filed in the property records of the county in which the

Development is located for each Development financed from the proceeds of Bonds issued by the Department. For Developments involving new construction, the term of the LURA will be the longer of 30 years, the period of guaranteed affordability or the period for which Bonds are outstanding. For the financing of an existing Development, the term of the LURA will be the longer of the longest period which is economically feasible in accordance with the Act, or the period for which Bonds are outstanding.

- (b) **Development Occupancy.** The LURA will specify occupancy restrictions for each Development based on the income of its tenants, and will restrict the rents that may be charged for Units occupied by tenants who satisfy the specified income requirements. Pursuant to §2306.269, Texas Government Code, the LURA will prohibit a Development Owner from excluding an individual or family from admission to the Development because the individual or family participates in the housing choice voucher program under Section 8, United States Housing Act of 1937 (the "Housing Act"), and from using a financial or minimum income standard for an individual or family participating in the voucher program that requires the individual or family to have a monthly income of more than two and one half (2.5) times the individual's or family's share of the total monthly rent payable to the Development Owner of the Development. Development occupancy requirements must be met on or prior to the date on which Bonds are issued unless the Development is under construction. Adequate substantiation that the occupancy requirements have been met, in the sole discretion of the Department, must be provided prior to closing. Occupancy requirements exclude Units for managers and maintenance personnel that are reasonably required by the Development.
- (c) **Set Asides.**
 - (1) Developments which are financed from the proceeds of Private Activity Bonds or from the proceeds of Qualified 501(c)(3) Bonds must be restricted under one of the following two set-asides:
 - (A) at least twenty percent (20%) of the Units within the Development that are available for occupancy shall be occupied or held vacant and available for occupancy at all times by persons or families whose income does not exceed fifty percent (50%) of the area median income, or
 - (B) at least forty percent (40%) of the Units within the Development that are available for occupancy shall be occupied or held vacant and available for occupancy at all times by persons or families whose income does not exceed sixty percent (60%) of the area median income.
 - (2) The Development Owner must designate at the time of Application which of the two set-asides will apply to the Development and must also designate the selected priority for the Development in accordance with §1372.0321, Texas Government Code. Units intended to satisfy set-aside requirements must be distributed evenly throughout the Development, and must include a reasonably proportionate amount of each type of Unit available in the Development.
 - (3) No tenant qualifying under either of the set-asides shall be denied continued occupancy of a Unit in the Development because, after commencement of such occupancy, such tenant's income increases to exceed the qualifying limit; provided, however, that, should a tenant's income, as of the most recent determination thereof, exceed 140% of the then applicable income limit and such tenant constitutes a portion of the set-aside requirement of this section, then such tenant shall only continue to qualify for so long as no Unit of comparable or smaller size is rented to a tenant that does not qualify as a Low-Income Tenant. (These are the federal set-aside requirements)
- (d) **Global Income Requirement.** All of the Units that are available for occupancy in Developments financed from the proceeds of Private Activity Bonds or from the proceeds of Qualified 501(c)(3) Bonds shall be occupied or held vacant (in the case of new construction)

and available for occupancy at all times by persons or families whose income does not exceed one hundred and forty percent (140%) of the area median income for a four-person household.

- (e) **Qualified 501(c)(3) Bonds.** Developments which are financed from the proceeds of Qualified 501(c)(3) Bonds are further subject to the restriction that at least seventy-five percent (75%) of the Units within the Development that are available for occupancy shall be occupied (or, in the case of new construction, held vacant and available for occupancy until such time as initial lease-up is complete) at all times by individuals and families of Low Income (less than or equal to 80% of AMFI).
- (f) **Taxable Bonds.** The occupancy requirements for Developments financed from the issuance of taxable Bonds will be negotiated, considered and approved by the Department on a case by case basis.
- (g) **Special Needs.** At least five percent (5%) of the Units within each Development must be designed to be accessible to Persons with Special Needs and hardware and cabinetry must be stored on site or provided to be installed on an as needed basis in such Units. The Development will comply with accessibility requirements in the Fair Housing Act Design manual. The Development Owner will use its best efforts (including giving preference to Persons with Special Needs) to:
 - (1) make at least five percent (5%) of the Units within the Development available for occupancy by Persons with Special Needs;
 - (2) make reasonable accommodations for such persons; and
 - (3) allow reasonable modifications at the tenant's sole expense pursuant to the Housing Act. During the term of the LURA, the Development Owner shall maintain written policies regarding the Development Owner's outreach and marketing program to Persons with Special Needs.
- (h) **Fair Housing.** All Developments financed by the Department must comply with the Fair Housing Act which prohibits discrimination in the sale, rental, and financing of dwellings based on race, color, religion, sex, national origin, familial status, and disability. The Fair Housing Act also mandates specific design and construction requirements for multifamily housing built for first occupancy after March 13, 1991, in order to provide accessible housing for individuals with disabilities.
- (i) **Tenant Services.** The LURA will require that the Development Owner offer a variety of services for residents of the Development through a Tenant Services Program Plan which is subject to annual approval by the Department.
- (j) **The LURA will require the Development Owner:**
 - (1) To obtain, complete and maintain on file Tenant Income Certifications from each Eligible Tenant, including:
 - (A) a Tenant Income Certification dated immediately prior to the initial occupancy of each new Eligible Tenant in the Development; and
 - (B) thereafter, annual Tenant Income Certifications which must be obtained on or before the anniversary of such Eligible Tenant's occupancy of the Unit, and in no event less than once in every 12-month period following each Eligible Tenant's occupancy of a Unit in the Development. For administrative convenience, the Development Owner may establish the first date that a Tenant Income Certification for the Development is received as the annual recertification date for all tenants. The Development Owner will obtain such additional information as may be required in the future by §142(d) of

the Code, as the same may be amended from time to time, or in such other form and manner as may be required by applicable rules, rulings, policies, procedures, Regulations or other official statements now or hereafter promulgated, proposed or made by the Department of the Treasury or the Internal Revenue Service with respect to obligations which are tax-exempt private activity bonds described in §142(d) of the Code. The Development Owner shall make a diligent and good-faith effort to determine that the income information provided by an applicant in a Tenant Income Certification is accurate by taking steps required under §142(d) of the Code pursuant to provisions of the Housing Act.

- (C) The Development shall comply with Title 10, Part 1, Chapter 60, Subchapter A.
- (2) As part of the verification, such steps may include the following, provided such action meets the requirements of §142(d) of the Code and the gross income of individuals shall be determined in a manner consistent with the determinations of low income families under section 8 of the United States Housing Act of 1937:
 - (A) obtain pay stubs sufficient to annualize income;
 - (B) obtain third party written verification of income;
 - (C) obtain an income verification from the applicant's current employer;
 - (D) obtain an income verification from the Social Security Administration; or
 - (E) if the applicant is self-employed, unemployed, does not have income tax returns or is otherwise not reasonably able to provide other forms of verification as required above, obtain another form of independent verification as would, in the Development Owner's reasonable commercial judgment, enable the Development Owner to determine the accuracy of the applicant's income information. The Development Owner shall retain all Tenant Income Certifications obtained in compliance with this subsection (b) of this section until the date that is six years after the last Bond is retired.
- (3) To obtain from each tenant in the Development, at the time of execution of the lease pertaining to the Unit occupied by such tenant, a written certification, acknowledgment and acceptance in such form as provided by the Department to the Development Owner from time to time that
 - (A) such lease is subordinate to the Mortgage and the LURA;
 - (B) all statements made in the Tenant Income Certification submitted by such tenant are accurate;
 - (C) the family income and eligibility requirements of the LURA and the Loan Agreement are substantial and material obligations of tenancy in the Development;
 - (D) such tenant will comply promptly with all requests for information with respect to such requirements from the Development Owner, the Trustee and the Department; and
 - (E) failure to provide accurate information in the Tenant Income Certification or refusal to comply with a request for information with respect thereto will constitute a violation of a substantial obligation of the tenancy of such tenant in the Development;
- (4) To maintain complete and accurate records pertaining to the Low-Income Units and to permit, at all reasonable times during normal business hours and upon reasonable notice, any duly authorized representative of the Department, the Trustee, the Department of the Treasury or the Internal Revenue Service to enter upon the Development Site to examine and inspect the Development and to inspect the books and records of the Development Owner pertaining to the Development, including those records pertaining to the occupancy of the Low-Income Units;
- (5) On or before each February 15 during the qualified development period, to submit to the Department (to the attention of the Portfolio Management and Compliance Division) a draft of the completed Internal Revenue Service Form 8703 or such other annual certification required by the Code to be submitted to the Secretary of the Treasury as to whether the

Development continues to meet the requirements of §142(d) of the Code and on or before each March 31 during the qualified development period, to submit such completed form to the Secretary of the Treasury and the Department;

- (6) To prepare and submit the compliance monitoring report. To cause to be prepared and submitted to the Department and the Trustee on the first day of the state restrictive period, and thereafter by the tenth calendar day of each March, June, September, and December, or other quarterly schedule as determined by the Department with written notice to the Development Owner, a certified compliance monitoring report and Development Owner's certification in such form as provided by the Departments to the Development Owner from time to time; and
- (7) To provide regular maintenance to keep the Development sanitary, decent and safe.
- (8) To establish a reserve account consistent with the requirements of §2306.186, Texas Government Code.
- (9) To prepare and submit the Housing Sponsor Report to the Department no later than March 1st of each year.

§35.8. Fees.

- (a) Application and Issuance Fees. The Department shall set fees to be paid by the Applicant in order to cover the costs of pre-application review, Application and Development review, the Department's expenses in connection with providing financing for a Development, and as required by law. (§1372.006(a), Texas Government Code)
- (b) Administration and Portfolio Management and Compliance Fees. The Department shall set ongoing fees to be paid by Development Owners to cover the Department's costs of administering the Bonds and portfolio management and compliance with the program requirements applicable to each Development.

§35.9. Waiver of Rules

Provided all requirements of the Act, the Code, and any other applicable law are met, the Board may waive any one or more of the Rules set forth in §§35.3 through 35.8 of this title relating to the Multifamily Housing Revenue Bond Program in order to further the purposes and the policies of Chapter 2306, Texas Government Code; to encourage the acquisition, construction, reconstruction, or rehabilitation of a Development that would provide decent, safe, and sanitary housing, including, but not limited to, providing such housing in economically depressed or blighted areas, or providing housing designed and equipped for Persons with Special Needs; or for other good cause, as determined by the Board.

§35.10. No Discrimination

The Department and its staff or agents, Applicants, Development Owners, and any participants in the Program shall not discriminate under this Program against any person or family on the basis of race, creed, national origin, age, religion, handicap, family status, or sex, or against persons or families on the basis of their having minor children, except that nothing herein shall be deemed to preclude a Development Owner from selecting tenants with Special Needs, or to preclude a Development Owner from selecting tenants based on income in renting Units to comply with the set asides under the provisions of this Chapter.