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## 2015 Competitive HTC Application Cycle Frequently Asked Questions (FAQs)

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Pursuant to §11.1(b) of the Qualified Allocation Plan (QAP), Department staff may, from time to time, make available for use by Applicants information and informal guidance in the form of reports, frequently asked questions, and responses to specific questions. The Department encourages communication with staff in order to clarify any issues that may not be fully addressed in the QAP or be unclear when applied to specific facts. However, while these resources are offered to help Applicants prepare and submit accurate information, Applicants should also appreciate that this type of guidance is limited by its nature and that staff will apply the rules of the QAP to each specific situation as it is presented in the submitted Application. Moreover, after the time that an issue is initially presented and guidance is provided, additional information may be identified and/or the issue itself may continue to develop based upon additional research and guidance. Thus, until confirmed through final action of the Board, staff guidance must be considered merely as an aid and an Applicant continues to assume full responsibility for any actions Applicant takes regarding an Application. In addition, although the Department may compile data from outside sources in order to assist Applicants in the Application process, it remains the sole responsibility of the Applicant to perform independently the necessary due diligence to research, confirm, and verify any data, opinions, interpretations, or other information upon which an Applicant bases an Application or includes in any submittal in connection with an Application. These rules may need to be applied to facts and circumstances not contemplated at the time of their creation and adoption. When and if such situations arise the Board will use a reasonableness standard in evaluating and addressing Applications for Housing Tax Credits.

Following is a list of questions that the Department has received with respect to the 2015 Uniform Multifamily Rules and QAP and how various provisions of the rules will be applied to Applications submitted and reviewed by the Department during the 2015 competitive cycle. Each of the questions was received via email or phone over the past several weeks and at the application workshops held in early December. Each time an update is made the most recently updated date will be added to the box at the top right of this page. The FAQ is an opportunity to provide all Applicants and the public the same information that was relayed to the individuals who asked the questions. There are other questions which have been posed and addressed, but it was staff's assessment that they did not raise questions or issues with broad application.

Questions and answers are in the same order that their related sections appear in the rules. If questions and answers are added after the initial posting, the revision dates will appear at the top of this page and will be included next to each of the added questions. The Department may not send out a new listserv each time an update is made unless the update is extensive. Staff encourages interested individuals to check back periodically. At the January 15, 2015 board meeting, staff will present to the all questions and answers included in this FAQ for acceptance. However, staff will continue to supplement this FAQ; questions and answers with dates subsequent to any Board action will not have been reviewed by the board.

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## Chapter 10, Subchapter A – Uniform Multifamily Rules

### §10.3 – Definitions and Staff Determinations

**Q:** Will the Department underwrite Applications using an applicable percentage of 9%?

**A:** No. Unless new legislation has actually passed (not just been proposed) at the time an Application is submitted, the applicable percentage used in underwriting the Application will be 40 basis points over the current (February 2015) applicable percentage for 70% present value credits (for New Construction/Rehabilitation) in accordance with §10.3(a)(5) of the Uniform Multifamily Rules.

## Chapter 10, Subchapter B – Uniform Multifamily Rules

### §10.101(a)(2)(T) – Mandatory Community Assets (public transportation)

**Q:** [added 02/9/2015] What type of documentation should be submitted to evidence a regularly scheduled public transportation stop within ½ mile of the Development Site?

**A:** A map should be submitted to document the ½ mile distance requirement along with a route map/schedule to evidence that service is provided on a regularly scheduled basis.

### §10.101(a)(3)-(4) – Undesirable Site Features and Neighborhood Characteristics

**Q:** Section 10.101(a)(4)(B)(ii) requires disclosure related to crime data in the “immediately surrounding area” and gives options for defining that area. If an Applicant determines that the Development Site is under the 18 per 1,000 persons threshold for one type of “immediately surrounding area” but not for another, is disclosure required?

**A:** No. For example, if the rate of part 1 violent crimes for the census tract in which the Development Site is located is lower than 18 per 1,000 persons annually but the rate for the police beat is over that threshold, disclosure is not required, assuming that disclosure is also not required pursuant to §10.101(a)(4)(B)(i) or (iii).

**Q:** How does the Department define “highly volatile liquids”?

**A:** Pursuant to 49 CFR §195.2, a Highly volatile liquid or HVL means a hazardous liquid which will form a vapor cloud when released to the atmosphere and which has a vapor pressure exceeding 276 kPa (40 psia) at 37.8 °C (100 °F). HVLs are usually liquids at pipeline pressures and become gaseous when exposed to the atmosphere. HVLs in a gaseous state are heavier than air and will flow along the ground and collect in lower elevations of the ground profile. They do not usually dissipate rapidly. HVLs in a gaseous state are usually flammable and explosive upon contact with an ignition source. Some HVLs are toxic when inhaled in a gaseous state. All HVLs will displace oxygen and are therefore asphyxiants in a gaseous state (i.e., even if the HVL plume in a gaseous state has not reached a source of ignition or ignited, the plume can be deadly).

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## Chapter 10, Subchapter C – Uniform Multifamily Rules

### §10.201(1)(C) – 3<sup>rd</sup> Party Report Delivery

**Q:** [added 3/17/2015] Can a Market Analysis report be submitted via the Department's FTP server?

**A:** No. The Market Analysis is a 3<sup>rd</sup> Party Report and, as such, is required to be submitted via a CD-R in order to comply with the Rule.

### §10.203 – Public Notifications and §11.8(b)(2) – Pre-Application Threshold Criteria

**Q:** Whom should applicants contact to obtain a list of neighborhood organizations on record with the county or state?

**A:** It is an applicant's responsibility to perform the due diligence necessary to verify the existence of neighborhood organizations that would require notification or that could affect point elections for the QCP point item. While staff will publish a list of neighborhood Organizations that have requested to be on record with the state by being on record with the Department, the rules do not require an applicant to seek a list of neighborhood organizations from state or local elected officials. However, applicants are encouraged to do so to ensure that they have sought information from all possible sources.

### §10.204(5) – Experience Requirement

**Q:** Will the Department accept Experience Certificates from previous years?

**A:** Yes, but only those issued in 2014. Experience certificates issued prior to 2014 will not be sufficient for meeting the experience requirement for 2015. Applicants can submit documentation to evidence that the requirements are met with the full application or, for 9% HTC applications, at any time during the Application Acceptance Period. Submissions sent outside the full application should be sent to Elizabeth Henderson at [elizabeth.henderson@tdhca.state.tx.us](mailto:elizabeth.henderson@tdhca.state.tx.us).

### §10.204(8)(E)(ii) – Development Costs (off-sites included in eligible basis)

**Q:** [added 2/9/2015] How should off-site costs that can be included in eligible basis be shown on the Development Cost Schedule?

**A:** The off-site costs should be itemized in the off-site section of the Development Cost Schedule, but any portion that can be claimed in eligible basis should be totaled and put in the eligible basis column under other site-work.

### §10.205 – Required Third Party Reports

**Q:** How should the Primary Market Area (PMA) Map be submitted?

**A:** The PMA map and its defined census tracts or ZIP codes may be submitted directly to the Department (via the Serv-U system or emailed directly to Pamela Cloyde at [Pamela.cloyde@tdhca.state.tx.us](mailto:Pamela.cloyde@tdhca.state.tx.us)) from the market analyst as a pdf or .an1 file. Submissions should include the development name and application number, and the PMA map is still required by 5pm on February 27, 2015. Failure to timely submit the map could result in termination of the

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application, so applicants are encouraged to also include a copy of the map behind tab with the application file.

## **§10.207 – Waivers of Rules for Applications**

**Q:** What is the process for requesting a waiver?

**A:** Requests for waivers will be accepted any time during the Application Acceptance Period but will not be accepted after a full application has been submitted, even if it is submitted prior to the deadline. However, staff may present to the Board consideration of a waiver for an active application as a result of a request for allowable relief, as in the case of a scoring appeal. There is no Department template or form for a waiver request. Requests for waivers for Competitive 9% HTC applications should be sent directly to Kathryn Saar at [kathryn.saar@tdhca.state.tx.us](mailto:kathryn.saar@tdhca.state.tx.us). Requests for waivers for 4% HTC/Bond applications should be sent to Teresa Morales at [teresa.morales@tdhca.state.tx.us](mailto:teresa.morales@tdhca.state.tx.us). Requests for waivers for HOME only applications should be sent to Eric Weiner at [eric.weiner@tdhca.state.tx.us](mailto:eric.weiner@tdhca.state.tx.us). Requests for waivers can also be submitted within a pre-application or application, in which case there is a place to indicate such on the payment receipt.

## **Chapter 10, Subchapter D – Uniform Multifamily Rules**

### **§10.302(d)(1) – Operating Feasibility: Income**

**Q:** **[added 2/19/2015]** What happens if the rent and income limits change after an Application is submitted?

**A:** The HUD 2015 Income and Rent limits have yet to be published, so Program staff will review Applications based on the 2014 limits. Pursuant to 10.302(d)(1)(A)(ii), “if Gross Program Rents are adjusted by the Department after the close of the Application Acceptance Period, but prior to publication of the Report, the Underwriter may adjust the EGI to account for any increase or decrease in Gross Program Rents for the purposes of determining the reasonableness of the Applicant’s EGI.”

## Chapter 11 – Qualified Allocation Plan

### §11.4 – Tax Credit Request and Award Limits

**Q:** If an application proposes to qualify for an increase in eligible basis (30% boost) under §11.4(c)(2)(D) by restricting 10% of the low-income units for households at or below 30% AMGI, can these same units be used to qualify for points under either §11.9(c)(1) related to Income Levels of Tenants or §11.9(c)(2) related to Rent Levels of Tenants?

**A:** No. The language in §11.4(c)(2)(D) reads, “Units must be in addition to Units required under any other provision of this chapter.” Therefore, the same units cannot be used to qualify for both the boost and points (whether under §11.9(c)(1) or (2)). Applicants should exercise caution in completing the application and should double check their calculations to ensure that a sufficient number of units have the appropriate rent and income levels for all elections made in the application.

**Q:** If an application could qualify for points under the Opportunity Index but chose not to elect such points (for instance, the Applicant elected Community Revitalization Plan points instead of Opportunity Index points), could the application qualify for an increase in eligible basis (30% boost) under §11.4(c)(2)(C)?

**A:** Yes. The language in §11.4(c)(2)(C) which reads, “the Development meets the criteria” suggests that it is possible that an Application’s score might not include points for Opportunity Index but that the characteristics/location of the Development Site could still allow the Application to elect the 30% boost under the above cited provision of the QAP.

### §11.5 – Competitive HTC Set-Asides

**Q:** Will applications proposing a Rental Assistance Demonstration (“RAD”) conversion be considered eligible to compete in the At-Risk Set-Aside?

**A:** No, unless 25% of the units are retained as public housing pursuant to §11.5(3)(D) of the QAP.

**Q:** If an application could qualify for points under the Opportunity Index but chose not elect such points (for instance, the Applicant elected Community Revitalization Plan points instead of Opportunity Index points), could the application be allowed to qualify for relocating the Development Site under the At-Risk Set-Aside pursuant to 11.5(3)(c)(iii)?

**A:** Yes. The language in §11.5(3)(c)(iii) which reads, “the Development Site must qualify for points,” suggests that it is possible that an Application’s score might not include points for Opportunity Index but that the characteristics/location of the Development Site could still allow the Application to relocate the site under the above cited provisions of the QAP.

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## §11.7 – Tie Breaker Factors

**Q:** If two applications (*e.g.* applications ‘A’ and ‘B’) have the same score and ‘A’ could have qualified for points under the Opportunity Index but the Applicant chose not elect the such points (for instance, Applicant for ‘A’ elected Community Revitalization Plan points instead of Opportunity Index points), can the Opportunity Index point level that could have been elected be used to determine whether the application wins the tie breaker for highest score on the Opportunity Index? In other words, could ‘A’ win the tie breaker under §11.7(1) using a point level that was not actually elected in the application?

**A:** No. The tie breaker provision is based on score. The language in §11.7(1) reads, “Applications scoring higher on the Opportunity Index,” and applications will not be awarded points that are not explicitly elected by the applicant. Therefore, if ‘B’ actually had points awarded under the Opportunity Index and ‘A’ did not, then ‘B’ would win the tie breaker. If neither application in this scenario actually had Opportunity Index points included in the application’s total score, staff would look to §11.7(2) to determine which application wins the tie breaker.

## §11.9-Competitive HTC Selection Criteria

### §11.9(c)(4) – Opportunity Index

**Q:** If a Development Site is NOT located within a census tract that has a poverty level below 15% or with income in the first or second quartile of median household income for the county or MSA as applicable, in order to qualify to elect points under §11.9(c)(4)(B), does the qualifying elementary school need to serve grades that align with TEA’s conventions for defining elementary schools (K-5 or K-6) as opposed to the qualifying school serving any number of grade levels?

**A:** Yes, but further explanation may be helpful. The scoring item is a two-pronged test.

First, in order for the Application to be eligible for points under the listed point options, the Development Site must pass a threshold test; it must be located in an area with the necessary median income level **OR** poverty level **OR** rating of the elementary school. If meeting the requirements of the first “prong” by way of a highly rated elementary school, the school (or schools) must serve all of the elementary grade levels, as laid out in §11.9(c)(4)(C).

Second, once the development site passes this first test, the applicant can assess whether the application qualifies for points from the menu of options based on proximity to the listed community assets. The application can qualify for points by being within 1.5 miles of these community assets. One of those assets is a school with a Met Standard Rating, but qualifying for these points is different than passing the test discussed in the first step/prong. Instead of the school needing to serve all of the elementary grade levels, it simply must have some grade levels, whether elementary, middle, or high school grades, have a Met Standard, and be within 1.5 miles of the development site (the site must also be in the attendance zone).

As an example, a site might be located within the attendance zones of two separate schools that, combined, make up the elementary school used to pass the first prong of the test (combined the schools serve K -6<sup>th</sup>). If the site is within 1.5 miles of just one of those two schools it can elect 3 points under §11.9(c)(4)(B)(2)(i).

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**Q:** If a Development Site is located within 1.5 linear miles of a child care center that has a child care program that serves only toddlers and pre-kindergarten children (and not infants), will the Application qualify for points under §11.9(c)(4)(B)(iv)?

**A:** Yes. The center only needs to serve at least one of the three groups in order to qualify for points.

**Q:** If a Development Site is located within 1.5 linear miles of a child care center that has a child care program that serves toddlers, pre-kindergarten, and school-age children, can the Application qualify for points under BOTH §11.9(c)(4)(B)(ii) and (iv)?

**A:** Yes. While one center can qualify for points under both provisions, staff is aware that there are many centers that are licensed to serve school-age children that do not in fact serve them. The Department will require evidence that school-age children are actually served by the center in addition to the center maintaining the required license. "School-age children" is defined by the Department of Family and Protective Services as a child who is five years or older and who will attend school away from the center in August or September of that year. Typically, staff would expect centers qualifying for these points to serve children 5-12 years old.

**Q:** If a Development Site is located within 1.5 linear miles of a child care center that 1) has a child care program that currently serves toddlers and pre-kindergarten, 2) is licensed to serve school-age children but does not serve them, and 3) is proposing to serve school-age children in the near future, can the Application qualify for points under BOTH §11.9(c)(4)(B)(ii) and (iv)?

**A:** No. Staff will review the facts as they exist on February 27, 2015 in determining general eligibility as well as eligibility for points.

**Q:** If a Development Site is located within 1.5 linear miles of a child care home which is licensed to serve (and actually does serve) infants, toddlers and pre-kindergarten, can the Application qualify for points under §11.9(c)(4)(B)(iv)?

**A:** No. Only proximity to child care centers will qualify an application for points. Applicants should refer to the Department of Family and Protective Services website for the distinctions between child care centers and homes.

**Q:** What qualifies as a full service grocery store? A health related facility? A senior center?

**A:** A full service grocery store is a store in which a typical household may buy the preponderance of its typical food and household items needs, including a variety of options for fresh meats, produce, dairy, baked goods, frozen foods, and some household cleaning and paper goods. A typical convenience store would not qualify.

A health related facility should have licensed health professionals providing direct care medical services (*e.g.* hospital, urgent care facility, dental clinic, general practitioner medical offices, etc.). A pharmacy, retail/wholesale medical devices business, gym with professional trainers, or salon with massage or other health/beauty services would not qualify.

A senior center is a facility (not a seniors club without its own meeting space) where the primary purpose is to provide services to seniors on a regular basis, at least three times per week. The facility should have regular staff, whether paid or volunteer, and should not be a general activity center with some events and/or services for seniors (such as a YMCA). A church or other non-secular institution or club that hosts occasional events for seniors would not qualify.

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Department staff welcomes written questions concerning actual examples of such facilities. Please contact Kathryn Saar at [kathryn.saar@tdhca.state.tx.us](mailto:kathryn.saar@tdhca.state.tx.us).

## **§11.9(c)(7) – Tenant Populations with Special Housing Needs**

**Q:** If an Application is proposing Reconstruction of a development that was originally constructed before 1978, is participation in the 811 Program required in order to qualify for points?

**A:** Staff will evaluate these applications on a case-by-case basis, but typically if an entire development site is being demolished and rebuilt, then participation in the 811 Program will be required in order to qualify for points. Applicants proposing reconstruction that involves partial demolition of the original site should contact Department staff for a formal determination.

**Q:** If an Application is proposing the use of vouchers but does not have a commitment of vouchers at the time of Application, is participation in the 811 Program required to qualify for points?

**A:** Applicants proposing the use of other project-based rental or long-term operating assistance that would preclude the development from participating in the 811 Program pursuant to §11.9(c)(7)(A)(iii) may indicate on the Application that the development is not eligible to participate in the 811 program and therefore select points by committing to set aside units for Tenants with Special Needs pursuant to §11.9(c)(7)(B). However, those Applicants will be required to show evidence that the (project-based) vouchers are committed at the time of HTC Commitment. If vouchers committed would not preclude the development from participation in the 811 Program (for example, if vouchers were committed for all but 5 units, leaving those 5 available for participation in the 811 program), the Department will require participation in order to retain the award. Staff will not recommend that Applications selecting points under §11.9(c)(7) be allowed to forfeit those points at the time of Commitment.

**Q:** If an Application is proposing 98 of 100 units that have long-term rental assistance, is the development eligible to participate in the 811 Program and therefore required to do so in order to qualify for the points?

**A:** Assuming the other requirements in §11.9(c)(7)(i), (ii), and (iv) are met, yes. In order to qualify for points, the remaining 2 units would be required to participate in the Section 811 Program.

**Q:** **[added 2/19/2015]** If points are elected under §11.9(c)(7), does the Applicant need to sign the 811 Certification? And if so, by whom should the Certification be signed?

**A:** If the Application is eligible for 811 Participation, the Development Owner will be required to sign the 811 Certification. This certification does not need to be signed by all members of the ownership entity.

## **§11.9(d)(1) – Local Government Support**

**Q:** **[added 2/19/2015]** If a Development Site is located partially within a city and partially within an ETJ, which entity (city or county) should provide the resolution of support?

**A:** Both. If any part of the site is located within an ETJ, then resolutions from the city and county are required to achieve maximum points.



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## §11.9(d)(2) – Commitment of Development Funding by Local Political Subdivision

**Q:** If a Development Site is located within the city limits of a city what local political subdivisions would be eligible entities for the purpose of scoring points?

**A:** The Applicant for such a site could approach the following Local Political Subdivisions for funds:

- The county government for the county in which the Development Site is located;
- The city government for the city in which the Development Site is located;
- A government instrumentality of the city or county in which the Development Site is located provided at least 60% of the board of the instrumentality is made up of city council members or county commissioners, as applicable; or
- A government instrumentality of the city or county in which the Development Site is located provided at least 100% of the board of the instrumentality is appointed by city or county elected officials, as applicable.

**Q:** If a Development Site is located within the extraterritorial jurisdiction (ETJ) of a municipality, what local political subdivisions would be eligible entities for the purpose of scoring points?

**A:** In most cases, where a Development Site is in the ETJ of City X, then the Place used to determine the Development Site's rural/urban designation is also City X. In these cases, the population of City X would be used to calculate the number of points for which the Application is eligible, and the Applicant could approach the following Local Political Subdivisions for funds:

- The county government for the county in which the Development Site is located;
- The city government for City X;
- A government instrumentality of City X or the county in which the Development Site is located provided at least 60% of the board of the instrumentality is made up of city council members or county commissioners, as applicable; or
- A government instrumentality of City X or the county in which the Development Site is located provided at least 100% of the board of the instrumentality is appointed by city or county elected officials, as applicable.

In some cases, a Development Site may be located in the ETJ of City X, but the rural/urban designation for the Development Site is derived from Place Y (*i.e.* an unincorporated Census Designated Place). In these cases, Applicants may approach City X or its government instrumentalities, but if they do so the Department will use the population of City X to determine eligibility for points. In cases where the Development Site is located within Place Y, Applicants can also approach the county or eligible instrumentalities thereof, and in those cases would use the population of that Place to calculate points. In many cases the population used to determine the amount of LPS funding can vary widely depending on which LPS is approached for funding. If applicants have any questions please contact staff to ensure that the correct minimum funding amounts for points are understood.

**Q:** Are tax abatements and vouchers considered permanent sources with respect to an Application being eligible for the additional point under §11.9(d)(2)(D)?

**A:** Yes. While contracts for vouchers and tax abatements might be for less than 15 years, because these types of sources are not expected to be re-paid they are considered permanent, much like an in-kind contribution or grant.

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**Q:** Will the Department monitor applicants who claim points under §11.9(d)(2)(D) to ensure that owners close on the permanent source of development funding and maintain the funding for its full term?

**A:** The Department's Asset Management Division may monitor for owners who claimed these points and do not maintain the development funding for its full term. Applicants are reminded that by state statute (Sec. 2306.6720) each representation made to secure a housing tax credit allocation is enforceable by the Department. In addition, issues such as these may be taken into account as future applications undergo previous participation reviews and could result in ineligibility in the future.

**Q:** Can a resolution which is serving as a commitment of funds for purposes of the additional points under §11.9(d)(2)(C) include a number of options for the type of source being committed? For example, can it read that the LPS is prepared to commit X dollars in the form of either a fee waiver, tax abatement, or grant?

**A:** Yes. The resolution can include flexibility with respect to the type of funding being committed. However, an amount of funding must still be specified in order to assess points. In addition, if an Applicant is also seeking a point under §11.9(d)(2)(D) for a permanent source, then all of the options listed in the resolution should be permanent sources meeting the requirements for the additional point. When submitting a resolution for the additional two points, Applicants should ensure that the submitted resolution supports ALL of the elected points under this scoring item.

**Q:** **[added 2/9/2015]** Is the resolution for the additional points under §11.9(d)(2)(C) due with the Full Application?

**A:** Yes. The resolution evidencing a firm commitment of Local Political Subdivision funding must be included with the Full Application and received by the Full Application Delivery Date of 02/27/15.

**Q:** **[added 2/9/2015]** Do I need to provide any support documentation when claiming points under §11.9(d)(3) Declared Disaster Area?

**A:** No, you simply need to check the box claiming the points. Staff will verify whether or not the county in which the Development Site is located is eligible for points.

**Q:** **[added 1/22/2015]** What is the state wide median household income figure used in the definition of Economically Distressed Area that reads, in part, "a census tract that has a median household income that is 75 percent or less of the statewide median household income?"

**A:** The statewide median household income figure is \$51,563 and comes from the 5-Year American Community Survey (ACS) ending with the year 2012.