

**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
GOVERNING BOARD MEETING
A G E N D A**

**8:00 AM
September 6, 2018**

**Texas Capitol Building
Capitol Extension Room E2.016
1100 Congress Avenue
Austin, TX 78701**

Supplemental Materials

Suggested changes to 10 TAC Chapter 11, the Qualified Allocation Plan, and 10 TAC Chapter 13, the Multifamily Direct Loan Rule resulting from comment and discussion at the TDHCA Governing Board Rules Committee meeting on September 5, 2018.

This language is provided as a convenience only, so that Board members and stakeholders are able to evaluate the suggested changes in context. They will not become part of the draft rules unless approved by Board action.

Chapter 11, Housing Tax Credit Program Qualified Allocation Plan

Subchapter A – Pre-application, Definitions, Threshold Requirements and Competitive Scoring

(d) Definitions.

(30) Control (including the terms "Controlling," "Controlled by," and/or "under common Control with")--The power, ability, or authority, acting alone or in concert with others, directly or indirectly, to manage, direct, superintend, restrict, regulate, govern, administer, or oversee. As used herein "acting in concert" involves more than merely serving as a single member of a multi-member body. For example a single director on a five person board is not automatically deemed to be acting in concert with the other members of the board because they retain independence of judgment. —However, by way of illustration, if that director is one of three directors on a five person board who all represent a single shareholder, they clearly represent a single interest and are presumptively acting in concert. —Similarly, a single shareholder owning only a five percent interest might not exercise control under ordinary circumstances, but if they were in a voting trust under which a majority block of shares were voted as a group, they would be acting in concert with others and in a control position. However, even if a member of a multi-member body is not acting in concert and therefore does not exercise control in that role, they may have other roles, such as executive officer positions, which involve actual or apparent authority to exercise control. Controlling entities of a partnership include the general partners, may include special limited partners when applicable, but not investor limited partners or special limited partners who do not possess other factors or attributes that give them Control. Controlling individuals and entities as set forth in subparagraphs (A)-(E) of a limited liability company include but are not limited to the managers, managing members, any members with 10 percent or more ownership of the limited liability company, and any members with authority similar to that of a general partner in a limited partnership, but not investor members who do not possess other factors or attributes that give them Control. Controlling individuals or entities of a corporation, including non-profit corporations where such powers have been specifically delegated to one or more members, include voting members of the corporation's board, whether or not any one member did not participate in a particular decision due to recusal or absence. Multiple Persons may be deemed to have Control simultaneously.

(A) for for-profit corporations, any officer authorized by the board of directors, regardless of title, to act on behalf of the corporation, including but not limited to the president, vice president, secretary, treasurer, and all other executive officers, and each stock holder having a 4050 percent or more interest in the corporation, and any individual who has Control with respect to such stock holder;

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

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

(D) for limited liability companies, all managers, managing members, members having a 4050 percent or more interest in the limited liability company, any individual Controlling such members, or any officer authorized to act on behalf of the limited liability company; or,

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

(987) Principal--Persons that will be capable of exercising Control ~~(which includes~~may include ~~voting board members~~ pursuant to ~~§40.3(a11.1(d)(2930)~~ of this chapter) over a partnership, corporation, limited liability company, trust, or any other private entity. ~~In the case of:~~

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

~~(B) corporations, Principals include any officer authorized by the board of directors, regardless of title, given broad or general authority to act on behalf of the corporation, including but not limited to the president, vice president, secretary, treasurer, and all other executive officers, and each stock holder having a 10 percent or more interest in the corporation, and any individual who has Control with respect to such stock holder; and~~

~~(C) limited liability companies, Principals include all managers, managing members, members having a 10 percent or more interest in the limited liability company, any individual Controlling such members, or any officer authorized to act on behalf of the limited liability company.~~

Subchapter C - Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules

§11.204. Required Documentation for Application Submission-

(2) Applicant Eligibility Certification. A certification of the information in this subchapter as well as Subchapter B of this chapter must be executed by any individuals required to be listed on the organizational chart and also identified in ~~subparagraphs (A)–(D) below §11.1(d)(30), the definition of Control.~~ The certification must identify the various criteria relating to eligibility requirements associated with multifamily funding from the Department, including but not limited to the criteria identified under ~~§1011.202~~ of this chapter (relating to Ineligible Applicants and Applications).

~~(A) for for-profit corporations, any officer authorized by the board of directors, regardless of title, to act on behalf of the corporation, including but not limited to the president, vice president, secretary, treasurer, and all other executive officers, and each stock holder having a 10 percent or more interest in the corporation, and any individual who has Control with respect to such stock holder;~~

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

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

~~(D) for limited liability companies, all managers, managing members, members having a 10 percent or more interest in the limited liability company, any individual Controlling such members, or any officer authorized to act on behalf of the limited liability company.~~

(13) Ownership Structure and Previous Participation.

(A) Organizational Charts. A chart must be submitted that clearly illustrates the complete organizational structure of the final proposed Development Owner and of any Developer and Guarantor, identifying all Principals thereof and providing the names and ownership percentages of all Persons having an ownership interest in the Development Owner, Developer and Guarantor, as applicable, whether directly or through one or more subsidiaries, whether or not they have Control. Persons having Control should be specifically identified on the Chart. ~~Nonprofit entities, public housing authorities, publicly traded corporations, individual board members, and executive directors of nonprofit entities, governmental bodies, and corporations, as applicable,~~ must be included in this exhibit and trusts must list all beneficiaries that have the legal ability to control or direct activities of the trust and are not just financial beneficiaries. The List of Organizations form, as provided in the Application, must include all Persons identified on the organizational charts, and further identify which of those Persons listed exercise Control of the Development.

§13.8 Loan Structure and Underwriting Requirements

(c) Direct Loans through the Department must adhere to the following criteria as identified in paragraphs (1) - ~~(78)~~ of this subsection if being requested as construction-to-permanent loans:

(1) The term for permanent loans shall be no less than ten (10) years and no greater than forty (40) years and the amortization schedule shall be thirty (30) years. The Department's loan must mature at the same time or within six (6) months of the shortest term of any senior debt so long as neither exceeds forty (40) years and six (6) months.

(2) Amortized loans shall be structured with a regular monthly payment beginning on the first day of the 25th full month following the actual date of loan closing and continuing for the loan term.

(3) If the first lien mortgage is a federally insured HUD or FHA mortgage the Department may approve a loan structure with annual payments payable from Surplus Cash Flow provided that the debt coverage ratio, inclusive of the loan, continues to meet the requirements in this subchapter.

(4) If the proposed first lien is a federally insured HUD or FHA mortgage that requires the Direct Loan to be subject to 75% of Surplus Cash Flow, staff will require the debt service coverage ratio on both the federally insured loan and the Department's loan – as restricted to 75% of Surplus Cash Flow – to continue to meet the minimum 1.15 in accordance with 10 TAC §10.302(d)(4)(D).

(5) 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 less than or equal to the Direct Loan amount and superior to any other sources that have soft repayment structures, non-amortizing balloon notes, have deferred forgivable provisions or in which the lender has an identity of interest with any member of the Development Team; and,

(6) If the Direct Loan amounts to more than 50 percent of the Total Housing Development Cost, except for Developments also financed through the USDA §515 program, the Application must include the documents as identified in subparagraphs (A) - (B) of this paragraph:

(A) a letter from a Third Party CPA verifying the capacity of the Applicant, Developer, or Development Owner to provide at least 10 percent 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 equal to at least 10 percent of the Total Housing Development Cost from a financial institution that is available for use during the proposed Development activities.

(7) If the Direct Loan is the only source of permanent Department funding for the Development:

~~(A) The Development Owner must provide equity in an amount not less than 20 percent of Total Housing Development Costs.~~

~~(i) An Applicant for Direct Loan funds may request Board approval to have an equity requirement of less than twenty percent (20%). 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. This support case will be reviewed by staff, and staff will provide their assessment and recommendation to the Board. The Applicant's support should include all mitigating or supporting factors including, by way of example, and not by way of limitation, performance bonds or collateral, lines of credit, or intercreditor agreements. "Sweat equity" or other forms of equity that cannot be readily accessed will not be allowed to count toward the equity requirement.~~

(AB) For Applicants proposing new construction, an "as completed" appraisal that reflects the prospective value of the completed property consistent with rent and income restrictions proposed in the Application pursuant to 10 TAC §11.304 which results in total repayable loan to value of not greater than 80% must be provided.

(CB) For Applicants proposing rehabilitation, the "as is" appraisal required by 10 TAC §11.205(4) may meet this requirement without needing an "as completed" appraisal provided the loan to value is not greater than 80%.

(8) All Direct Loan applicants where other third-party financing entities are part of the sources of funding must submit a *pro forma* and lender approval letter evidencing review of the Development and the Principals as described in 10 TAC §11.9(e)(1). 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.

10 TAC 11.7(1)

(1) Applications proposed to be located in a census tract with a poverty rate below the median poverty rate for all ~~the census tracts in which pre-awarded Competitive HTC a~~ Applications ~~from the past three years were submitted for the current cycle, as of the Pre-Application Final Delivery Date (with Region 11 adding an additional 15% to that value and Region 13 adding an additional 5% to that value).~~ A census tract will not be counted more than once and the poverty rate for each census tract will come from the most recent American Community Survey data. If a tie still persists, then the Development in the census tract with the highest percentage of statewide rent burden for renter households at or below 80% Area Median Family Income (“AMFI”), as determined by the U.S. Department of Housing and Urban Development’s Comprehensive Housing Affordability Strategy (“CHAS”) dataset and as reflected in the Department’s current Site Demographic Characteristics Report. A census tract’s median poverty will not be counted more than once if multiple Applications propose to construct Developments in the same census tract.

10 TAC 11.8(b)(2)

(2) Evidence in the form of a certification provided in the pre-application, that all of the notifications required under this paragraph have been made and that a reasonable search for applicable entities has been conducted. (§2306.6704)

(A) The Applicant must list in the pre-application all Neighborhood Organizations on record with the county or state whose boundaries include the entire proposed Development Site as of the beginning of the Application Acceptance Period. ~~An Applicant should retain and be prepared to produce evidence of a reasonable search of those records and the search results, including in the scope of the search at least the following terms: name of the neighborhoods/subdivisions, name of the public schools for the Development Site, term ‘homeowner,’ term ‘neighborhood,’ names of historically significant nearby areas or features, and colloquially used descriptions of the area (e.g., Fifth Ward, SoCo, EaDo). As referenced, “on record with the county” includes bylaws or articles of incorporation filed with a county and/or a database of neighborhood organizations, but does not include documents filed in the name of the neighborhood that provide no indication of good standing (e.g., a DBA). As referenced, “on record with the state” means an organization in good standing with the Secretary of State.~~

10 TAC 11.9(b)(1)(B)

(B) Unit and Development Features (9 points). Applicants that elect in an Application to provide specific amenity and quality features in every Unit at no extra charge to the tenant will be awarded points based on the point structure provided in §11.101(b)(6)(B) of this title and as certified to in the Application. The amenities will be required to be identified in the LURA. Rehabilitation Developments will start with a base score of ~~three~~ five (35) points and Supportive Housing Developments will start with a base score of five (5) points.

10 TAC 11.9(c)(5)(F)

(F) The Development Site is located entirely within a census tract that, according to American Community Survey 5-year Estimates, has both a poverty rate greater than 20% and a median gross rent for a two-bedroom unit greater than its county's 2016 HUD Fair Market Rent for a two-bedroom unit. This measure is referred to as the Affordable Housing Needs Indicator in the Site Demographic Characteristics Report (2 points).

10 TAC 11.9(c)(7)

(7) Proximity to the Urban Core. A Development in a Place, as defined by the US Census Bureau, with a population over 200,000 may qualify for points under this item. The Development Site must be located within 4 miles of the main municipal government administration building if the population of the Place is 750,000 or more, or within 2 miles of the main municipal government administration building if the population of the city is ~~500,000 – 749,999, or within 1 mile of the main municipal government administration building if the population of the city is 200,000–499,999.~~ The main municipal government administration building will be determined by the location of regularly scheduled municipal governing body meetings. Distances are measured from the nearest property boundaries, not inclusive of non-contiguous parking areas. This scoring item will not apply to Applications under the At-Risk Set-Aside. (5 points)

10 TAC 11.101(b)(6)(B)

(B) Unit and Development Construction Features. Housing Tax Credit Applicants may select amenities for the score of an Application under this section, but must maintain the points associated with those amenities by maintaining the amenity selected or providing substitute amenities with equal or higher point values. Tax-Exempt Bond Developments must include enough amenities to meet a minimum of nine (9) points. Direct Loan Applications not layered with Housing Tax Credits must include enough amenities to meet a minimum of four (4) points. The amenity shall be for every Unit at no extra charge to the tenant. The points selected at Application and corresponding list of amenities will be required to be identified in the LURA, and the points selected at Application must be maintained throughout the Affordability Period. Applications involving scattered site Developments must have a specific amenity located within each Unit to count for points. Rehabilitation Developments will start with a base score of ~~three-five~~ (35) points and Supportive Housing Developments will start with a base score of five (5) points.

10 TAC 11.203(1)(B)

(B) The Applicant must list, in the certification form provided in the pre-application and Application, all Neighborhood Organizations on record with the county or state as of 30 days prior to the beginning of the Application Acceptance Period and whose boundaries include the proposed Development Site as of the submission of the Application; and the Applicant must certify that a reasonable search for applicable entities has been conducted. ~~An Applicant should retain and be prepared to produce evidence of a reasonable search of those records and the search results, including in the scope of the search at least the following terms: name of the neighborhoods/subdivisions, name of the public schools for the Development Site, term 'homeowner,' term 'neighborhood,' names of historically significant nearby areas or features, and~~

~~colloquially used descriptions of the area (e.g., Fifth Ward, SoCo, EaDo). As referenced, “on record with the county” includes bylaws or articles of incorporation filed with a county and/or a database of neighborhood organizations, but does not include documents filed in the name of the neighborhood that provide no indication of good standing (e.g., a DBA). As referenced, “on record with the state” means an organization in good standing with the Secretary of State.~~