

**SUPPLEMENT FOR
BOARD MEETING OF NOVEMBER 13, 2014**

J. Paul Ozer, Chair

Juan Muñoz, Vice-Chair



**TEXAS DEPARTMENT OF
HOUSING & COMMUNITY AFFAIRS**

Building Homes. Strengthening Communities.

ACTION ITEMS

4a

BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION
NOVEMBER 13, 2014

Presentation, Discussion, and Possible Action on an order adopting the amendments to 10 TAC Chapter 11 §11.1(e), concerning Census Data; §11.2, concerning Program Calendar for Competitive Housing Tax Credits; §11.3(e), concerning Developments in Certain Sub-Regions and Counties; §11.3(f), concerning Additional Phase; §11.5, concerning Competitive HTC Set-Asides; §11.6, concerning Competitive HTC Allocation Process; §11.7, concerning Tie Breaker Factors; §11.8(b), concerning Pre-Application Threshold Criteria; §11.9(c)(4), concerning Opportunity Index; §11.9(c)(5), concerning Educational Excellence; §11.9(c)(7), concerning Tenant Populations with Special Housing Needs; §11.9(d)(1), concerning Local Government Support; §11.9(d)(4), concerning Quantifiable community Participation; §11.9(e)(3), concerning Pre-application Participation; §11.9(e)(7), concerning Funding Request Amount; and §11.10, concerning Challenges of Competitive HTC Applications; concerning the Housing Tax Credit Program Qualified Allocation Plan and directing its publication in the *Texas Register*

RECOMMENDED ACTION

WHEREAS, the Texas Department of Housing and Community Affairs (the “Department”) is authorized to make Housing Tax Credit allocations for the State of Texas;

WHEREAS, the Department, as required by §42(m)(1) of the Internal Revenue Code and Texas Government Code §2306.67022, developed this Qualified Allocation Plan to establish the procedures and requirements relating to an allocation of Housing Tax Credits;

WHEREAS, the proposed amendments to Chapter 11 were published in the September 19, 2014 issue of the *Texas Register* for public comment; and

WHEREAS, pursuant to Texas Government Code §2306.6724(b) the Board shall adopt and submit to the Governor a proposed Qualified Allocation Plan no later than November 15;

NOW, therefore, it is hereby,

RESOLVED, that the final order adopting the amendments to 10 TAC, Chapter 11 concerning the Housing Tax Credit Qualified Allocation Plan together with the preamble presented to this meeting are hereby ordered and approved for submittal to the Governor to approve, approve with changes, or reject and, once the Governor has taken such action, to cause its publication in the *Texas Register*; and

FURTHER RESOLVED, that the Executive Director and his designees be and each of them hereby are authorized, empowered, and directed, for and on behalf of the Department, to cause the Qualified Allocation Plan, together with the preamble in the form presented to this meeting, to be delivered to the Governor,

prior to November 15th for his review and approval, and to cause the Qualified Allocation Plan, as approved, approved with changes, or rejected by the Governor, to be published in the *Texas Register* and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing.

BACKGROUND

The Board approved the proposed amendments to Chapter 11 regarding the Housing Tax Credit Program Qualified Allocation Plan (“QAP”) at the September 4, 2014 Board meeting to be published in the *Texas Register* for public comment. In keeping with the requirements of the Administrative Procedures Act, staff has reviewed all comments received in response to the proposed amendments and provided a reasoned response to these comments. While staff reviewed and considered comment made on sections that were not proposed for amendment, a reasoned response to those comments was not included here. However, the comment itself is included in the attachment. Staff is not recommending any further amendments to any additional sections as that could potentially require re-publication in the *Texas Register* and ultimately an inability to meet the statutory requirement to submit the rules to the governor by November 15, 2014.

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Preamble, Reasoned Response, and Amended Rule

The Texas Department of Housing and Community Affairs (the “Department”) adopts amended 10 TAC, Chapter 11, §§11.1 – 11.10 concerning the Housing Tax Credit Program Qualified Allocation Plan. Sections 11.2, 11.6 – 11.7, 11.8(b), 11.9(c)(4), 11.9(c)(5), 11.9(c)(7), 11.9(d)(4) and 11.10 are adopted with changes to text as published in the September 19, 2014 issue of the *Texas Register* (39 TexReg 7474). Sections 11.1(e), 11.3(e), 11.3(f), 11.5, 11.9(d)(1), 11.9(e)(3), 11.9(e)(7) are adopted without change and will not be republished.

REASONED JUSTIFICATION. The Department finds that the adoption of the rule will result in a more consistent approach to governing multifamily activity and to the awarding of multifamily funding or assistance through the Department while minimizing repetition among the programs. The comments and responses include both administrative clarifications and revisions to the Housing Tax Credit Program Qualified Allocation Plan based on the comments received. After each comment title, numbers are shown in parentheses. These numbers refer to the person or entity that made the comment as reflected at the end of the reasoned response. If comment resulted in recommended language changes to the Draft Housing Tax Credit Program Qualified Allocation Plan as presented to the Board in September, such changes are indicated.

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS

Public comments were accepted through October 20, 2014, with comments received from (1) StoneLeaf Companies, (2) Bridgette Wallis, (3) Community Development Corporation of Brownsville, (4) Churchill Residential, (5) City of Beaumont, (6) City of Fort Worth, (7) Claire Palmer, (8) MHMRA of Harris County, (9) Les Kilday, (10) Motivation Education & Training, Inc. (MET), (11) Michael Wallis, (12) Fountainhead Management, Inc., (13) Rural Rental Housing Association (RRHA) of Texas, (14) Terri Anderson, (15) DMA Development Company, LLC, (16) Communities for Veterans, (17) Coats Rose, (18) National Church Residences, (19) Texas Association of Affordable Housing Providers (TAAHP), (20) Alyssa Carpenter, (21) Randy Plitt, (22) Housing Authority of the City of El Paso, (23) Sallie Burchett, (25) Greater East End District, (26) Sarah Andre, (27) City of Houston, (28) Sonoma Advisors, (29) Hettig Kahn, (30) Marque Real Estate Consultants, (31) South Texas Collaborative for Housing Development, (32) Daniel & Beshara, (33) Foundation Communities, (34) New Hope Housing, (35) Cheryl Worth, (36) S Anderson Consulting, (37) Versa Development, (38) Hogg Foundation for Mental Health, (39) Texas Council for Developmental Disabilities, (41) Avenue CDC, (42) Local Initiatives Support Coalition (LISC), (43) Star – Equities, LLC, (44) Mark-Dana Corporation, (46) Texas Association of Community Development Corporations (TACDC), (47) National Housing Trust, (48) Texas Appleseed and Texas Low Income Housing Information Service, (49) Inclusive Communities Housing Development Corporation, (50) Bonner Carrington, (51) RealTex Development, (52) Roundstone Development, (53) Accessible Housing Austin, Inc., (54) Promoting Independence Advisory Committee

1. Chapter 11 – General Comment (5), (19), (28), (33), (35), (41)

COMMENT SUMMARY: Commenter (5) suggested the QAP appears to give favor to maximizing the number of affordable units and fails to provide any incentive for the development of a truly mixed-income development. Commenter (5) recommended there be a significant point award for developers that include a certain percentage (15% - 20%) of their units offered as market rate which would promote a more diverse development and community

based on income. Commenter (5) believed that such change is consistent with the direction of HUD to promote a healthier development for both the residents and the community.

Commenter (41) suggested language be added to the QAP that encourages development in communities that have access to mass transit and recommended that developments located within one mile (or half-mile) radius of an existing light rail stop (or other mass transit) be given extra points in the scoring process. Commenter (33) also stated that urban developments built in proximity to public transit should be incentivized with an additional point and further suggested that such point be available if located in a Transit Oriented District (TOD) within Dallas, Fort Worth, San Antonio, Houston and Austin. Furthermore, the TODs, according to commenter (33), should be designated by the local political subdivision and have a regulating plan (or something similar) that should outline the area and have specific development guidelines to facilitate TOD development.

Commenter (33) recommended the rules be modified to limit the number of developments in small communities, such as Alton, Liberty Hill, Buda, etc.

Commenter (28) stressed the importance of separate rules for 4% HTC applications and stated such credits are an unlimited resource that aren't allocated as they are under the 9% HTC program. According to commenter (28) Section 142 of the IRC entitles access to the 4% credits and the Department should be clear that feasibility is performed solely to protect the private activity bond volume cap available to multifamily applications. Commenter (28) believed that if the concern over approving certain developments is due to fair housing then 4% applications should be required to ask HUD for a determination or approval of their fair housing affirmative marketing plans which would shift the burden to HUD and allow the use of private activity bond volume cap. Further along the lines of fair housing, commenter (28) suggested that if 4% applications were intended to further fair housing then the Department could use all of its HOME funds exclusively for 4% developments since 9% developments rarely need them given the current pricing and debt cost.

Commenter (35) provided comments regarding the Uniform Relocation Act (URA), and recommended that any development receiving HTC should be made by law to comply with the federal URA. Commenter (35) believes that since compliance with URA is not required, it creates a domino effect in which those low income households are financially harmed due to the displacement and consequently seek out federal assistance which adds unnecessary stress on programs that have finite means.

Commenter (19) expressed the need to bring parity between general population and elderly developments and, while supportive of the removal of the elderly prohibition in certain areas of the state, would like to see the scoring criteria not put elderly developments at a disadvantage statewide.

STAFF RESPONSE:

In response to Commenter (5), while staff agrees with the idea of encouraging mixed-income development, staff is not recommending the addition of another scoring item, in part because it would not constitute a logical outgrowth of any other part of the rule and would be a significant change to the overall scoring criteria. In addition, staff previously received informal comment that §11.9(e)(4), related to Leveraging of Private, State, and Federal Resources actually does

encourage this type of development, although indirectly by providing an incentive to limit the Housing Tax Credit request with respect to the Total Development Costs.

In response to Commenters (41) and (33), staff again is not recommending the addition of another scoring item related to proximity to transportation, in part because it would not constitute a logical outgrowth of any other part of the rule and would be a significant change to the overall scoring criteria. In addition, staff does not have evidence of a direct correlation between proximity to public transportation and high opportunity areas as Commenter (41) suggests. In response to Commenter (33), while staff does not recommend an incentive for all developments located in an urban area to be located near transit, staff is recommending in §10.101(a)(2) relating to Mandatory Community Assets, that Supportive Housing developments in urban areas be required to be located within 1/2 mile of public transportation or to provide, at no cost to the tenant, accessible transportation when the Property Management Office is open, such as cab vouchers or a specialized van on-site, to a bus or other public transit stop.

In response to Commenter (33) regarding limiting the number of awards made in smaller communities, staff does not recommend such a change as it would not be consistent with §2306.6711(f) of the Texas Government Code. Should the market not be able to bear the additional development, the Real Estate Analysis division has the ability to recommend denial of the award.

In response to Commenter (28), staff does not recommend separate sets of rules governing the 4% credits and 9% credits. Staff believes that threshold criteria and housing de-concentration factors should apply to all types of housing tax credit developments as that application (of those criteria) will result in greater housing choice for low-income Texans. In addition, this is consistent with other statutory requirements such as the “Twice the State Average Per Capita” and “One Mile Three Year Rule” which apply to both programs. With respect to the Department’s HOME funds and TCAP Program Income funds, staff may recommend set-asides and/or priorities for tax exempt bond developments in future NOFAs.

In response to Commenter (35), staff is not recommending a requirement that housing tax credit development owners comply with the Uniform Relocation Act. Of course, where tax credits are layered with federal funding sources, the Act will apply in accordance with its terms. Regarding cases where lower income tenants are displaced because they do not meet the selection criteria of the new development owner, staff has recommended changes to Subchapter F, Section 10.610, “Tenant Selection Criteria” which will prohibit Owners from retroactively applying tenant selection criteria to tenants who already reside in the development at the time new or revised leasing criteria are applied and who are otherwise in good standing under the lease. However, as a program that provides affordable rental housing through private market development, the IRS allows Owners of Housing Tax Credit developments to establish their own criminal, credit, and residential screening criteria in accordance with applicable law.

In response to Commenter (19), staff is not recommending any change to the scoring criteria that affords applications proposing Qualified Elderly developments the ability to achieve additional points. Staff believes that the rules and the scoring criteria as a whole provide for the ability for Qualified Elderly developments to be competitive and that there are already ample incentives for applicants to propose Qualified Elderly developments.

Staff recommends no changes based on these comments.

2. §11.2 – Program Calendar (50)

COMMENT SUMMARY: Commenter (50) recommended the pre-application final delivery date be changed from January 13, 2015 to January 8, 2015 to allow more time between pre-application and full application and also recommended the due date for the Site Design and Development Feasibility Report along with all resolutions for the housing de-concentration factors be due April 1, 2015 instead of February 27, 2015. Commenter (50) suggested the additional time will allow developers to better analyze the application logs and determine whether or not to move forward. Moreover, commenter (50) indicated that the April 1 deadline should not delay underwriting since local government support resolutions and State Representative letters are not due until April 1 and they are the primary determinants on whether an application will ultimately be competitive.

STAFF RESPONSE:

In response to Commenter (50), staff is recommending that the pre-application final delivery date be changed to January 8, 2015. Staff believes this will still afford the development community enough time to obtain site control and submit the pre-application. However, staff recommends the Site Design and Feasibility Report continue to be due with the full application. This is an important tool not only for staff's evaluation but for the applicants in preparing that application and so it is appropriately due at the same time. The support letters and resolutions are not due until April 1 in order to give those elected officials time to evaluate the application themselves, including the information contained in the Site Design and Feasibility Report.

3. §11.3 – Housing De-concentration Factors (32), (48), (49), (50)

COMMENT SUMMARY: Commenters (48), (50) expressed objection to the removal of the prohibition of qualified elderly developments in certain sub-regions and counties. According to commenter (48), given the limited resources available to fund affordable housing and the overwhelming need in Texas, it is not the most efficient or effective use of state resources to overbuild elderly developments, even if it is the more politically palatable type of affordable housing in many jurisdictions. Commenter (48) requested this prohibition be reinstated and re-evaluated each tax credit cycle to determine which areas are ineligible for such developments. Commenter (48) further asserted that overbuilding elderly developments while underserving families discriminates on the basis of familial status in violation of the Fair Housing Act and may discriminate on the basis of race, color and national origin considering the composition of the population of Texas based on data provided by commenter (48). Moreover, commenter (48) noted that while elderly households can live in family developments, families are by definition precluded from residing in qualified elderly developments.

Commenter (32) also expressed opposition to lifting the eligibility restriction against qualified elderly developments, specifically in Collin and Denton counties. According to commenter (32) the prohibition against such developments in 2014 did not produce a balance between elderly and family developments in Collin and Denton counties as well as in the Dallas area. Commenter (32) asserted that lifting the restriction will continue the perpetuation of racial segregation and give rise to an inference that the Department has intentionally discriminated on the basis of race. Commenter (32) provided data that the commenter believes supports their assertions. Commenter (32) suggested that if the Department maintains its position on lifting the restriction then it

should also eliminate points for the Opportunity Index, Educational Excellence, and the Opportunity Index basis boost for qualified elderly developments in Collin and Denton counties.

Commenter (49) recommended reinstating the eligibility restriction against qualified elderly developments in Collin, Denton, Ellis and Johnson counties because, they assert, the proportion of elderly HTC units continues to exceed those available for the general population.

Commenter (50) stated that in 2013, elderly developments comprised 25.02% of the Department's overall portfolio and they comprised 31.85% of the developments in those areas that were prohibited in 2014, as opposed to 21.04% of the developments in all other areas. According to commenter (50), after the 2014 cycle elderly developments still made up 31.20% of the developments in the ineligible areas (a decrease of only 0.65%), compared to 20.84% of the developments in all other areas.

STAFF RESPONSE:

Staff believes that allowing or limiting elderly developments in certain areas is far more complex than Commenters (32), (49), and (50) portray. For example, some of the comments put forth by Commenter (32) rely on rent burdened households to suggest a need based approach should be used. However, the rent burden data used is likely reflecting households *already* residing in existing tax credit housing as rent burdened. This is because "rent burdened" is defined, in the particular data used by Commenter, as those expending more than 30% of household income on housing costs. Because tax credit rents are based on the maximum income household spending 30% of household income on housing costs, it is frequently the case that eligible households with incomes below the income limits will ultimately expend more than 30% of their household income on housing costs. These conclusions are well documented in many studies of the tax credit program, and the development of tax credit housing is unlikely to dramatically affect rent burdened figures based on the particular definition used by Commenter.

In response to all commenters, Staff does not think that there is any one lens through which these issues can be viewed, but rather that it is incumbent on the State to pursue multiple lines of research and review. The analysis used to develop the 2014 limitations, for example, was a snapshot calculation of the proportion of elderly developments in the Department's portfolio as compared with their estimated representation in the income qualified population. This methodology obviously has limitations. Moreover, that methodology alone should not, in Staff's opinion, be used to support a multi-year restriction on the development of elderly restricted housing.

In considering the removal of the restriction Staff considered population growth, for example, in light of the fact that the proposed developments will not place in service for about two years from their award dates and they will serve their locales for thirty years or more. Trend data from the State Demographer shows a strong movement towards a larger elderly population and this developing need should be considered, especially as this elderly population overwhelmingly lives on fixed incomes. In Collin County, for example, data projections from the State Demographer reflect that the population of individuals age 65 and older will increase 10% from 2015 to 2017, while the population of individuals in all other age groups are projected to decline 1% over the same period. In the same county over the period from 2015 to 2025, the population of individuals age 65 and older will increase 65% from 2015 to 2025, while the population of

individuals in all other age groups are projected to decline 2% over the same period. Data projections in other counties, such as Denton County, reflect similar trends.

Additionally, in reviewing data concerning persons with disabilities, it is clear that households qualifying for elderly restricted housing is much higher than in all other age groups. For example, according to the 2013 5-year American Community Survey the percentage of persons with disabilities amongst the Texas population of individuals age 65 and older is 39% as compared with 9% for all other age groups. Elderly housing is designed to serve this population (e.g. elevator requirements for multi-story structures).

Lastly, in response to all commenters, there are other incentives that are recommended in the proposed QAP to facilitate the development of affordable housing in a broadly dispersed and nondiscriminatory manner. In fact, while not currently under a court ordered remedial plan, the QAP as proposed reflects a framework very similar to that which was approved and ordered by a federal judge for the same counties cited by Commenter (32). The 2013 court ordered remedial plan reflected no such restrictions on elderly housing and produced a compliant allocation in the eyes of the federal judge. However, Staff will continue to review data on an ongoing basis to ensure the Department's programs are serving a range of households and operating in a legally compliant and nondiscriminatory manner.

Staff recommends no changes based on these comments.

4. §11.5(3) – Competitive HTC Set-Asides (10), (17), (18), (22), (47)

COMMENT SUMMARY: Commenter (10) recommended a set-aside be established for farm workers in units beyond those targeted for special needs when a housing facility will be located in areas with a strong agricultural economy that relies on human labor. Moreover, commenter (10) recommended establishing an incentive for combining HTC's with USDA 514 funding in order to include farm worker units within larger mixed population facilities. When USDA 514 funding is present, commenter (10) also suggested developments in urban areas be allowed to compete in the rural set-aside. Also proposed by commenter (10) is the following change regarding the USDA set-aside:

“(2) **USDA Set-Aside.** (§2306.111(d-2)) At least ~~5~~6 percent of the State Housing Credit Ceiling for each calendar year shall be allocated to Rural Developments which are financed through USDA. If an Application in this set-aside involves Rehabilitation it will be attributed to and come from the At-Risk Development Set-Aside; if an Application in this set-aside involves New Construction it will be attributed to and come from the applicable Uniform State Service Region and will compete within the applicable sub-region unless the New Construction is a USDA Section 514 project. Commitments of Competitive Housing Tax Credits issued by the Board in the current program year will be applied to each set-aside, Rural Regional Allocation, Urban Regional Allocation and/or USDA Set-Aside for the current Application Round as appropriate. Applications must also meet all requirements of Texas Government Code, §2306.111(d-2).”

In addition to the set-aside for farm workers, commenter (10) recommended additional points be given for projects in which units are designated for farm workers.

Commenters (17), (18) requested a clarification under the At-Risk Set-Aside that would include Section 202 loans. Commenters (17), (18) indicated that the Regulatory Agreements associated with such loans require affordability but only so long as the loan is outstanding and that the Mortgage Note allows prepayment with HUD approval and upon such prepayment the affordability restrictions terminate. To be considered an “At-Risk Development” it must be subject to maintaining affordability in the contract granting the subsidy and be nearing expiration or the federally insured mortgage on the development is eligible for prepayment or is nearing the end of its term. According to commenters (17), (18) a Section 202 loan would satisfy the requirements of At-Risk because the Regulatory Agreement which is the stipulation to maintain affordability is nearing expiration because its affordability restrictions expire upon prepayment of the loan. To demonstrate the pending expiration of the Regulatory Agreement, the applicant should be allowed to provide prepayment approval at the time of the HTC Commitment. Commenters (17), (18) further stated that the Section 202 loan can be construed as federally insured because upon default HUD is obligated to cover losses in the program and the HUD Handbook categorizes such loans as the equivalent to a mortgage insurance program. The recommended revision by commenters (17), (18) includes the following:

“(B) An At-Risk Development must meet all the requirements of Texas Government Code, §2306.6702(a)(5). For purposes of this subparagraph, any stipulation to maintain affordability in the contract granting the subsidy, or any federally insured mortgage will be considered to be nearing expiration or nearing the end of its term if expiration will occur or the term will end within two (2) years of July 31 of the year the Application is submitted. Developments with HUD-insured mortgages (including loans under Section 202 of the Housing Act of 1959) qualifying as At-Risk under §2306.6702(a)(5) may be eligible if the HUD-insured mortgage is eligible for prepayment without penalty. To the extent that an Application is eligible under §2306.6705(a)(5)(B)(ii)(b) and the units being reconstructed were demolished prior to the beginning of the Application Acceptance Period, the Application will be categorized as New Construction.”

Commenter (22) recommended the following modification to the At-Risk Set-Aside:

“(D) Developments must be at risk of losing affordability from the financial benefits available to the Development and must retain or renew the existing financial benefits and affordability unless regulatory barriers necessitate elimination of a portion of that benefit for the Development. For Developments qualifying under §2306.6702(a)(5)(B), only a portion of the subsidy must be retained for the proposed Development, ~~but no less than 25 percent~~ a fair and reasonable portion of the proposed Units must be public housing units supported by public housing operating subsidy. (§2306.6714(a-1))”

Commenter (47) expressed support for the 15% set-aside for at-risk developments and urged the Department to continue to prioritize developments that involve preservation and rehabilitation.

STAFF RESPONSE:

In response to Commenter (10), staff believes that implementing the suggested change related to the amount of credits in the USDA Set-Aside or allowing Urban USDA Set-Aside Applications

to compete in Rural Sub-regions would be inconsistent with statutory requirements for set-asides in §§2306.111(d), (d-1), (d-2), and 2306.6714, Texas Gov't Code. In addition, the suggestion that applications in an urban area that are proposing the utilization of Section 514/516 funding should compete in the rural set-aside may also violate statute. Even if not a violation, staff is not recommending such a change since those applications are already essentially competing in the USDA set-aside, and it is difficult to predict whether or not competing against other urban or rural applications would give any advantage to those applications. Staff is not recommending an additional scoring item to incentivize farmworker housing, in part because it would not constitute a logical outgrowth of any other part of the rule and would be a significant change to the overall scoring criteria. Should the Board direct staff to incentivize this type of occupancy preference in the future, staff could consider such a change.

In response to Commenters (17) and (18), staff disagrees with the assertion that a regulatory agreement is nearing expiration because the owner has an ability to pre-pay the loan. Section 2306.6702(5)(A)(ii)(b), Texas Gov't Code, provides the means by which an application can qualify to compete in the At-Risk Set-Aside and specifically refers to pre-payment of federally insured mortgages. A HUD 202 Direct Loan, in some cases, is not a federally insured mortgage. Therefore, the ability to prepay a HUD Direct Loan does not qualify a development as At-Risk. Staff's reading of the HUD handbooks indicates a clear distinction between HUD-insured mortgages and HUD-held mortgages (Direct Loans) in several places (*e.g.* Chapter 1 of 4350.3 and section 1-14 of 4350.4, which lists HUD's mortgage insurance programs and does not include Section 202), including in the specific section that was referenced in the comment.

In response to Commenter (22), staff believes that 25% is a "fair and reasonable" portion of the units that are required to be retained as public housing in order for an application to qualify to compete in the At-Risk Set-aside under this provision of the rule and statute. In addition, the commenter's proposed change would result in unnecessary ambiguity in the rule. Staff suggests that if there is a compelling reason for a particular applicant to retain fewer than the required number of units that a waiver could be requested.

Staff appreciates the support of Commenter (47).

Staff recommends no change based on these comments.

5. §11.6(5) – Competitive HTC Allocation Process – Force Majeure Events (16), (19), (37), (48)

COMMENT SUMMARY: Commenter (16) recommended the following revisions to this section which will provide the Department with sufficient discretion to address unexpected delays to developments which otherwise comply with the terms of Carryover. Commenter (16) further stated that the lack of a mechanism to allow for the forward allocation of HTC's when extraordinary delays arise outside the control of the applicant leaves the Department without the administrative tools necessary to preserve and ensure completion by the placed in service deadline.

“(5) Credit Returns Resulting from Force Majeure Events. In the event that the Department receives a return of Competitive HTCs during the current program year from an Application that received a Competitive Housing Tax Credit award during any of the preceding three years, such returned credit will, if

all of the requirements of this paragraph are met, be allocated separately from the current year's tax credit allocation, and shall not be subject to the requirements of paragraph (2) of this section. Requests to separately allocate returned credit where all of the requirements of this paragraph have not been met or requests for waivers of any part of this paragraph will ~~not~~ be considered within the discretion of the Executive Director. For purposes of this paragraph, credits returned after September 30 of the preceding program year may be considered to have been returned on January 1 of the current year in accordance with the treatment described in §(b)(2)(C)(iii) of Treasury Regulation 1.42-14. The Department's Governing Board may approve the execution of a current program year Carryover Agreement regarding the returned credits with the Development Owner that returned such credits only if:

(A) The credits were returned as a result of "Force Majeure" events that occurred after the execution of a Carryover Allocation Agreement ~~start of construction~~ and before issuance of Forms 8609. Force Majeure events are sudden and unforeseen civil unrest, shortages of labor or material, financial difficulties caused by temporary shutdown, sequestration, or administrative delays by an instrumentality of the government of the United States, fire, tornado, flooding, significant and unusual rainfall or subfreezing temperatures, or loss of access to necessary water or utilities as a direct result of significant weather events, or any other catastrophic natural, social, political, or economic event that, in the discretion of the Executive Director, unforeseeably prevents the Development from reaching completion within the time prescribed at Carryover. Force Majeure events must delay a closing of debt or equity finance or make construction activity impossible or materially impede its progress ~~for a duration of at least 90 days, whether consecutive or not~~;

(B) Acts or events caused by the willful negligence or willful act of the Development Owner, Affiliate or a Related Party shall under no circumstance be considered to be caused by Force Majeure;..."

Commenters (19), (29), (37) recommended the following revisions in order to be consistent with the already defined term in the Department's HOME Loan documents:

"(A) The credits were returned as a result of "Force Majeure" events that occurred after the start of construction and before issuance of Forms 8609. Force Majeure events are the following sudden and unforeseen circumstances outside the control of the Development Owner; acts of God such as fire, tornado, flooding, significant and unusual rainfall or subfreezing temperatures, or loss of access to necessary water or utilities as a direct result of significant weather events; explosion; vandalism; orders or acts of military authority; litigation; changes in law, rules, or regulations, national emergency or insurrection; riot; acts of terrorism; supplier failures; or materials or labor shortages. Force Majeure events must make construction activity impossible or materially impede its progress. ~~for a duration of at least 90 days, whether consecutive or not~~."

Moreover, commenters (29), (37) also recommended the following sentence be added to paragraph (A):

“Additionally, for a Development using HOME or CDBG funds subject to Section 3, delays resulting from governmental administration or failure to act.”

Commenter (48) expressed support for this provision and stated it reflects lessons learned about disaster recovery and further indicated it will help ensure that more affordable units are constructed more quickly when they are most needed.

STAFF RESPONSE:

In response to Commenter (16), staff’s proposed language is intentionally narrow in order to address only those most unusual and unforeseen situations. Staff does not believe that Chapter 2306 authorizes the broad discretion to allocate credits outside of the statutory framework provided for the evaluation and award of tax credit applications.

In response to Commenters (19), (29), and (37), staff agrees with the suggested revision with the exception of the addition of provisions related to delays in closing. Staff recommends the following change to the section.

“(A) The credits were returned as a result of “Force Majeure” events that occurred after the start of construction and before issuance of Forms 8609. Force Majeure events are the following sudden and unforeseen circumstances outside the control of the Development Owner: acts of God such as fire, tornado, flooding, significant and unusual rainfall or subfreezing temperatures, or loss of access to necessary water or utilities as a direct result of significant weather events; explosion; vandalism; orders or acts of military authority; litigation; changes in law, rules, or regulations; national emergency or insurrection; riot; acts of terrorism; supplier failures; or materials or labor shortages. Force Majeure events must make construction activity impossible or materially impede its progress ~~for a duration of at least 90 days, whether consecutive or not...~~”

6. §11.7 – Tie Breaker Factors (30)

COMMENT SUMMARY: Commenter (30) suggested that if the intent of the tie breaker factors is to de-concentrate the location of affordable housing then it should be unique to the type of housing proposed and; therefore, recommended the following modification:

“(2) Applications proposed to be located the greatest distance from the nearest Housing Tax Credit assisted Development, servicing the same Tenant Population.”

STAFF RESPONSE:

Staff agrees with Commenter (30) and has incorporated the suggested change into the rule.

7. §11.8 – Pre-Application Requirements (19), (20), (30), (36)

COMMENT SUMMARY: Commenter (19) recommended the following modification to §11.8(b):

“(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. (§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 proposed Development Site as provided by the local elected officials; as of the beginning of the Application Acceptance Period or that the Applicant has knowledge of as of the date of pre-application submission. It is the responsibility of the Applicant to identify all such Neighborhood Organizations.”

Commenters (20), (30), (36) recommended the language “as provided by the local elected officials, or that the Applicant has knowledge of as of the date of pre-application submission” be deleted since the requirement to request a list of the local officials was deleted prior to 2014 and the governing statute only requires notification of entities on record with the county or state, not whether the applicant has knowledge of any. Commenters (20), (36) further added that the question of whether an applicant had knowledge of a specific neighborhood organization was the subject of a 2014 challenge and staff’s determination was ultimately decided on whether the organization was “on record” per statute.

STAFF RESPONSE:

Staff agrees with the Commenters and recommends the following revision to §11.8(b):

“(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. (§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 proposed Development Site as ~~provided by the local elected officials, or that the Applicant has knowledge of as of the date of pre-application submission. It is the responsibility of the Applicant to identify all such Neighborhood Organizations~~ of the beginning of the Application Acceptance Period.

8. §11.9(c)(4) – Selection Criteria – Opportunity Index (1), (4), (12), (13), (15), (18), (19), (20), (23), (25), (28), (36), (42), (46), (47), (48), (50)

COMMENT SUMMARY: Commenter (1) suggested developments located in rural areas be given an allowable proximity of 2 miles to community assets and further indicated that such distance allowance would be consistent with the threshold requirement under §10.101(a)(2) of the Uniform Multifamily Rules. Commenter (1) stated that it is not uncommon for residents in rural areas to drive up to 2 miles to these community assets.

Commenter (4) provided comment that there are a few school districts that have district wide enrollment with no specific attendance zones and stated that some of these districts are quite large in geographic area and have certain areas within those districts that have very good schools.

Commenter (4) further expressed that the ICP litigation mandates that neighborhoods such as these be included and suggested the following modification to this scoring item:

~~“(C) An elementary school attendance zone for the Development Site does not include schools with district wide possibility of enrollment or no defined attendance zones, sometimes known as magnet schools. However, in districts with district wide enrollment an Applicant may use the lowest rating of all elementary schools that may possibly be attended by the tenants. The elementary school attendance zone for Development Sites contained in school districts with district wide enrollment will be a 3 mile radius. Within this 3 mile radius, at least 75% of the elementary schools must have achieved a 77 or greater on index 1 of the performance index, related to student achievement, by the Texas Education Agency. The applicable school rating will be the 2014 accountability rating assigned by the Texas Education Agency...”~~

Commenters (13), (19) recommended the following change which would allow more potential locations for housing and further noted that a one point reduction will not materially impact the quality of the education received.

“(B) For Developments located in a Rural Area, an Application may qualify to receive up to seven (7) cumulative points based on median income of the area and/or proximity to the essential community assets as reflected in clauses (i) - (v) of this subparagraph if the Development Site is located within a census tract that has a poverty rate below 15 percent for Individuals (35 percent for regions 11 and 13) or within a census tract with income in the top or second quartile of median household income for the county or MSA as applicable or within the attendance zone of an elementary school that has a Met Standard rating and has achieved a ~~76~~⁷ or greater on index 1 of the performance index, related to student achievement.”

Commenters (13), (19) suggested the following changes since rural communities are often served by one set of amenities for the entire town and that driving distances are measured more by time and less by miles. Moreover, due to the difficulty in finding a licensed childcare provider for infants, toddlers and pre-kindergarten in a rural area commenter (13) recommended changes to this portion of the item as well.

“(i) The Development Site is located within the attendance zone and within one linear mile of an elementary, middle, or high school with a Met Standard rating (For purposes of this clause only, any school, regardless of the number of grades served, can count towards points. However, schools without ratings, unless paired with another appropriately rated school, or schools with a Met Alternative Standard rating, will not be considered.) (3 points);

(ii) The Development Site is within ~~two~~^{one} linear miles of a center that is licensed by the Department of Family and Protective Services specifically to provide a school-age program (2 points);

- (iii) The Development Site is located within ~~twoone~~ linear miles of a full service grocery store (2 points);
- (iv) The Development Site is located within ~~twoone~~ linear miles of a center that is licensed by the Department of Family and Protective Services to provide a child care program for infants, toddlers, and/or pre-kindergarten, at a minimum (2 points);
- (v) The Development is a Qualified Elderly Development and the Development Site is located within ~~twoone~~ linear miles of a senior center (2 points); and/or
- (vi) The Development Site is located within ~~twoone~~ linear miles of a health related facility (1 point).”

Commenter (15) suggested this item be modified to allow elementary schools that meet or exceed the lower of the statewide average or the regional average in order to qualify for points. In doing so, commenter (15) believed the anomaly in Region 11 that occurred in the 2014 application round where three developments were awarded in one small city would not have occurred.

Commenter (15) recommended Qualified Elderly Developments located in first quartile census tracts with qualifying schools receive 5 points and in second quartile census tracts with qualifying schools receive 3 points. Such a change would be consistent with scoring that was available under the 2013 application round and will allow elderly developments to be competitive under the program. Commenter (50) provided similar comments as reflected in their suggested language below and further stated that general population communities already have a two point scoring advantage when in the first quartile.

“(iii) any Development, regardless of population served, if the Development Site is located in a census tract with income in the top quartile of median household income for the county or MSA as applicable and the Development Site is in the attendance zone of an elementary school that has a Met Standard rating and has achieved a 77 or greater on Index 1 of the performance index, related to student achievement (5 points);...”

Commenter (18) provided comment that stated reasons why high opportunity areas exclude existing elderly developments, specifically, that high performing schools do not impact the quality of life for seniors, rehabilitation properties do not increase the concentration of affordable housing in the area, current tenants in a rural area are part of the poverty rate so setting the rate below 15% results in their own community being disqualified, and lastly, that these properties do not have the ability to be re-located. Commenter (18) recommended rehabilitation developments under this scoring item be eligible for up to 7 points if there is a service coordinator onsite for 15 hours a week or if there are health care services within 1 mile.

Commenter (26) suggested that qualified elderly developments should also be able to achieve 7 or 5 points for high opportunity if they are a first or second quartile census tract. Commenter (26) further stated that there is no evidence to support that family deals are preferable in all

markets and this essentially blocks elderly developments from several markets even with the prohibition against elderly developments lifted, as currently proposed.

Commenter (18) expressed concerns as it relates to permanent supportive housing, specifically, high performing schools do not affect this population because they are mostly single adult individuals, supportive housing developments in areas of lower income typically provides for better employment opportunities for such low-skilled residents, and lastly, that developments located near services and public transportation are characteristics considered to be a priority as opposed to a high income area. For these reasons, commenter (18) recommended for permanent supportive housing developments that target homeless adults, they be eligible to receive 7 points, provided there is a full time case manager onsite for 35 hours a week or that there are health care services within 1 mile.

Commenter (42) suggested the following addition to this scoring item which will encourage development supported by public transit, which is an essential element for families earning as little as 30% of AMGI. Commenter (46) similarly agreed indicating that this would be a crucial step as larger cities in Texas create and expand new development opportunities around transit lines and mobility centers.

“(v) any Development, regardless of population served, if the Development site is located within one linear mile of a designated public transportation stop at which public transportation (not including “on demand” transportation) stops on a regular, scheduled basis. A site’s eligibility for on demand transportation or transportation provided directly or indirectly by the Development Owner does not meet this requirement (2 points).”

Commenters (3), (46) stated that while they agree with the Department in providing housing in areas of opportunity, the current scoring structure relating to the student achievement index drives funding away from the poorest minority communities and that an index score of 77 has inadvertently disqualified the overwhelming majority of locations in the Rio Grande Valley. Specifically, commenter (3) stated that of the 28 school districts where they do most of their work, only 2 districts had the required three schools (elementary, middle and high school) that scored a 77 or better. As a result, Harlingen, San Benito, Kingsville, southern Corpus Christi and 98% of Brownsville will never be able to build another HTC property. Commenters (3), (46) recommended this scoring item be changed so that just one school in the feeder zone of a development meet the score of 77.

Commenter (47) stated that although they are encouraged at the distinctions in this scoring item between new construction/adaptive re-use and preservation projects, they emphasized that expanding opportunity housing must not be at the expense of existing low-income communities. Moreover, commenter (47) urged the Department to balance the allocation of tax credits between new construction and preservation developments, particularly where existing housing is principally occupied by low income minority households.

Commenters (20), (36) expressed support for the use of the rating of 77 or greater for certain point selections since it is based on current TEA averages and feels that use of any other number would be arbitrary.

Commenter (28) indicated this scoring item is a redline disaster happening, at least in Region 3, and further stated the Department must be flexible on the definition of the poverty percentage within the margin of error. In using the highest number available, commenter (28) believed real high opportunity areas are being excluded. Commenter (28) suggested this scoring item be modified based on school ranking criteria and quartile and ignore the poverty percentage. Moreover, commenter (28) recommended that for districts with district wide enrollment, the district wide rating or the school rating closest to the development site needs to be used and not the lowest available. Commenter (28) also stated that the ability to put housing in areas with good schools is being hindered with use of the lowest scoring school approach. Commenter (28) further added that the average rating for school performance should be related to their MSA and not every area of the state.

Commenter (50) recommended that in districts that have open enrollment, the overall district rating should be used rather than the lowest ranking school in the entire district, since most students will not attend the lowest ranking school.

Commenter (23) suggested the Department should round up rather than down when calculating the various quartiles so that it opens up several more census tracts for High Opportunity points.

Commenter (25) indicated that while legal requirements in the Dallas area require use of the Opportunity Index, they do not believe it should be applied across the state. With the intent of this scoring item to advantage developments not located in socioeconomically challenged areas, commenter (25) stated that a map of census tracts with individual poverty rates in excess of 15% shows more than two-thirds of the City of Houston to be “low” opportunity areas. Commenter (25) referenced HUD’s Moving to Opportunity program which showed no differences between the study’s groups with respect to adult employment or student educational outcomes. What this scoring item fails to address, according to commenter (25), is what happens to the neighborhoods and schools the relocated people leave behind which seems to be at odds with numerous state-sponsored efforts to revitalize those very same areas.

Commenter (12) stated the intent of this scoring item is to locate housing in non-Hispanic Caucasian neighborhoods while making it nearly impossible to locate an HTC development in predominately minority neighborhoods, which according to Commenter (12), is a violation of the Fair Housing Act. Commenter (12) suggested the Department remove this scoring item until it has been determined that it is not a violation of intentional discrimination.

Commenter (48) expressed that continued emphasis on locating developments in high opportunity areas is central to carrying out civil rights obligations as well as the purpose of the HTC and other multifamily programs. With a portfolio of developments that are concentrated in racially and ethnically segregated and low income areas, the Department’s commitment to balancing the current distribution with investments in high opportunity areas is necessary and important, according to commenter (48).

Commenter (15) expressed support for this scoring item for rural developments and believes that a similar standard for urban developments would provide a better measure of the desirability of sites than does the current language. As a consideration for the 2016 QAP, commenter (15) recommended putting first and second quartile sites on equal footing, and then focus on the proximity of amenities to distinguish the scoring of sites from one another. In doing so, it would

provide a better gauge of the relative quality of sites and would open more areas, still of high quality, for affordable housing.

STAFF RESPONSE:

In response to Commenters (1), (13) and (19) with respect to the requirement to be within one mile of amenities in order to qualify for points if located in a rural area, staff believes that because there is already a threshold requirement for developments to be located within two miles of certain amenities that it is appropriate that any distances to these same amenities that are associated with a scoring item be shorter. Otherwise, almost all rural developments that meet the basic threshold requirement would also be eligible for points. However, staff is recommending more flexibility with respect to the ages served by licensed centers that provide child care. The recommended revision is included below. Staff appreciates the support expressed by Commenter (15) for the Opportunity Index for rural developments.

In response to Commenter (28) with respect to the poverty rate threshold required to achieve points on the Opportunity Index, the percentage used is consistent with the percentage used in several studies associated fair housing and effectively narrows the eligible tracts to those with relatively low poverty. Staff recommends no change to this threshold. In addition, staff generally disagrees with the assertion from Commenters (12) and (25) that the use of the Opportunity Index to evaluate applications equates to redlining. Staff appreciates the support expressed by Commenter (48) for the continued use of the Opportunity Index.

In response to Commenter (23), staff is not recommending their proposed revision since “rounding up” would defeat the purpose of using the term “quartiles.” Staff finds no reason to make this revision other than to include more census tracts as possibly eligible for points.

In response to Commenter (4) and (50), while staff is recommending some revisions related to Choice School Programs, staff is not recommending changes in relation to district-wide enrollment. While Choice Programs allow tenants some ability to choose the school at which their children will attend, district-wide enrollment can easily result in students having to travel past highly rated schools to attend less highly rated schools, especially if any of the factors used by the district to determine where a child will attend school involves the overall population of the school and/or other demographic data.

In response to Commenters (13), (19), and (28) with respect to the threshold of a score of 77 on Index 1 of the performance index, staff is not recommending any revision because the threshold is based on the state average, as published by the TEA. In response to Commenter (28), because school districts do not align well with MSAs, it is impractical to use a threshold based on the MSAs performance, and while the TEA also published regional averages, staff found that the most significant outlier from the state average was in region 11. Staff addressed this discrepancy below. Staff appreciates the support expressed by Commenters (20) and (36) utilizing 77 as the threshold.

In response to Commenters (3), (15), and (46) staff agrees that some adjustment should be made for region 11 with respect to the index 1 score threshold for schools to qualify an application for points. Staff has found, through an analysis of the data provided by the TEA, that the average index 1 score for elementary schools in region 11 is approximately 75, and the average index 1 score for middle and high schools (combined) is approximately 68. Therefore, in order to address

the concerns of the commenters, staff is not recommending a change to the Opportunity Index but to §11.9(c)(5) related to Educational Excellence. Staff believes that it was the search for sites that scored these Educational Excellence points that resulted in the concentration of applications in particular cities in region 11 during the 2014 tax credit round.

In response to Commenter (15), (26), and (50) with respect to increasing the number of points available for applications proposing Qualified Elderly developments, staff is not recommending such a change. As stated previously, staff recognizes that there are still areas of the state where the percentage of qualified elderly households residing in rent restricted tax credit assisted units exceeds the percentage of the total qualified elderly eligible low income population, even if the results of the recent Competitive 9% HTC application cycles did have the effect of reducing these differences. Staff believes that the rules and the scoring criteria as a whole provide for the ability for Qualified Elderly developments to be competitive and that there are already ample incentives for applicants to propose Qualified Elderly developments, particularly the likelihood that the applications will garner support and the exemption from participation in the Section 811 program in order to achieve points on the application. In addition, with respect to comments regarding specific features that are typically included in an Elderly development, there is nothing in the rules which prohibits owners from building developments that target the general population and still provide features such as lever style handles on doors and accessible electric controls and switches. Staff appreciates the comments with respect to potential changes in the 2016 QAP, particularly those that suggest giving equal weight to first and second quartile tracts and adding focus to proximity to amenities. Staff will continue to work with stakeholders in consideration of these suggestions.

In response to Commenter (18), staff disagrees with the idea that the choice to live in proximity to good schools and in areas of low poverty and high income are not of importance to elderly populations. The overall concept of encouraging development in high opportunity areas is about giving low-income Texans a choice not just to live in safe, decent housing but to live in safe, decent neighborhoods, which oftentimes means those “suburbs and exurbs of metropolitan areas,” which, according to the Joint Center for Housing Study at Harvard publication referenced by Commenter (15), is where almost half of households over 50 actually choose to live. Staff makes the same assertion with respect to the tenants of supportive housing, that they too should be given the choice to live in good neighborhoods. However, staff does recognize the unique needs of populations served by supportive housing, which is why those applications are afforded the opportunity to achieve more points in other scoring categories. With respect to rehabilitation in rural areas, while staff agrees with both Commenters (18) and (47) that this is a much needed activity in the state, the USDA and At-Risk Set-Asides address a good portion of that need each year. However, while not recommending any change to the 2015 QAP, staff is working closely with rural and preservation developers to establish a mechanism by which to prioritize these transactions. In the absence of another clear priority, however, staff recommends that rehabilitation activities, just as new construction activities, be encouraged in high opportunity areas or areas of significant community revitalization.

In response to Commenters (42) and (46), staff is not recommending a change to the Opportunity Index to include an incentive for development in proximity to public transportation. First, the suggested language by Commenter (42) could trigger a violation of statute, as it would make the Opportunity Index score worth more than one of the “top 11” scoring items in §2306.6710, Texas Gov’t Code. Secondly, staff finds proximity to public transportation is not always consistent with the concept of high opportunity areas, as the placement of public transportation

does not necessarily have any direct correlation with any other relevant attributes of a neighborhood besides potential ridership. In addition, not all public planning efforts involve directing public transportation into areas that may show promise in the future; those efforts may instead be reactions to private development. Therefore, it is not unreasonable to assume that such public transportation would be built in high opportunity areas *after* affordable housing is built there.

In response to Commenter (25), while staff appreciates that there are a number of census tracts that do not qualify an application for points on the Opportunity Index, particularly in some larger cities, and that there always lies the possibility of problems associated with abandoned neighborhoods, it does not change the objectives of providing fair housing choice and encouraging development in areas of either high opportunity or significant community revitalization – in all areas of the state. Moreover, it is staff’s understanding that the City of Houston has a comprehensive revitalization effort in place which should afford applicants the opportunity to achieve points in that scoring category.

In light of all the comments received, staff is recommending the following revision to §11.9(c)(4):

“(C) An elementary school attendance zone for the Development Site does not include schools with district-wide possibility of enrollment or no defined attendance zones, sometimes known as magnet schools. However, in districts with district-wide enrollment an Applicant may use the lowest rating of all elementary schools that may possibly be attended by the tenants. In districts with “choice” programs, where students can select one or more schools in the district that they wish to attend, an Applicant may use the district rating. The applicable school rating will be the 2014 accountability rating assigned by the Texas Education Agency. School ratings will be determined by the school number, so that in the case where a new school is formed or named or consolidated with another school but is considered to have the same number that rating will be used. A school that has never been rated by the Texas Education Agency will use the district rating. If a school is configured to serve grades that do not align with the Texas Education Agency’s conventions for defining elementary schools (typically grades K-5 or K-6), the school will be considered to have the lower of the ratings of the schools that would be combined to meet those conventions.”

9. §11.9(c)(5) – Selection Criteria – Educational Excellence (3), (4), (6), (9), (12), (13), (14), (15), (18), (19), (20), (25), (28), (30), (31), (36), (49), (50)

COMMENT SUMMARY: Commenter (3) stated that while they agree with the Department in providing housing in areas of opportunity, the current scoring structure relating to the student achievement index under this scoring item drives funding away from the poorest minority communities and that an index score of 77 has inadvertently disqualified the overwhelming majority of locations in the Rio Grande Valley. Specifically, commenter (3) stated that of the 28 school districts where they do most of their work, only 2 districts had the required three schools (elementary, middle and high school) that scored a 77 or better. As a result, Harlingen, San Benito, Kingsville, southern Corpus Christi and 98% of Brownsville will never be able to build another HTC property. Commenter (3) recommended this scoring item be changed so that just one school in the feeder zone of a development meets the score of 77.

Commenter (31) noted that the average performance index score in Region 11 is 68 and historically the Board has taken special conditions existing in this region into consideration to address the unique poverty level in the area. Given the fact that poverty level has a direct effect on the achievement of the students and resulting scores, commenter (31) recommended this scoring item be modified to qualify a development in urban areas to receive 3 points provided that at least two of the schools achieve a 74 or greater on the index 1 and for rural areas a score of 67 or greater.

Commenter (4) provided comment that there are a few school districts that have district wide enrollment with no specific attendance zones and stated that some of these districts are quite large in geographic area and have certain areas within those districts that have very good schools. Commenter (4) further expressed that the ICP litigation mandates that neighborhoods such as these be included and suggested the following modification:

“The middle and high school attendance zones for Development Sites contained in school districts with district wide enrollment will be a 3 mile radius. In the case where no middle and high schools are within a 3 mile radius, the closest schools will be considered. Within this radius, at least 75% of the middle and high schools must have achieved a 77 or greater on index 1 of the performance index, related to student achievement, by the Texas Education Agency. The applicable school rating will be the 2014 accountability rating assigned by the Texas Education Agency.”

Commenters (9), (50) proposed this scoring item be modified to allow 1 point for each school that has achieved a 77 or greater for index 1, provided the schools also have a Met Standard rating. Commenter (9), (50) expressed that points under this item should not be based entirely on the elementary school scoring 77 or greater, but in instances where the middle and/or high school achieve the desired score then points should be available. Moreover, as an alternative to this recommendation should staff not agree, commenter (9) suggested that the following be added as an option under this scoring item:

“(5) Educational Excellence. An Application may qualify to receive up to three (3) points for a Development Site located within the attendance zones of public schools that have achieved a 77 or greater on index 1 of the performance index, related to student achievement, by the Texas Education Agency, provided that the schools also have a Met Standard rating. Points will be awarded as described in subparagraphs (A) ~~and (CB)~~ of this paragraph....

(A) The Development Site is within the attendance zone of an elementary school, a middle school and a high school with the appropriate rating (3 points); ~~or~~

(B) The Development Site is within the attendance zone of an elementary school and either a middle school or high school with the appropriate rating (1 point); ~~or-~~

(C) The Development Site is within the attendance zone of a middle school and a high school with the appropriate rating (1 point).”

Commenter (14) suggested this item be modified to allow for the school to have the Met Standard rating and be the lesser of the proposed minimum score (77) or the average for the county. Commenter (19) recommended the performance index score of 77 be lowered to use either 77 or the average per region, whichever is lower. Similar to that of commenter (9), commenter (19) recommended awarding 1 point for each school that achieves the appropriate rating as reflected in the following:

~~“(A) The Development Site is within the attendance zone of an elementary school, a middle school and a high school with the appropriate rating (3 points); or~~

~~(BA) The Development Site is within the attendance zone of an elementary school and either a middle school or high school with the appropriate rating then 1 point for each (+ 2 points);~~

(B) The Development Site is within the attendance zone of an elementary school with the appropriate rating (1 point).”

Commenter (50) recommended that in districts that have open enrollment, the overall district rating should be used rather than the lowest ranking school in the entire district, since most students will not attend the lowest ranking school as reflected in their proposed modification:

“(5) Educational Excellence. An Application may qualify to receive up to three (3) points for a Development Site located within the attendance zones of public schools that have achieved a 77 or greater on index 1 of the performance index, related to student achievement, by the Texas Education Agency, provided that the schools also have a Met Standard rating. Points will be awarded as described in subparagraphs (A) and (B) of this paragraph. An attendance zone does not include schools with district-wide possibility of enrollment or no defined attendance zones, sometimes known as magnet schools. However, in districts with district-wide enrollment an Applicant may use the ~~lowest~~ rating of the school district of affluence ~~in lieu of the~~ elementary, middle, and/or high schools, respectively, which may possibly be attended by the tenants.”

Commenter (15) suggested a modification to allow elementary schools that meet or exceed the lower of the statewide average or the regional average in order to qualify for points. In doing so, commenter (15) believed the anomaly in Region 11 that occurred in the 2014 application round where three developments were awarded in one small city would not have occurred.

Commenter (13) recommended the following changes which would allow more potential locations and alleviate subjectivity from one year to the next and further noted that a one point reduction will not materially impact the quality of the education received.

“(5) Educational Excellence. An Application may qualify to receive up to three (3) points for a Development Site located within the attendance zones of public schools that have achieved a ~~767~~ or greater on index 1 of the performance index, related to student achievement, by the Texas Education Agency, provided that the schools also have a Met Standard rating. For Applications in the USDA set-aside,

the Property must be located within the attendance zones of public schools that have achieved a MET Standard (55) or Met Alternative Standard (30) rating on Index 1 of the performance index. Points will be awarded as described in subparagraphs (A) and (B) of this paragraph. An attendance zone does not include schools with district-wide possibility of enrollment or no defined attendance zones, sometimes known as magnet schools. However, in districts with district-wide enrollment an Applicant may use the lowest rating of all elementary, middle, or high schools, respectively, which may possibly be attended by the tenants. The applicable school rating will be the 2013 or 2014 accountability rating assigned by the Texas Education Agency. School ratings will be determined by the school number, so that in the case where a new school is formed or named or consolidated with another school but is considered to have the same number that rating will be used....”

Commenter (19) suggested that qualified elderly developments combined with rehabilitation and supportive housing should be excluded from this scoring item and additional options for scoring should be provided. Commenter (18) stated that for elderly developments, educational excellence does not directly impact their quality of life and believed existing elderly developments should be allowed to qualify for these points. Commenter (18) suggested the following recommended language:

“An Application proposing Qualified Elderly combined with Rehabilitation may qualify to receive up to three (3) points for a Development Site that:

(A) The Development has on on-site care coordinator or service coordinator on site for a minimum of 15 hours per week (3 points); or
~~(A)(B)~~ The Development Site is within 1 mile of a Senior Center (2 points).”

Commenter (49) recommended that only general population developments should be eligible to receive points under this scoring item and stated that elderly developments do not provide access to education excellence for its residents because such developments exclude families with children. According to commenter (49) awarding superficial points to elderly developments in areas of high opportunity hinders the development of housing for families with children because local governments reacting to NIMBY are more likely to support the elderly developments.

Commenter (12) stated the intent of this scoring item is to locate housing in non-Hispanic Caucasian neighborhoods while making it nearly impossible to locate an HTC development in predominately minority neighborhoods, which according to Commenter (12), is a violation of the Fair Housing Act. Commenter (12) suggested the Department remove this scoring item until it has been determined that it is not a violation of intentional discrimination.

Commenter (25) expressed concern over this scoring item because it awards points on the basis of TEA ratings which compounds the effects of utilizing poverty rates to disadvantage and penalize poor neighborhoods. Similar to their comments on the Opportunity Index, commenter (25) believes that thought needs to be given to the impact on origin and destination schools when schools close as enrollment declines which further compound the challenges in turning these communities around.

Commenter (30) recommended the following modifications to this scoring item:

“(5) Educational Excellence. An Application may qualify to receive up to three (3) points for a Development Site located within the attendance zones of a school district (ISD) or public schools (whichever is higher) that have achieved a 7677 or greater on index 1 of the performance index, related to student achievement, by the Texas Education Agency (or 73 or greater for Developments in Region 11), provided that the ISD or the schools also have a Met Standard rating. If the ISD includes schools with district wide possibility of enrollment or no defined attendance zones (commonly known as school choice programs), an Applicant may use the rating of the ISD or the public schools (whichever is higher). In districts with district-wide enrollment, if the Applicant elects to use the rating of the public schools (elementary, middle and high schools), such schools must be those located nearest to or within 1 mile of the Development Site and the ISD must provide confirmation that the children of the Development will be able to either select or automatically attend such schools. Points will be awarded as described in subparagraphs (A) and (B) of this paragraph. ~~An attendance zone does not include schools with district wide possibility of enrollment or no defined attendance zones, sometimes known as magnet schools. However, in districts with district wide enrollment an Applicant may use the lowest rating of all elementary, middle, or high schools, respectively, which may possibly be attended by the tenants.~~The applicable ISD or school rating will be the 2014 accountability rating assigned by the Texas Education Agency...

(A) The Development Site is within the ISD or the attendance zone of an elementary school, a middle school and a high school with the appropriate rating (3 points); or...”

Commenter (28) recommended that for districts with district wide enrollment, the district wide rating or the school rating closest to the development site needs to be used and not the lowest available. Commenter (28) also stated that the ability to put housing in areas with good schools is being hindered with use of the lowest scoring school approach. Commenter (28) further added that the average rating for school performance should be related to their MSA and not every area of the state.

Commenter (6) requested free public charter schools that are within one mile of the proposed development should be included as an alternative to independent school systems and suggested the following revision:

“(5) Educational Excellence. An Application may qualify to receive up to three (3) points for a Development Site located within the attendance zones of public schools (including free public charter schools) that have achieved a 77 or greater on index 1 of the performance index, related to student achievement, by the Texas Education Agency, provided that the schools also have a Met Standard rating. Points will be awarded as described in subparagraphs (A) and (B) of this paragraph.”

Commenters (20), (36), (49) expressed support for the use of the rating of 77 or greater for certain point selections since it is based on current TEA averages and feels that use of any other number would be arbitrary.

STAFF RESPONSE:

In response to Commenter (4), (28), (30), and (50), while staff is recommending some revisions related to Choice School Programs, staff is not recommending changes in relation to district-wide enrollment. While Choice Programs allow tenants some ability to choose the school at which their children will attend, district-wide enrollment can easily result in students having to travel past highly rated schools to attend less highly rated schools, especially if any of the factors used by the district to determine where a child will attend school involves the overall population of the school and/or other demographic data. Furthermore, the use of the lowest rating of the schools instead of the district rating is even more appropriate with respect to Educational Excellence, since this scoring item focuses on distinguishing between elementary, middle, and high schools.

In response to Commenter (30) with respect to the threshold of a score of 77 on Index 1 of the performance index, staff is not recommending any revision because the threshold is based on the state average, as published by the TEA. Staff appreciates the support for the threshold expressed by Commenters (20), (36), and (49).

In response to Commenter (14), (15), and (28), not only did staff analyze the regional averages published by the TEA and found them to be relatively similar across the state (with the exception of Region 11), but staff believes it is impractical to use a threshold based on MSA, county or regional averages. (In addition, although TEA calculated regional averages, those regions do not align with the Department's regions. Although staff was able to analyze the data provided by TEA, it is difficult to calculate averages of the Department's regions with great accuracy.) Staff appreciates the support expressed by Commenters (20) and (36) for 77 as the threshold with respect to the Opportunity Index.

In response to Commenter (6), while staff would be willing to consider free public charter schools, it would only be under the circumstance that the tenants of the proposed development would be guaranteed attendance at such schools. If the school is unavailable to the tenant, its proximity loses some of its value to the tenant.

In response to Commenter (13), while staff appreciates the unique circumstances faced by those applying under the USDA Set-Aside, in general staff is not recommending changes to the threshold related to evaluating schools, with the exception of those in Region 11. Staff continues to work closely with stakeholders to establish an alternate way to prioritize these rural rehabilitation developments.

In response to Commenter (18), staff disagrees that Qualified Elderly developments should be able to achieve these points through another mechanism not related to proximity to highly rated schools. Staff notes that Commenter (49) suggests the opposite, that Qualified Elderly developments should not be able to access these points at all. Staff believes that while quality schools may not directly impact the elderly population, they do speak (at least in part) to the overall character of a neighborhood, and this is important to any vulnerable population, whether that vulnerability comes from age, disability, low-income status, or any number of other

situations. Therefore, staff is not recommending any changes with respect to Qualified Elderly developments. To further respond to Commenter (18) with respect to applications proposing rehabilitation, while this and other scoring items might inadvertently incentivize new construction over rehabilitation activities in the regional allocation, 15% of the total allocation goes directly to the At-Risk Set-Aside, ensuring that preservation is accomplished each year.

Staff disagrees with the assertion from Commenters (12) and (25) that the use of the Educational Excellence scoring item to evaluate applications equates to redlining.

In response to Commenter (25), while staff appreciates that there always lies the possibility of problems associated with “origin” schools losing attendance and closing, it does not change the objectives of providing fair housing choice and encouraging development in areas of either high opportunity (including areas of educational excellence) or significant community revitalization – in all areas of the state – and providing overall diversity in housing options to low income Texans.

In response to Commenters (9) and (19) with respect to awarding one point for each school that is highly rated, staff believes this only allows Applicants to “double count” a highly rated elementary school. This essentially makes the Opportunity Index (in urban areas) worth up to 8 points instead of 7, since the elementary school is already counting toward points in that scoring category.

In response to Commenters (3), and (31), staff agrees that some adjustment should be made for region 11 with respect to the index 1 score threshold for schools to qualify an application for points. Staff has found, through an analysis of the data provided by the TEA, that the average index 1 score for elementary schools in region 11 is approximately 75, and the average index 1 score for middle and high schools (combined) is approximately 68. Staff did not calculate averages for rural and urban communities separately since school districts do not necessarily align with the Department’s definitions of urban and rural, and staff is not recommending different thresholds for urban and rural communities.

In response to Commenters (9), (19), and (50), staff agrees and is recommending a change to allow for 1 point under this scoring item if both a middle school and high school are highly rated but where the elementary school does not meet the required threshold.

In light of all comments received, staff recommends the following revision to §11.9(c)(5):

“Educational Excellence. An Application may qualify to receive up to three (3) points for a Development Site located within the attendance zones of public schools that have achieved a 77 or greater on index 1 of the performance index, related to student achievement, by the Texas Education Agency, provided that the schools also have a Met Standard rating. Points will be awarded as described in subparagraphs (A) and (B) of this paragraph. An attendance zone does not include schools with district-wide possibility of enrollment or no defined attendance zones, sometimes known as magnet schools. However, in districts with district-wide enrollment an Applicant may use the lowest rating of all elementary, middle, or high schools, respectively, which may possibly be attended by the tenants. In districts with “choice” programs, where students can select one or more schools in the district that they wish to attend, an Applicant may use the district rating. The

applicable school rating will be the 2014 accountability rating assigned by the Texas Education Agency. School ratings will be determined by the school number, so that in the case where a new school is formed or named or consolidated with another school but is considered to have the same number that rating will be used. A school that has never been rated by the Texas Education Agency will use the district rating. If a school is configured to serve grades that do not align with the Texas Education Agency's conventions for defining elementary schools (typically grades K-5 or K-6), middle schools (typically grades 6-8 or 7-8) and high schools (typically grades 9-12), the school will be considered to have the lower of the ratings of the schools that would be combined to meet those conventions. In determining the ratings for all three levels of schools, ratings for all grades K-12 must be included, meaning that two or more schools' ratings may be combined. For example, in the case of an elementary school which serves grades K-4 and an intermediate school that serves grades 5-6, the elementary school rating will be the lower of those two schools' ratings. Also, in the case of a 9th grade center and a high school that serves grades 10-12, the high school rating will be considered the lower of those two schools' ratings. Sixth grade centers will be considered as part of the middle school rating.

(A) The Development Site is within the attendance zone of an elementary school, a middle school and a high school with the appropriate rating. For Developments in Region 11, the middle school and high school must achieve an Index 1 score of at least 70 to be eligible for these points (3 points); or

(B) The Development Site is within the attendance zone of an elementary school and either a middle school or high school with the appropriate rating. For Developments in Region 11, the middle school or high school must achieve an Index 1 score of at least 70 to be eligible for these points (1 point); or-

(C) The Development Site is within the attendance zone of a middle school and high school with the appropriate rating. For Developments in Region 11, the middle school and high school must achieve an Index 1 score of at least 70 to be eligible for these points (1 point)."

10. §11.9(c)(7) – Selection Criteria – Tenant Populations with Special Housing Needs (8), (10), (13), (15), (18), (19), (20), (27), (30), (33), (34), (36), (38), (39), (41), (44), (48), (50), (53), (54)

COMMENT SUMMARY: Commenter (8) expressed support for the inclusion of the Section 811 Rental Assistance Demonstration Program and suggested the following considerations be given with regards to this scoring item:

- The Development is not located in an area of high criminal activity;
- Each Development has adequate security procedures and equipment in place to safeguard this vulnerable population;
- The Development is in proximity or readily accessible to needed service providers;

- Public transportation is available in front of or on the property with other transportation options such as Metro Lift and State of Texas’ medical transportation being readily available as well;
- Property owners and staff have experience or agree to obtain training in understanding the conditions as well as best practices to interact with people with disabilities;
- The units designated as part of the program should be dispersed throughout the property and should be equivalent in size, quality and desirable locations within the development; and
- The number of available points under this scoring item should be increased from two (2) to five (5) with points being assigned based on the number of units designated for the disability program.

Commenter (38) also expressed support for the inclusion of the Section 811 Program for owners that choose to participate through application on an existing property and further noted that this scoring item will support the targeted population in accessing affordable housing in their communities, including individuals with serious mental illness that are engaged in services but face challenges due to housing instability. Similarly, commenters (48), (53), (54) voiced support by stating it creates the opportunity for persons with disabilities to live as independently as possible through the coordination of voluntary services and the provision of a choice of subsidized, integrated rental housing options.

Commenter (39) expressed that Department staff, through multiple meetings and roundtable discussions, considered how to incentivize use of the 811 Program in conjunction with the HTC program and indicated that developers held misconceptions in the provision of long term services, myths about the people that will benefit and concerns with the burdensome requirements for a provider of project rental assistance. Commenter (39) further expressed support for this scoring item and specifically for incentivizing the participation of HTC developers.

Commenter (13) recommended the following modification stating the grandfathering rule should apply in urban rim areas where rural projects were built long ago and the city limits have grown out to meet the once rural locations. According to commenter (13), USDA properties are accepting the 811 population in their projects currently, the Section 515 properties will be competing in the USDA set-aside, not in urban sub-regions and the scoring should remain consistent within the set-aside.

“(7) Tenant Populations with Special Housing Needs. (§42(m)(1)(C)(v)) An Application may qualify to receive two (2) points by serving Tenants with Special Housing Needs. Points will be awarded as described in subparagraphs (A) and (B) of this paragraph.

(A) Applications meeting all of the requirements in clauses (i) – (iv) of this subparagraph are eligible to receive two (2) points by committing to participate in the Department’s Section 811 Project Rental Assistance Demonstration Program (“Section 811 Program”)..... In order to be eligible for these points, an Application is required to participate in the Section 811 Program, unless any one of the following provisions under clauses (i) – (iv) of this subparagraph are not met...

(iv) The Development Site must be located in one of the following areas: Austin-Round Rock MSA, Brownsville-Harlingen MSA, Dallas-Fort Worth MSA; El Paso MSA; Houston-The Woodlands-Sugar Land MSA; McAllen-Edinburg-Mission MSA; or San Antonio-New Braunfels MSA. For purposes of this subsection, the definition of a rural area includes existing USDA projects retaining USDA financing.”

Commenters (15), (34), (44), (50) expressed opposition to the inclusion of a point incentive for participation in the 811 program and recommended such participation be deleted from the QAP. According to commenter (15), (50) the population that the 811 program is intended to serve require more extensive services than are provided at a typical HTC property. Commenters (15), (34), (44), (50) believed the 811 program would be more successful if an RFP process was created whereby developers with the necessary experience in serving this type of population can voluntarily apply. Moreover, commenter (15) offered that should the RFP process be undersubscribed after two RFP rounds then the Department could consider incentivizing participation through the HTC program. As an alternative to completely removing participation in the 2015 QAP, commenter (15) suggested limiting those applications that qualify for subparagraph (A) to those applications in the city limits of Dallas, Fort Worth, Houston, Austin and San Antonio and reduce the points from 2 points to 1 point for both subparagraphs (A) and (B). Similarly, commenter (19) recommended the 811 program be removed as a scoring item and be administered through a separate process. However, should the program remain in the QAP, commenter (19) suggested it apply very narrowly to those large cities within each of the MSA’s which would address the needs of the residents to remain near public transportation and services. Commenter (19) also recommended that supportive housing be removed from the requirement because the index would violate the Department’s Integrated Housing Rule of not allowing more than 25% of the total units to be set aside or have an occupancy preference for persons with disabilities, including Section 811 PRA units.

Commenters (33), (34) requested Supportive Housing be removed from this requirement to provide units under the 811 program. Commenters (33), (34) indicated that while some may argue that Supportive Housing may have an advantage under this provision, it is not the case as many of the developments in this commenter’s portfolio would not qualify due to violation of the 25% Integrated Housing maximum that will be placed on Supportive Housing for purposes of the 811 program. Based on the Department’s Integrated Housing rule, supportive housing designed for special needs populations is exempt; the HUD rule does not allow such exemption. Moreover, commenters (33), (34) stated it is critical for supportive housing developments to seek sources of gap financing in order to be financially feasible and many of the gap funding sources requires their own set-asides in order to be competitive for the funding. Commenters (33), (34) recommended this section be modified to add the following:

“(7) Tenant Populations with Special Housing Needs. (§42(m)(1)(C)(v)) An Application may qualify to receive two (2) points by serving Tenants with Special Housing Needs. Points will be awarded as described in subparagraphs (A) and (B) of this paragraph.

(A) Applications meeting all of the requirements in clauses (i) – (iv) of this subparagraph are eligible to receive two (2) points by committing to participate in the Department’s Section 811 Project Rental Assistance Demonstration Program (“Section 811 Program”).... In order to be eligible

for these points, an Application is required to participate in the Section 811 Program, unless any one of the following provisions under clauses (i) – ~~(v)~~ of this subparagraph are not met.

(i) The Development must not be a Qualified Elderly Development;

(ii) The Development must not be originally constructed before 1978;

(iii) The units committed to the Section 811 Program in the Development must not have any other sources of project-based rental or operating assistance; ~~and~~

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

~~(v) The Development must not be a Supportive Housing Development.~~”

In addition to the request to include supportive housing under the 811 program, commenter (33) requested clarification regarding the Draft Property Management Agreement Provisions. Specifically, the language to “make the first initial vacancies available to Section 811 applicants”; commenter (33) indicated that with HTC developments the goal during lease-up is to get units tagged for credits as soon as possible and that for Section 811 the requirement is for the units to only be made available as opposed to set-aside for such prospective tenants. Moreover, commenter (33) recommended vacancy payments be a part of the 811 program and stressed that with most of their voucher programs such payment is essential to keep the property revenue positive; holding units vacant without payment would be a fiscal blow to a property.

Commenter (30) recommended this scoring item be modified to give applicants the option of qualifying for points under subparagraph (A) or (B) or that subparagraph (A) be removed. According to commenter (30), imposing the uncertainty of the 811 program, both short and long-term on applicants, many of whom do not have the expertise necessary to support this specialized population, is unfair. Commenter (30) suggested the 811 program first be made available to those non-profits and housing authorities with existing or proposed developments in Houston, Dallas, San Antonio, Fort Worth and Austin through an RFP process. Commenter (30) indicated that such awards could be based, at a minimum on, (i) the experience of the applicant/sponsor in housing, and in providing services unique to a special needs population, and (ii) the location of the development to transportation that will allow the tenant to access medical services and other required resources, not otherwise provided by the applicant/sponsor.

Commenter (50) suggested that should the Section 811 program remain in the QAP it should be optional or be required for Supportive Housing Developments since such developments will be more suitable for such residents and the developers and property managers of supportive housing properties will be better equipped to work with and will have more access to the resources necessary to properly serve Section 811 residents. Commenter (50) further asserted the 811 program puts an unequal burden on developers in the MSAs selected because they will have to compete with others in their same sub-region that do not qualify for Section 811 because of their

county or other reason, and they can get the two points without having to participate in this new and unproven program. Commenter (50) echoed the concerns noted by other commenters regarding the additional expenses to properties in connection with the 811 program and further added that in making this program a requirement the Department is requiring owners who desire to build in certain MSAs to work with HUD even though it is not in their original plan to do so. While commenter (50) prefers the Department remove the Section 811 language from this scoring item for 2015, other recommended changes were suggested in the event the requirement remains which include:

Option 1:

“(7) Tenant Populations with Special Housing Needs. (§42(m)(1)(C)(v)) An Application may qualify to receive two (2) points by serving Tenants with Special Housing Needs. Points will be awarded as described in subparagraphs (A) and (B) of this paragraph.

(A)In order to be eligible for these points, an Application ~~is required~~may choose to participate in the Section 811 Program, unless any one of the following provisions under clauses (i) – (iv) of this subparagraph are not met...

(B) Applications proposing Developments that do not meet the requirements of subparagraph (A) of this paragraph or choose not to participate in Section 811 may qualify for two (2) points for meeting the requirements of this subparagraph....”

Option 2:

“(7) Tenant Populations with Special Housing Needs. (§42(m)(1)(C)(v)) An Application may qualify to receive two (2) points by serving Tenants with Special Housing Needs. Points will be awarded as described in subparagraphs (A) and (B) of this paragraph.

(A) ... In order to be eligible for these points, an Application is required to participate in the Section 811 Program, unless any one of the following provisions under clauses (i) – (iv) of this subparagraph are not met.

(i) The Development must not be a Qualified Elderly Development;

(ii) The Development is Supportive Housing;

(iii) The Development must not be originally constructed before 1978;

~~(iv)~~ (i) The units committed to the Section 811 Program in the Development must not have any other sources of project-based rental or operating assistance; and

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

Commenter (18) expressed concern over the supportive services that are required for residents with special needs and recommended developments that receive additional points under this scoring item be required to provide adequate services on-site for these tenants and have sufficient service experience or have an MOU with a service provider to deliver these services.

Commenter (44) stated that while staff has worked hard on the 811 program with HUD, there remains a lot of work to define and establish a working 811 program. Specifically, commenter (44) identified several areas of this program that remain unresolved: the robust services that will be needed for the residents will only be available through the third party providers during business hours, developments in the 500 year floodplain are ineligible, the Cooperative Agreement, which will serve for the rules and guidelines for the program has yet to be finalized and executed, in addition to the Program Manuals, the parameters under which existing HTC properties can be eligible for such populations remains unclear and an uneven playing field will exist because not all applicants will have existing properties that are eligible. Moreover, commenter (44) expressed concern over the increased construction and development costs, increased time to complete development and construction, higher management and operating expenses (due to having to use HUD’s Tenant Rental Assistance Certification System, Enterprise Income Verification and Section 811 Model Lease) for the life of the property that will be associated with this 811 program.

Commenters (20), (36) requested that any unit requirements for the 811 program be at a level that does not require Davis-Bacon, such as 8 units. Commenters (20), (36) believed that including Davis-Bacon will have a profound impact on construction costs and require more tax credits, thus leading to fewer awards and less geographical distribution of credits.

Commenter (27) recommended that developments participating in Houston’s PSH program receive the same points as the Section 811 Program with the only criteria for these points being participation in the City of Houston’s/Harris County’s PSH program. Commenter (27) indicated the Department’s 811 program is in direct conflict with the structure of the PSH program which is designed to have a critical mass of qualified residents in order to provide intensive supportive services on site and in most cases about 20 residents is the critical number for on-site services. Moreover, PSH developers are specifically offered vouchers to guarantee that rents will be available for these tenants. Commenter (27) requested the PSH program be a third option offering the same points as the 811 program as reflected in their proposed modification to this scoring item:

“(7) Tenant Populations with Special Housing Needs. (§42(m)(1)(C)(v)) An Application may qualify to receive two (2) points by serving Tenants with Special Housing Needs. Points will be awarded as described in subparagraphs (A) ~~and~~(B) ~~and~~ (C) of this paragraph.

(C) Application may qualify to receive two (2) points to meet the needs of the chronically homeless in Region 6 if the developer is a

participant in the City of Houston’s Permanent Supportive Housing program. Applications meeting all of the requirements in clauses (i) – (iv) of this subparagraph are eligible to receive two (2) points by committing to participate in the City of Houston’s Permanent Supportive Housing program. Applicants must commit the specified number of units in the proposed Development. Participation in the PSH Program will require execution of a PSH Loan Agreement with the City of Houston and other required documents on or before HTC Commitment. Applicants who have applied to participate under the 2014 PSH Program RFP prior to the Application submission and receive an award prior to July 1, 2015 may use units identified in that PSH application to qualify for points under this paragraph with the same number of units as would be required for the new Application. The same units cannot be used to qualify for points in more than one HTC Application. Once elected in the Application, Applicants may not withdraw their commitment to participate in the PSH Program. If commitment is withdrawn, these points shall be forfeited. Should an Applicant receive an award of HTC’s, the Department may allow Applicants to substitute alternate units in an existing Development in the Applicant’s or Affiliates’ portfolio, consistent with the City’s PSH program: such properties require approval by the Department to commit the same number of units in an existing Development in the Applicant’s or an Affiliate’s portfolio that will qualify as PSH Program participating units. Applicants must commit at least 10 Units for participation in the PSH Program.

- (i) The Development may be a Qualified Elderly Development;
- (ii) The Development must not be originally constructed before 1978;
- (iii) The units committed to the PSH Program in the Development may have other sources of project-based or operating assistance; and
- (iv) The Development Site must be located in Houston-The Woodlands-Sugar Land MSA.”

Commenter (41) indicated the inclusion of the 811 program will encourage applicants to submit applications for elderly developments since they can receive just as many points without participating instead of general population.

Commenter (10) suggested the term migrant farmworker in this section be changed to migrant and seasonal farmworker or simply farmworker to be consistent with sources quoted in the discussion of farmworkers in the *State of Texas Analysis of Impediments to Fair Housing Choice* as well as other federal program documents.

STAFF RESPONSE:

Staff appreciates the general comments and support for the Section 811 PRA Program’s inclusion the 2015 QAP expressed by Commenters (38), (39), (48), (53), and (54).

In response to Commenter (8) regarding suggestions related to Development siting, the Section 811 Program inclusion in the 2015 QAP allows for units to be located in a wide variety of locations. In order to maximize tenant choice, staff recommends no change based on these recommendations. In response to the suggestions related to on-site security and staff training, the

Department does not anticipate a need for additional security procedures and equipment for Developments that are hosting Section 811 units. In addition, the Department will be providing training for Property Management staff. With respect to the 811 units being dispersed throughout the Property and equivalent in size, quality, and desirable locations within the development, the Section 811 units are required by federal regulations to be dispersed throughout the property and this clarification is included in the program requirements. The Property will be required to place households in units that are appropriate to the bedroom size and of the same type, quality, and location as non-811 units. Therefore, staff recommends no change based on these comments.

In response to Commenter (8) regarding increasing the number of points for this scoring item, staff believes that 2 points is adequate to incentivize participation in the program and recommends no change based on this comment. In addition, staff received comment to the contrary, suggesting that the scoring item be reduced to a 1-point item and/or the incentive to participate in the program be removed entirely.

In response to Commenter (39) regarding possible misconceptions about the program and the population it serves, staff intends to provide training for Owners and Property Managers and; therefore, recommends no change based on this comment.

In response to Commenter (13) regarding USDA properties being exempt from participation in the 811 program, staff believes that USDA properties, if located in the MSAs, could be a good resource for Section 811 tenants and provide more housing choice. Staff recommends no change based on this comment.

In response to Commenters (15), (19), (34), (44), and (50) suggesting that the incentive be removed completely, staff is not recommending such a change. Considering that the program is supported by those with a particular interest in serving these populations but opposed by the potential applicants, and based on several conversations with those in the development community, staff believes that the most effective way to achieve the goals of the Section 811 Program is through this incentive.

In response to Commenters (15), (44), and (50) regarding extensive services required by individuals living in Section 811 units, the Section 811 program is designed to only serve individuals who already have access to community-based services and supports. Therefore, staff recommends no change.

In response to Commenters (15), (19), (30), (34), (44) and (50) regarding an RFP process in place of this incentive, staff believes that releasing an RFP (or NOFA) without incentives for participation will result in very few responses and a substantial delay of the implementation of the program. This would unnecessarily contribute to the ongoing institutionalization of persons with disabilities who could otherwise live in the community if they had access to affordable housing. Additionally, persons with severe mental illness and youth and young adults aging out of the foster care system have a current demonstrated high need for more affordable, integrated housing options. Staff has received prior board approval to publish a Notice of Funding Availability (NOFA) for the Section 811 Program but does not anticipate doing so until staff can analyze the Section 811 units in the program as a result of the 2015 Competitive HTC cycle. Staff may release a NOFA to fill in location gaps or to expend more 811 funds in general. Therefore, staff recommends no change.

In response to Commenters (15) and (19) regarding limiting the Section 811 program to those developments located within the city limits of the larger cities within the MSAs, staff believes this would eliminate hundreds of qualified beneficiaries from the program. This is evidenced by the data provided by the Texas Health and Human Services agencies on the locations of people who are members of the Section 811 program's Target Population. In addition, this geographic change would limit a large number of potential properties who could qualify for the program that would reduce tenant choice. Therefore, staff recommends no change.

In response to Commenter (15) regarding the point value being reduced from 2 points to 1 point, staff believes that 2 points is appropriate in order to incentivize the program adequately. In addition, staff received comment to the contrary, suggesting that the incentive be increased. Staff recommends no change.

In response to Commenter (19) regarding proximity to services and transportation within the MSAs, staff does not find that there is a compelling need to further limit the housing choice of potential beneficiaries. The seven MSAs were chosen through an extensive public process to ensure geographic dispersion and because the Texas Health and Human Services Commission, through the Inter-Agency Partnership Agreement, has indicated that adequate community-based services and supports are available in these areas. In addition, not all Section 811 tenants may need close access to public transportation. Having a wide variety of location choices for Section 811 tenants will promote tenant choice. Therefore, staff recommends no change.

Staff supports the suggestion of Commenters (19), (33), and (34) that supportive housing be exempted from the requirements of §11.9(c)(7)(A). Due to the potential conflicts in the integrated housing rule required by HUD and the business model of supportive housing developments, staff supports this change and recommends revising the scoring item accordingly.

In response to Commenter (33) regarding the Draft Property Agreement, a document to be signed by the Owner and the Department after award of Section 811 units, and regarding vacancy payments, staff appreciates these comments and will consider them. However, they are not relevant to the scoring item in the QAP, but are Section 811 Program considerations.

In response to Commenter (50) regarding the suggestion that participation in the Section 811 Program be required for only for Supportive Housing Developments, staff is not recommending such a change. Staff actually received comment to the contrary, pointing out that there are relatively few qualified Supportive Housing Developments that participate in the Housing Tax Credit Program and that there are potential conflicts between HUD's integrated housing requirements and the model currently used in supportive housing developments. Therefore, staff is instead recommending that Supportive Housing developments *not* be required to participate in the program in order to achieve points. With respect to making participation in the program optional in order to achieve points, staff believes that making the Section 811 program optional would take away the incentive provided by the point item; therefore staff does not recommend this change.

In response to Commenters (19), (44), and (50) regarding the point structure creating undue burdens on developers in MSAs competing with those outside of a qualifying MSA, staff suggests that developers have many options when preparing applications. While staff appreciates the competitive nature of the process and that the vast majority of applicants will be tempted to request the points on the application, it is still a business decision on the part of the owner as to

whether or not to participate in the Section 811 program. Should developers find that it is too burdensome, they can choose not to elect the points. There are many instances in which applicants make similar decisions, for example in choosing whether or not to partner with a HUB or non-profit, requesting more or less credit in order to maximize either equity or leverage, etc. Staff has awarded several applications that did not achieve maximum points in every scoring category. Therefore, staff is not recommending removing the incentive based on these comments.

In response to Commenter (18), staff agrees with the idea in general that developments could benefit from additional onsite services and service coordinators. However, staff is not recommending that any additional requirements be added to the rules with respect to services provided. Regarding those services as it relates directly to Section 811 Program units, the tenants in those units will be provided services from local service providers, so participation in the program ideally would not cause the development owner to need additional onsite services.

In response to Commenter (44) with respect to the third party service providers, staff is working with HHSC staff to identify resources, when available, for after hours support for Section 811 tenants, but does not believe this is necessary for the program to be successful. Regarding developments that may potentially be ineligible due to location in the 500 year flood plain, staff is recommending language in the rule that will exempt developments from participating should they be unable to meet all of the program requirements, including any related to location in a floodplain that cannot be reasonably mitigated. With respect to the final version of the Cooperative Agreement, staff does not anticipate anything in the final negotiations to impact program design. In the unlikely event that happens, the Board has the authority to either waive the 811 requirements or to determine that a Development is not required to participate in the program (and possibly instead serve other special needs populations) in order to retain points elected on the HTC application, and staff would recommend granting such a waiver. Regarding the concern that the Program Manuals are not finalized, the Department has contracted with the Technical Assistance Collaborative, a national expert on the Section 811 PRA Program, to create the implementation manuals. These manuals are on track to be finalized by the end of 2014, far before a Property or Tenant will be in place for the Program. Therefore, staff does not recommend any changes based on these comments.

In response to Commenter (44) regarding concern that the parameters under which existing development may be eligible to participate in the Section 811 Program is unclear, staff presented a draft of the Program Criteria at a September 30, 2014 roundtable discussion and has made it available on the TDHCA website. In addition, TDHCA published an on-line discussion forum to receive feedback on the criteria, in addition to other program design elements. Staff received no comments on the on-line forum regarding the Program Criteria. However, staff has heard from the development community that they would prefer to have the option to place Section 811 units in an existing Development and agrees with this concept as it will make units available sooner for Section 811 tenants. In addition, this Program Criteria is being presented to the Board at the November 13, 2014 meeting for consideration.

In response to Commenters (20) and (36) concerning requirements to use Davis Bacon standards, those standards are set by HUD, and can be viewed in the Section 811 Program Guidelines, under PRA.213, available on the TDHCA website. In general, Davis Bacon standards will only be a requirement for Properties that have more 12 or more units under one construction contract assisted by 811 or because other funding in the Development triggers the requirement. The QAP

only requires that Applicants select 10 units for participation in the 811 Program in order to qualify for points.

In response to Commenter (27) regarding the City of Houston/Harris County's PSH program, while staff is supportive of the program itself (and incentivizes participation in it via another scoring item), that program serves a different population (the chronically homeless) than the Section 811 PRA program and; therefore, should be compatible with the Section 811 PRA program. Staff is not recommending any change based on these comments.

In response to Commenter (41) regarding the idea that applicants will be encouraged to submit applications for elderly developments since they are not required to participate in the section 811 Program, staff has considered the same. However, this is only speculation, and there is not a clear remedy for the situation if that proves to be the case. The Section 811 Program serves households with an eligible person with a disability at least 18 years of age and under the age of 62, so it is impractical to require Qualified Elderly developments to participate. While staff is recommending lifting the 2014 restriction against elderly developments in some sub-regions and counties, staff is not recommending any changes to scoring items that would afford Qualified Elderly applications the ability to achieve additional points. This could work to balance incentives between general population and Qualified Elderly applications.

In response to Commenter (10), the term has been changed to farm worker.

Staff recommends the following revisions to clarify the rule and to address some of the concerns of the commenters.

“(7) Tenant Populations with Special Housing Needs. (§42(m)(1)(C)(v)) An Application may qualify to receive two (2) points by serving Tenants with Special Housing Needs. Points will be awarded as described in subparagraphs (A) and (B) of this paragraph.

(A) Applications meeting all of the requirements in clauses (i) – (iv) of this subparagraph are eligible to receive two (2) points by committing to participate in the Department's Section 811 Project Rental Assistance Demonstration Program (“Section 811 Program”). In order to be eligible for points, Applicants must commit at least 10 Units in the proposed Development for participation in the Section 811 Program unless the Integrated Housing Rule (10 TAC §1.15) or Section 811 Program guidelines and program requirements limits the proposed Development to fewer than 10 Units. ~~the specified number of units in the proposed Development or be~~ Alternatively, Applications may qualify for points if evidence is submitted in the Application that indicates ~~approved approval~~ by the Department to commit the same number of units (as would be required in the proposed Development) in an existing Development in the Applicant's or an Affiliate's portfolio. ~~that will qualify as Section 811 Program participating units as outlined in the Department's Section 811 Program guidelines and program requirements. An Application may request a waiver from the Board for a specific requirement of the Section 811 Program on their application. However, a request for a waiver does not guarantee eligibility for points.~~ Participation in the Section 811 Program will require execution of a Section

811 property agreement and other required documents on or before HTC Commitment. ~~Applicants who have applied to participate under the 2014 Section 811 Program NOFA prior to their Application submission and receive an award prior to July 1, 2015 may use units identified in that Section 811 Program application to qualify for points under this paragraph, with the same number of units as would be required for the new Application.~~ The same units cannot be used to qualify for points in more than one HTC Application. Once elected in the Application, Applicants may not withdraw their commitment to participate in the Section 811 Program unless authorized by the Board~~the Department determines that the Development cannot meet all of the Section 811 program criteria. In this case, staff may allow the Application to qualify for points by meeting the requirements of subparagraph (B) of this paragraph.~~ Should an Applicant receive an award of HTCs, the Department may allow Applicants to substitute alternate units in an existing Development in the Applicant's or Affiliates' portfolio, ~~consistent with the Department's Section 811 Program criteria, to participate in the Section 811 Program and to qualify for these points;~~ such properties require approval by the Department to commit the same number of units in ~~an~~the existing Development as were committed in the Application. It is the Applicant's responsibility to familiarize themselves with the Section 811 Program guidelines and program requirements, including the 30-year use restriction for the 811 units, before selecting points. in the Applicant's or an Affiliate's portfolio that will qualify as Section 811 Program participating units as outlined in the Department's Section 811 Program guidelines and program requirements. Applicants must commit at least 10 Units for participation in the Section 811 Program unless the Integrated Housing Rule (10 TAC §1.15) or Section 811 Program guidelines and program requirements limits the Application to fewer than 10 Units. The total number of Units set aside for persons with disabilities, including Section 811 units, cannot exceed 18% of the total Units (for Development of 50 Units or more) or exceed 25% of the total Units (for Developments with less than 50 Units). In order to be eligible for these points, an Application is required to participate in the Section 811 Program, unless any one of the following provisions under clauses (i) — (iv) of this subparagraph are not met.

- (i) The Development must not be a Qualified Elderly Development or Supportive Housing;
- (ii) The Development ~~must~~ not be originally constructed before 1978;
- (iii) The Development has units available to be committed to the Section 811 Program in the Development, meaning that those units must do not have any other sources of project-based rental or long-term operating assistance within 6 months of receiving 811 assistance and cannot have an existing restriction for persons with disabilities; and

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

(B) Applications proposing Developments that do not meet all of the requirements of clauses (i) – (iv) of subparagraph (A) of this paragraph may qualify for two (2) points for meeting the requirements of this subparagraph. In order to qualify for points, Applicants must agree to set-aside at least 5 percent of the total Units for Persons with Special Needs. For purposes of this subparagraph, Persons with Special Needs is defined as households where one individual has alcohol and/or drug addictions, Colonia resident, Persons with Disabilities, Violence Against Women Act Protections (domestic violence, dating violence, sexual assault, and stalking), persons with HIV/AIDS, homeless populations, veterans, wounded warriors (as defined by the Caring for Wounded Warriors Act of 2008), and migrant farm—workers. Throughout the Compliance Period, unless otherwise permitted by the Department, the Development Owner agrees to affirmatively market Units to Persons with Special Needs. In addition, the Department will require an initial minimum twelve-month period during which Units must either be occupied by Persons with Special Needs or held vacant. After the initial twelve-month period, the Development Owner will no longer be required to hold Units vacant for Persons with Special Needs, but will be required to continue to affirmatively market Units to Persons with Special Needs.”

11. §11.9(d)(1) – Selection Criteria – Local Government Support (2), (6), (11), (30)

COMMENT SUMMARY: Commenters (2), (11) recommended this scoring item be modified to require all local governments to hold a public hearing and/or public comment period before they vote on a resolution in support of an application and further stated that citizens deserve a voice in what happens in their state and local areas. These commenters expressed concern over the lack of transparency in the HTC program administered by the Department.

Commenter (6) articulated that in order to achieve the maximum number of points under this scoring item, such resolutions should be accompanied by direct monetary support by the municipality for the development. While commenter (6) recognizes financial support from the municipality is addressed in another scoring item, they believe the points associated with local support from the elected officials of the municipality should also be tied to funding received from that municipality. Commenter (6) recommended the following changes:

“(A) Within a municipality, the Application will receive:

(i) ~~(i)~~ seventeen (17) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality supports the Application or Development and the municipality provides at least \$1,100,000 of local funding directly to the development; or

- (ii) sixteen (16) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality supports the Application or Development and the municipality provides at least \$700,000 but less than \$1,100,000 of local funding directly to the development; or
- (iii) fifteen (15) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality supports the Application or Development and the municipality provides at least \$350,000 but less than \$700,000 of local funding directly to the development; or
- (iv) fourteen (14) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality supports the Application or Development and the municipality provides less than \$350,000 of local funding directly to the development; or
- (vii) ~~fourteen~~thirteen (14) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality has no objection to the Application or Development.

Commenter (30) suggested that if the Department is striving to de-concentrate housing in those counties with less than one million in population, then this scoring item should be adjusted such that the maximum points remain at seventeen (17) but then allow for one additional point to be obtained if the governing body of the municipality or county (as applicable) explicitly identifies a specific application as one of significant importance to that municipality or county. Commenter (30) further added that similar to revitalization, a municipality or county may only identify one single application during each application round and should multiple applications submit resolutions under this item then none of those particular applications will be eligible for the additional point.

STAFF RESPONSE:

In response to Commenters (2) and (11), the QAP reflects the statutory requirements of this scoring item without much elaboration. Statute specifically requires a public hearing for eligibility with respect to tax-exempt bond applications, but that requirement is left out of the statute with respect to competitive 9% applications. In addition, the Department's application requirements are based in statute with some practical considerations for staff review. All of the application materials are available to the public on the website, and all correspondence with respect to the reviews of those applications is available via open records requests. Staff makes every effort to be fair and transparent in the process, from rule-making through application acceptance, review, and award.

In response to Commenter (6), again, the QAP reflects the statutory requirement without much elaboration. Additionally, as recognized by the commenter, financial support is addressed in another scoring item. Therefore, staff feels that tying financial support to this scoring item is unnecessary, redundant, and inconsistent with the statute.

While staff appreciates the idea of further differentiation as suggested by Commenter (30), staff hesitates to recommend such a change without weigh-in from other stakeholders, including local municipalities and/or the Board.

Staff recommends no change based on these comments.

12. §11.9(d)(4) – Selection Criteria – Quantifiable Community Participation (17), (48), (50)

COMMENT SUMMARY: Commenter (17) expressed concern over the change in the deadline for neighborhood organizations to submit documents to the Department, specifically, that such deadline was changed from the full application delivery date to the beginning of the application acceptance period. Commenter (17) indicated that this timing is problematic given all the discussions that need to take place with neighborhood organizations to explain the QCP process, not to mention the new deadline is immediately after the holiday season.

Commenter (48) articulated concerns in awarding additional points for support from neighborhood organizations that have previously opposed HTC developments because it encourages discrimination against families with children and other protected classes under the Fair Housing Act. Specifically, commenter (48) indicated that it incentivizes developers to propose elderly developments or developments that exclude supportive housing that would tend to trigger less NIMBYism. Commenter (48) affirmed that the breadth and fairness of local participation in many neighborhood organizations can be difficult to evaluate, and the framework for local input must ensure the process is not a barrier to furthering the fair housing goals of the state. Commenter (48) noted that this scoring item lacks a clear process for challenging QCP on the basis of unlawful discrimination under the Fair Housing Act, nor is it clear that all forms of community participation will be evaluated for evidence of unlawful discrimination. Commenter (48) pointed out that §11.9(d)(6)(D) – Input from Community Organizations scoring item states that “input that evidences unlawful discrimination against classes of persons protected by Fair Housing law or the scoring of which the Department determines to be contrary to the Department’s efforts to affirmatively further fair housing will not be considered.” However, the QCP scoring item states “if such statement is contrary to findings or determinations, including zoning determinations, of a municipality, county, school district, or other local Government Entity...the fact finder will not make determinations as to the accuracy of statements presented.” Commenter (48) urged the Department to make clear that all forms of QCP, including written statements from neighborhood organizations, will be evaluated for evidence of unlawful discrimination and opposition motivated by a discriminatory bias and further urged that there be a process to challenge such opposition.

Commenter (50) recommended the following modifications to this scoring item on the basis that neighborhood organizations have the right to form and govern their organizations as they see fit and further stated that as long as support or opposition is given in accordance with the HOA or POA meeting rules it should be allowed.

“(A) Statement Requirements. If an organization cannot make the following affirmative certifications or statements then the organization will not be considered a Neighborhood Organization for purposes of this paragraph.

- (i) the Neighborhood Organization's name, a written description and map of the organization's boundaries, signatures and contact information (phone, email and mailing address) of at least two individual members with authority to sign on behalf of the organization;

(ii) certification that the boundaries of the Neighborhood Organization contain the Development Site and that the Neighborhood Organization meets the definition pursuant to Texas Government Code, §2306.004(23-a) and includes at least two separate residential households;

~~(iii) certification that support, opposition, or neutrality was given at a public meeting in accordance with the organization's governing documents; ~~no person required to be listed in accordance with Texas Government Code §2306.6707 with respect to the Development to which the Application requiring their listing relates participated in any way in the deliberations of the Neighborhood Organization, including any votes taken~~;~~

~~(iv) certification that at least 80 percent of the current membership of the Neighborhood Organization consists of persons residing or owning real property within the boundaries of the Neighborhood Organization; and~~

(iv) an explicit expression of support, opposition, or neutrality. Any expression of opposition must be accompanied with at least one reason forming the basis of that opposition. A Neighborhood Organization is encouraged to be prepared to provide additional information with regard to opposition.”

STAFF RESPONSE:

In response to Commenter (17), staff suggests allowing Neighborhood Organizations to become on record with the state by registering with the Department up to 30 days prior to the Final Application Delivery Date. This coincides with the date by which neighborhood organizations must be on record with the state in order to require notification from applicants. Staff notes that neighborhood organizations might become on record with the county or through another state agency (Secretary of State, for example) at any time and still potentially qualify an application for points.

In response to Commenter (48), while the language in this scoring does not explicitly mention unlawful discrimination (as mentioned in the other scoring item), staff does still review for such statements and will treat them accordingly, with possible referral to the Texas Workforce Commission. However, the role of the fact finder with respect to challenges to statements is only to evaluate them as compared to the findings of the local jurisdictions.

In response to Commenter (50), while staff agrees that neighborhood organizations can and should form and function as they best see fit, the restrictions on the qualifying neighborhood organizations are in place to discourage developers from forming neighborhood organizations solely for purposes of scoring points on a particular application. The Department is seeking input from people who actually live in the neighborhood, as mandated by statute, and has found that these types of restrictions are necessary in accomplishing that goal. Without them, staff has found that statements from the developers themselves and/or one or two parties that are otherwise financially invested in the proposed development have qualified for points, which is not in keeping with the spirit of the rule.

Staff recommends the following revision to §11.9(d)(4).

“Quantifiable Community Participation. (§2306.6710(b)(1)(B); §2306.6725(a)(2)) An Application may qualify for up to nine (9) points for written statements from a Neighborhood Organization. In order for the statement to qualify for review, the Neighborhood Organization must have been in existence prior to the Pre-Application Final Delivery Date, and its boundaries must contain the Development Site. In addition, the Neighborhood Organization must be on record with the state (includes the Department) or county in which the Development Site is located. Neighborhood Organizations may request to be on record with the Department for the current Application Round with the Department by submitting documentation (such as evidence of board meetings, bylaws, etc.) by 30 days prior to the ~~beginning of the Application Acceptance Period~~Full Application Delivery Date. The written statement must meet the requirements in subparagraph (A) of this paragraph.”

STATUTORY AUTHORITY. The amended sections are adopted pursuant to Texas Government Code §2306.053, which authorizes the Department to adopt rules. Additionally, the new sections are proposed pursuant to Texas Government Code §2306.67022, which specifically authorizes the Department to adopt a qualified allocation plan.

INDEX OF COMMENTERS

- (1) StoneLeaf Companies
- (2) Bridgette Wallis
- (3) Community Development Corporation of Brownsville
- (4) Churchill Residential
- (5) City of Beaumont
- (6) City of Fort Worth
- (7) Claire Palmer
- (8) MHMRA of Harris County
- (9) Les Kilday
- (10) Motivation Education & Training, Inc. (MET)
- (11) Michael Wallis
- (12) Fountainhead Management, Inc.
- (13) RRHA of Texas
- (14) Terri Anderson
- (15) DMA Development Company, LLC
- (16) Communities for Veterans
- (17) Coats Rose
- (18) National Church Residences
- (19) Texas Association of Affordable Housing Providers (TAAHP)
- (20) Alyssa Carpenter
- (21) Randy Plitt
- (22) Housing Authority of the City of El Paso
- (23) Sallie Burchett
- (25) Greater East End District
- (26) Sarah Andre
- (27) City of Houston
- (28) Sonoma Advisors
- (29) Hettig Kahn
- (30) Marque Real Estate Consultants
- (31) South Texas Collaborative for Housing Development
- (32) Daniel & Beshara
- (33) Foundation Communities
- (34) New Hope Housing
- (35) Cheryl Worth
- (36) S Anderson Consulting
- (37) Versa Development
- (38) Hogg Foundation for Mental Health
- (39) Texas Council for Developmental Disabilities
- (41) Avenue CDC
- (42) Local Initiatives Support Coalition (LISC)
- (43) Star – Equities, LLC
- (44) Mark-Dana Corporation
- (46) Texas Association of Community Development Corporations (TACDC)
- (47) National Housing Trust
- (48) Texas Appleseed and Texas Low Income Housing Information Service
- (49) Inclusive Communities Housing Development Corporation
- (50) Bonner Carrington

- (51) RealTex Development
- (52) Roundstone Development
- (53) Accessible Housing Austin, Inc.
- (54) Promoting Independence Advisory Committee

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State of Texas
Qualified Allocation Plan

§11.1.General.

(a) Authority. This chapter applies to the awarding and allocation by the Texas Department of Housing and Community Affairs (the "Department") of Housing Tax Credits. The federal laws providing for the awarding and allocation of Housing Tax Credits require states to adopt a qualified allocation plan. Pursuant to Texas Government Code, Chapter 2306, Subchapter DD, the Department is assigned responsibility for this activity. As required by Internal Revenue Code (the "Code"), §42(m)(1), the Department has developed this Qualified Allocation Plan (QAP) and it has been duly approved to establish the procedures and requirements relating to an award and allocation of Housing Tax Credits. All requirements herein and all those applicable to a Housing Tax Credit Development or an Application under Chapter 10 of this title (relating to Uniform Multifamily Rules), or otherwise incorporated by reference herein collectively constitute the QAP required by Texas Government Code, §2306.67022.

(b) Due Diligence and Applicant Responsibility. 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.

(c) Competitive Nature of Program. Applying for competitive housing tax credits is a technical process that must be followed completely. As a result of the highly competitive nature of applying for tax credits, an Applicant should proceed on the assumption that deadlines are fixed and firm with respect to both date and time and cannot be waived except where authorized and for truly extraordinary circumstances, such as the occurrence of a significant natural disaster that makes timely adherence impossible. If an Applicant chooses to submit by delivering an item physically to the Department, it is the Applicant's responsibility to be within the Department's doors by the appointed deadline. Applicants should further ensure that all required documents are included, legible, properly organized, and tabbed, and that materials in required formats involving digital media are complete and fully readable. Applicants are strongly encouraged to submit the required items well in advance of established deadlines. Staff, when accepting Applications, may conduct limited reviews at the time of intake as a courtesy only. If staff misses an issue in such a limited review, the fact that the Application was accepted by staff or that the issue was not identified does not operate to waive the requirement or validate the completeness, readability, or any other aspect of the Application.

(d) Definitions. The capitalized terms or phrases used herein are defined in §10.3 of this title (relating to Definitions), unless the context clearly indicates otherwise. Any capitalized terms that are defined in Texas Government Code, Chapter 2306, §42 of the Code, or other Department rules have, when capitalized, the meanings ascribed to them therein. Defined terms when not capitalized, are to be read in context and construed according to common usage.

(e) Census Data. Where this chapter requires the use of census or American Community Survey data, the Department shall use the most current data available as of October 1, 2014, unless specifically otherwise provided in federal or state law or in the rules. The availability of more current data shall generally be disregarded.

(f) Deadlines. Where a specific date or deadline is identified in this chapter, the information or documentation subject to the deadline must be submitted on or before 5:00 p.m. Central Time Zone on the day of the deadline.

§11.2. Program Calendar for Competitive Housing Tax Credits.

Non-statutory deadlines specifically listed in the Program Calendar may be extended for good cause by the Executive Director for a period of not more than five (5) business days provided that the Applicant has, in writing, requested an extension prior to the date of the original deadline. Extensions relating to Administrative Deficiency deadlines may only be extended if documentation needed to resolve the item is needed from a Third Party.

Deadline	Documentation Required
01/02/2015	Application Acceptance Period Begins.
01/ 1308 /2015	Pre-Application Final Delivery Date (including pre-clearance and waiver requests).
02/27/2015	Full Application Delivery Date (including Quantifiable Community Participation documentation; Environmental Site Assessments (ESAs), Property Condition Assessments (PCAs); Appraisals; Primary Market Area Map; Site Design and Development Feasibility Report; and all Resolutions necessary under §11.3 of this chapter related to Housing De-Concentration Factors).
04/01/2015	Final Input from Elected Officials Delivery Date (including Resolution for Local Government Support pursuant to §11.9(d)(1) of this chapter and State Representative Input pursuant to §11.9(d)(5) of this chapter (after opportunity to review materially complete Applications)). Market Analysis Delivery Date pursuant to §10.205 of this title. Site Challenges Delivery Date.
05/01/2015	Challenges to Neighborhood Organization Opposition Delivery Date.

Deadline	Documentation Required
05/01/2015	Application Challenges Deadline.
Mid-May	Final Scoring Notices Issued for Majority of Applications Considered "Competitive."
06/12/2015	Deadline for public comment to be included in a summary to the Board at a posted meeting.
June	Release of Eligible Applications for Consideration for Award in July.
July	Final Awards.
Mid-August	Commitments are Issued.
11/02/2015	Carryover Documentation Delivery Date.
07/01/2016	10 Percent Test Documentation Delivery Date.
12/31/2017	Placement in Service.
Five (5) business days after the date on the Deficiency Notice (without incurring point loss)	Administrative Deficiency Response Deadline (unless an extension has been granted).

§11.3.Housing De-Concentration Factors.

(a) Two Mile Same Year Rule (Competitive HTC Only). As required by Texas Government Code, §2306.6711(f), staff will not recommend for award, and the Board will not make an award to an Application that proposes a Development Site located in a county with a population that exceeds one million if the proposed Development Site is also located less than two linear miles from the proposed Development Site of another Application within said county that is awarded in the same calendar year.

(b) Twice the State Average Per Capita. As provided for in Texas Government Code, §2306.6703(a)(4), if a proposed Development is located in a municipality, or if located completely outside a municipality, a county, that has more than twice the state average of units per capita supported by Housing Tax Credits or private activity bonds at the time the Application Round begins (or for Tax-Exempt Bond Developments at the time the Certificate of Reservation is issued by the Texas Bond Review Board), the Applicant must obtain prior approval of the Development from the Governing Body of the appropriate municipality or county containing the Development. Such approval must include a resolution adopted by the Governing Body of the municipality or county, as applicable, setting forth a written statement of support, specifically citing Texas Government Code, §2306.6703(a)(4) in the text of the actual adopted resolution, and authorizing an allocation of Housing Tax Credits for the Development. An acceptable, but not required, form of resolution may be obtained in the Multifamily Programs Procedures Manual. Required documentation must be submitted by the Full Application Delivery Date as identified in §11.2 of this chapter (relating to Program Calendar for Competitive Housing Tax Credits) or Resolutions Delivery Date in §10.4 of this title (relating to Program Dates), as applicable.

(c) One Mile Three Year Rule. (§2306.6703(a)(3))

(1) An Application that proposes the New Construction or Adaptive Reuse of a Development that is located one linear mile or less (measured between closest boundaries by a straight line on a map) from another development that meets all of the criteria in subparagraphs (A) - (C) of this paragraph shall be considered ineligible.

(A) The development serves the same type of household as the proposed Development, regardless of whether the Development serves families, elderly individuals, or another type of household; and

(B) The development has received an allocation of Housing Tax Credits or private activity bonds for any New Construction at any time during the three-year period preceding the date the Application Round begins (or for Tax-Exempt Bond Developments the three-year period preceding the date the Certificate of Reservation is issued); and

(C) The development has not been withdrawn or terminated from the Housing Tax Credit Program.

(2) Paragraph (1) of this subsection does not apply to a Development:

(A) that is using federal HOPE VI (or successor program) funds received through HUD;

(B) that is using locally approved funds received from a public improvement district or a tax increment financing district;

(C) that is using funds provided to the state under the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. §§12701 et seq.);

(D) that is using funds provided to the state and participating jurisdictions under the Housing and Community Development Act of 1974 (42 U.S.C. §§5301 et seq.);

(E) that is located in a county with a population of less than one million;

(F) that is located outside of a metropolitan statistical area; or

(G) that the Governing Body of the appropriate municipality or county where the Development is to be located has by vote specifically allowed the construction of a new Development located within one linear mile or less from a Development described under paragraph (1)(A) of this subsection. An acceptable, but not required, form of resolution may be obtained in the Multifamily Programs Procedures Manual. Required documentation must be submitted by the Full Application Delivery Date as identified in §11.2 of this chapter or Resolutions Delivery Date in §10.4 of this title, as applicable.

(3) Where a specific source of funding is referenced in paragraph (2)(A) - (D) of this subsection, a commitment or resolution documenting a commitment of the funds must be provided in the Application or prior to the Full Application Delivery Date as identified in §11.2 of this chapter or Resolutions Delivery Date in §10.4 of this title, as applicable.

(d) Limitations on Developments in Certain Census Tracts. An Application that proposes the New Construction or Adaptive Reuse of a Development proposed to be located in a census tract that has more than 20 percent Housing Tax Credit Units per total households as established by the 5-year American Community Survey shall be considered ineligible unless:

(1) the Development is in a Place that has a population is less than 100,000; or

(2) the Governing Body of the appropriate municipality or county containing the Development has by vote specifically allowed the construction of the new Development and submits to the Department a resolution referencing this rule. In providing a resolution a municipality or county should consult its own staff and legal counsel as to whether such resolution will be consistent with Fair Housing laws as they may apply, including, as applicable, consistency with any FFAST form on file, any current Analysis of Impediments to Fair Housing Choice, or any current plans such as one year action plans or five year consolidated plans for HUD block grant funds, such as HOME or CDBG funds. An acceptable, but not required, form of resolution may be obtained in the Multifamily Programs Procedures Manual. Required documentation must be submitted by the Full Application Delivery Date as identified in §11.2 of this chapter or Resolutions Delivery Date in §10.4 of this title, as applicable.

(e) Additional Phase. Applications proposing an additional phase of an existing tax credit Development serving the same Target Population, or Applications proposing Developments that are adjacent to an existing tax credit Development serving the same Target Population, or Applications that are proposing a Development serving the same Target Population on a contiguous site to another Application awarded in the same program year, shall be considered ineligible unless the other Developments or phase(s) of the Development have been completed and have maintained occupancy of at least 90 percent for a minimum six (6) month period as reflected in the submitted rent roll. If the Application proposes the Rehabilitation or replacement of existing federally-assisted affordable housing units or federally-assisted affordable housing units demolished on the same site within two years of the beginning of the Application Acceptance Period, this provision does not apply.

§11.4. Tax Credit Request and Award Limits.

(a) Credit Amount (Competitive HTC Only). (§2306.6711(b)) The Board may not award or allocate to an Applicant, Developer, Affiliate or Guarantor (unless the Guarantor is also the General Contractor, and is not a Principal of the Applicant, Developer or Affiliate of the Development Owner) Housing Tax Credits in an aggregate amount greater than \$3 million in a single Application Round. All entities that are under common Control are Affiliates. For purposes of determining the \$3 million limitation, a Person is not deemed to be an Applicant, Developer, Affiliate or Guarantor solely because it:

- (1) raises or provides equity;
- (2) provides "qualified commercial financing;"
- (3) is a Qualified Nonprofit Organization or other not-for-profit entity that is providing solely loan funds, grant funds or social services; or
- (4) receives fees as a Development Consultant or Developer that do not exceed 10 percent of the Developer Fee (or 20 percent for Qualified Nonprofit Developments and other Developments in which an entity that is exempt from federal income taxes owns at least 50% of the General Partner) to be paid or \$150,000, whichever is greater.

(b) Maximum Request Limit (Competitive HTC Only). For any given Development, an Applicant may not request more than 150 percent of the credit amount available in the sub-region based on estimates released by the Department on December 1, or \$1,500,000, whichever is less, or \$2,000,000 for Applications under the At-Risk Set-Aside. The Department will consider the amount in the Funding Request of the pre-application and Application to be the amount of Housing Tax Credits requested and will automatically reduce the Applicant's request to the maximum allowable under this subsection if exceeded. Regardless of the credit amount requested or any subsequent changes to the request made by staff, the Board may not award to any individual Development more than \$2 million in a single Application Round. (§2306.6711(b))

(c) Increase in Eligible Basis (30 percent Boost). Applications will be evaluated for an increase of up to but not to exceed 30 percent in Eligible Basis provided they meet the criteria identified in paragraph (1) or (2) of this subsection. Staff will recommend no increase or a partial increase in Eligible Basis if it is determined it would cause the Development to be over sourced, as evaluated by the Real Estate Analysis division, in which case a credit amount necessary to fill the gap in financing will be recommended. The criteria in paragraph (2) of this subsection are not applicable to Tax-Exempt Bond Developments.

(1) The Development is located in a Qualified Census Tract (QCT) (as determined by the Secretary of HUD) that has less than 20 percent Housing Tax Credit Units per total households in the tract as established by the U.S. Census Bureau for the 5-year American Community Survey. New Construction or Adaptive Reuse Developments located in a QCT that has in excess of 20 percent Housing Tax Credit Units per total households in the tract are not eligible to qualify for a 30 percent increase in Eligible Basis, which would otherwise be available for the Development Site pursuant to §42(d)(5) of the Code. For Tax-Exempt Bond Developments, as a general rule, a QCT designation would have to coincide with the program year the Certificate of Reservation is issued in order for the Department to apply the 30 percent boost in its underwriting evaluation. For New Construction or Adaptive Reuse Developments located in a QCT with 20 percent or greater Housing Tax Credit Units per total households, the Development is eligible for the boost if the Application includes a resolution stating that the Governing Body of the appropriate municipality or county containing the Development has by vote specifically allowed the construction of the new Development and referencing this rule. An acceptable, but not required, form of resolution may be

obtained in the Multifamily Programs Procedures Manual. Required documentation must be submitted by the Full Application Delivery Date as identified in §11.2 of this chapter or Resolutions Delivery Date in §10.4 of this title, as applicable. Applicants must submit a copy of the census map that includes the 11-digit census tract number and clearly shows that the proposed Development is located within a QCT.

(2) The Development meets one of the criteria described in subparagraphs (A) - (E) of this paragraph pursuant to §42(d)(5) of the Code:

- (A) the Development is located in a Rural Area;
- (B) the Development is proposing entirely Supportive Housing and is expected to be debt free or have no foreclosable or non-cash flow debt;
- (C) the Development meets the criteria for the Opportunity Index as defined in §11.9(c)(4) of this chapter (relating to Competitive HTC Selection Criteria);
- (D) the Applicant elects to restrict an additional 10 percent of the proposed low income Units for households at or below 30 percent of AMGI. These Units must be in addition to Units required under any other provision of this chapter; or
- (E) the Development is a non-Qualified Elderly Development not located in a QCT that is in an area covered by a community revitalization plan. A Development will be considered to be in an area covered by a community revitalization plan if it is eligible for and elects points under §11.9(d)(7) of this chapter.

§11.5.Competitive HTC Set-Asides (§2306.111(d)). This section identifies the statutorily-mandated set-asides which the Department is required to administer. An Applicant may elect to compete in each of the set-asides for which the proposed Development qualifies. In order to be eligible to compete in the Set-Aside, the Application must meet the requirements of the Set-Aside as of the Full Application Delivery Date. Election to compete in a Set-Aside does not constitute eligibility to compete in the Set-Aside, and Applicants who are ultimately deemed not to qualify to compete in the Set-Aside will be considered not to be participating in the Set-Aside for purposes of qualifying for points under §11.9(3) of this chapter (related to Pre-Application Participation).

(1) Nonprofit Set-Aside. (§2306.6729 and §2306.6706(b)) At least 10 percent of the State Housing Credit Ceiling for each calendar year shall be allocated to Qualified Nonprofit Developments which meet the requirements of §42(h)(5) of the Code and Texas Government Code, §2306.6729 and §2306.6706(b). Qualified Nonprofit Organizations must have the controlling interest in the Development Owner applying for this set-aside (e.g., greater than 50 percent ownership in the General Partner). If the Application is filed on behalf of a limited partnership, the Qualified Nonprofit Organization must be the Managing General Partner. If the Application is filed on behalf of a limited liability company, the Qualified Nonprofit Organization must be the controlling Managing Member. Additionally, for Qualified Nonprofit Development in the Nonprofit Set-Aside the nonprofit entity or its nonprofit Affiliate or subsidiary must be the Developer or a co-Developer as evidenced in the development agreement. An Applicant that meets the requirements to be in the Qualified Nonprofit Set-Aside is deemed to be applying under that set-aside unless their Application specifically includes an affirmative election to not be treated under that set-aside and a certification that they do not expect to receive a benefit in the allocation of tax credits as a result of being affiliated with a nonprofit. The Department reserves the right to request a change in this election and/or not recommend credits for those

unwilling to change elections if insufficient Applications in the Nonprofit Set-Aside are received. Applicants may not use different organizations to satisfy the state and federal requirements of the set-aside.

(2) USDA Set-Aside. (§2306.111(d-2)) At least 5 percent of the State Housing Credit Ceiling for each calendar year shall be allocated to Rural Developments which are financed through USDA. If an Application in this set-aside involves Rehabilitation it will be attributed to and come from the At-Risk Development Set-Aside; if an Application in this set-aside involves New Construction it will be attributed to and come from the applicable Uniform State Service Region and will compete within the applicable sub-region. Commitments of Competitive Housing Tax Credits issued by the Board in the current program year will be applied to each set-aside, Rural Regional Allocation, Urban Regional Allocation and/or USDA Set-Aside for the current Application Round as appropriate. Applications must also meet all requirements of Texas Government Code, §2306.111(d-2).

(3) At-Risk Set-Aside. (§2306.6714; §2306.6702)

(A) At least 15 percent of the State Housing Credit Ceiling for each calendar year will be allocated under the At-Risk Development Set-Aside and will be deducted from the State Housing Credit Ceiling prior to the application of the regional allocation formula required under §11.6 of this chapter (relating to Competitive HTC Allocation Process). Through this set-aside, the Department, to the extent possible, shall allocate credits to Applications involving the preservation of Developments identified as At-Risk Developments. (§2306.6714) Up to 5 percent of the State Housing Credit Ceiling associated with this set-aside may be given priority to Rehabilitation Developments under the USDA Set-Aside.

(B) An At-Risk Development must meet all the requirements of Texas Government Code, §2306.6702(a)(5). For purposes of this subparagraph, any stipulation to maintain affordability in the contract granting the subsidy, or any federally insured mortgage will be considered to be nearing expiration or nearing the end of its term if expiration will occur or the term will end within two (2) years of July 31 of the year the Application is submitted. Developments with HUD-insured mortgages qualifying as At-Risk under §2306.6702(a)(5) may be eligible if the HUD-insured mortgage is eligible for prepayment without penalty. To the extent that an Application is eligible under §2306.6705(a)(5)(B)(ii)(b) and the units being reconstructed were demolished prior to the beginning of the Application Acceptance Period, the Application will be categorized as New Construction.

(C) An Application for a Development that includes the demolition of the existing Units which have received the financial benefit described in Texas Government Code, §2306.6702(a)(5) will not qualify as an At-Risk Development unless the redevelopment will include at least a portion of the same site. Alternatively, an Applicant may propose relocation of the existing units in an otherwise qualifying At-Risk Development if:

- (i) the affordability restrictions and any At-Risk eligible subsidies are approved to be transferred to the Development Site (i.e. the site proposed in the tax credit Application) prior to the tax credit Commitment deadline;
- (ii) the Applicant seeking tax credits must propose the same number of restricted units (e.g. the Applicant may add market rate units); and

(iii) the new Development Site must qualify for points on the Opportunity Index under §11.9(c)(4) of this chapter (relating to Competitive HTC Selection Criteria).

(D) Developments must be at risk of losing affordability from the financial benefits available to the Development and must retain or renew the existing financial benefits and affordability unless regulatory barriers necessitate elimination of a portion of that benefit for the Development. For Developments qualifying under §2306.6702(a)(5)(B), only a portion of the subsidy must be retained for the proposed Development, but no less than 25 percent of the proposed Units must be public housing units supported by public housing operating subsidy. (§2306.6714(a-1))

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

(F) An amendment to any aspect of the existing tax credit property sought to enable the Development to qualify as an At-Risk Development, that is submitted to the Department after the Application has been filed and is under review will not be accepted.

§11.6.Competitive HTC Allocation Process. This section identifies the general allocation process and the methodology by which awards are made.

(1) Regional Allocation Formula. The Department shall initially make available in each Rural Area and Urban Area of each Uniform State Service Region ("sub-region") Housing Tax Credits in an amount consistent with the Regional Allocation Formula developed in compliance with Texas Government Code, §2306.1115. The process of awarding the funds made available within each sub-region shall follow the process described in this section. Where a particular situation that is not contemplated and addressed explicitly by the process described herein, Department staff shall formulate a recommendation for the Board's consideration based on the objectives of regional allocation together with other policies and purposes set out in Texas Government Code, Chapter 2306 and the Department shall provide Applicants the opportunity to comment on and propose alternatives to such a recommendation. In general, such a recommendation shall not involve broad reductions in the funding request amounts solely to accommodate regional allocation and shall not involve rearranging the priority of Applications within a particular sub-region or set-aside except as described herein. If the Department determines that an allocation recommendation would cause a violation of the \$3 million credit limit per Applicant, the Department will make its recommendation by selecting the Development(s) that most effectively satisfy the Department's goals in meeting set-aside and regional allocation goals. Where sufficient credit becomes available to award an application on the waiting list late in the calendar year, staff may allow flexibility in meeting the Carryover Allocation submission deadline to ensure to the fullest extent feasible that available resources are allocated by December 31.

(2) Credits Returned and National Pool Allocated After January 1. For any credits returned after January 1 and eligible for reallocation, the Department shall first return the credits to the sub-region or set-aside from which the original allocation was made. The credits will be treated in a manner consistent with the allocation process described in this section and may ultimately flow from the sub-region and be awarded in the collapse process to an Application in another region, sub-region or set-aside. For any credit received from the

"national pool" after the initial approval of awards in late July, the credits will be added to and awarded to the next Application on the waiting list for the state collapse.

(3) Award Recommendation Methodology. (§2306.6710(a) - (f); §2306.111) The Department will assign, as described herein, Developments for review by the program and underwriting divisions. In general, Applications will be prioritized for assignment, with highest priority given to those identified as most competitive based upon the Applicant self-score and an initial program review. The procedure identified in subparagraphs (A) - (F) of this paragraph will also be used in making recommendations to the Board.

(A) USDA Set-Aside Application Selection (Step 1). The first level of priority review will be those Applications with the highest scores in the USDA Set-Aside until the minimum requirements stated in §11.5(2) of this chapter (relating to Competitive HTC Set-Asides. (§2306.111(d))) are attained. The minimum requirement may be exceeded in order to award the full credit request or underwritten amount of the last Application selected to meet the At-Risk Set-Aside requirement;

(B) At-Risk Set-Aside Application Selection (Step 2). The second level of priority review will be those Applications with the highest scores in the At-Risk Set-Aside statewide until the minimum requirements stated in §11.5(3) of this chapter are attained. This may require the minimum requirement to be exceeded to award the full credit request or underwritten amount of the last Application selected to meet the At-Risk Set-Aside requirement. This step may leave less than originally anticipated in the 26 sub-regions to award under the remaining steps, but these funds would generally come from the statewide collapse;

(C) Initial Application Selection in Each Sub-Region (Step 3). The highest scoring Applications within each of the 26 sub-regions will then be selected provided there are sufficient funds within the sub-region to fully award the Application. Applications electing the At-Risk or USDA Set-Asides will not be eligible to receive an award from funds made generally available within each of the sub-regions;

(D) Rural Collapse (Step 4). If there are any tax credits set-aside for Developments in a Rural Area in a specific Uniform State Service Region ("Rural sub-region") that remain after award under subparagraph (C) of this paragraph, those tax credits shall be combined into one "pool" and then be made available in any other Rural Area in the state to the Application in the most underserved Rural sub-region as compared to the sub-region's allocation. This rural redistribution will continue until all of the tax credits in the "pool" are allocated to Rural Applications and at least 20 percent of the funds available to the State are allocated to Applications in Rural Areas. (§2306.111(d)(3)) In the event that more than one sub-region is underserved by the same percentage, the priorities described in clauses (i) - (ii) of this subparagraph will be used to select the next most underserved sub-region:

- (i) the sub-region with no recommended At-Risk Applications from the same Application Round; and
- (ii) the sub-region that was the most underserved during the Application Round during the year immediately preceding the current Application Round.

(E) Statewide Collapse (Step 5). Any credits remaining after the Rural Collapse, including those in any sub-region in the State, will be combined into one "pool." The funds will be used to award the highest scoring Application (not selected in a prior step) in the most underserved sub-region in the State

compared to the amount originally made available in each sub-region. This process will continue until the funds remaining are insufficient to award the next highest scoring Application in the next most underserved sub-region. In the event that more than one sub-region is underserved by the same percentage, the priorities described in clauses (i) and (ii) of this subparagraph will be used to select the next most underserved sub-region:

- (i) the sub-region with no recommended At-Risk Applications from the same Application Round; and
- (ii) the sub-region that was the most underserved during the Application Round during the year immediately preceding the current Application Round.

(F) Contingent Qualified Nonprofit Set-Aside Step (Step 6). If an insufficient number of Applications participating in the Nonprofit Set-Aside are selected after implementing the criteria described in subparagraphs (A) - (E) of this paragraph to meet the requirements of the 10 percent Nonprofit Set-Aside, action must be taken to modify the criteria described in subparagraphs (A) - (E) of this paragraph to ensure the set-aside requirements are met. Therefore, the criteria described in subparagraphs (C) - (E) of this paragraph will be repeated after selection of the highest scoring Application(s) under the Nonprofit Set-Aside statewide are selected to meet the minimum requirements of the Nonprofit Set-Aside. This step may cause some lower scoring Applications in a sub-region to be selected instead of a higher scoring Application not participating in the Nonprofit Set-Aside.

(4) Waiting List. The Applications that do not receive an award by July 31 and remain active and eligible will be recommended for placement on the waiting list. The waiting list is not static. The allocation process will be used in determining the Application to award. For example, if credits are returned, those credits will first be made available in the set-aside or sub-region from which they were originally awarded. This means that the first Application on the waiting list is in part contingent on the nature of the credits that became available for award. The Department shall hold all credit available after the late-July awards until September 30 in order to collect credit that may become available when tax credit Commitments are submitted. Credit confirmed to be available, as of September 30, may be awarded to Applications on the waiting list unless insufficient credits are available to fund the next Application on the waiting list. For credit returned after September 30, awards from the waiting list will be made when the remaining balance is sufficient to award the next Application on the waiting list based on the date(s) of returned credit. Notwithstanding the foregoing, if decisions related to any returns or rescissions of tax credits are under appeal or are otherwise contested, the Department may delay awards until resolution of such issues. (§2306.6710(a) - (f); §2306.111)

(5) Credit Returns Resulting from Force Majeure Events. In the event that the Department receives a return of Competitive HTCs during the current program year from an Application that received a Competitive Housing Tax Credit award during any of the preceding three years, such returned credit will, if all of the requirements of this paragraph are met, be allocated separately from the current year's tax credit allocation, and shall not be subject to the requirements of paragraph (2) of this section. Requests to separately allocate returned credit where all of the requirements of this paragraph have not been met or requests for waivers of any part of this paragraph will not be considered. For purposes of this paragraph, credits returned after September 30 of the preceding program year may be considered to have been returned on January 1 of the current year in accordance with the treatment described in §(b)(2)(C)(iii) of Treasury Regulation 1.42-14. The Department's Governing Board may approve the execution of a current program year Carryover Agreement regarding the returned credits with the Development Owner that returned such credits only if:

(A) The credits were returned as a result of "Force Majeure" events that occurred after the start of construction and before issuance of Forms 8609. Force Majeure events are the following sudden and unforeseen circumstances outside the control of the Development Owner: acts of God such as fire, tornado, flooding, significant and unusual rainfall or subfreezing temperatures, or loss of access to necessary water or utilities as a direct result of significant weather events; explosion; vandalism; orders or acts of military authority; litigation; changes in law, rules, or regulations; national emergency or insurrection; riot; acts of terrorism; supplier failures; or materials or labor shortages. Force Majeure events must make construction activity impossible or materially impede its progress ~~for a duration of at least 90 days, whether consecutive or not;~~

(B) Acts or events caused by the willful negligence or willful act of the Development Owner, Affiliate or a Related Party shall under no circumstance be considered to be caused by Force Majeure;

(C) A Development Owner claiming Force Majeure must provide evidence of the type of event, as described in subparagraph (A) of this paragraph, when the event occurred, and that the loss was a direct result of the event;

(D) The Development Owner must prove that reasonable steps were taken to minimize or mitigate any delay or damages, that the Development Owner substantially fulfilled all obligations not impeded by the event, that the Development and Development Owner was properly insured and that the Department was timely notified of the likelihood or actual occurrence of an event described in subparagraph (A) of this paragraph;

(E) The event prevents the Development Owner from meeting the placement in service requirements of the original allocation;

(F) The requested current year Carryover Agreement allocates the same amount of credit as that which was returned;

(G) The Department's Real Estate Analysis Division determines that the Development continues to be financially viable in accordance with the Department's underwriting rules after taking into account any insurance proceeds related to the event; and

(H) The Development Owner submits a signed written request for a new Carryover Agreement concurrently with the voluntary return of the HTCs.

§11.7. Tie Breaker Factors.

In the event there are Competitive HTC Applications that receive the same number of points in any given set-aside category, rural regional allocation or urban regional allocation, or rural or statewide collapse, the Department will utilize the factors in this section, in the order they are presented, to determine which Development will receive preference in consideration for an award. The tie breaker factors are not intended to specifically address a tie between equally underserved sub-regions in the rural or statewide collapse.

(1) Applications scoring higher on the Opportunity Index under §11.9(c)(4) of this chapter (relating to Competitive HTC Selection Criteria) as compared to another Application with the same score.

(2) Applications proposed to be located the greatest linear distance from the nearest Housing Tax Credit assisted Development servicing the same Target Population. Developments awarded Housing Tax Credits but do not yet have a Land Use Restriction Agreement in place will be considered Housing Tax Credit assisted Developments for purposes of this paragraph. The linear measurement will be performed from closest boundary to closest boundary.

§11.8. Pre-Application Requirements (Competitive HTC Only).

(a) General Submission Requirements. The pre-application process allows Applicants interested in pursuing an Application to assess potential competition across the thirteen (13) state service regions, sub-regions and set-asides. Based on an understanding of the potential competition they can make a more informed decision whether they wish to proceed to prepare and submit an Application. A complete pre-application is a pre-application that meets all of the Department's criteria, as outlined in subsections (a) and (b) of this section, with all required information and exhibits provided pursuant to the Multifamily Programs Procedures Manual.

(1) The pre-application must be submitted, along with the required pre-application fee as described in §10.901 of this title (relating to Fee Schedule), no later than the Pre-application Final Delivery Date as identified in §11.2 of this chapter (relating to Program Calendar for Competitive Housing Tax Credits). If such pre-application and corresponding fee are not submitted on or before this deadline the Applicant will be deemed to have not made a pre-application.

(2) The pre-application shall consist of one (1) CD-R containing a PDF copy and Excel copy submitted to the Department in the form of single files as required in the Multifamily Programs Procedures Manual.

(3) Only one pre-application may be submitted by an Applicant for each Development Site.

(4) Department review at this stage is limited, and not all issues of eligibility and threshold are reviewed or addressed at pre-application. Acceptance by staff of a pre-application does not ensure that an Applicant satisfies all Application eligibility, threshold or documentation requirements. While the pre-application is more limited in scope than an Application, pre-applications are subject to the same limitations, restrictions, or causes for disqualification or termination as a full Application, and pre-applications will thus be subject to the same consequences for violation, including but not limited to loss of points and termination of the pre-application.

(b) Pre-Application Threshold Criteria. Pursuant to Texas Government Code, §2306.6704(c) pre-applications will be terminated unless they meet the threshold criteria described in subsection (a) of this section and paragraphs (1) and (2) of this subsection:

(1) Submission of the competitive HTC pre-application in the form prescribed by the Department which identifies at a minimum:

(A) Site Control meeting the requirements of §10.204(10) of this title (relating to Required Documentation for Application Submission). For purposes of meeting this specific requirement related to pre-application threshold criteria, proof of consideration and any documentation required for identity of interest transactions is not required at the time of pre-application submission but will be required at the time of full application submission;

(B) Funding request;

(C) Target Population;

- (D) Requested set-asides (At-Risk, USDA, Nonprofit, and/or Rural);
- (E) Total Number of Units proposed;
- (F) Census tract number in which the Development Site is located;
- (G) Expected score for each of the scoring items identified in the pre-application materials; and
- (H) Proposed name of ownership entity.

(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. (§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 proposed Development Site as ~~provided by the local elected officials, or that the Applicant has knowledge of as of the date of pre-application submission. It is the responsibility of the Applicant to identify all such Neighborhood Organizations of the beginning of the Application Acceptance Period.~~

(B) Notification Recipients. No later than the date the pre-application is submitted, notification must be sent to all of the persons or entities prescribed in clauses (i) – (viii) of this subparagraph. Developments located in an ETJ of a city are required to notify both city and county officials. The notifications may be sent by e-mail, fax or mail with registered return receipt or similar tracking mechanism in the format required in the Pre-application Notification Template provided in the pre-application. The Applicant is encouraged to retain proof of delivery in the event the Department requires proof of notification. Acceptable evidence of such delivery is demonstrated by signed receipt for mail or courier delivery and confirmation of delivery for fax and e-mail. Officials to be notified are those officials in office at the time the pre-application is submitted. Note that between the time of pre-application (if made) and full Application, such officials may change and the boundaries of their jurisdictions may change. By way of example and not by way of limitation, events such as redistricting may cause changes which will necessitate additional notifications at full Application. Meetings and discussions do not constitute notification. Only a timely and compliant written notification to the correct person constitutes notification.

- (i) Neighborhood Organizations on record with the state or county as of the beginning of the Application Acceptance Period whose boundaries include the proposed Development Site;
- (ii) Superintendent of the school district in which the Development Site is located;
- (iii) Presiding officer of the board of trustees of the school district in which the Development Site is located;
- (iv) Mayor of the municipality (if the Development Site is within a municipality or its extraterritorial jurisdiction);
- (v) All elected members of the Governing Body of the municipality (if the Development Site is within a municipality or its extraterritorial jurisdiction);
- (vi) Presiding officer of the Governing Body of the county in which the Development Site is located;
- (vii) All elected members of the Governing Body of the county in which the Development Site is located; and

(viii) State Senator and State Representative of the districts whose boundaries include the proposed Development Site;

(C) Contents of Notification.

(i) The notification must include, at a minimum, all of the information described in subclauses (I) – (VI) of this clause.

(I) the Applicant's name, address, an individual contact name and phone number;

(II) the Development name, address, city and county;

(III) a statement informing the entity or individual being notified that the Applicant is submitting a request for Housing Tax Credits with the Texas Department of Housing and Community Affairs;

(IV) whether the Development proposes New Construction, Reconstruction, Adaptive Reuse, or Rehabilitation;

(V) the physical type of Development being proposed (*e.g.* single family homes, duplex, apartments, townhomes, high-rise etc.); and

(VI) the approximate total number of Units and approximate total number of low-income Units.

(ii) The notification may not contain any false or misleading statements. Without limiting the generality of the foregoing, the notification may not create the impression that the proposed Development will serve the elderly unless 100 percent of the Units will be for Qualified Elderly and it may not indicate that it will target or prefer any subpopulation unless such targeting or preference is in full compliance with all applicable state and federal laws, including state and federal fair housing laws.

(c) Pre-application Results. Only pre-applications which have satisfied all of the pre-application requirements, including those in §11.9(e)(3) of this chapter, will be eligible for pre-application points. The order and scores of those Developments released on the Pre-application Submission Log do not represent a Commitment on the part of the Department or the Board to allocate tax credits to any Development and the Department bears no liability for decisions made by Applicants based on the results of the Pre-application Submission Log. Inclusion of a pre-application on the Pre-application Submission Log does not ensure that an Applicant will receive points for a pre-application.

§11.9.Competitive HTC Selection Criteria.

(a) General Information. This section identifies the scoring criteria used in evaluating and ranking Applications. The criteria identified in subsections (b) - (e) of this section include those items required under Texas Government Code, Chapter 2306, §42 of the Code, and other criteria established in a manner consistent with Chapter 2306 and §42 of the Code. There is no rounding of numbers in this section for any of the calculations in order to achieve the desired requirement or limitation, unless rounding is explicitly stated as allowed for that particular calculation or criteria. Due to the highly competitive nature of the program, Applicants that elect points where supporting documentation is required but fail to provide any supporting documentation will not be allowed to cure the issue through an Administrative Deficiency. However, Department staff may provide the Applicant an opportunity to explain how they believe the Application, as submitted, meets the requirements for points or otherwise satisfies the requirements.

(b) Criteria promoting development of high quality housing.

(1) Size and Quality of the Units. (§2306.6710(b)(1)(D); §42(m)(1)(C)(iii)) An Application may qualify for up to fifteen (15) points under subparagraphs (A) and (B) of this paragraph.

(A) Unit Sizes (8 points). The Development must meet the minimum requirements identified in this subparagraph to qualify for points. Points for this item will be automatically granted for Applications involving Rehabilitation (excluding Reconstruction), for Developments receiving funding from USDA, or for Supportive Housing Developments without meeting these square footage minimums only if requested in the Self Scoring Form.

- (i) five-hundred fifty (550) square feet for an Efficiency Unit;
- (ii) six-hundred fifty (650) square feet for a one Bedroom Unit;
- (iii) eight-hundred fifty (850) square feet for a two Bedroom Unit;
- (iv) one-thousand fifty (1,050) square feet for a three Bedroom Unit; and
- (v) one-thousand two-hundred fifty (1,250) square feet for a four Bedroom Unit.

(B) Unit and Development Features (7 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 §10.101(b)(6)(B) of this title (relating to Site and Development Requirements and Restrictions) 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 (3) points and Supportive Housing Developments will start with a base score of five (5) points.

(2) Sponsor Characteristics. (§42(m)(1)(C)(iv)) (1 point). An Application may qualify to receive one (1) point provided the ownership structure contains a HUB certified by the Texas Comptroller of Public Accounts by the Full Application Delivery Date, or Qualified Nonprofit Organization provided the Application is under the Nonprofit Set-Aside. The HUB or Qualified Nonprofit Organization must have some combination of ownership interest in the General Partner of the Applicant, cash flow from operations, and developer fee which taken together equal at least 80 percent and no less than 5 percent for any category. For example, a HUB or Qualified Nonprofit Organization may have 20 percent ownership interest, 30 percent of the developer fee, and 30 percent of cash flow from operations. The HUB or Qualified Nonprofit Organization must also materially participate in the Development and operation of the Development throughout the Compliance Period and must have experience directly related to the housing industry, which may include experience with property management, construction, development, financing, or compliance. A Principal of the HUB or Qualified Nonprofit Organization cannot be a Related Party to any other Principal of the Applicant or Developer (excluding another Principal of said HUB or Qualified Nonprofit Organization).

(c) Criteria to serve and support Texans most in need.

(1) Income Levels of Tenants. (§§2306.111(g)(3)(B) and (E); 2306.6710(b)(1)(C) and (e); and §42(m)(1)(B)(ii)(I)) An Application may qualify for up to sixteen (16) points for rent and income restricting a Development for the entire Affordability Period at the levels identified in subparagraph (A) or (B) of this paragraph.

(A) For any Development located within a non-Rural Area of the Dallas, Fort Worth, Houston, San Antonio, or Austin MSAs:

- (i) At least 40 percent of all low-income Units at 50 percent or less of AMGI (16 points);
- (ii) At least 30 percent of all low income Units at 50 percent or less of AMGI (14 points); or
- (iii) At least 20 percent of all low-income Units at 50 percent or less of AMGI (12 points).

(B) For Developments proposed to be located in areas other than those listed in subparagraph (A) of this paragraph:

- (i) At least 20 percent of all low-income Units at 50 percent or less of AMGI (16 points);
- (ii) At least 15 percent of all low-income Units at 50 percent or less of AMGI (14 points); or
- (iii) At least 10 percent of all low-income Units at 50 percent or less of AMGI (12 points).

(2) Rent Levels of Tenants. (§2306.6710(b)(1)(G)) An Application may qualify to receive up to thirteen (13) points for rent and income restricting a Development for the entire Affordability Period. These levels are in addition to those committed under paragraph (1) of this subsection.

(A) At least 20 percent of all low-income Units at 30 percent or less of AMGI for Supportive Housing Developments qualifying under the Nonprofit Set-Aside or for Developments participating in the City of Houston's Permanent Supportive Housing ("PSH") program. A Development participating in the PSH program and electing points under this subparagraph must have applied for PSH funds by the Full Application Delivery Date, must have a commitment of PSH funds by Commitment, must qualify for five (5) or seven (7) points under paragraph (4) of this subsection (relating to the Opportunity Index), and must not have more than 18 percent of the total Units restricted for Persons with Special Needs as defined under paragraph (7) of this subsection (relating to Tenant Populations with Special Housing Needs) (13 points);

(B) At least 10 percent of all low-income Units at 30 percent or less of AMGI or, for a Development located in a Rural Area, 7.5 percent of all low-income Units at 30 percent or less of AMGI (11 points); or

(C) At least 5 percent of all low-income Units at 30 percent or less of AMGI (7 points).

(3) Tenant Services. (§2306.6710(b)(1)(I) and §2306.6725(a)(1)) A Supportive Housing Development qualifying under the Nonprofit Set-Aside or Developments participating in the City of Houston's Permanent Supportive Housing ("PSH") program may qualify to receive up to eleven (11) points and all other Developments may receive up to ten (10) points. A Development participating in the PSH program and electing eleven (11) points under this paragraph must have applied for PSH funds by the Full Application Delivery Date, must have a commitment of PSH funds by Commitment, must qualify for five (5) or seven (7) points under paragraph (4) of this subsection, and must not have more than 18 percent of the total Units restricted for Persons with Special Needs as defined under paragraph (7) of this subsection. By electing points, the Applicant certifies that the Development will provide a combination of supportive services, which are listed in §10.101(b)(7) of this title, appropriate for the proposed tenants and that there is adequate space for the intended services. The provision and complete list of supportive

services will be included in the LURA. The Owner may change, from time to time, the services offered; however, the overall points as selected at Application will remain the minimum. No fees may be charged to the tenants for any of the services. Services must be provided on-site or transportation to those off-site services identified on the list must be provided. The same service may not be used for more than one scoring item.

(4) Opportunity Index. The Department may refer to locations qualifying for points under this scoring item as high opportunity areas in some materials.

(A) For Developments located in an Urban Area, if the proposed Development Site is located within a census tract that has a poverty rate below 15 percent for Individuals (or 35 percent for Developments in Regions 11 and 13), an Application may qualify to receive up to seven (7) points upon meeting the additional requirements in clauses (i) - (iv) of this subparagraph. The Department will base poverty rate on data from the five (5) year American Community Survey.

(i) the Development targets the general population or Supportive Housing, the Development Site is located in a census tract with income in the top quartile of median household income for the county or MSA as applicable, and the Development Site is in the attendance zone of an elementary school that has a Met Standard rating and has achieved a 77 or greater on index 1 of the performance index, related to student achievement (7 points);

(ii) the Development targets the general population or Supportive Housing, the Development Site is located in a census tract with income in the second quartile of median household income for the county or MSA as applicable, and the Development Site is in the attendance zone of an elementary school that has a Met Standard rating and has achieved a 77 or greater on index 1 of the performance index, related to student achievement (5 points);

(iii) any Development, regardless of population served, if the Development Site is located in a census tract with income in the top quartile of median household income for the county or MSA as applicable (3 points); or

(iv) any Development, regardless of population served, if the Development Site is located in a census tract with income in the top two quartiles of median household income for the county or MSA as applicable (1 point).

(B) For Developments located in a Rural Area, an Application may qualify to receive up to seven (7) cumulative points based on median income of the area and/or proximity to the essential community assets as reflected in clauses (i) - (v) of this subparagraph if the Development Site is located within a census tract that has a poverty rate below 15 percent for Individuals (35 percent for regions 11 and 13) or within a census tract with income in the top or second quartile of median household income for the county or MSA as applicable or within the attendance zone of an elementary school that has a Met Standard rating and has achieved a 77 or greater on index 1 of the performance index, related to student achievement.

(i) The Development Site is located within the attendance zone and within one linear mile of an elementary, middle, or high school with a Met Standard rating (For purposes of this clause only,

any school, regardless of the number of grades served, can count towards points. However, schools without ratings, unless paired with another appropriately rated school, or schools with a Met Alternative Standard rating, will not be considered.) (3 points);

(ii) The Development Site is within one linear mile of a center that is licensed by the Department of Family and Protective Services specifically to provide a school-age program (2 points);

(iii) The Development Site is located within one linear mile of a full service grocery store (2 points);

(iv) The Development Site is located within one linear mile of a center that is licensed by the Department of Family and Protective Services to provide a child care program for infants, toddlers, and/or pre-kindergarten, at a minimum (2 points);

(v) The Development is a Qualified Elderly Development and the Development Site is located within one linear mile of a senior center (2 points); and/or

(vi) The Development Site is located within one linear mile of a health related facility (1 point).

(C) An elementary school attendance zone for the Development Site does not include schools with district-wide possibility of enrollment or no defined attendance zones, sometimes known as magnet schools. However, in districts with district-wide enrollment an Applicant may use the lowest rating of all elementary schools that may possibly be attended by the tenants. In districts with "choice" programs, where students can select one or more schools in the district that they wish to attend, an Applicant may use the district rating. The applicable school rating will be the 2014 accountability rating assigned by the Texas Education Agency. School ratings will be determined by the school number, so that in the case where a new school is formed or named or consolidated with another school but is considered to have the same number that rating will be used. A school that has never been rated by the Texas Education Agency will use the district rating. If a school is configured to serve grades that do not align with the Texas Education Agency's conventions for defining elementary schools (typically grades K-5 or K-6), the school will be considered to have the lower of the ratings of the schools that would be combined to meet those conventions.

(5) Educational Excellence. An Application may qualify to receive up to three (3) points for a Development Site located within the attendance zones of public schools that have achieved a 77 or greater on index 1 of the performance index, related to student achievement, by the Texas Education Agency, provided that the schools also have a Met Standard rating. Points will be awarded as described in subparagraphs (A) and (B) of this paragraph. An attendance zone does not include schools with district-wide possibility of enrollment or no defined attendance zones, sometimes known as magnet schools. However, in districts with district-wide enrollment an Applicant may use the lowest rating of all elementary, middle, or high schools, respectively, which may possibly be attended by the tenants. In districts with "choice" programs, where students can select one or more schools in the district that they wish to attend, an Applicant may use the district rating. The applicable school rating will be the 2014 accountability rating assigned by the Texas Education Agency. School ratings will be determined by the school number, so that in the case where a new school is formed or named or consolidated with another school but is considered to have the same number that rating will be used. A school that has never been

rated by the Texas Education Agency will use the district rating. If a school is configured to serve grades that do not align with the Texas Education Agency's conventions for defining elementary schools (typically grades K-5 or K-6), middle schools (typically grades 6-8 or 7-8) and high schools (typically grades 9-12), the school will be considered to have the lower of the ratings of the schools that would be combined to meet those conventions. In determining the ratings for all three levels of schools, ratings for all grades K-12 must be included, meaning that two or more schools' ratings may be combined. For example, in the case of an elementary school which serves grades K-4 and an intermediate school that serves grades 5-6, the elementary school rating will be the lower of those two schools' ratings. Also, in the case of a 9th grade center and a high school that serves grades 10-12, the high school rating will be considered the lower of those two schools' ratings. Sixth grade centers will be considered as part of the middle school rating.

(A) The Development Site is within the attendance zone of an elementary school, a middle school and a high school with the appropriate rating. For Developments in Region 11, the middle school and high school must achieve an Index 1 score of at least 70 to be eligible for these points (3 points); or

(B) The Development Site is within the attendance zone of an elementary school and either a middle school or high school with the appropriate rating. For Developments in Region 11, the middle school or high school must achieve an Index 1 score of at least 70 to be eligible for these points (1 point); or-

(C) The Development Site is within the attendance zone of a middle school and high school with the appropriate rating. For Developments in Region 11, the middle school and high school must achieve an Index 1 score of at least 70 to be eligible for these points (1 point).

(6) Underserved Area. (§§2306.6725(b)(2); 2306.127, 42(m)(1)(C)(ii)) An Application may qualify to receive two (2) points for general population or Supportive Housing Developments if the Development Site is located in one of the areas described in subparagraphs (A) - (D) of this paragraph.

(A) A Colonia;

(B) An Economically Distressed Area;

(C) A Place, or if outside of the boundaries of any Place, a county that has never received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation for a Development that remains an active tax credit development; or

(D) For Rural Areas only, a census tract that has never received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation for a Development that remains an active tax credit development serving the same Target Population.

(7) Tenant Populations with Special Housing Needs. (§42(m)(1)(C)(v)) An Application may qualify to receive two (2) points by serving Tenants with Special Housing Needs. Points will be awarded as described in subparagraphs (A) and (B) of this paragraph.

(A) Applications meeting all of the requirements in clauses (i) – (iv) of this subparagraph are eligible to receive two (2) points by committing to participate in the Department's Section 811 Project Rental Assistance Demonstration Program ("Section 811 Program"). In order to be eligible for points, Applicants must commit at least 10 Units in the proposed Development for participation in the

~~Section 811 Program unless the Integrated Housing Rule (10 TAC §1.15) or Section 811 Program guidelines and program requirements limits the proposed Development to fewer than 10 Units. the specified number of units in the proposed Development or be. Alternatively, Applications may qualify for points if evidence is submitted in the Application that indicates approved approval by the Department to commit the same number of units (as would be required in the proposed Development) in an existing Development in the Applicant's or an Affiliate's portfolio, that will qualify as Section 811 Program participating units as outlined in the Department's Section 811 Program guidelines and program requirements. An Application may request a waiver from the Board for a specific requirement of the Section 811 Program on their application. However, a request for a waiver does not guarantee eligibility for points. Participation in the Section 811 Program will require execution of a Section 811 property agreement and other required documents on or before HTC Commitment. Applicants who have applied to participate under the 2014 Section 811 Program NOFA prior to their Application submission and receive an award prior to July 1, 2015 may use units identified in that Section 811 Program application to qualify for points under this paragraph, with the same number of units as would be required for the new Application. The same units cannot be used to qualify for points in more than one HTC Application. Once elected in the Application, Applicants may not withdraw their commitment to participate in the Section 811 Program unless authorized by the Board. The Department determines that the Development cannot meet all of the Section 811 program criteria. In this case, staff may allow the Application to qualify for points by meeting the requirements of subparagraph (B) of this paragraph. Should an Applicant receive an award of HTCs, the Department may allow Applicants to substitute alternate units in an existing Development in the Applicant's or Affiliates' portfolio, consistent with the Department's Section 811 Program criteria, to participate in the Section 811 Program and to qualify for these points; such properties require approval by the Department to commit the same number of units in an existing Development as were committed in the Application. It is the Applicant's responsibility to familiarize themselves with the Section 811 Program guidelines and program requirements, including the 30-year use restriction for the 811 units, before selecting points. in the Applicant's or an Affiliate's portfolio that will qualify as Section 811 Program participating units as outlined in the Department's Section 811 Program guidelines and program requirements. Applicants must commit at least 10 Units for participation in the Section 811 Program unless the Integrated Housing Rule (10 TAC §1.15) or Section 811 Program guidelines and program requirements limits the Application to fewer than 10 Units. The total number of Units set aside for persons with disabilities, including Section 811 units, cannot exceed 18% of the total Units (for Development of 50 Units or more) or exceed 25% of the total Units (for Developments with less than 50 Units). In order to be eligible for these points, an Application is required to participate in the Section 811 Program, unless any one of the following provisions under clauses (i)–(iv) of this subparagraph are not met.~~

(i) The Development must not be a Qualified Elderly Development or Supportive Housing;

(ii) The Development -must not be originally constructed before 1978;

(iii) The Development has units available to be committed to the Section 811 Program in the Development, meaning that those units must do not have any other sources of project-based rental or long-term operating assistance within 6 months of receiving 811 assistance and cannot have an existing restriction for persons with disabilities; and

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

(B) Applications proposing Developments that do not meet all of the requirements of clauses (i) – (iv) of subparagraph (A) of this paragraph may qualify for two (2) points for meeting the requirements of this subparagraph. In order to qualify for points, Applicants must agree to set-aside at least 5 percent of the total Units for Persons with Special Needs. For purposes of this subparagraph, Persons with Special Needs is defined as households where one individual has alcohol and/or drug addictions, Colonia resident, Persons with Disabilities, Violence Against Women Act Protections (domestic violence, dating violence, sexual assault, and stalking), persons with HIV/AIDS, homeless populations, veterans, wounded warriors (as defined by the Caring for Wounded Warriors Act of 2008), and ~~migrant farm-workers~~. Throughout the Compliance Period, unless otherwise permitted by the Department, the Development Owner agrees to affirmatively market Units to Persons with Special Needs. In addition, the Department will require an initial minimum twelve-month period during which Units must either be occupied by Persons with Special Needs or held vacant. After the initial twelve-month period, the Development Owner will no longer be required to hold Units vacant for Persons with Special Needs, but will be required to continue to affirmatively market Units to Persons with Special Needs.

(d) Criteria promoting community support and engagement.

(1) Local Government Support. An Application may qualify for up to seventeen (17) points for a resolution or resolutions voted on and adopted by the bodies reflected in subparagraphs (A) - (C) of this paragraph, as applicable. The resolution(s) must be dated prior to Final Input from Elected Officials Delivery Date and must be submitted to the Department no later than the Final Input from Elected Officials Delivery Date as identified in §11.2 of this chapter. Such resolution(s) must specifically identify the Development whether by legal description, address, Development name, Application number or other verifiable method. In providing a resolution a municipality or county should consult its own staff and legal counsel as to whether such resolution will be consistent with Fair Housing laws as they may apply, including, as applicable, consistency with any FFAST form on file, any current Analysis of Impediments to Fair Housing Choice, or any current plans such as one year action plans or five year consolidated plans for HUD block grant funds, such as HOME or CDBG funds. For an Application with a proposed Development Site that, at the time of the initial filing of the Application, is:

(A) Within a municipality, the Application will receive:

(i) seventeen (17) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality supports the Application or Development; or

(ii) fourteen (14) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality has no objection to the Application or Development.

(B) Within the extraterritorial jurisdiction of a municipality, the Application may receive points under clause (i) or (ii) of this subparagraph and under clause (iii) or (iv) of this subparagraph:

(i) eight and one-half (8.5) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality supports the Application or Development; or

(ii) seven (7) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality has no objection to the Application or Development; and

(iii) eight and one-half (8.5) points for a resolution from the Governing Body of that county expressly setting forth that the county supports the Application or Development; or

(iv) seven (7) points for a resolution from the Governing Body of that county expressly setting forth that the county has no objection to the Application or Development.

(C) Within a county and not within a municipality or the extraterritorial jurisdiction of a municipality:

(i) seventeen (17) points for a resolution from the Governing Body of that county expressly setting forth that the county supports the Application or Development; or

(ii) fourteen (14) points for a resolution from the Governing Body of that county expressly setting forth that the county has no objection to the Application or Development.

(2) Commitment of Development Funding by Local Political Subdivision. (§2306.6710(b)(1)(E)) An Application may receive up to fourteen (14) points for a commitment of Development funding from the city (if located in a city) or county in which the Development Site is located. Development funding from instrumentalities of a city or county will not qualify for points under this scoring item unless such instrumentalities first award the funds to the city or county for their administration, at least 60 percent of the governing board of the instrumentality consists of city council members from the city in which the Development Site is located (if located in a city) or county commissioners from the county in which the Development Site is located, or 100 percent of the governing board of the instrumentality is appointed by the elected officials of the city in which the Development Site is located (if located within a city) or county in which the Development Site is located. The government instrumentality providing Development funding under this scoring item may not be a Related Party to the Applicant. Development funding must be provided in the form of a construction and/or permanent loan with an interest rate no higher than 3 percent per annum and term of at least 5 years, a grant, an in-kind contribution, a contribution which will support the Development, such as vouchers, or combination thereof. Funds cannot have been provided to the Local Political Subdivision by the Applicant or a Related Party. Should the Local Political Subdivision borrow funds in order to commit funding to the Development, the Applicant or a Related Party to the Applicant can provide collateral or guarantees for the loan only to the Local Political Subdivision. HOME Investment Partnership Program or Community Development Block Grant funds administered by the State of Texas cannot be utilized for points under this scoring item except where the city, county, or instrumentality is an actual applicant for and subrecipient of such funds for use in providing financial support to the proposed Development. The Applicant must provide evidence in the Application that an application or request for the development funds has been submitted in the form of an acknowledgement from the applicable city or county. The acknowledgement must also state that a final decision with regard to the awards of such funding is expected to occur no later than September 1. A firm commitment of funds is required by Commitment or points will be lost (except for Applicants electing the point under

subparagraph (C) of this paragraph). While the specific source can change, the funding secured must have been eligible at the time the Application was submitted.

(A) Option for Development Sites located in the ETJ of a municipality. For an Application with a Development Site located in the ETJ of a municipality, whether located in an unincorporated Place or not, the Applicant may seek Development funding from the municipality or a qualifying instrumentality of the municipality, provided the Applicant uses the population of said municipality as the basis for determining the Application's eligible points under subparagraph (B) of this paragraph. Applicants are encouraged to contact Department staff where an Applicant is uncertain of how to determine the correct Development funding amounts or qualifying Local Political Subdivisions.

(B) Applications will qualify for points based on the amount of funds at the levels described in clauses (i) - (v) of this subparagraph. For the purpose of this calculation, the Department will use the population of the Place from which the Development Site's Rural or Urban Area designation is derived.

(i) eleven (11) points for a commitment by a Local Political Subdivision of the lesser of the population of the Place multiplied by a factor of 0.15 in funding per Low Income Unit or \$15,000 in funding per Low Income Unit;

(ii) ten (10) points for a commitment by a Local Political Subdivision of the lesser of the population of the Place multiplied by a factor of 0.10 in funding per Low Income Unit or \$10,000 in funding per Low Income Unit;

(iii) nine (9) points for a commitment by a Local Political Subdivision of the lesser of population of the Place multiplied by a factor of 0.05 in funding per Low Income Unit or \$5,000 in funding per Low Income Unit;

(iv) eight (8) points for a commitment by a Local Political Subdivision of the lesser of the population of the Place multiplied by a factor of 0.025 in funding per Low Income Unit or \$1,000 in funding per Low Income Unit; or

(v) seven (7) points for a commitment by a Local Political Subdivision of the lesser of the population of the Place multiplied by a factor of 0.01 in funding per Low Income Unit or \$500 in funding per Low Income Unit.

(C) Two (2) points may be added to the points in subparagraph (B)(i) - (v) of this paragraph and subparagraph (D) of this paragraph if the Applicant provides a firm commitment for funds in the form of a resolution from the Local Political Subdivision and provides a commitment for the same source(s) at Commitment. The resolution must reflect terms that are consistent with the requirements of this paragraph.

(D) One (1) point may be added to the points in subparagraph (B)(i) - (v) of this paragraph and subparagraph (C) of this paragraph if the financing to be provided is in the form of a grant or in-kind contribution meeting the requirements of this paragraph or a permanent loan with a minimum term

of fifteen (15) years, minimum amortization period of thirty (30) years, and interest rate no higher than 3 percent per annum. An Applicant must certify that they intend to maintain the Development funding for the full term of the funding, barring unanticipated events. For Applicants electing this additional point that have not yet received an award or commitment, the structure of the funds will be reviewed at Commitment for compliance with this provision.

(3) Declared Disaster Area. (§2306.6710(b)(1)) An Application may receive ten (10) points if at the time of Application submission or at any time within the two-year period preceding the date of submission, the Development Site is located in an area declared to be a disaster area under the Texas Government Code, §418.014.

(4) Quantifiable Community Participation. (§2306.6710(b)(1)(B); §2306.6725(a)(2)) An Application may qualify for up to nine (9) points for written statements from a Neighborhood Organization. In order for the statement to qualify for review, the Neighborhood Organization must have been in existence prior to the Pre-Application Final Delivery Date, and its boundaries must contain the Development Site. In addition, the Neighborhood Organization must be on record with the state (includes the Department) or county in which the Development Site is located. Neighborhood Organizations may request to be on record with the Department for the current Application Round with the Department by submitting documentation (such as evidence of board meetings, bylaws, etc.) by 30 days prior to the beginning of the Application Acceptance Period~~Full Application Delivery Date~~. The written statement must meet the requirements in subparagraph (A) of this paragraph.

(A) Statement Requirements. If an organization cannot make the following affirmative certifications or statements then the organization will not be considered a Neighborhood Organization for purposes of this paragraph.

(i) the Neighborhood Organization's name, a written description and map of the organization's boundaries, signatures and contact information (phone, email and mailing address) of at least two individual members with authority to sign on behalf of the organization;

(ii) certification that the boundaries of the Neighborhood Organization contain the Development Site and that the Neighborhood Organization meets the definition pursuant to Texas Government Code, §2306.004(23-a) and includes at least two separate residential households;

(iii) certification that no person required to be listed in accordance with Texas Government Code §2306.6707 with respect to the Development to which the Application requiring their listing relates participated in any way in the deliberations of the Neighborhood Organization, including any votes taken;

(iv) certification that at least 80 percent of the current membership of the Neighborhood Organization consists of persons residing or owning real property within the boundaries of the Neighborhood Organization; and

(v) an explicit expression of support, opposition, or neutrality. Any expression of opposition must be accompanied with at least one reason forming the basis of that opposition. A

Neighborhood Organization is encouraged to be prepared to provide additional information with regard to opposition.

(B) Technical Assistance. For purposes of this section, if and only if there is no Neighborhood Organization already in existence or on record, the Applicant, Development Owner, or Developer is allowed to provide technical assistance in the creation of and/or placing on record of a Neighborhood Organization. Technical assistance is limited to:

- (i) the use of a facsimile, copy machine/copying, email and accommodations at public meetings;
- (ii) assistance in completing the QCP Neighborhood Information Packet, providing boundary maps and assisting in the Administrative Deficiency process; and
- (iii) presentation of information and response to questions at duly held meetings where such matter is considered.

(C) Point Values for Quantifiable Community Participation. An Application may receive points based on the values in clauses (i) - (vi) of this subparagraph. Points will not be cumulative. Where more than one written statement is received for an Application, the average of all statements received in accordance with this subparagraph will be assessed and awarded.

- (i) nine (9) points for explicit support from a Neighborhood Organization that, during at least one of the three prior Application Rounds, provided a written statement that qualified as Quantifiable Community Participation opposing any Competitive Housing Tax Credit Application and whose boundaries remain unchanged;
- (ii) eight (8) points for explicitly stated support from a Neighborhood Organization;
- (iii) six (6) points for explicit neutrality from a Neighborhood Organization that, during at least one of the three prior Application Rounds provided a written statement, that qualified as Quantifiable Community Participation opposing any Competitive Housing Tax Credit Application and whose boundaries remain unchanged;
- (iv) four (4) points for statements of neutrality from a Neighborhood Organization or statements not explicitly stating support or opposition, or an existing Neighborhood Organization provides no statement of either support, opposition or neutrality, which will be viewed as the equivalent of neutrality or lack of objection;
- (v) four (4) points for areas where no Neighborhood Organization is in existence, equating to neutrality or lack of objection, or where the Neighborhood Organization did not meet the explicit requirements of this section; or
- (vi) zero (0) points for statements of opposition meeting the requirements of this subsection.

(D) Challenges to opposition. Any written statement from a Neighborhood Organization expressing opposition to an Application may be challenged if it is contrary to findings or determinations, including zoning determinations, of a municipality, county, school district, or other local Governmental Entity having jurisdiction or oversight over the finding or determination. If any such statement is challenged, the challenger must declare the basis for the challenge and submit such challenge by the Challenges to Neighborhood Organization Opposition Delivery Date as identified in §11.2 of this chapter. The Neighborhood Organization expressing opposition will be given seven (7) calendar days to provide any information related to the issue of whether their assertions are contrary to the findings or determinations of a local Governmental Entity. All such materials and the analysis of the Department's staff will be provided to a fact finder, chosen by the Department, for review and a determination of the issue presented by this subsection. The fact finder will not make determinations as to the accuracy of the statements presented, but only with regard to whether the statements are contrary to findings or determinations of a local Governmental Entity. The fact finder's determination will be final and may not be waived or appealed.

(5) Community Support from State Representative. (§2306.6710(b)(1)(F); §2306.6725(a)(2)) Applications may receive up to eight (8) points or have deducted up to eight (8) points for this scoring item. To qualify under this paragraph letters must be on the State Representative's letterhead, be signed by the State Representative, identify the specific Development and clearly state support for or opposition to the specific Development. This documentation will be accepted with the Application or through delivery to the Department from the Applicant or the State Representative and must be submitted no later than the Final Input from Elected Officials Delivery Date as identified in §11.2 of this chapter. Once a letter is submitted to the Department it may not be changed or withdrawn. Therefore, it is encouraged that letters not be submitted well in advance of the specified deadline in order to facilitate consideration of all constituent comment and other relevant input on the proposed Development. State Representatives to be considered are those in office at the time the letter is submitted and whose district boundaries include the Development Site. Neutral letters or letters that do not specifically refer to the Development or specifically express support or opposition will receive zero (0) points. A letter that does not directly express support but expresses it indirectly by inference (e.g. "the local jurisdiction supports the Development and I support the local jurisdiction") will be treated as a neutral letter.

(6) Input from Community Organizations. Where the Development Site does not fall within the boundaries of any qualifying Neighborhood Organization, then, in order to ascertain if there is community support, an Application may receive up to four (4) points for letters that qualify for points under subparagraphs (A), (B), and/or (C) of this paragraph. No more than four (4) points will be awarded under this point item under any circumstances. All letters must be submitted within the Application. Should an Applicant elect this option and the Application receives letters in opposition, then one (1) point will be subtracted from the score under this paragraph for each letter in opposition, provided that the letter is from an organization that would otherwise qualify under this paragraph. However, at no time will the Application receive a score lower than zero (0) for this item.

(A) An Application may receive two (2) points for each letter of support submitted from a community or civic organization that serves the community in which the Development Site is located. Letters of support must identify the specific Development and must state support of the specific Development at the proposed location. To qualify, the organization must be qualified as tax exempt and have as a primary (not ancillary or secondary) purpose of the overall betterment, development, or improvement of the community as a whole or of a major aspect of the community such as

improvement of schools, fire protection, law enforcement, city-wide transit, flood mitigation, or the like. The community or civic organization must provide some documentation of its tax exempt status and its existence and participation in the community in which the Development Site is located including, but not limited to, a listing of services and/or members, brochures, annual reports, etc. Letters of support from organizations that cannot provide reasonable evidence that they are active in the area that includes the location of the Development Site will not be awarded points. For purposes of this subparagraph, community and civic organizations do not include neighborhood organizations, governmental entities (excluding Special Management Districts), or taxing entities.

(B) An Application may receive two (2) points for a letter of support from a property owners association created for a master planned community whose boundaries include the Development Site and that does not meet the requirements of a Neighborhood Organization for the purpose of awarding points under paragraph (4) of this subsection.

(C) An Application may receive two (2) points for a letter of support from a Special Management District whose boundaries, as of the Full Application Delivery Date as identified in §11.2 of this chapter (relating to Program Calendar for Competitive Housing Tax Credits), include the Development Site.

(D) Input that evidences unlawful discrimination against classes of persons protected by Fair Housing law or the scoring of which the Department determines to be contrary to the Department's efforts to affirmatively further fair housing will not be considered. If the Department receives input that could reasonably be suspected to implicate issues of non-compliance under the Fair Housing Act, staff will refer the matter to the Texas Workforce Commission for investigation, but such referral will not, standing alone, cause staff or the Department to terminate the Application. Staff will report all such referrals to the Board and summarize the status of any such referrals in any recommendations.

(7) Community Revitalization Plan. An Application may qualify for points under this paragraph only if no points are elected under subsection (c)(4) of this section, related to Opportunity Index.

(A) For Developments located in an Urban Area of Region 3.

(i) An Application may qualify to receive up to six (6) points if the Development Site is located in an area targeted for revitalization in a community revitalization plan that meets the criteria described in subclauses (I) - (VI) of this clause:

(I) The community revitalization plan must have been adopted by the municipality or county in which the Development Site is located.

(II) The adopting municipality or county must have performed, in a process providing for public input, an assessment of the factors in need of being addressed as a part of such community revitalization plan. Factors assessed must include at least five (5) of the following eight (8) factors:

(-a-) adverse environmental conditions, natural or manmade, that are material in nature and are inconsistent with the general quality of life in typical average income

neighborhoods. By way of example, such conditions might include significant and recurring flooding, presence of hazardous waste sites or ongoing localized emissions not under appropriate remediation, nearby heavy industrial uses, or uses presenting significant safety or noise concerns such as major thoroughfares, nearby active railways (other than commuter trains), or landing strips; significant and widespread (e.g. not localized to a small number of businesses or other buildings) rodent or vermin infestation acknowledged to present health risks requiring a concerted effort; or fire hazards;

(-b-) presence of blight, which may include excessive vacancy, obsolete land use, significant decline in property value, or other similar conditions that impede growth;

(-c-) presence of inadequate transportation or infrastructure;

(-d-) lack of accessibility to and/or presence of inadequate health care facilities, law enforcement and fire fighting facilities, social and recreational facilities, and other public facilities comparable to those typically found in neighborhoods containing comparable but unassisted housing;

(-e-) the presence of significant crime;

(-f-) the lack of or poor condition and/or performance of public education;

(-g-) the lack of local business providing employment opportunities; or

(-h-) efforts to promote diversity, including multigenerational diversity, economic diversity, etcetera, where it has been identified in the planning process as lacking.

(III) The target area must be larger than the assisted housing footprint and should be limited in size along the lines of specific neighborhoods rather than encompassing large areas of a city or county. Staff will review the target areas for presence of the factors identified in subclause (II) of this clause.

(IV) The adopted plan, taken as a whole, must be a plan that can reasonably be expected to revitalize the neighborhood and address in a substantive and meaningful way the material factors identified in subclause (II) of this clause. Generally, because revitalization must identify specific matters needing to be addressed by revitalization and provide a plan and budget specifically directed to those identified issues, revitalization will be considered distinct and separate from broader economic development efforts.

(V) The adopted plan must describe the planned budget and uses of funds to accomplish its purposes within the applicable target area. To the extent that expenditures, incurred within four (4) years prior to the beginning of the Application Acceptance Period, have already occurred in the applicable target area, a statement from a city or county official concerning the amount of the expenditure and purpose of the expenditure may be submitted.

(VI) To be eligible for points under this item, the community revitalization plan must already be in place as of the Full Application Final Delivery Date pursuant to §11.2 of this chapter evidenced by a letter from the appropriate local official stating that:

(-a-) the plan was duly adopted with the required public input processes followed;

(-b-) the funding and activity under the plan has already commenced; and

(-c-) the adopting municipality or county has no reason to believe that the overall funding for the full and timely implementation of the plan will be unavailable.

(ii) Points will be awarded based on:

(I) Applications will receive four (4) points if the applicable target area of the community revitalization plan has a total budget or projected economic value of \$6,000,000 or greater; or

(II) Applications will receive two (2) points if the applicable target area of the community revitalization plan has a total budget or projected economic value of at least \$4,000,000; and

(III) Applications may receive (2) points in addition to those under subclause (I) or (II) of this clause if the Development is explicitly identified by the city or county as contributing most significantly to the concerted revitalization efforts of the city or county (as applicable). A city or county may only identify one single Development during each Application Round for the additional points under this subclause. A resolution from the Governing Body of the city or county that approved the plan is required to be submitted in the Application (this resolution is not required at pre-application). If multiple Applications submit resolutions under this subclause from the same Governing Body, none of the Applications shall be eligible for the additional points. A city or county may, but is not required, to identify a particular Application as contributing most significantly to concerted revitalization efforts.

(B) For Developments located in Urban Areas outside of Region 3.

(i) An Application may qualify for up to six (6) points for meeting the criteria under subparagraph (A) of this paragraph (with the exception of being located in Region 3); or

(ii) An Application will qualify for four (4) points if the city or county has an existing plan for Community Development Block Grant - Disaster Relief Program (CDBG-DR) funds that meets the requirements of subclauses (I) - (V) of this clause. To qualify for points, the Development Site must be located in the target area defined by the plan, and the Application must have a commitment of CDBG-DR funds. The plan (in its entirety) and a letter from a local government official with specific knowledge and oversight of implementing the plan are included in the Application and must:

(I) define specific target areas for redevelopment of housing that do not encompass the entire jurisdiction;

(II) be subject to administration in a manner consistent with an approved Fair Housing Activity Statement-Texas (FHAST);

(III) be subject to administration in a manner consistent with the findings of an Analysis of Impediments approved or accepted by HUD within the last three (3) calendar years or an approved Fair Housing Activity Statement-Texas (FHAST), approved by the Texas General Land Office;

(IV) certify that the plan and the Application are consistent with the adopting municipality or county's plan to affirmatively further fair housing under the Fair Housing Act; and

(V) be in place prior to the Full Application Final Delivery Date.

(C) For Developments located in a Rural Area.

(i) An Application may qualify for up to four (4) points for meeting the criteria under subparagraph (B) of this paragraph if located outside of Region 3 (with the exception of being located in an Urban Area); or

(ii) The requirements for community revitalization in a Rural Area are distinct and separate from the requirements related to community revitalization in an Urban Area in that the requirements in a Rural Area relate primarily to growth and expansion indicators. An Application may qualify for up to four (4) points if the city, county, state, or federal government has approved expansion of basic infrastructure or projects, as described in this paragraph. Approval cannot be conditioned upon the award of tax credits or on any other event (zoning, permitting, construction start of another development, etc.) not directly associated with the particular infrastructure expansion. The Applicant, Related Party, or seller of the Development Site cannot contribute funds for or finance the project or infrastructure, except through the normal and customary payment of property taxes, franchise taxes, sales taxes, impact fees and/or any other taxes or fees traditionally used to pay for or finance such infrastructure by cities, counties, state or federal governments or their related subsidiaries. The project or expansion must have been completed no more than twelve (12) months prior to the beginning of the Application Acceptance Period or have been approved and is projected to be completed within twelve (12) months from the beginning of the Application Acceptance Period. An Application is eligible for two (2) points for one of the items described in subclauses (I) - (V) of this clause or four (4) points for at least two (2) of the items described in subclauses (I) - (V) of this clause:

(I) New paved roadway (may include paving an existing non-paved road but excludes overlays or other limited improvements) or expansion of existing paved roadways by at least one lane (excluding very limited improvements such as new turn lanes or restriping), in which a portion of the new road or expansion is within one half (1/2) mile of the Development Site;

(II) New water service line (or new extension) of at least 500 feet, in which a portion of the new line is within one half (1/2) mile of the Development Site;

(III) New wastewater service line (or new extension) of at least 500 feet, in which a portion of the new line is within one half (1/2) mile of the Development Site;

(IV) Construction of a new law enforcement or emergency services station within one (1) mile of the Development Site that has a service area that includes the Development Site; and

(V) Construction of a new hospital or expansion of an existing hospital's capacity by at least 25 percent within a five (5) mile radius of the Development Site and ambulance service to and from the hospital is available at the Development Site. Capacity is defined as total number of beds, total number of rooms or total square footage of the hospital.

(iii) To qualify under clause (ii) of this subparagraph, the Applicant must provide a letter from a government official with specific knowledge of the project (or from an official with a private utility company, if applicable) which must include:

(I) the nature and scope of the project;

(II) the date completed or projected completion;

(III) source of funding for the project;

(IV) proximity to the Development Site; and

(V) the date of any applicable city, county, state, or federal approvals, if not already completed.

(e) Criteria promoting the efficient use of limited resources and applicant accountability.

(1) Financial Feasibility. (§2306.6710(b)(1)(A)) An Application may qualify to receive a maximum of eighteen (18) points for this item. To qualify for points, a 15-year pro forma itemizing all projected income including Unit rental rate assumptions, operating expenses and debt service, and specifying the underlying growth assumptions and reflecting a minimum must-pay debt coverage ratio of 1.15 for each year must be submitted. The pro forma must include the signature and contact information evidencing that it has been reviewed and found to be acceptable by an authorized representative of a proposed Third Party construction or permanent lender. An acceptable form of lender approval letter is found in the application. If the letter evidences review of the Development alone it will receive sixteen (16) points. If the letter evidences review of the Development and the Principals, it will receive eighteen (18) points.

(2) Cost of Development per Square Foot. (§2306.6710(b)(1)(H); §42(m)(1)(C)(iii)) An Application may qualify to receive up to twelve (12) points based on either the Building Cost or the Hard Costs per square foot of the proposed Development, as originally submitted in the Application. For purposes of this paragraph, Building Costs will exclude structured parking or commercial space that is not included in Eligible Basis, and Hard Costs will include general contractor overhead, profit, and general requirements. Structured parking or commercial space costs must be supported by a cost estimate from a Third Party General Contractor or subcontractor with experience in structured parking or commercial construction,

as applicable. The square footage used will be the Net Rentable Area (NRA). The calculations will be based on the cost listed in the Development Cost Schedule and NRA shown in the Rent Schedule.

(A) A high cost development is a Development that meets one of the following conditions:

- (i) the Development is elevator served, meaning it is either a Qualified Elderly Development with an elevator or a Development with one or more buildings any of which have elevators serving four or more floors;
- (ii) the Development is more than 75 percent single family design;
- (iii) the Development is Supportive Housing; or
- (iv) the Development Site qualifies for five (5) or seven (7) points under subsection (c)(4) of this section, related to Opportunity Index, and is located in an Urban Area.

(B) Applications proposing New Construction or Reconstruction will be eligible for twelve (12) points if one of the following conditions is met:

- (i) The Building Cost per square foot is less than \$70 per square foot;
- (ii) The Building Cost per square foot is less than \$75 per square foot, and the Development meets the definition of a high cost development;
- (iii) The Hard Cost per square foot is less than \$90 per square foot; or
- (iv) The Hard Cost per square foot is less than \$100 per square foot, and the Development meets the definition of high cost development.

(C) Applications proposing New Construction or Reconstruction will be eligible for eleven (11) points if one of the following conditions is met:

- (i) The Building Cost per square foot is less than \$75 per square foot;
- (ii) The Building Cost per square foot is less than \$80 per square foot, and the Development meets the definition of a high cost development;
- (iii) The Hard Cost per square foot is less than \$95 per square foot; or
- (iv) The Hard Cost per square foot is less than \$105 per square foot, and the Development meets the definition of high cost development.

(D) Applications proposing New Construction or Reconstruction will be eligible for ten (10) points if one of the following conditions is met:

(i) The Building Cost is less than \$90 per square foot; or

(ii) The Hard Cost is less than \$110 per square foot.

(E) Applications proposing Adaptive Reuse or Rehabilitation (excluding Reconstruction) will be eligible for points if one of the following conditions is met:

(i) Twelve (12) points for Applications which include Hard Costs plus acquisition costs included in Eligible Basis that are less than \$100 per square foot;

(ii) Twelve (12) points for Applications which include Hard Costs plus acquisition costs included in Eligible Basis that are less than \$130 per square foot, located in an Urban Area, and that qualify for 5 or 7 points under subsection (c)(4) of this section, related to Opportunity Index; or

(iii) Eleven (11) points for Applications which include Hard Costs plus acquisition costs included in Eligible Basis that are less than \$130 per square foot.

(3) Pre-application Participation. (§2306.6704) An Application may qualify to receive up to six (6) points provided a pre-application was submitted during the Pre-Application Acceptance Period. Applications that meet the requirements described in subparagraphs (A) - (G) of this paragraph will qualify for six (6) points:

(A) The total number of Units does not increase by more than ten (10) percent from pre-application to Application;

(B) The designation of the proposed Development as Rural or Urban remains the same;

(C) The proposed Development serves the same Target Population;

(D) The pre-application and Application are participating in the same set-asides (At-Risk, USDA, Non-Profit, and/or Rural);

(E) The Application final score (inclusive of only scoring items reflected on the self score form) does not vary by more than six (6) points from what was reflected in the pre-application self score;

(F) The Development Site at Application is at least in part the Development Site at pre-application, and the census tract number listed at pre-application is the same at Application; and

(G) The pre-application met all applicable requirements.

(4) Leveraging of Private, State, and Federal Resources. (§2306.6725(a)(3))

(A) An Application may qualify to receive up to three (3) points if at least five (5) percent of the total Units are restricted to serve households at or below 30 percent of AMGI (restrictions elected under

other point items may count) and the Housing Tax Credit funding request for the proposed Development meet one of the levels described in clauses (i) - (iv) of this subparagraph:

(i) the Development leverages CDBG Disaster Recovery, HOPE VI, RAD, or Choice Neighborhoods funding and the Housing Tax Credit Funding Request is less than 9 percent of the Total Housing Development Cost (3 points). The Application must include a commitment of such funding; or

(ii) If the Housing Tax Credit funding request is less than 8 percent of the Total Housing Development Cost (3 points); or

(iii) If the Housing Tax Credit funding request is less than 9 percent of the Total Housing Development Cost (2 points); or

(iv) If the Housing Tax Credit funding request is less than 10 percent of the Total Housing Development Cost (1 point).

(B) The calculation of the percentages stated in subparagraph (A) of this paragraph will be based strictly on the figures listed in the Funding Request and Development Cost Schedule. Should staff issue an Administrative Deficiency that requires a change in either form, then the calculation will be performed again and the score adjusted, as necessary. However, points may not increase based on changes to the Application. In order to be eligible for points, no more than 50 percent of the developer fee can be deferred. Where costs or financing change after completion of underwriting or award (whichever occurs later), the points attributed to an Application under this scoring item will not be reassessed unless there is clear evidence that the information in the Application was intentionally misleading or incorrect.

(5) Extended Affordability or Historic Preservation. (§§2306.6725(a)(5); 2306.111(g)(3)(C); 2306.185(a)(1) and (c); 2306.6710(e)(2); and 42(m)(1)(B)(ii)(II)) An Application may qualify to receive up to four (4) points for this scoring item.

(A) In accordance with the Code, each Development is required to maintain its affordability for a 15-year compliance period and, subject to certain exceptions, an additional 15-year extended use period. Development Owners that agree to extend the affordability period for a Development to thirty-five (35) years total may receive two (2) points; or

(B) An Application includes a tax credit request amounting to less than or equal to \$7,000 per HTC unit, that has received a letter from the Texas Historical Commission determining preliminary eligibility for historic (rehabilitation) tax credits and is proposing the use of historic (rehabilitation) tax credits (whether federal or state credits). At least one existing building that will be part of the Development must reasonably be expected to qualify to receive and document receipt of historic tax credits by issuance of Forms 8609. An Application may qualify to receive four (4) points under this provision.

(6) Right of First Refusal. (§2306.6725(b)(1); §42(m)(1)(C)(viii)) An Application may qualify to receive (1 point) for Development Owners that will agree to provide a right of first refusal to purchase the Development upon or following the end of the Compliance Period in accordance with Texas Government

Code, §2306.6726 and the Department's rules including §10.407 of this title (relating to Right of First Refusal) and §10.408 of this title (relating to Qualified Contract Requirements).

(7) Funding Request Amount. An Application may qualify to receive one (1) point if the Application reflects a Funding Request of Housing Tax Credits, as identified in the original Application submission, of no more than 100% of the amount available within the sub-region or set-aside as estimated by the Department as of December 1, 2014.

(f) Point Adjustments.

Staff will recommend to the Board and the Board may make a deduction of up to five (5) points for any of the items listed in paragraph (1) of this subsection, unless the person approving the extension (the Board or Executive Director, as applicable) makes an affirmative finding setting forth that the facts which gave rise to the need for the extension were beyond the reasonable control of the Applicant and could not have been reasonably anticipated. Any such matter to be presented for final determination of deduction by the Board must include notice from the Department to the affected party not less than fourteen (14) days prior to the scheduled Board meeting. The Executive Director may, but is not required, to issue a formal notice after disclosure if it is determined that the matter does not warrant point deductions. (§2306.6710(b)(2))

(1) If the Applicant or Affiliate failed to meet the original Carryover submission or 10 percent Test deadline(s) or has requested an extension of the Carryover submission deadline, the 10 percent Test deadline (relating to either submission or expenditure).

(2) If the Developer or Principal of the Applicant violates the Adherence to Obligations.

(3) Any deductions assessed by the Board for paragraph (1) or (2) of this subsection based on a Housing Tax Credit Commitment from the preceding Application Round will be attributable to the Applicant or Affiliate of an Application submitted in the current Application Round.

§11.10.Challenges of Competitive HTC Applications.

The Department will address challenges received from unrelated entities to a specific active Application. The Department will utilize a preponderance of the evidence standard, and determinations made by the Department concerning challenges cannot be appealed by a party unrelated to the Applicant that is the subject of the challenge. The challenge process is reflected in paragraphs (1) - (13) of this section. A matter, even if raised as a challenge, that staff determines should be treated as an Administrative Deficiency will be treated and handled as an Administrative Deficiency, not as a challenge.

(1) Challenges to Applications (excluding Site Challenges) must be received by the Department no later than the Application Challenges Deadline as identified in §11.2 of this chapter (relating to Program Calendar for Competitive Housing Tax Credits) and must be accompanied by the corresponding non-refundable challenge processing fee as described in §10.901 of this title (relating to Fee Schedule). Challenges related to Undesirable Site Features and Undesirable Neighborhood Characteristics are due no later than the Site Challenges Delivery Date as identified in §11.2 of this chapter (relating to Program Calendar for Competitive Housing Tax Credits). Unless the required fee is received with the challenge, no

challenge will be deemed to have been submitted, and the challenge fee must be paid for each Application challenged by a challenger.

(2) A challenge must be clearly identified as such, and it must state the specific identity of and contact information for the person making the challenge and, if they are acting on behalf of anyone else, on whose behalf they are acting.

(3) Challengers must provide, at the time of filing the challenge, all briefings, documentation, and other information that the challenger offers in support of the challenge. Challengers must provide sufficient credible evidence that, if confirmed, would substantiate the challenge. Assertions not accompanied by supporting documentation susceptible to confirmation will not be considered.

(4) Challenges to the financial feasibility of the proposed Development are premature unless final underwriting reports on the challenged Application have been posted to the Department's website.

(5) Challenges relating to undesirable site features and undesirable neighborhood characteristics as described in §§10.101(a)(3) and (4) of this title (relating to Site and Development Requirements and Restrictions) are due by the Site Challenges Delivery Date and may relate to a failure to disclose characteristics described in §10.101(a)(4)(AB) of this title or the presence of other characteristics that may deem the Site ineligible..

(6) Challengers are encouraged to be prudent in identifying issues to challenge, realizing that most issues will be identified and addressed through the routine review and Administrative Deficiency process;

(7) Once a challenge to an Application has been submitted, subsequent challenges on the same Application from the same challenger will not be accepted;

(8) The Department shall promptly post all items received and purporting to be challenges and any pertinent information to its website;

(9) The Department shall notify the Applicant that a challenge was received within seven (7) days of receipt of the challenge;

(10) Where, upon review by staff, an issue is not clearly resolved, staff may send an Applicant an Administrative Deficiency notice to provide the Applicant with a specific issue in need of clarification and time to address the matter in need of clarification as allowed by the rules related to Administrative Deficiencies;

(11) The Applicant may provide a response regarding the challenge and any such response must be provided within fourteen (14) days of their receipt of the challenge;

(12) The Department shall promptly post its determinations of all matters submitted as challenges. Because of statutory requirements regarding the posting of materials to be considered by the Board, staff may be required to provide information on late received items relating to challenges as handouts at a Board meeting; and

(13) Staff determinations regarding all challenges will be reported to the Board.

4b

BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION
NOVEMBER 13, 2014

Presentation, Discussion, and Possible Action on orders adopting the repeals of 10 TAC Chapter 10 Subchapter A, concerning General Information and Definitions; Subchapter B, concerning Site and Development Requirements and Restrictions; Subchapter C, concerning Application Submission Requirements, Ineligibility Criteria, Board Decisions, and Waiver of Rules; and Subchapter G, concerning Fee Schedule, Appeals, and Other Provisions; and orders adopting the new Subchapter A, concerning General Information and Definitions; Subchapter B, concerning Site and Development Requirements and Restrictions; Subchapter C, concerning Application Submission Requirements, Ineligibility Criteria, Board Decisions, and Waiver of Rules for Applications; and Subchapter G, concerning Fee Schedule, Appeals, and Other Provisions; and directing their publication in the *Texas Register*.

RECOMMENDED ACTION

WHEREAS, the Uniform Multifamily Rules contain eligibility, threshold and procedural requirements relating to applications requesting multifamily funding;

WHEREAS, changes have been proposed that improve the efficiency of the funding sources involved; and

WHEREAS, the proposed repeal and proposed new Chapter 10 were published in the September 19, 2014 issue of the *Texas Register* for public comment;

NOW, therefore, it is hereby

RESOLVED, that the final order adopting the repeal of 10 TAC Chapter 10 Subchapter A General Information and Definitions, Subchapter B, Site and Development Requirements and Restrictions, Subchapter C Application Submission Requirements, Ineligibility Criteria, Board Decisions, and Waiver of Rules, and Subchapter G Fee Schedule, Appeals and Other Provisions and proposed new 10 TAC Chapter 10, Subchapters A, B, C and G concerning Uniform Multifamily Rules, together with the preambles presented to this meeting, are approved for publication in the *Texas Register*; and

FURTHER RESOLVED, that the Executive Director and his designees be and each of them hereby are authorized, empowered, and directed, for and on behalf of the Department, to cause the repeal and new Uniform Multifamily Rules, together with the preambles in the form presented to this meeting, to be published in the *Texas Register* and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing.

BACKGROUND

The Board approved the proposed repeal and proposed new Chapter 10 regarding the Uniform Multifamily Rules at the September 4, 2014, Board meeting to be published in the *Texas Register* for public comment. In keeping with the requirements of the Administrative Procedures Act, staff has reviewed all comments received and provided a reasoned response to each comment.

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Preamble, Reasoned Response, and New Rule

The Texas Department of Housing and Community Affairs (the “Department”) adopts new 10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter A, §§10.1 – 10.4 concerning General Information and Definitions. Section 10.2 and 10.3 are adopted with changes to the text as published in the September 19, 2014 issue of the *Texas Register* (39 TexReg 7395). Sections 10.1 and 10.4 are adopted without changes and will not be republished.

REASONED JUSTIFICATION. The Department finds that the adoption of the sections will result in a more consistent approach to governing multifamily activity and to the awarding of funding or assistance through the Department and to minimize repetition. The comments and responses include both administrative clarifications and corrections to the Uniform Multifamily Rule based on the comments received. After each comment title numbers are shown in parentheses. These numbers refer to the person or entity that made the comment as reflected at the end of the reasoned response. If comment resulted in recommended language changes to the proposed Uniform Multifamily Rule as presented to the Board in September, such changes are indicated.

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS.

Public comments were accepted through October 20, 2014, with comments received from the following: (10) Motivation Education & Training, Inc. (MET), (17) Coats Rose, (20) Alyssa Carpenter, (24) Cynthia Bast, (26) Sarah Andre, (27) City of Houston, (30) Marque Real Estate Consultants, (33) Foundation Communities, (34) New Hope Housing, (36) S Anderson Consulting, (46) Texas Association of Community Development Corporations (TACDC).

1. §10 – General Comments – (10)

COMMENT SUMMARY: Commenter (10) stated developers of farm worker housing should be encouraged to meet design standards for farmworker housing that would create housing units that meet the HTC program requirements because many of them would be ineligible for HTC funding otherwise. Commenter (10) also recommended the Department consider providing assistance and/or creating incentives to encourage developers to actively market non-farm worker housing to farm workers, especially existing housing stock in rural areas, which would help meet some farm worker housing needs without adding new units to markets.

STAFF RESPONSE:

Staff agrees that developers of farmworker housing should follow HTC program requirements; however, creating incentives for developers to actively market existing housing stock to farmworkers would represent a significantly new policy directive and would require a republication for public comment. This issue may be taken into consideration in future rulemakings.

Staff recommends no change based on this comment.

2. §10.3 – Subchapter A – Definitions – Proposed New Definitions (27)

COMMENT SUMMARY: Commenter (27) suggested the following new definitions, consistent with their comments on the Qualified Allocation Plan.

“Community Revitalization Area (CRA) – The areas defined for deep revitalization by the City of Houston’s Disaster Relief Round 2 (DR2) Planning Study. Map is available at: http://www.houstontx.gov/housing/ninepercent/CRA_Outreach_Maps.pdf.

CRA Outreach Area – The extended areas defined by the City of Houston’s DR2 Planning Study for single family rehabilitation and reconstruction. Map is available at: http://www.houstontx.gov/housing/ninepercent/CRA_Outreach_Maps.pdf.

Permanent Supportive Housing (PSH) – An affordable housing development that links a range of services for vulnerable tenants to ensure housing stability. Any unit identified as PSH is one that is deeply affordable and targeted to extremely low income households and coupled with direct, facilitated access to a comprehensive array of services. Services can include, but are not limited to, case management, medical, mental health, substance use treatment, employment and life skills counseling, eviction prevention programs, social and recreational events, and tenant advocacy. The services are voluntary to the tenant, while service and property management staff focuses on housing stability. The unit is tied to a lease and tenants are expected to adhere to the conditions of the lease. Therefore, group housing and transitional housing are not included in this definition.”

STAFF RESPONSE:

In response to Commenter (27) with respect to a definition of Community Revitalization Area, staff understands that the City of Houston is suggesting such a change so that some applications proposing developments located in areas targeted by the CDBG Disaster Recovery plan can qualify for points under §11.9(d)(7) of the Qualified Allocation Plan (QAP) related to Community Revitalization Plan. Staff believes it is possible that these applications could qualify for these points without such a change, since under §11.9(d)(7)(B), applications that have a commitment of CDBG-DR funds do qualify for points. This provision (§11.9(d)(7)(B)) was added to the QAP as a result of previous comment from the City of Houston. Therefore, staff is recommending no change to either the definitions or the scoring item.

With respect to the addition of a definition for Permanent Supportive Housing, staff understands that this comment was made in order to allow those applicants participating in the City of Houston’s Permanent Supportive housing program to access the same points that other applicants will access through participation in the Department’s Section 811 program. Even if staff or the Board chooses to recommend such a policy change, staff does not find the added definition necessary to implement the rule.

Staff does not recommend the addition of the definitions.

3. §10.3 – Subchapter A – Definitions – Applicant (24)

COMMENT SUMMARY: Commenter (24) articulated that the organizational charts in the application are to identify the proposed development owner, the entities that will be part of the ownership structure and the individuals that will own or control those entities. Commenter (24)

questioned whether the inclusion of this new definition would benefit from being tied to the organizational chart and/or the definition of Principal. Commenter (24) stressed that in places where certain terms, Applicant, Affiliate, Principal and Development Team, for example are used in the rules, there needs to be uniformity and consistency to avoid creating unintended burdens or infeasibility issues for the Applicants.

STAFF RESPONSE:

In general, staff agrees with Commenter (24) and recommends the revisions below. However, with respect to the definitions of Applicant and Control, staff is not recommending any changes. The definition of Applicant was added primarily to address the issue that the applicant entity often listed in the applications is not yet formed, and the term is also used throughout the rules. Should any changes need to be made to the rules with respect to what is required in the organizational charts, previous participation forms, and/or certifications, staff will address those issues in the appropriate sections of the rule.

“(6) Applicant—means any individual or a group of individuals and any Affiliates who file an Application for funding or tax credits subject to the requirements of this chapter or 10 TAC Chapters 11 or 12 and who may contemplate the later formation of one or more business entities, such as a limited partnership, that is to be engaged in the ownership of a Development. In administering the application process the Department staff will assume that the applicant will be able to form any such entities and that all necessary rights, powers, and privileges including, but not limited to, site control will be transferable to that entity. The organization formation of the ownership entity, qualification to do business (if needed), and transfer of such rights, powers, and privileges must be accomplished as required in this Chapter and 10 TAC Chapters 11 and 12, as applicable.”

4. §10.3 – Subchapter A – Definitions – Colonia (20), (30), (36)

COMMENT SUMMARY: Commenter (20), (36) suggested this definition remains too subjective, and as evidenced in the 2014 application round and challenge process, needs to be clarified. Commenter (20), (36) recommended language be adopted that would consider a site to have the “characteristics of a Colonia” if it is located within 50 feet, boundary to boundary, of an existing Colonia as recorded and mapped by the Attorney General’s office. Commenter (30) also suggested this definition be more narrowly defined especially given the points that could be achieved. Commenter (30) indicated that lack of access to utilities should be a key distinction when comparing the physical and economic characteristics of a Colonia to the area of the proposed Development and suggested the following modification.

“(19) Colonia--A geographic area that is located in a county some part of which is within one-hundred fifty (150) miles of the international border of this state, that consists of eleven (11) or more dwellings that are located in proximity to each other in an area that may be described as a community or neighborhood, and that...:

(B) has the physical and economic characteristics of a colonia, as determined by the Department, ~~and is an area encompassing no more than two (2) square miles.~~ The factors to be considered by the Department will include the proximity of the

Development Site to the existing Colonia communities, and the ability or inability of the Colonia communities to access basic utilities to meet the minimal needs of the residents.”

STAFF RESPONSE:

Staff agrees with Commenter (30) that clarification of the factors to be considered in the Department’s evaluation of a geographic area would provide more certainty for applicants. However, staff is not recommending limiting areas considered to be colonias as being only 50 feet from a Colonia as defined by the Texas Water Development Board. Staff is recommending the following revision.

“(19) Colonia--A geographic area that is located in a county some part of which is within one-hundred fifty (150) miles of the international border of this state, that consists of eleven (11) or more dwellings that are located in proximity to each other in an area that may be described as a community or neighborhood, and that:

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

(B) has the physical and economic characteristics of a colonia, as determined by the Department, and is a geographic area encompassing no more than two (2) square miles. Factors to be considered by the Department include, but are not limited to, ability to access basic utilities and boundaries that may define communities or neighborhoods. Applicants will be required to define the geographic area to be evaluated by the Department.”

5. §10.3 – Subchapter A – Definitions – Control (24)

COMMENT SUMMARY: Commenter (24) questioned whether the additional language in this definition was appropriate because of the fact that the definition of Control is tied to the definition of Principal and as a result, the new language would make every board member of a non-profit corporation a Principal, when it appears that the Department is trying to get away from such connection in other contexts (*e.g.* Previous Participation). Commenter (24) articulated that if the concept in the new language needs to be included then it should be included somewhere else so that unintended consequences can be avoided.

STAFF RESPONSE:

With respect to the added language in the definition of Control, staff still contends that board members, regardless of whether or not they recuse themselves from certain decisions, do exercise some control over the entities on whose board they serve. Staff also believes that this is the best place to address that situation, so that it can apply to any aspect of the rule. Staff also believes that the definition of Principal should in fact include this concept of control. However, staff is recommending changes to the rule regarding the Certification of Principal which should address some of the commenter’s concerns.

6. §10.3 – Subchapter A – Definitions – Developer Services (24)

COMMENT SUMMARY: Commenter (24) suggested item (A) and the reference to permanent financing in item (B), as noted below, needs to be removed. Commenter (24) stated the Department’s rules should not be at odds with IRS interpretation regarding these items. Specifically, commenter (24) noted the IRS has focused its attention on the services performed by the developer and whether or not those services are tied to eligible basis items. As an illustration, services related to land acquisition would be ineligible as well as those developer services related to obtaining permanent financing.

“(A) ~~site selection and purchase or lease contract negotiation;~~
(B) identifying and negotiating sources of construction ~~and permanent financing,~~
including financing provided by the Department;”

STAFF RESPONSE:

The definition is not intended to address issues of eligible basis, but to address issues related to fees charges by the developer and then again by another consultant. Staff wants to ensure that those fees are not counted twice. Staff recommends no change to the definition.

7. §10.3 – Subchapter A – Definitions – Development Team (24)

COMMENT SUMMARY: Commenter (24) recommended the following modification to reflect correct usage of the defined term.

“(43) Development Team--All Persons and Affiliates thereof that play a role in the ~~Development~~ development, construction, rehabilitation, management and/or continuing operation of the subject Development, including any Development Consultant and Guarantor.”

STAFF RESPONSE: Staff agrees with the commenter and has modified the definition accordingly.

8. §10.3 – Subchapter A – Definitions – General Partner (24)

COMMENT SUMMARY: Commenter (24) recommended the following changes to this definition on the basis of clarifying the general partner’s role, correcting the name of the organizational document, and clarifying that a limited liability company can be controlled by a manager or a managing member and that not all limited liability companies have managers.

“(55) General Partner--Any person or entity identified as a general partner in ~~articles of limited partnership a certificate of formation~~ for the partnership that is the Development Owner and that ~~has general liability for the partnership or that has~~ Controls the partnership with respect to any such general partner. Where a limited liability corporation is the legal structure employed rather than a limited partnership, the manager or managing member of that limited liability corporation is deemed, for the purposes of these rules, to be the functional equivalent of a general partner.”

STAFF RESPONSE: Staff agrees with the commenter and has modified the definition accordingly.

9. §10.3 – Subchapter A – Definitions – Managing General Partner (24)

COMMENT SUMMARY: Commenter (24) recommended the following modifications to maintain consistency with the proposed revisions to the definition of General Partner.

“(74) Managing General Partner--A general partner of a partnership (or, as provided for in paragraph (5554) of this subsection, its functional equivalent) that is vested with the authority to take actions that are binding on behalf of the partnership and the other partners. The term Managing General Partner can also refer to a manager or managing member ~~Managing Member~~ of a limited liability company where so designated to bind the limited liability company and its members under its Agreement or any other person that has such powers in fact, regardless of their organizational title.”

STAFF RESPONSE: Staff agrees with the commenter and has modified the definition accordingly.

10. §10.3 – Subchapter A – Definitions – Principal (24)

COMMENT SUMMARY: Commenter (24) recommended the following modifications to this definition in order to obtain uniformity and consistency across all multifamily rules where such term, in conjunction with other terms including Applicant, Affiliate and Development Team are used and could create unintended burdens or infeasibility issues for the Applicants.

“(98) Principal--Persons that will exercise Control over an entity ~~a partnership, corporation, limited liability company, trust, or any other private entity~~. In the case of:

(A) partnerships, Principals include all General Partners, special limited partners (other than those affiliated with an investor limited partner), and Principals with ownership interest individuals Controlling such partners;

(B) for-profit corporations, Principals include 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; ~~and~~

(C) non-profit corporations or governmental instrumentalities (such as housing authorities), Principals include 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;

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

(EE) 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.”

STAFF RESPONSE: Staff does not believe the proposed changes are necessary. However, with respect to any recommended changes regarding certifications required, staff will recommend revisions in the appropriate sections. Staff recommends the following revision to this definition:

“(98) Principal—Persons that will exercise Control (which includes voting board members pursuant to §10.3(a)(29) of this chapter) over a partnership, corporation, limited liability company, trust, or any other private entity. In the case of...”

11. §10.3 – Subchapter A – Definitions – Right of First Refusal (24)

COMMENT SUMMARY: Commenter (24) questioned whether this definition should refer to a Qualified Nonprofit Organization rather than to just a nonprofit.

STAFF RESPONSE: Staff agrees with the commenter and has modified the definition accordingly.

“(116) Right of First Refusal--An Agreement to provide a right to purchase the Property to a Qualified Nonprofit Organization ~~nonprofit~~ or tenant organization with priority to that of any other buyer at a price whose formula is prescribed in the LURA.”

12. §10.3 – Subchapter A – Definitions – Supportive Housing (17), (26), (33), (34), (46)

COMMENT SUMMARY: Commenters (17), (33), (34), (46) suggested the following modifications to this definition given the additional points allowed for such developments. Commenter (33) further stated that the proposal to strike the debt-free language and just leave debt that is non-foreclosable or non-cash flow contingent is problematic since funding from the City of Austin and Federal Home Loan Bank are foreclosable if affordability restrictions were violated. The proposed changes below, according to commenters (33), (34) catch exceptions of the multiple funding sources used for supportive housing developments.

“(125) Supportive Housing--Residential rental developments intended for occupancy by individuals or households in need of specialized and specific non-medical services in order to maintain independent living. Supportive housing developments generally include established funding sources outside of project cash flow that require certain populations be served and/or certain services provided. The developments are expected to be debt free, or have no permanent foreclosable or noncash flow debt. ~~free of foreclosable debt or have debt that is subject to cash flow repayment.~~ A Supportive Housing Development financed with tax-exempt bonds with a project based rental assistance contract for a majority of the Units may be treated as Supportive Housing under all subchapters of this chapter, except Subchapter D of this chapter (relating to Underwriting and Loan Policy)...”

Commenter (26) suggested this definition be revised to include an exclusive focus on a population that has supportive housing needs and not allow an Application to claim points for 5 or 10 units within a larger development.

STAFF RESPONSE: Staff agrees with Commenters (17), (33), (34), and (46) and has modified the definition accordingly. With respect to Commenter (26), staff believes the definition speaks to the populations served without necessitating any changes. In addition, the nature of the financing of these developments helps to ensure that an appropriate number of units actually function as supportive housing units.

STATUTORY AUTHORITY. The new sections are adopted pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules. Additionally, the new sections are adopted pursuant to Texas Government Code, §2306.67022, which specifically authorizes the Department to adopt a qualified allocation plan.

Uniform Multifamily Rules

Subchapter A – General Information and Definitions

§10.1.Purpose. This chapter applies to an award of multifamily development funding or other assistance including the award of Housing Tax Credits by the Texas Department of Housing and Community Affairs (the "Department") and establishes the general requirements associated in making such awards. Applicants pursuing such assistance from the Department are required to certify, among other things, that they have familiarized themselves with the rules that govern that specific program, including but not limited to, Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan), Chapter 12 of this title (relating to Multifamily Housing Revenue Bond Rules) and other Department rules. This chapter does not apply to any project-based rental or operating assistance programs or funds unless incorporated by reference in whole or in part in a Notice of Funding Availability ("NOFA") or rules for such a program except to the extent that Developments receiving such assistance and otherwise subject to this chapter remain subject to this chapter.

§10.2.General.

(a) This chapter may not contemplate unforeseen situations that may arise, and in that regard the Department staff is to apply a reasonableness standard in the evaluation of Applications for multifamily development funding. Additionally, Direct Loan funds and other non-Housing Tax Credit or tax exempt bond resources may be made available through a NOFA or other similar governing document that includes the basic Application and funding requirements:

- (1) deadlines for filing Applications and other documents;
- (2) any additional submission requirements that may not be explicitly provided for in this chapter;
- (3) any applicable Application set-asides and requirements related thereto;
- (4) award limits per Application or Applicant;
- (5) any federal or state laws or regulations that may supersede the requirements of this chapter; and
- (6) other reasonable parameters or requirements necessary to implement a program or administer funding effectively.

(b) Due Diligence and Applicant Responsibility. 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, rent and income limits, 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 multifamily rules 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 multifamily rules to each specific situation as it is presented in the submitted 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 independently perform the necessary due diligence to research, confirm, and verify any data, opinions, interpretations or other information upon which Applicant bases an Application.

(c) Board Standards for Review. Some issues may require or benefit from board review. The Board is not constrained to a particular standard, and while its actions on one matter are not binding as to how it will address another matter, the Board does seek to promote consistency with its policies, including the policies set forth in this chapter.

(d) Census Data. Where this chapter requires the use of census or American Community Survey data, the Department shall use the most current data available as of October 1, 2014, unless specifically otherwise provided in federal or state law or in the rules. The availability of more current data shall generally be

disregarded. For Rural Area and Urban Area designations, the Department shall use in establishing the designations, the U.S. Census Bureau's Topographically Integrated Geographic Encoding and Referencing ("TIGER") shape files applicable for the population dataset used in making such designations.

(e) Public Information Requests. Pursuant to Texas Government Code, §2306.6717, any pre-application and any full Application, including all supporting documents and exhibits, must be made available to the public, in their entirety, on the Department's website. The filing of a pre-application or Application with the Department shall be deemed as consent to the release of any and all information contained therein, including supporting documents and exhibits, and as a waiver of any of the applicable provisions of Texas Government Code, Chapter 552, with the exception of any such provisions that are considered by law as not subject to a waiver.

(f) Responsibilities of Municipalities and Counties. In providing resolutions regarding housing de-concentration issues, threshold requirements, or scoring criteria, municipalities and counties should consult their own staff and legal counsel as to whether such resolution will be consistent with Fair Housing laws as they may apply, including, as applicable, consistency with any Fair Housing Activity Statement-Texas ("FHA ST") form on file, any current Analysis of Impediments to Fair Housing Choice, or any current plans such as one year action plans or five year consolidated plans for HUD block grant funds, such as HOME or CDBG funds.

(g) Deadlines. Where a specific date or deadline is identified in this chapter, the information or documentation subject to the deadline must be submitted on or before 5:00 p.m. Central Time Zone on the day of the deadline.

§10.3. Definitions.

(a) Terms defined in this chapter apply to the Housing Tax Credit Program, Multifamily Housing Revenue Bond Program, HOME Program and any other programs for the development of affordable rental property administered by the Department and as may be defined in this title. Any capitalized terms not specifically mentioned in this section or any section referenced in this document shall have the meaning as defined in Texas Government Code Chapter 2306, Internal Revenue Code (the "Code") §42, the HOME Final Rule, and other Department rules, as applicable.

(1) Adaptive Reuse--The change-in-use of an existing building not, at the time of Application, being used, in whole or in part, for residential purposes (e.g., school, warehouse, office, hospital, hotel, etc.), into a building which will be used, in whole or in part, for residential purposes. Adaptive reuse requires that the exterior walls of the existing building remain in place. All units must be contained within the original exterior walls of the existing building. Porches and patios may protrude beyond the exterior walls. Ancillary non-residential buildings, such as a clubhouse, leasing office and/or amenity center may be newly constructed outside the walls of the existing building or as detached buildings on the Development Site.

(2) Administrative Deficiencies--Information requested by Department staff that is required to clarify or correct one or more inconsistencies or to provide non-material missing information in the original Application or to assist staff in evaluating the Application that, in the Department staff's reasonable judgment, may be cured by supplemental information or explanation which will not necessitate a substantial reassessment or re-evaluation of the Application. Administrative Deficiencies may be issued at any time while the Application or Contract is under consideration by the Department, including at any time while reviewing performance under a Contract, processing documentation for a Commitment of Funds, closing of a loan, processing of a disbursement request, close-out of a Contract, or resolution of any issues related to compliance.

(3) Affiliate--An individual, corporation, partnership, joint venture, limited liability company, trust, estate, association, cooperative or other organization or entity of any nature whatsoever that directly, or indirectly through one or more intermediaries, has Control of, is Controlled by, or is under common Control with any other Person. All entities that share a Principal are Affiliates.

(4) Affordability Period--The Affordability Period commences as specified in the Land Use Restriction Agreement (LURA) or federal regulation, or commences on the first day of the Compliance Period as defined by the Code §42(i)(1), and continues through the appropriate program's affordability requirements or termination of the LURA, whichever is earlier. The term of the Affordability Period shall be imposed by the LURA or other deed restriction and may be terminated upon foreclosure or deed in lieu of foreclosure. The Department reserves the right to extend the Affordability Period for HOME or NSP Developments that fail to meet program requirements. During the Affordability Period, the Department shall monitor to ensure compliance with programmatic rules as applicable, regulations, and Application representations.

(5) Applicable Percentage--The percentage used to determine the amount of the Housing Tax Credit for any Development, as defined more fully in the Code §42(b).

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

(i) nine percent if such timing is deemed appropriate by the Department or if the ability to claim the full 9 percent credit is extended by the U.S. Congress prior to February 28, 2014;

(ii) forty basis points over the current applicable percentage for 70 percent present value credits, pursuant to §42(b) of the Code for the month in which the Application is submitted to the Department; or

(iii) fifteen basis points over the current applicable percentage for 30 percent present value credits, unless fixed by Congress, pursuant to §42(b) of the Code for the month in which the Application is submitted to the Department.

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

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

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

(iii) the percentage as calculated in subparagraph (A) of this paragraph if the Agreement and Election Statement has not been executed and no buildings have been placed in service.

(6) Applicant—means any individual or a group of individuals and any Affiliates who file an Application for funding or tax credits subject to the requirements of this chapter or 10 TAC Chapters 11 or 12 and who may contemplate the later formation of one or more business entities, such as a limited partnership, that is to be engaged in the ownership of a Development. In administering the application process the Department staff will assume that the applicant will be able to form any such entities and that all necessary rights, powers, and privileges including, but not limited to, site control will be transferable to that entity. The organization formation of the ownership entity, qualification to do business (if needed), and transfer of such rights, powers, and privileges must be accomplished as required in this Chapter and 10 TAC Chapters 11 and 12, as applicable.

(7) Application Acceptance Period--That period of time during which Applications may be submitted to the Department.

(8) Award Letter – A document that may be issued to an awardee of a Direct Loan before the issuance of a Commitment and/or Contract which preliminarily sets forth the terms and conditions under which the Direct Loan will be made available. An Award Letter will typically be contingent on the awardee satisfying certain requirements prior to executing a Commitment and/or Contract.

(9) Bank Trustee--A federally insured bank with the ability to exercise trust powers in the State of Texas.

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

(11) Breakeven Occupancy--The occupancy level at which rental income plus secondary income is equal to all operating expenses, including replacement reserves and taxes, and mandatory debt service requirements for a Development.

(12) Building Costs--Cost of the materials and labor for the vertical construction or rehabilitation of buildings and amenity structures.

(13) Carryover Allocation--An allocation of current year tax credit authority by the Department pursuant to the provisions of §42(h)(1)(C) of the Code and U.S. Treasury Regulations, §1.42-6.

(14) Carryover Allocation Agreement--A document issued by the Department, and executed by the Development Owner, pursuant to §10.402(f) of this chapter (relating to Housing Tax Credit and Tax Exempt Bond Developments).

(15) Cash Flow--The funds available from operations after all expenses and debt service required to be paid have been considered.

(16) Certificate of Reservation--The notice given by the Texas Bond Review Board (TBRB) to an issuer reserving a specific amount of the state ceiling for a specific issue of bonds.

(17) Code--The Internal Revenue Code of 1986, as amended from time to time, together with any applicable regulations, rules, rulings, revenue procedures, information statements or other official pronouncements issued thereunder by the U.S. Department of the Treasury or the Internal Revenue Service (IRS).

(18) Code of Federal Regulations (CFR)--The codification of the general and permanent rules and regulations of the federal government as adopted and published in the Federal Register.

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

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

(B) has the physical and economic characteristics of a colonia, as determined by the Department, and is a geographic area encompassing no more than two (2) square miles. Factors to be considered by the Department include, but are not limited to, ability to access basic utilities and boundaries that may define communities or neighborhoods. Applicants will be required to define the geographic area to be evaluated by the Department.

(20) Commitment (also referred to as Contract)--A legally binding written contract, setting forth the terms and conditions under which housing tax credits, loans, grants or other sources of funds or financial assistance from the Department will be made available.

(21) Commitment of Funds--Occurs after the Development is approved by the Board and once a Commitment or Award Letter is executed between the Department and Development Owner. For Direct Loan Programs, this process is distinct from "Committing to a specific local project" as defined in 24 CFR Part 92, which may occur when the activity is set up in the disbursement and information system established by HUD; known as the Integrated Disbursement and Information System (IDIS). The Department's commitment of funds may not align with commitments made by other financing parties.

(22) Committee--See *Executive Award and Review Advisory Committee*.

(23) Comparable Unit--A Unit, when compared to the subject Unit, is similar in net rentable square footage, number of bedrooms, number of bathrooms, overall condition, location (with respect to the subject Property based on proximity to employment centers, amenities, services and travel patterns), age, unit amenities, utility structure, and common amenities.

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

(25) Compliance Period--With respect to a building financed by Housing Tax Credits, the period of fifteen (15) taxable years, beginning with the first taxable year of the credit period pursuant to §42(i)(1) of the Code.

(26) Continuously Occupied--The same household has resided in the Unit for at least twelve (12) months.

(27) Contract--See *Commitment*.

(28) Contractor--See *General Contractor*.

(29) 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. Controlling entities of a partnership include the general partners, special limited partners when applicable, but not investor limited partners who do not possess other factors or attributes that give them Control. Controlling entities 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, 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.

(30) Contract Rent--Net rent based upon current and executed rental assistance contract(s), typically with a federal, state or local governmental agency.

(31) Credit Underwriting Analysis Report--Sometimes referred to as the "Report." A decision making tool used by the Department and Board containing a synopsis and reconciliation of the Application information submitted by the Applicant.

(32) Debt Coverage Ratio (DCR)--Sometimes referred to as the "Debt Coverage" or "Debt Service Coverage." Calculated as Net Operating Income for any period divided by scheduled debt service required to be paid during the same period.

(33) Deferred Developer Fee--The portion of the Developer Fee used as a source of funds to finance the development and construction of the Property.

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

(35) Determination Notice--A notice issued by the Department to the Development Owner of a Tax-Exempt Bond Development which specifies the Department's determination as to the amount of tax credits that the Development may be eligible to claim pursuant to §42(m)(1)(D) of the Code.

(36) Developer--Any Person entering into a contractual relationship with the Owner to provide Developer Services with respect to the Development and receiving a fee for such services and any other Person receiving any portion of a developer fee, whether by subcontract or otherwise, except if the Person is acting as a consultant with no Control and receiving less than 10 percent of the total Developer fee. The Developer may or may not be a Related Party or Principal of the Owner.

(37) Developer Fee--Compensation in amounts defined in §10.302(e)(7) of this chapter (relating to Underwriting Rules and Guidelines) paid by the Owner to the Developer for Developer Services inclusive of compensation to a Development Consultant(s), Development Team member or any subcontractor that performs Developer Services or provides guaranties on behalf of the Owner will be characterized as Developer Fee.

(38) Developer Services--A scope of work relating to the duties, activities and responsibilities for pre-development, development, design coordination, and construction oversight of the Property generally including but not limited to:

- (A) site selection and purchase or lease contract negotiation;
- (B) identifying and negotiating sources of construction and permanent financing, including financing provided by the Department;
- (C) coordination and administration of activities, including the filing of applications to secure such financing;
- (D) coordination and administration of governmental permits, and approvals required for construction and operation;
- (E) selection and coordination of development consultants including architect(s), engineer(s), third-party report providers, attorneys, and other design or feasibility consultants;
- (F) selection and coordination of the General Contractor and construction contract(s);
- (G) construction oversight;
- (H) other consultative services to and for the Owner;
- (I) guaranties, financial or credit support if a Related Party; and
- (J) any other customary and similar activities determined by the Department to be Developer Services.

(39) Development Site--The area, or if scattered site, areas on which the Development is proposed and to be encumbered by a LURA.

(40) Development--A residential rental housing project that consists of one or more buildings under common ownership and financed under a common plan which has applied for Department funds. This includes a project consisting of multiple buildings that are located on scattered sites and contain only rent restricted units. (§2306.6702)

(41) Development Consultant or Consultant--Any Person (with or without ownership interest in the Development) who provides professional or consulting services relating to the filing of an Application, or post award documents as required by the program.

(42) Development Owner (also referred to as "Owner")--Any Person, General Partner, or Affiliate of a Person who owns or proposes a Development or expects to acquire Control of a Development under a purchase contract or ground lease approved by the Department and is responsible for performing under the allocation and/or Commitment with the Department. (§2306.6702)

(43) Development Team--All Persons and Affiliates thereof that play a role in the Development, construction, rehabilitation, management and/or continuing operation of the subject Development, including any Development Consultant and Guarantor.

(44) Direct Loan--Funds provided through the HOME Program, Neighborhood Stabilization Program, or Housing Trust Fund or other program available through the Department for multifamily development. Direct Loans may also include deferred forgivable loans or other similar direct funding by the Department, regardless if it is required to be repaid. The tax-exempt bond program is specifically excluded.

(45) Economically Distressed Area--An area that is in a census tract that has a median household income that is 75 percent or less of the statewide median household income and in a municipality or, if not within a municipality, in a county that has been awarded funds under the Economically Distressed Areas Program administered by the Texas Water Development Board within the five (5) years ending at the beginning of the Application Acceptance Period. Notwithstanding all other requirements, for funds awarded to another type of political subdivision (e.g., a water district), the Development Site must be within the jurisdiction of the political subdivision.

(46) Effective Gross Income ("EGI")--The sum total of all sources of anticipated or actual income for a rental Development, less vacancy and collection loss, leasing concessions, and rental income from employee-occupied units that is not anticipated to be charged or collected.

(47) Efficiency Unit--A Unit without a separately enclosed Bedroom designed principally for use by a single person.

(48) Eligible Hard Costs--Hard Costs includable in Eligible Basis for the purposes of determining a Housing Credit Allocation.

(49) Environmental Site Assessment ("ESA")--An environmental report that conforms to the Standard Practice for Environmental Site Assessments: Phase I Assessment Process (ASTM Standard Designation: E 1527) and conducted in accordance with §10.305 of this chapter (relating to Environmental Site Assessment Rules and Guidelines) as it relates to a specific Development.

(50) Executive Award and Review Advisory Committee (also referred to as the "Committee")--The Department committee created under Texas Government Code §2306.1112.

(51) Existing Residential Development--Any Development Site which contains existing residential units at any time after the beginning of the Application Acceptance Period.

(52) Extended Use Period--With respect to an HTC building, the period beginning on the first day of the Compliance Period and ending the later of:

- (A) the date specified in the Land Use Restriction Agreement or
- (B) the date which is fifteen (15) years after the close of the Compliance Period.

(53) First Lien Lender--A lender whose lien has first priority as a matter of law or by operation of a subordination agreement or other intercreditor agreement.

(54) General Contractor (including "Contractor")--One who contracts for the construction or rehabilitation of an entire Development, rather than a portion of the work. The General Contractor hires subcontractors, such as plumbing contractors, electrical contractors, etc., coordinates all work, and is responsible for payment to the subcontractors. A prime subcontractor will also be treated as a General Contractor, and any fees payable to the prime subcontractor will be treated as fees to the General Contractor, in the scenarios described in subparagraphs (A) and (B) of this paragraph:

(A) any subcontractor, material supplier, or equipment lessor receiving more than 50 percent of the contract sum in the construction contract will be deemed a prime subcontractor; or

(B) if more than 75 percent of the contract sum in the construction contract is subcontracted to three or fewer subcontractors, material suppliers, and equipment lessors, such parties will be deemed prime subcontractors.

(55) General Partner--Any person or entity identified as a general partner in ~~articles of limited partnership a certificate of formation~~ for the partnership that is the Development Owner and that ~~has general liability for the partnership or that has~~ Controls the partnership with respect to any such general partner. Where a limited liability corporation is the legal structure employed rather than a limited partnership, the manager ~~or managing member~~ of that limited liability corporation is deemed, for the purposes of these rules, to be the functional equivalent of a general partner.

(56) Governing Body--The elected or appointed body of public or tribal officials, responsible for the enactment, implementation, and enforcement of local rules and the implementation and enforcement of applicable laws for its respective jurisdiction.

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

(58) Gross Capture Rate--Calculated as the Relevant Supply divided by the Gross Demand.

(59) Gross Demand--The sum of Potential Demand from the Primary Market Area ("PMA"), demand from other sources, and Potential Demand from a Secondary Market Area ("SMA") to the extent that SMA demand does not exceed 25 percent of Gross Demand.

(60) Gross Program Rent--Maximum rent limits based upon the tables promulgated by the Department's division responsible for compliance, which are developed by program and by county or Metropolitan Statistical Area ("MSA") or Primary Metropolitan Statistical Area ("PMSA") or national non-metro area.

(61) Guarantor--Any Person that provides, or is anticipated to provide, a guaranty for all or a portion of the equity or debt financing for the Development.

(62) HTC Development (also referred to as "HTC Property")--A Development subject to an active LURA for Housing Tax Credits allocated by the Department.

(63) HTC Property--See *HTC Development*.

(64) Hard Costs--The sum total of Building Costs, Site Work costs, Off-Site Construction costs and contingency.

(65) Historically Underutilized Businesses ("HUB")--An entity that is certified as such under Texas Government Code, Chapter 2161 by the State of Texas.

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

(67) Housing Credit Allocation--An allocation of Housing Tax Credits by the Department to a Development Owner for a specific Application in accordance with the provisions of this chapter and Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan).

(68) Housing Credit Allocation Amount--With respect to a Development or a building within a Development, the amount of Housing Tax Credits the Department determines to be necessary for the financial feasibility of the Development and its viability as a Development throughout the Affordability Period and which the Board allocates to the Development.

(69) Housing Quality Standards ("HQS")--The property condition standards described in 24 CFR §982.401.

(70) Initial Affordability Period--The Compliance Period or such longer period as shall have been elected by the Owner as the minimum period for which Units in the Development shall be retained for low-income tenants and rent restricted, as set forth in the LURA.

(71) Integrated Disbursement and Information System ("IDIS")--The electronic grants management information system established by HUD to be used for tracking and reporting HOME funding and progress and which may be used for other sources of funds as established by HUD.

(72) Land Use Restriction Agreement ("LURA")--An agreement, regardless of its title, between the Department and the Development Owner which is a binding covenant upon the Development Owner and successors in interest, that, when recorded, encumbers the Development with respect to the requirements of the programs for which it receives funds. (§2306.6702)

(73) Low-Income Unit--A Unit that is intended to be restricted for occupancy by an income eligible household, as defined by the Department utilizing its published income limits.

(74) Managing General Partner--A general partner of a partnership (or, as provided for in paragraph (545) of this subsection, its functional equivalent) that is vested with the authority to take actions that are binding on behalf of the partnership and the other partners. The term Managing General Partner can also refer to a manager or Mmanaging Mmember of a limited liability company where so designated to bind the limited liability company and its members under its Agreement or any other person that has such powers in fact, regardless of their organizational title.

(75) Market Analysis--Sometimes referred to as "Market Study." An evaluation of the economic conditions of supply, demand and rental rates conducted in accordance with §10.303 of this chapter (relating to Market Analysis Rules and Guidelines) as it relates to a specific Development.

(76) Market Analyst--A real estate appraiser or other professional familiar with the subject property's market area who prepares a Market Analysis.

(77) Market Rent--The achievable rent at the subject Property for a unit without rent and income restrictions determined by the Market Analyst or Underwriter after adjustments are made to actual rents on Comparable Units to account for differences in net rentable square footage, functionality, overall condition, location (with respect to the subject Property based on proximity to primary employment centers, amenities, services and travel patterns), age, unit amenities, utility structure, and common area amenities. The achievable rent conclusion must also consider the proportion of market units to total units proposed in the subject Property.

(78) Market Study--See *Market Analysis*.

(79) Material Deficiency--Any deficiency in an Application or other documentation that exceeds the scope of an Administrative Deficiency. May include a group of Administrative Deficiencies that, taken together, create the need for a substantial re-assessment or reevaluation of the Application.

(80) Multifamily Programs Procedures Manual--The manual produced and amended from time to time by the Department which reiterates and implements the rules and provides guidance for the filing of multifamily related documents.

(81) Net Operating Income ("NOI")--The income remaining after all operating expenses, including replacement reserves and taxes that have been paid.

(82) Net Program Rent--Calculated as Gross Program Rent less Utility Allowance.

(83) Net Rentable Area ("NRA")--The unit space that is available exclusively to the tenant and is typically heated and cooled by a mechanical HVAC system. NRA is measured to the outside of the studs of a unit or to the middle of walls in common with other units. NRA does not include common hallways, stairwells, elevator shafts, janitor closets, electrical closets, balconies, porches, patios, or other areas not actually available to the tenants for their furnishings, nor does NRA include the enclosing walls of such areas.

(84) Non-HTC Development--Sometimes referred to as Non-HTC Property. Any Development not utilizing Housing Tax Credits or Exchange funds.

(85) Notice of Funding Availability ("NOFA")--A notice issued by the Department that announces funding availability, usually on a competitive basis, for multifamily rental programs requiring Application submission from potential Applicants.

(86) Off-Site Construction--Improvements up to the Development Site such as the cost of roads, water, sewer, and other utilities to provide access to and service the Site.

(87) Office of Rural Affairs--An office established within the Texas Department of Agriculture; formerly the Texas Department of Rural Affairs.

(88) One Year Period ("1YP")--The period commencing on the date on which the Department and the Owner agree to the Qualified Contract price in writing and continuing for twelve (12) calendar months.

(89) Owner--See *Development Owner*.

(90) Person--Without limitation, any natural person, corporation, partnership, limited partnership, joint venture, limited liability company, trust, estate, association, cooperative, government, political subdivision, agency or instrumentality or other organization or entity of any nature whatsoever, and shall include any group of Persons acting in concert toward a common goal, including the individual members of the group.

(91) Persons with Disabilities--With respect to an individual, means that such person has:

- (A) a physical or mental impairment that substantially limits one or more major life activities of such individual;
- (B) a record of such an impairment; or
- (C) is regarded as having such an impairment, to include persons with severe mental illness and persons with substance abuse disorders.

(92) Physical Needs Assessment--See *Property Condition Assessment*.

(93) Place--An area defined as such by the United States Census Bureau, which, in general, includes an incorporated city, town, or village, as well as unincorporated areas know as census designated places. The Department may provide a list of Places for reference.

(94) Post Carryover Activities Manual--The manual produced and amended from time to time by the Department which explains the requirements and provides guidance for the filing of post-carryover activities, or for Tax Exempt Bond Developments, the requirements and guidance for post Determination Notice activities.

(95) Potential Demand--The number of income-eligible, age-, size-, and tenure-appropriate target households in the designated market area at the proposed placement in service date.

(96) Primary Market ("PMA")--Sometimes referred to as "Primary Market Area." The area defined by the Market Analyst as described in §10.303 of this chapter from which a proposed or existing Development is most likely to draw the majority of its prospective tenants or homebuyers.

(97) Primary Market Area--See *Primary Market*.

(98) Principal--Persons that will exercise Control [\(which includes voting board members pursuant to §10.3\(a\)\(29\) 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, special limited partners, and Principals with ownership interest;
- (B) corporations, Principals include 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; 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.

(99) Pro Forma Rent--For a restricted Unit, the lesser of the Net Program Rent or the Market Rent. For an unrestricted unit, the Market Rent. Contract Rents, if applicable, will be used as the Pro Forma Rent.

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

(101) Property Condition Assessment ("PCA")--Sometimes referred to as "Physical Needs Assessment," "Project Capital Needs Assessment," or "Property Condition Report." The PCA provides an evaluation of the physical condition of an existing Property to evaluate the immediate cost to rehabilitate and to determine costs of future capital improvements to maintain the Property. The PCA must be prepared in accordance with §10.306 of this chapter (relating to Property Condition Assessment Guidelines) as it relates to a specific Development.

(102) Qualified Contract ("QC")--A bona fide contract to acquire the non-low-income portion of the building for fair market value and the low-income portion of the building for an amount not less than the Applicable Fraction (specified in the LURA) of the calculation as defined within §42(h)(6)(F) of the Code.

(103) Qualified Contract Price ("QC Price")--Calculated purchase price of the Development as defined within §42(h)(6)(F) of the Code and as further delineated in §10.408 of this chapter (relating to Qualified Contract Requirements).

(104) Qualified Contract Request ("Request")--A request containing all information and items required by the Department relating to a Qualified Contract.

(105) Qualified Elderly Development--A Development which is operated with property-wide age restrictions for occupancy and which meets the requirements of "housing for older persons" under the federal Fair Housing Act. The age restrictions associated with or character of such a Development are sometimes referred to as "Qualified Elderly".

(106) Qualified Nonprofit Organization--An organization that meets the requirements of §42(h)(5)(C) of the Code for all purposes, and for an allocation in the nonprofit set-aside or subsequent transfer of the property, meets the requirements of Texas Government Code §2306.6706, and §2306.6729, and §42(h)(5) of the Code.

(107) Qualified Nonprofit Development--A Development which meets the requirements of §42(h)(5) of the Code, includes the required involvement of a Qualified Nonprofit Organization, and is seeking Competitive Housing Tax Credits.

(108) Qualified Purchaser--Proposed purchaser of the Development who meets all eligibility and qualification standards stated in the Qualified Allocation Plan of the year the Request is received, including attending, or assigning another individual to attend, the Department's Property Compliance Training.

(109) Reconstruction--The demolition of one or more residential buildings in an Existing Residential Development and the construction of an equal number of units or less on the Development Site. At least one unit must be reconstructed in order to qualify as Reconstruction.

(110) Rehabilitation--The improvement or modification of an Existing Residential Development through alteration, incidental addition or enhancement. The term includes the demolition of an Existing Residential Development and the Reconstruction of a Development on the Development Site, but does not include Adaptive Reuse. (§2306.004(26-a)) More specifically, Rehabilitation is the repair, refurbishment and/or replacement of existing mechanical and structural components, fixtures and finishes. Rehabilitation will

correct deferred maintenance, reduce functional obsolescence to the extent possible and may include the addition of: energy efficient components and appliances, life and safety systems; site and resident amenities; and other quality of life improvements typical of new residential Developments.

(111) Related Party--As defined in Texas Government Code, §2306.6702.

(112) Relevant Supply--The supply of Comparable Units in proposed and Unstabilized Developments targeting the same population including:

(A) the proposed subject Units;

(B) Comparable Units in another proposed development within the PMA with a priority Application over the subject, based on the Department's evaluation process described in §10.201(6) of this chapter (relating to Procedural Requirements for Application Submission) that may not yet have been presented to the Board for consideration of approval;

(C) Comparable Units in previously approved but Unstabilized Developments in the PMA; and

(D) Comparable Units in previously approved but Unstabilized Developments in the Secondary Market Area (SMA), in the same proportion as the proportion of Potential Demand from the SMA that is included in Gross Demand.

(113) Report--See *Credit Underwriting Analysis Report*.

(114) Request--See *Qualified Contract Request*.

(115) Reserve Account--An individual account:

(A) created to fund any necessary repairs for a multifamily rental housing Development; and

(B) maintained by a First Lien Lender or Bank Trustee.

(116) Right of First Refusal--An Agreement to provide a right to purchase the Property to a [Qualified Nonprofit Organization](#)~~nonprofit~~ or tenant organization with priority to that of any other buyer at a price whose formula is prescribed in the LURA.

(117) Rural Area--

(A) A Place that is located:

(i) outside the boundaries of a primary metropolitan statistical area or a metropolitan statistical area; or

(ii) within the boundaries of a primary metropolitan statistical area or a metropolitan statistical area, if the statistical area has a population of 25,000 or less and does not share a boundary with an urban area

(B) For areas not meeting the definition of a Place, the designation as a Rural Area or Urban Area is assigned in accordance with §10.204(5) of this chapter (relating to Required Documentation for Application Submission).

(118) Secondary Market (SMA)--Sometimes referred to as "Secondary Market Area." The area defined by the Qualified Market Analyst as described in §10.303 of this chapter.

(119) Secondary Market Area--See *Secondary Market*.

(120) Single Room Occupancy ("SRO")--An Efficiency Unit that meets all the requirements of a Unit except that it may, but is not required, to be rented on a month to month basis to facilitate Transitional Housing. Buildings with SRO Units have extensive living areas in common and are required to be Supportive Housing and include the provision for substantial supports from the Development Owner or its agent on site.

(121) Site Control--Ownership or a current contract or series of contracts, that meets the requirements of §10.204(10) of this chapter, that is legally enforceable giving the Applicant the ability, not subject to any legal defense by the owner, to develop a Property and subject it to a LURA reflecting the requirements of any awards of assistance it may receive from the Department.

(122) Site Work--Materials and labor for the horizontal construction generally including excavation, grading, paving, underground utilities, and site amenities.

(123) State Housing Credit Ceiling--The aggregate amount of Housing Credit Allocations that may be made by the Department during any calendar year, as determined from time to time by the Department in accordance with applicable federal law, including §42(h)(3)(C) of the Code, and Treasury Regulation §1.42-14.

(124) Sub-Market--An area defined by the Underwriter based on general overall market segmentation promulgated by market data tracking and reporting services from which a proposed or existing Development is most likely to draw the majority of its prospective tenants or homebuyers.

(125) Supportive Housing--Residential rental developments intended for occupancy by individuals or households in need of specialized and specific non-medical services in order to maintain independent living. Supportive housing developments generally include established funding sources outside of project cash flow that require certain populations be served and/or certain services provided. The developments are expected to be ~~debt free or have no permanent~~ ~~foreclosable debt or have debt that is subject to non~~ cash flow ~~repayment~~ ~~debt~~. A Supportive Housing Development financed with tax-exempt bonds with a project based rental assistance contract for a majority of the Units may be treated as Supportive Housing under all subchapters of this chapter, except Subchapter D of this chapter (relating to Underwriting and Loan Policy). The services offered generally include case management and address special attributes of such populations as Transitional Housing for homeless and at risk of homelessness, persons who have experienced domestic violence or single parents or guardians with minor children.

(126) Target Population--The designation of types of housing populations shall include those Developments that are entirely Qualified Elderly and those that are entirely Supportive Housing. All others will be considered to serve general populations without regard to any subpopulations.

(127) Tax-Exempt Bond Development--A Development requesting or having been awarded Housing Tax Credits and which receives a portion of its financing from the proceeds of tax-exempt bonds which are subject to the state volume cap as described in §42(h)(4) of the Code, such that the Development does not receive an allocation of tax credit authority from the State Housing Credit Ceiling.

(128) Tax-Exempt Bond Process Manual--The manual produced and amended from time to time by the Department which explains the process and provides guidance for the filing of a Housing Tax Credit Application utilizing Tax-Exempt Bonds.

(129) TDHCA Operating Database--Sometimes referred to as "TDHCA Database." A consolidation of recent actual income and operating expense information collected through the Department's Annual Owner Financial Certification process, as required and described in Subchapter F of this chapter (relating to Compliance Monitoring), and published on the Department's web site (www.tdhca.state.tx.us).

- (130) Third Party--A Person who is not:
- (A) an Applicant, General Partner, Developer, or General Contractor; or
 - (B) an Affiliate to the Applicant, General Partner, Developer or General Contractor; or
 - (C) anyone receiving any portion of the administration, contractor or Developer fees from the Development; or
 - (D) any individual that is an executive officer or member of the governing board or has greater than 10 percent ownership interest in any of the entities are identified in subparagraphs (A) - (C) of this paragraph.
- (131) Total Housing Development Cost--The sum total of the acquisition cost, Hard Costs, soft costs, Developer fee and General Contractor fee incurred or to be incurred through lease-up by the Development Owner in the acquisition, construction, rehabilitation, and financing of the Development.
- (132) Transitional Housing--A Supportive Housing development that includes living Units with more limited individual kitchen facilities and is:
- (A) used exclusively to facilitate the transition of homeless individuals and those at-risk of becoming homeless, to independent living within twenty-four (24) months; and
 - (B) is owned by a Development Owner that includes a governmental entity or a qualified non-profit which provides temporary housing and supportive services to assist such individuals in, among other things, locating and retaining permanent housing. The limited kitchen facilities in individual Units must be appropriately augmented by suitable, accessible shared or common kitchen facilities.
- (133) Underwriter--The author(s) of the Credit Underwriting Analysis Report.
- (134) Uniform Physical Condition Standards ("UPCS")--As developed by the Real Estate Assessment Center of HUD.
- (135) Unit--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.
- (136) Unit Type--Units will be considered different Unit Types if there is any variation in the number of bedroom, bathrooms or a square footage difference equal to or more than 120 square feet. For example: A two Bedroom/one bath Unit is considered a different Unit Type than a two Bedroom/two bath Unit. A three Bedroom/two bath Unit with 1,000 square feet is considered a different Unit Type than a three Bedroom/two bath Unit with 1,200 square feet. A one Bedroom/one bath Unit with 700 square feet will be considered an equivalent Unit Type to a one Bedroom/one bath Unit with 800 square feet.
- (137) Unstabilized Development--A development with Comparable Units that has been approved for funding by the Department's Board of Directors or is currently under construction or has not maintained a 90 percent occupancy level for at least twelve (12) consecutive months following construction completion. A development may be deemed stabilized by the Underwriter based on factors relating to a development's lease-up velocity, Sub-Market rents, Sub-Market occupancy trends and other information available to the Underwriter. The Market Analyst may not consider such development stabilized in the Market Study.

(138) Urban Area--A Place that is located within the boundaries of a primary metropolitan statistical area or a metropolitan statistical area other than a Place described by paragraph (116)(A)(ii) of this subsection. For areas not meeting the definition of a Place, the designation as a Rural Area or Urban Area is assigned in accordance with §10.204(5) of this chapter.

(139) U.S. Department of Agriculture ("USDA")--Texas Rural Development Office (TRDO) serving the State of Texas.

(140) U.S. Department of Housing and Urban Development (HUD)-regulated Building--A building for which the rents and utility allowances of the building are reviewed by HUD.

(141) Utility Allowance--The estimate of tenant-paid utilities made in accordance with Treasury Regulation, §1.42-10 and §10.614 of this chapter (relating to Utility Allowances).

(142) Work Out Development--A financially distressed Development for which the Owner and/or a primary financing participant is seeking a change in the terms of Department funding or program restrictions.

(b) Request for Staff Determinations. Where the definitions of Development, Development Site, New Construction, Rehabilitation, Reconstruction, Adaptive Reuse, and Target Population fail to account fully for the activities proposed in an Application, an Applicant may request and Department staff may provide a determination to an Applicant explaining how staff will review an Application in relation to these specific terms and their usage within the applicable rules. Such request must be received by the Department prior to submission of the pre-application (if applicable to the program) or Application (if no pre-application was submitted). Staff's determination may take into account the purpose of or policies addressed by a particular rule or requirement, materiality of elements, substantive elements of the development plan that relate to the term or definition, the common usage of the particular term, or other issues relevant to the rule or requirement. All such determinations will be conveyed in writing. If the determination is finalized after submission of the pre-application or Application, the Department may allow corrections to the pre-application or the Application that are directly related to the issues in the determination. It is an Applicant's sole responsibility to request a determination and an Applicant may not rely on any determination for another Application regardless of similarities in a particular fact pattern. For any Application that does not request and subsequently receive a determination, the definitions and applicable rules will be applied as used and defined herein. Such a determination is intended to provide clarity with regard to Applications proposing activities such as: scattered site development or combinations of construction activities (e.g. Rehabilitation with some New Construction). An Applicant may appeal a determination for their Application if the determination provides for a treatment that relies on factors other than the explicit definition. A Board determination or a staff determination not timely appealed cannot be further appealed or challenged.

§10.4.Program Dates. This section reflects key dates for all multifamily development programs except for the Competitive Housing Tax Credit Program. A program calendar for the Competitive Housing Tax Credit Program is provided in Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan). Applicants are strongly encouraged to submit the required items well in advance of established deadlines. Non-statutory deadlines specifically listed in this section may be extended for good cause by the Executive Director for a period of not more than five (5) business days provided; however, that the Applicant requests an extension prior to the date of the original deadline. Extensions relating to Administrative Deficiency deadlines may only be extended if documentation needed to resolve the item is needed from a Third Party.

(1) Full Application Delivery Date. The deadline by which the Application must be submitted to the Department. For Direct Loan Applications, such deadline will generally be defined in the applicable NOFA and for Tax-Exempt Bond Developments, such deadlines are more fully explained in §10.201(2) of this chapter (relating to Procedural Requirements for Application Submission).

(2) Notice to Submit Lottery Application Delivery Date. No later than December 12, 2014, Applicants that receive an advance notice regarding a Certificate of Reservation must submit a notice to the Department, in the form prescribed by the Department.

(3) Applications Associated with Lottery Delivery Date. No later than December 19, 2014, Applicants that participated in the Texas Bond Review Board Lottery must submit the complete tax credit Application to the Department.

(4) Administrative Deficiency Response Deadline. Such deadline shall be five (5) business days after the date on the deficiency notice without incurring a penalty fee pursuant to §10.901 of this chapter (relating to Fee Schedule).

(5) Third Party Report Delivery Date (Environmental Site Assessment (ESA), Property Condition Assessment (PCA), Appraisal (if applicable), Market Analysis and the Site Design and Development Feasibility Report). For Direct Loan Applications, the Third Party reports must be submitted with the Application in order for it to be considered a complete Application. For Tax-Exempt Bond Developments, the Third Party Reports must be submitted no later than seventy-five (75) calendar days prior to the Board meeting at which the tax credits will be considered. The seventy-five (75) calendar day deadlines are available on the Department's website.

(6) Resolutions Delivery Date. Resolutions required for Tax-Exempt Bond Developments or Direct Loan Applications must be submitted no later than fourteen (14) calendar days before the Board meeting at which consideration of the award will occur.

(7) Challenges to Neighborhood Organization Opposition Delivery Date. No later than forty-five (45) calendar days prior to the Board meeting at which consideration of the award will occur.

Preamble, Reasoned Response, and New Rule

The Texas Department of Housing and Community Affairs (the “Department”) adopts new 10 TAC, Chapter 10 Uniform Multifamily Rules, Subchapter B, §10.101 concerning Site and Development Restrictions and Requirements, with changes to the proposed text as published in the September 19, 2014, issue of the *Texas Register* (39 TexReg 7405).

REASONED JUSTIFICATION. The Department finds that the adoption of the section will result in a more consistent approach to governing multifamily activity and to the awarding of funding or assistance through the Department and to minimize repetition. The comments and responses include both administrative clarifications and corrections to the Uniform Multifamily Rule based on the comments received. After each comment title, numbers are shown in parentheses. These numbers refer to the person or entity that made the comment as reflected at the end of the reasoned response. If comment resulted in recommended language changes to the Uniform Multifamily Rule as presented to the Board in September, such changes are indicated.

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS.

Public comments were accepted through October 20, 2014, with comments received from (4) Churchill Residential, (6) City of Fort Worth, (13) Rural Rental Housing Association (RRHA) of Texas, (15) DMA Development Company, LLC, (17) Coats Rose, (18) National Church Residences, (19) Texas Association of Affordable Housing Providers (TAAHP), (20) Alyssa Carpenter, (21) Randy Plitt, (23) Sallie Burchett, (24) Cynthia Bast, (25) Greater East End District, (26) Sarah Andre, (27) City of Houston, (32) Daniel & Beshara, (33) Foundation Communities, (34) New Hope Housing, (36) S Anderson Consulting, (41) Avenue CDC, (42) Local Initiatives Support Coalition (LISC), (45) Houston Housing Authority, (46) Texas Association of Community Development Corporations (TACDC), (47) National Housing Trust, (48) Texas Appleseed and Texas Low Income Housing Information Service, (49) Inclusive Communities Housing Development Corporation, (50) Bonner Carrington, (51) RealTex Development, (52) Roundstone Development.

13. §10.101(a)(1) – Subchapter B – Floodplain (15), (26), (33), (51)

COMMENT SUMMARY: Commenters (15), (26), (33), (51) requested clarification to the added language in this section, specifically that only developments located in the floodplain must be able to obtain flood insurance rather than having it be a requirement for all developments.

STAFF RESPONSE: Staff recommends removal of the added language regarding developments being able to obtain flood insurance.

14. §10.101(a)(2) – Subchapter B – Mandatory Community Assets (15), (33), (34)

COMMENT SUMMARY: Commenter (15) expressed support for the addition of proximity to public transportation as a mandatory amenity specific to Supportive Housing Developments, but recommended reducing the required distance to ½ of a mile.

Commenters (33), (34) also expressed support for the proximity to public transportation; however, did not believe being within a mile of those assets listed under (U) – (Y) as critical. Commenters (33), (34) believed that what is critical for Supportive Housing Developments is

access to services, which are mostly delivered on-site by partnerships with qualified providers. In cases where they are not, then a bus stop located within walking distance is what's important because it gives residents easy access to their medical provider. Moreover, commenters (33), (34) stated that a negative implication of the addition of these assets is that while the development may be in proximity to one of those assets listed in (U) – (Y) they may not have public transportation assistance to the other services.

STAFF RESPONSE: In response to commenter (15) staff agrees and has changed the required distance for proximity to public transportation to ½ mile as reflected in the following modification:

“(2) Mandatory Community Assets. Development Sites must be located within a one mile radius (two-mile radius for Developments located in a Rural Area), unless otherwise required by the specific asset as noted below, of at least six (6) community assets listed in subparagraphs (A) – ~~(Y)~~(T) of this paragraph. Supportive Housing Developments located in an Urban Area must ~~be located within a one mile radius of at least one of the community assets listed~~meet the requirement in subparagraphs ~~(T)–(Y)~~(T) of this paragraph. Only one community asset of each type listed will count towards the number of assets required. A map must be included identifying the Development Site and the location of each of the community assets by name. All assets must exist or, if under construction, must be under active construction, post pad (e.g. framing the structure) by the date the Application is submitted:

...~~(T)~~ Development Site is located within ½ mile of a designated public transportation stop at which public transportation (not including “on demand” transportation) stops on a regular, scheduled basis; a site's eligibility for on demand transportation ~~or transportation provided directly or indirectly by the Development Owner does~~ not meet this requirement. However, accessible transportation provided at no cost to the tenant when the Property Management Office is open, such as cab vouchers or a specialized van on-site, to a bus or other public transit stop, does qualify.

~~(U) Centers for treatment of alcohol and/or drug dependency;~~

~~(V) Centers for treatment of PTSD and other significant psychiatric or psychological conditions;~~

~~(W) Centers providing therapeutic and/or rehabilitative services relating to mobility, sight, speech, cognitive, or hearing impairments;~~

~~(X) Clinics providing medical and/or psychological and/or psychiatric assistance for persons of limited financial means; or~~

~~(Y) Other assistive services designed to support the households in which one or more household members have disabilities”~~

In response to commenters (33), (34) regarding the additional community assets required for Supportive Housing Developments staff believes these assets are better suited under the Tenant Supportive Services and recommends they be added as a 1-point option under §10.101(b)(7).

15. §10.101(a)(3) – Subchapter B – Undesirable Site Features (13), (19), (20), (24), (25), (32), (36), (41), (45), (48), (49), (50), (51)

COMMENT SUMMARY: Commenter (13) indicated the state offices of Rural Development and HUD may not be able to certify to Fair Housing at the state level which will require a letter from the national office. It may not be possible to get a letter indicating the Rehabilitation of the existing units is consistent with the Fair Housing Act in a timely manner, resulting in the disqualification of the HTC application. Therefore, commenter (13) recommended the changes as noted below. Similarly, commenter (45) expressed concerns with the timing associated with having to obtain such a letter from a federal agency and suggested that because HUD has issued a proposed Affirmatively Furthering Fair Housing rule that enacts certain portions of the Fair Housing Act, the Department should wait until such rule is final to avoid the risk of implementing a provision that could be inconsistent with federal regulations. Moreover, commenter (45) indicated that since addressing impediments to fair housing can vary from locality to locality, if any letter is to be required, then it should come from the local jurisdiction. Commenter (45) also requested the exemption for rehabilitation developments under this section should also be provided to reconstruction developments to eliminate an apparent preference for rehabilitation over reconstruction in the rules and to also prevent the loss of affordable housing inventory.

“(3) Undesirable Site Features. Development Sites within the applicable distance of any of the undesirable features identified in subparagraphs (A) - (J) of this paragraph will be considered ineligible. Rehabilitation (excluding Reconstruction) Developments with ongoing and existing federal assistance from HUD or USDA may be granted an exemption by the Board. Such an exemption must be requested at the time of or prior to the filing of an Application, ~~and must include a letter from the fair housing or civil rights office of the existing federal oversight entity indicating that the Rehabilitation of the existing units is consistent with the Fair Housing Act.~~ The distances are to be measured from the nearest boundary of the Development Site to the undesirable feature...”

Commenter (48) expressed support for the requirement that rehabilitation developments with existing or ongoing federal assistance from HUD or USDA demonstrate they are consistent with the Fair Housing Act before the Board exempts such development from any of applicable undesirable site features. Moreover, the additional features under (D) and (E) of this section are applauded by commenter (48) since it will make it easier for developers to avoid using resources to propose such developments and ensure the health and safety of the residents.

Commenter (19) recommended some modifications to the undesirable site features noted below and commenters (25), (41) agreed with the modification to item (D) regarding the use of a one mile radius. Commenter (45) indicated use of a 2 mile radius seems arbitrary and appears to be double the general HUD standard.

“(C) Development Sites located within ~~300~~⁵⁰⁰ feet of heavy industrial or dangerous uses such as manufacturing plants, fuel storage facilities (excluding gas stations), refinery blast zones, etc.;

(D) Development Sites located within one ~~(1)~~² miles of potentially hazardous uses such as nuclear plants, large refineries (e.g. oil refineries producing more than 100,000 barrels of ~~crude~~ oil daily), ~~or large oil field operations;~~”

Commenter (50) agreed with those changes to (C) as proposed by commenters (19), (25) and also suggested “manufacturing plants” be removed as an example of heaving industrial because it is too varied across their trade. Commenter (41) also noted the increased proximity to heavy industrial and expressed concern over the Department’s inability to provide a good definition of what constitutes heavy industrial. Handling such proposed sites on a case-by-case basis, according to commenter (41), is time consuming for staff and makes land purchase negotiations difficult.

Moreover, commenter (19) recommended the following undesirable site feature be deleted and further suggested the HUD requirements should be used as the standard for what is acceptable with regards to pipelines.

~~“(I) Development Sites that contain one or more pipelines, situated underground or aboveground, which carry highly volatile liquids, hazardous substances, acutely hazardous materials, or hazardous wastes, unless the pipeline is a natural gas line which is used only to supply natural gas to the Development Site or neighborhood; or”~~

Commenters (20), (36) expressed that item (D) under this section regarding sites located in proximity to potentially hazardous uses is very broad and could invite challenges. Commenters (20), (36) also expressed concerns regarding item (I), specifically that any pipeline located on a site would render the site unacceptable due to the “unless the pipeline is a natural gas” language. Commenters (20), (36) question why the Department would completely eliminating such sites if HUD does not consider underground pipelines that transmit hazardous substances to be a hazard if they comply with applicable safety standards. Should this item remain, commenters (20), (36) recommended it only pertain to sites that carry highly volatile liquids (HVLs). Similar concerns regarding pipelines were expressed by commenter (24), specifically, to the extent pipelines are in compliance with published regulations and the depth at which pipelines are placed are permitted in accordance with industry practice, state or local regulations and are therefore considered non-hazardous; the Department should not preclude such sites from being eligible.

Commenters (20), (36) requested clarification regarding “fuel storage facilities” stating it could be anything from a gas station to farms to businesses that store propane for their own use on the premises and further stated it would be helpful to describe what type of fuels would be considered dangerous and how much defines a “facility.” Moreover, commenters (20), (36) suggested that in cases where a property encompasses many acres but the fuel storage is contained on a small section of the site, this item be revised to measure from the proposed Development Site to the actual fuel storage tanks.

Commenter (51) recommended the allowable distance for a Development Site to be located from a railroad remain at 300 feet instead of the proposed 100 feet and commenter (26) requested the Department use 300 feet instead of 500 feet as the standard for undesirable features so that more sites can be eligible.

Commenters (32), (49) expressed support for the changes proposed in this section.

STAFF RESPONSE: In response to Commenters (13) and (45), staff is not recommending removing the requirement for a letter from HUD or any other federal oversight entity with respect to this rule. This is only required if an applicant is proposing a site that would otherwise

be ineligible, so it is not a threshold requirement in general but a threshold for an exemption from the rule. Staff also notes that Commenter (48) is in favor of the requirement.

In response to Commenters (19), (25), (41), and (45) regarding subparagraphs (C) and (D) of this section, staff is not recommending decreasing the threshold for proximity to heavy industrial use; staff has found that 300 feet often equates to uses directly across the street. Concerning clarifying language, staff may address “heavy industrial use” in the Frequently Asked Questions but is not recommending a change in the rule. In general, staff can look to zoning to determine heavy industrial use, but because there are many scenarios where zoning is not a factor, staff will continue to evaluate on a case-by-case basis. However, staff is recommending implementation of the comments suggesting the exception for gas stations in subparagraph (C) and the deletion of “large oil fields” in subparagraph D.

In response to Commenters (20) and (36), staff recommends removing some of the language regarding pipelines carrying hazardous materials. Staff recommends the following revision:

- “(A) Development Sites located within 300 feet of junkyards;
- (B) Development Sites located within 100 feet of active railroad tracks, unless the Applicant provides evidence that the city/community has adopted a Railroad Quiet Zone or the railroad in question is commuter or light rail;
- (C) Development Sites located within 500 feet of heavy industrial or dangerous uses such as manufacturing plants, fuel storage facilities (excluding gas stations), refinery blast zones, etc.;
- (D) Development Sites located within 2 miles of potentially hazardous uses such as nuclear plants; or large refineries (e.g. oil refineries producing more than 100,000 barrels of crude oil daily); or large oil field operations;
- (E) Development Sites located within 300 feet of a solid waste or sanitary landfills;
- (F) Development Sites in which the buildings are located within the easement of any overhead high voltage transmission line, support structures for high voltage transmission lines, radio antennae, satellite towers, or other similar structures. This does not apply to local service electric lines and poles;
- (G) Development Sites in which the buildings are located within the accident zones or clear zones for commercial or military airports;
- (H) Development Sites located within 300 feet of a sexually-oriented business. For purposes of this paragraph, a sexually-oriented business shall be defined as stated in Local Government Code, §243.002;
- (I) Development Sites that contain one or more pipelines, situated underground or aboveground, which carry highly volatile liquids, ~~hazardous substances, acutely hazardous materials, or hazardous wastes, unless the pipeline is a natural gas line which is used only to supply natural gas to the Development Site or neighborhood~~; or
- (J) Any other Site deemed unacceptable, which would include, without limitation, those with exposure to an environmental factor that may adversely affect the health and safety of the residents and which cannot be adequately mitigated.”

16. §10.101(a)(4) – Subchapter B – Undesirable Neighborhood Characteristics (6), (13), (15), (17), (19), (20), (21), (24), (25), (26), (32), (34), (36), (41), (42), (45), (46), (48), (49), (50), (52)

COMMENT SUMMARY: Commenter (6) stated that by defining neighborhoods as undesirable it further stigmatizes the residents of the area and perpetuates the negative stereotypes associated with people of lesser means. Commenter (6) further noted that many areas of Fort Worth have poverty rates above 35% and would therefore be limited in locations for affordable housing that need it. Commenter (6) also stated that the required disclosure and associated fee creates an additional obstacle for an applicant to overcome in order to receive an award in a revitalization area and recommended that such disclosure and review should also be necessary for developments in a high opportunity area to ensure that all residents will have access to employment and services and that the location is suitable for the residents. Commenter (6) requested the undesirable neighborhood characteristics be removed.

Commenters (25), (41), (42), (46) questioned the use of 35% as the appropriate poverty level when HUD’s own definition of concentrated poverty is 40%. Commenter (32) expressed support for the eligibility restrictions based on conditions of slum and blight and reflected in (A) – (D) of this section; however, suggested the use of 35% as a poverty indicator needs further review to prevent additional concentration of HTC units in racially concentrated areas of poverty, particularly in the Dallas area. Commenter (32) articulated that 33% of general population HTC units in Dallas are already disproportionately concentrated in census tracts with 35% and higher poverty rates. Commenter (32) further stated that the presence of such units in high poverty tracts has not led to a decrease in poverty or an improvement in the slum and blight in those neighborhoods.

Commenter (45) supports the goal to de-concentrate poverty but suggests the goals of preservation and de-concentration should be separate and independent goals, neither of which should be contingent upon a letter from a federal agency. Commenter (45) expressed concerns with the timing associated with having to obtain the letter from a federal agency and suggested that because HUD has issued a proposed Affirmatively Furthering Fair Housing rule that enacts certain portions of the Fair Housing Act, the Department should wait until such rule is final to avoid the risk of implementing a provision that could be inconsistent with federal regulations. Moreover, commenter (45) indicated that since addressing impediments to fair housing can vary from locality to locality, if any letter is to be required, then it should come from the local jurisdiction. Commenter (45) suggested the following revisions to the goals listed in this section:

“(i) Preservation of existing occupied affordable housing units that are subject to existing federal rent or income restrictions, ~~that will not result in a further concentration of poverty and the Application includes a letter from the fair housing or civil rights office of the existing federal oversight entity indicating that the Rehabilitation of the existing units is consistent with the Fair Housing Act;~~

(ii) Development of affordable housing units that will achieve the goal of de-concentration of poverty;Improvement of housing opportunities for low income households and members of protected classes in areas that do not have high concentrations of existing affordable housing; or”

Commenter (45) articulated that §10.101(a)(4)(iii) of this section relating to recent community investment should include proposed future plans for investment in the community because looking only at past investment does not give a clear picture of future commitments that will be coming.

Commenters (15), (19), (20), (21), (25), (34), (36), (41), (42), (45), (46), (50), (52) expressed concerns with using Neighborhood Scout because the algorithm used to determine a crime index score is not transparent and cannot be evaluated for accuracy; therefore, commenter (15) suggested another, more transparent methodology that uses only violent crimes be used. Similarly, commenters (19), (21), (26) suggested that a ratio of violent crimes (only) to the population or violent crimes per 1,000 people be used instead. Commenters (20), (36) indicated that use of Neighborhood Scout does not consider differences between urban, rural and border areas and suggested that perhaps a quartile system based on regions or MSA and county areas similar to the opportunity index instead. Commenter (25) suggested the determination of whether a neighborhood is adversely impacted by crime should be handled on a case-by-case basis by the Department. Commenters (20), (36) also requested consideration for any “high opportunity” tracts that might exhibit the characteristics as mentioned under item (B) of this section. Commenter (41) suggested publicly available data should be used and then only those neighborhoods where the crime rate is significantly higher than the city average should be used. Commenter (13) stated that because Neighborhood Scout has not completed reporting of their Texas data it makes it difficult for developers to select a site in a timely manner. Commenters (13), (50) recommend the Department revert to the 2014 language of reporting crime hot spots.

~~“(ii) The Development Site is located in a census tract that has a crime index of 40 or less, according to neighborhoodscout.com, locally known presence of gang activity, prostitution, drug trafficking, or other significant criminal activity that rises to the level of frequent police reports;”~~

Commenters (17), (19), (34), (45) recommended the Neighborhood Scout crime index score be removed and stated that some of the best neighborhoods in Austin and other cities around the state score very poorly using that scoring system. Commenter (17) further suggested the Department abandon the concept of avoiding neighborhoods because of crime especially since it is under no legal obligation to cling to that definition of “undesirable.” Commenter (17) also stated that for a site in a high-crime area, evidence that the development will satisfy the obligation of affirmatively furthering fair housing must be submitted to the Department; however, HUD actually relies on evidence of high crime as an eligibility threshold to participate in the program thus reflecting that high crime is the reason to target a neighborhood with development funding. According to commenter (17), many high crime neighborhoods are places where children are currently living in substandard housing and a prohibition on using HTCs to remedy those substandard living conditions is itself a fair housing issue. Commenter (17) suggested that if crime in neighborhoods remains an eligibility issue, then the HUD definition in the Choice Neighborhood NOFA focusing on Part I violent crime should be used instead of the Neighborhood Scout index. Commenter (52) suggested that as an alternative to using Neighborhood Scout, CityData.com be used because it provides the ability to see how the crime for an area develops over time while Neighborhood Scout fails to show how an area may have decreased crime rates from the past.

Commenter (32) expressed support for the use of a crime indicator that would require further review for a site to be eligible and specifically felt the use of Neighborhood Scout is appropriate

and, depending on information reported, additional due diligence may be needed on the part of the Department. Commenter (32) suggested use of an indicator lower than 40 in order to mitigate objections to the use of any index or indicator and also suggested high crime rates based on police department reports be used as the need for additional analysis. Commenter (45) suggested instead of using Neighborhood Scout, recent data as provided by the local police department or law enforcement agency be used. If there was a challenge to the site based on crime, it seems administratively easier for the Department to request a letter from local law enforcement if the site is near a hot spot, according to commenter (45).

Commenter (49) expressed support to the changes in this section and stated that such changes establish neighborhood characteristics that would (and should) trigger closer examination by the Department to ensure the use of public resources is consistent with preserving and/or expanding affordable housing in decent and safe neighborhoods with opportunities for educational excellence and employment. Commenter (48) also expressed support for this section in that such characteristics and further review (if triggered) are important and necessary in order for the Department to comply with its fair housing and civil rights obligations and for the Board to determine whether an investment is the best use of funding sources in alignment with the Department's and State's goals.

Conversely, commenter (42) expressed that although there appears to be a favoritism of developments in high-income areas, the Department is urged to keep in mind that most of the people in the communities of which they serve are working families looking for quality, affordable housing with a support system which allows them to work, live their lives, and care for their families. The access to people and organizations willing and able to support the families may not always equate high income areas with high opportunity, as further articulated by commenter (42).

Commenter (32) supported the environmental indicators listed in (B)(iii) of this section and suggested the Department also include the database of TCEQ voluntary cleanup sites because many hazardous areas avoid listing on the federal databases by entering the TCEQ Voluntary Cleanup program. Commenter (32) also expressed that there is no reason not to subject sites located within .5 mile from such hazardous areas to the heightened review provided in §10.101(a)(4)(C) and (D) of this section.

Commenter (41) noted that in many neighborhoods in Houston it will be common for the Phase I ESA to uncover one or more of the listings under (B)(iii) of this section and further suggested the discovery of a listing within the ASTM- required search distances from the approximate site boundaries does not mean the site has any environmental issues at all. Commenter (41) further stated that any of the issues in this section will trigger an extensive review by the Department without sufficient time and resources to properly conduct such review.

Commenter (24) recommended the following modification to clarify the intent of this section:

“(A) If the Development Site has any of the characteristics described in subparagraph (B) of this paragraph, the Application may be determined ineligible and the Applicant must disclose the presence of such characteristics to the Department. Disclosure of undesirable characteristics must be made at the time the Application is submitted to the Department. ~~An~~Alternatively, an Applicant may choose to disclose the presence of such characteristics at the time the pre-

application (if applicable) is submitted to the Department or after inducement (for Tax-Exempt Bond Developments). ~~but~~ Disclosure must be accompanied by the Undesirable Neighborhood Characteristic Disclosure Fee pursuant to §10.901(21) of this chapter (relating to Fee Schedule).”

STAFF RESPONSE: In response to Commenter (6), staff believes this is an important aspect of the rule and is not recommending deleting it. While location in census tracts with a high level of poverty does trigger a requirement for disclosure, it does not equate to automatic ineligibility. Development sites that are found to be part of a comprehensive community revitalization may be found eligible. In addition, the rule was restructured so that staff can focus site visits on potentially ineligible sites; sites located in high opportunity areas are generally encouraged by the Department and must already meet the requirements of §10.101(a)(2) related to Mandatory Community Assets.

In response to Commenters (25), (41), (42), and (46), staff agrees that a 40% poverty rate in the census tracts is an appropriate threshold for disclosure and is recommending the change. Staff appreciates the support expressed by Commenter (32) regarding use of the threshold and the rule in general.

In response to Commenter (45), as with the Undesirable Site Features rule, staff is not recommending deleting the requirement for a letter from HUD or any other federal oversight entity with respect to this rule. This is only required if an applicant is proposing a site that would otherwise be ineligible, so it is not a threshold requirement in general but a threshold for the Board to consider should staff recommend a site be found ineligible. With respect to the consideration of planned community investment, the Board could consider such factors as well; however, the rule is written to encourage rehabilitation in areas that have already seen some investment and are not dependent upon the proposed transaction to act as a catalyst to that investment.

In response to the many comments related to the use of the crime index, staff is recommending a revision to the rule consistent with the suggestions of Commenters (17), (19), (21), and (26) to rely on violent crimes per 1,000 persons and provide various options for documenting compliance with this measure. Although Commenter (17) prefers elimination of a crime measure altogether, the commenter suggests an alternative is based on a threshold used in a HUD program. Staff’s recommended change is based on this suggestion. This change is also responsive to many other commenters (including (15), (19), (20), (21), (25), (34), (36), (41), (42), (45), (46), (50), and (52)) in that it provides additional flexibility in the data source, removes the crime index, only incorporates violent crime, and applies only to Urban Areas where data is more readily available. Staff feels it is important for applicants to perform an initial evaluation of their sites with respect to crime, and this rule encourages that evaluation. Staff also wants to provide some relatively objective benchmarks and examples of evidence since there was significant comment during the previous application cycle regarding the subjectivity of the language last year. Applicants are also encouraged to talk with local officials and utilize research data. If the results of that research indicate crime below the applicable threshold, then no disclosure is necessary. To the extent crime is higher than the threshold, other mitigating factors may be considered. The crime rate threshold does not result in an application being ineligible but triggers a more substantive review of relevant information concerning the neighborhood.

Staff appreciates those commenters that support the rule.

In response to Commenter (42), staff recognizes that there is a need for preserving affordable housing, and the overall allocation of tax credits does still address that need, particularly through the At-Risk Set-Aside.

In response to Commenter (32) regarding an additional environmental factor related to sites in proximity to those that participate in the TCEQ voluntary cleanup program, staff agrees and is recommending the addition to the rule.

In response to Commenter (41), staff finds the environmental factors appropriate and does not recommend any changes. In addition, even without the reconstructed rule, staff was able to visit a number of proposed sites in the Houston area last year and is confident in the capacity to perform such evaluations again.

In response to Commenter (24), staff does not want to give the impression that sites will be found ineligible based solely on poverty rates, criminal activity, and/or environmental factors; therefore, staff is not in favor of adding the suggested language. Staff emphasizes that disclosure of these features is only a tool for staff to be able to focus site visits and subsequently make determinations regarding eligibility. However, staff is recommending a slight revision to clarify when disclosure should occur.

Staff is recommending the following revision to §10.101(a)(4) Undesirable Neighborhood Characteristics, which incorporates the comments and suggestions of many of the commenters:

“(A) If the Development Site has any of the characteristics described in subparagraph (B) of this paragraph, the Applicant must disclose the presence of such characteristics to the Department. Disclosure of undesirable characteristics must be made at the time the Application is submitted to the Department. Alternatively, An Applicant may choose to disclose the presence of such characteristics at the time the pre-application (if applicable) is submitted to the Department or after inducement (for Tax-Exempt Bond Developments) but must be accompanied by the Undesirable Neighborhood Characteristic Disclosure Fee pursuant to §10.901(21) of this chapter (relating to Fee Schedule). Should staff determine that the Development Site has any of the characteristics described in subparagraph (B) of this paragraph and such characteristics were not disclosed, the Application may be subject to termination. Termination due to non-disclosure may be appealed pursuant to §10.902 of this chapter (relating to Appeals Process (§2306.0321; §2306.6715)). The presence of any characteristics listed in subparagraph (B) of this paragraph will prompt staff to perform an assessment of the Development Site and neighborhood, which may include a site visit, and which will include, where applicable, a review as described in subparagraph (C) of this paragraph. The assessment of the Development Site and neighborhood will be presented to the Board in a report, with a recommendation with respect to the eligibility of the Development Site. Should the Board uphold staff’s recommendation or make a determination that a Development Site is ineligible based on staff’s report, the termination of the Application resulting from such Board action is not subject to appeal. In order for the Development Site to be found eligible by the Board, despite the existence of undesirable neighborhood characteristics, the use of Department funds at the Development Site must be

consistent with achieving at least one of the goals in clauses (i) – (iii) of this subparagraph.

(i) Preservation of existing occupied affordable housing units that are subject to existing federal rent or income restrictions, that will not result in a further concentration of poverty and the Application includes a letter from the fair housing or civil rights office of the existing federal oversight entity indicating that the Rehabilitation of the existing units is consistent with the Fair Housing Act;

(ii) Improvement of housing opportunities for low income households and members of protected classes in areas that do not have high concentrations of existing affordable housing; or

(iii) Provision of affordable housing in areas where there has been significant recent community investment and evidence of new private sector investment; and

(iv) The Board may consider whether or not funding sources requested for the Development Site would otherwise be available for activities that would more closely align with the Department’s and state’s goals.

(B) The existence of any one of the three undesirable neighborhood characteristics in clauses (i) – (iii) of this subparagraph must be disclosed by the Applicant and will prompt further review as outlined in subparagraph (C) of this paragraph:

(i) The Development Site is located within a census tract that that has a poverty rate above 3540 percent for individuals (or 55 percent for Developments in regions 11 and 13).

(ii) The Development Site is located in an Urban Area and the rate of Part I violent crimes is greater than 18 per 1,000 persons (annually) for the immediately surrounding area. “Immediately surrounding area” for the purposes of this provision is defined as the census tract within which the Development Site is located, the police beat within which the Development Site is located for a city’s police department, or within a one half mile radius of the Development Site. The data used must include incidents recorded during the entire 2013 or 2014 calendar year but may include up to 36 consecutive months of data. Sources such as the written statement from a local police department or data from neighborhoodscout.com may be used to document compliance with this provision-a census tract that has a crime index of 40 or less, according to neighborhoodscout.com;

(iii) The Environmental Site Assessment for the Development Site indicates any facilities listings within the ASTM-required search distances from the approximate site boundaries on any one of the following databases:

(I) U.S. Environmental Protection Agency (“USEPA”) National Priority List (“NPL”);

Comprehensive Environmental Response, Compensation, and Liability Information System (“CERCLIS”);
(II) Federal Engineering and/or Institutional Controls Registries (“EC”);
Resource Conservation and Recovery Act (“RCRA”) facilities associated with treatment, storage, and disposal of hazardous materials that are undergoing corrective action (“RCRA CORRACTS”); ~~or~~
(III) RCRA Generators/Handlers of hazardous waste; or
(IV) State voluntary cleanup program.”

17. §10.101(b)(4) – Subchapter B – Mandatory Development Amenities (4), (18)

COMMENT SUMMARY: Commenter (4) recommended the requirement for one parking space per unit for elderly developments be reduced to .75 per unit which is more realistic considering that at least 25% of these tenants do not have cars and space is needed to add garages and carports in order to meet resident demand.

Commenter (18) recommended central air not be required for rehabilitation developments for all efficiency and one-bedroom units with less than 600 square feet that do not currently have central air. According to commenter (18), a packaged terminal air conditioned (PTAC) unit is sufficient to adequately and comfortably heat and cool a 600 square foot unit and can be adapted successfully for both efficiency and one-bedroom units and further stated the cost to replace a PTAC system with central air is cost prohibitive in an existing project when such funds could be spent more effectively and have greater impact elsewhere.

STAFF RESPONSE: In response to Commenter (4), staff is not recommending a change to the parking requirement. The commenter implies that garages and carports are in high demand, suggesting that the residents do use the parking spaces. The Department wants to ensure that this needed parking is not adding to the tenants’ overall living costs whether provided as garages, carports, or open spaces.

In response to Commenter (18), staff does not believe that PTAC units are an appropriate solution to the concerns raised by the Commenter. While PTAC units may be less expensive to install, they tend to cost more to operate, and those costs are often passed on the tenants. Staff believes that central air conditioning should remain a requirement for rehabilitation developments; however, should the Board choose to offer some relief to Applicant’s proposing rehabilitation, staff believes that mini-split systems could be an appropriate alternative. Mini-split systems are far superior to PTAC units. In addition to being much more efficient, they also offer quieter operation.

Staff recommends no change based on these comments.

18. §10.101(b)(5) – Subchapter B – Common Amenities (23)

COMMENT SUMMARY: Commenter (23) suggested closing off developments with a full perimeter fence should be prohibited rather than worth one point. Blocking pedestrian access inhibits walking to the nearby community assets and, according to commenter (23),

developments need to be primed to encourage walking with sidewalks, building orientation, etc including no perimeter fencing.

STAFF RESPONSE: Full perimeter fencing is one of many amenities listed in this section that a developer can select from based on what they feel is appropriate or desirable at their particular property. It is not a requirement that all developments have full perimeter fencing; therefore, developers have the discretion to design the property in a way that could take into account those concerns noted by commenter (23).

Staff recommends no change based on this comment.

19. §10.101(b)(5)(C)(xxxi) – Subchapter B – Green Building Features (19), (20), (36), (47)

COMMENT SUMMARY: Commenter (19) recommended adding the following options for Green Building:

~~“(-m-) locate water fixtures within 20 feet of hot water heater;~~
~~(-n-) implement a construction waste program;~~
~~(-o-) drip irrigate at non-turf areas;~~
~~(-p-) over 75% of property Xeriscape;~~
~~(-q-) radiant barrier decking on new construction or “cool” roof materials;~~
~~(-r-) shading devices for windows with solar orientation;~~
~~(-s-) energy star certified insulation products;~~
~~(-t-) spray foam insulation full cavity in walls;~~
~~(-u-) energy star rated windows;~~
~~(-v-) Merv 8 or better ac filters;~~
~~(-w-) floor score certified flooring;~~
~~(-x-) HVAC duct sealing with mastic sealant;~~
~~(-y-) granite countertops;~~
~~(-z-) sprinkler system with rain sensors;~~
~~(-aa-) polished concrete floors in community laundry rooms;~~
~~(-bb-) NAUF (No Added Urea Formaldehyde) cabinets.”~~

Commenters (20), (36) recommended the following changes to the Limited Green Amenities in this section and further suggested a percentage, such as 75% for all landscaping installed on the property be specified:

~~“(-b-) native and adaptive trees and plants—installed that reduce irrigation requirements and are appropriate to the Development Site’s soil and microclimate to allow for shading in the summer and heat gain in the winter;”~~

Commenter (47) expressed support for the green building incentives and further suggested the Department partner with Texas’ utilities to make energy-efficiency programs more accessible to affordable, multifamily developments.

STAFF RESPONSE: In response to Commenter (19), staff has added most (but not all) of the features suggested. Staff believes that some (granite countertops, concrete floors in laundry rooms, A/C filters, construction waste program) do not provide as much long-term benefit to the tenants as some of the other suggested features. In addition, staff believes that the concept of

xeriscaping is already captured in another part of the rule. Staff appreciates the suggestions as well as the support expressed by Commenter (47) and will continue to work towards making energy-efficiency programs accessible to low-income Texans. Staff recommends the following additions to the section:

- [“\(-m-\) locate water fixtures within 20 feet of hot water heater;](#)
- [\(-n-\) drop irrigate at non-turf areas;](#)
- [\(-o-\) radiant barrier decking for new Construction developments or “cool” roofing materials;](#)
- [\(-p-\) permanent shading devices for windows with solar orientation;](#)
- [\(-q-\) energy star certified insulation products;](#)
- [\(-r-\) full cavity spray foam insulation in walls;](#)
- [\(-s-\) energy star rated windows;](#)
- [\(-t-\) floor score certified flooring;](#)
- [\(-u-\) sprinkler system with rain sensors;](#)
- [\(-v-\) NAUF \(No Added Urea Formaldehyde\) cabinets.”](#)

Staff also recommends clarifying language in this section, specifically replacing “National Green Building Standard” with “ICC 700 National Green Building Standard.”

20. §10.101(b)(6)(B) – Subchapter B – Unit and Development Features (15), (19), (20), (21), (23), (33), (34), (36)

COMMENT SUMMARY: Commenters (15), (19), (20), (21), (23), (33), (34), (36) recommended the amenity options that were deleted in the draft be added back because all amenities that improve the quality of construction and long-term viability of the development ultimately benefit the residents. Commenters (15), (20), (36) further suggested that more, not fewer, options for unit and development amenities should be available to developers. Commenter (23) noted that removing the 30-year shingle, metal roofing and masonry requirements as options is at odds with the high opportunity requirements because many municipalities are embracing such design standards and their removal only penalizes the developments that are required to build this way.

Commenter (21) recommended the items noted below, which are available as options for new construction, reconstruction and adaptive reuse developments, should be available to rehabilitation developments under this section.

- “(A) All Units must be wired with RG-6/U COAX or better and CAT3 phone cable or better, wired to each bedroom, dining room and living room;
- (B) Laundry Connections;
- (C) Exhaust/vent fans (vented to the outside) in the bathrooms;”

STAFF RESPONSE: Staff agrees with commenters (15), (19), (20), (21), (23), (33), (34), (36) regarding the reinstatement of the amenity options that were deleted and recommends the following modification to this section:

- [“\(xiv\) Thirty \(30\) year shingle or metal roofing \(0.5 point\); and](#)

(xv) Greater than 30 percent stucco or masonry (includes stone, cultured stone, and brick but excludes cementitious siding) on all building exteriors; the percentage calculation may exclude exterior glass entirely (2 points).”

In response to commenter (21), there is nothing in the rule that precludes rehabilitation developments from including those amenities listed in the comment. However, staff has received previous comment that these amenities can be particularly difficult to install if not already in place in the existing property and therefore does not require them.

21. §10.101(b)(7) – Subchapter B – Tenant Supportive Services (6), (33), (34)

COMMENT SUMMARY: Commenter (6) recommended the following changes to the point values associated with the tenant supportive services:

- “(A) joint use library center, as evidenced by a written agreement with the local school district (1 point~~2 points~~);
- (B) weekday character building program (shall include at least on a monthly basis a curriculum based character building presentation on relevant topics, for example teen dating violence, drug prevention, teambuilding, internet dangers, stranger danger, etc.) (1 point~~2 points~~);
- (C) daily transportation such as bus passes, cab vouchers, specialized van on-site (4~~2~~ points);
- (D) Food pantry/common household items accessible to residents at least on a monthly basis (1/2 point; 1 point if at least semi-monthly);
- (E) GED preparation classes (shall include an instructor providing on-site coursework and exam) (1 point);
- (F) English as a second language classes (shall include an instructor providing on-site coursework and exam) (1/2 point);
- (G) quarterly financial planning courses (i.e. homebuyer education, credit counseling, investing advice, retirement plans, etc.). Courses must be offered through an on-site instructor; a CD-ROM or online course is not acceptable (1/2 point);
- (H) annual health fair (1/2 point);
- (I) quarterly health and nutritional courses (1/2 point; 1 point if monthly);
- (J) organized youth programs offered by the Development (1/2 point);
- (K) scholastic tutoring (shall include weekday homework help or other focus on academics) (3~~2~~ points);
- (L) Notary Services during regular business hours (§2306.6710(b)(3)) (1/2 point);
- (M) weekly exercise classes (2~~1~~ points);
- (N) twice monthly arts, crafts, and other recreational activities such as Book Clubs and creative writing classes (2~~1~~ points);
- (O) annual income tax preparation (offered by an income tax prep service) (1/2 point);
- (P) monthly transportation to community/social events such as mall trips, community theatre, bowling, organized tours, etc. (1/2 point);
- (Q) twice monthly on-site social events (i.e. potluck dinners, game night, sing-a-longs, movie nights, birthday parties, etc.) (1/2 point);
- (R) specific case management services offered through external, contracted parties for seniors, Persons with Disabilities or Supportive Housing (1/2 point);

(S) weekly home chore services (such as valet trash removal, assistance with recycling, furniture movement, etc., and quarterly preventative maintenance including light bulb replacement) for seniors and Persons with Disabilities (~~2~~1 points);

(T) any of the programs described under Title IV-A of the Social Security Act (42 U.S.C. §§601, et seq.) which enables children to be cared for in their homes or the homes of relatives; ends the dependence of needy families on government benefits by promoting job preparation, work and marriage; prevents and reduces the incidence of unplanned pregnancies; and encourages the formation and maintenance of two-parent families (1/2 point);

(U) contracted career training and placement partnerships with local worksource offices, culinary programs, or vocational counseling services; also resident training programs that train and hire residents for job opportunities inside the development in areas like leasing, tenant services, maintenance, landscaping, or food and beverage operation (1 1/2 points);

(V) external partnerships for provision of weekly AA or NA meetings at the Development Site (~~2~~1 points);

(W) contracted onsite occupational or physical therapy services for seniors and Persons with Disabilities (~~2~~1 points);

(X) a full-time resident services coordinator with a dedicated office space at the development (~~2~~1 points); and

(Y) a resident-run pea patch or community garden (1/2 point).”

Commenters (33), (34) expressed support for some of the new additions in the list of tenant services and suggested the following revision to case management due to licensed social workers on staff at some Supportive Housing Developments who are the primary case manager. The proposed changes by the Department to this section would preclude these case managers from being counted. Commenter (33) further noted that third-party case management does not have any benefit to the actual residents nor does it further define the service.

“(R) specific case management services offered by a qualified Owner or Developer or through external, contracted parties for seniors, Persons with Disabilities or Supportive Housing (1 point);”

STAFF RESPONSE: In response to commenter (6) staff does not believe a reduction in the point values is warranted and that with the point thresholds required to be met there are still an adequate amount of tenant services provided at each development. In response to commenters (33), (34) staff appreciates the expressed support regarding the new options and agrees with the proposed modification to allow qualified owners or developers to provide such case management services. Moreover, in response to comment on a previous section staff recommends the following revisions to the list of possible services:

“(A) joint use library center, as evidenced by a written agreement with the local school district (2 points);

(B) weekday character building program (shall include at least on a monthly basis a curriculum based character building presentation on relevant topics, for example teen dating violence, drug prevention, teambuilding, internet dangers, stranger danger, etc.) (2 points);

(C) daily transportation such as bus passes, cab vouchers, specialized van on-site (4 points);

- (D) Food pantry/common household items accessible to residents at least on a monthly basis (1 point);
- (E) GED preparation classes (shall include an instructor providing on-site coursework and exam) (1 point);
- (F) English as a second language classes (shall include an instructor providing on-site coursework and exam) (1 point);
- (G) quarterly financial planning courses (i.e. homebuyer education, credit counseling, investing advice, retirement plans, etc.). Courses must be offered through an on-site instructor; a CD-ROM or online course is not acceptable (1 point);
- (H) annual health fair (1 point);
- (I) quarterly health and nutritional courses (1 point);
- (J) organized youth programs offered by the Development (1 point);
- (K) scholastic tutoring (shall include weekday homework help or other focus on academics) (3 points);
- (L) Notary Services during regular business hours (§2306.6710(b)(3)) (1 point);
- (M) weekly exercise classes (2 points);
- (N) twice monthly arts, crafts, and other recreational activities such as Book Clubs and creative writing classes (2 points);
- (O) annual income tax preparation (offered by an income tax prep service) (1 point);
- (P) monthly transportation to community/social events such as mall trips, community theatre, bowling, organized tours, etc. (1 point);
- (Q) twice monthly on-site social events (i.e. potluck dinners, game night, sing-a-longs, movie nights, birthday parties, etc.) (1 point);
- (R) specific case management services offered by a qualified Owner or Developer or through external, contracted parties for seniors, Persons with Disabilities or Supportive Housing (1 point);
- (S) weekly home chore services (such as valet trash removal, assistance with recycling, furniture movement, etc., and quarterly preventative maintenance including light bulb replacement) for seniors and Persons with Disabilities (2 points);
- (T) any of the programs described under Title IV-A of the Social Security Act (42 U.S.C. §§601, et seq.) which enables children to be cared for in their homes or the homes of relatives; ends the dependence of needy families on government benefits by promoting job preparation, work and marriage; prevents and reduces the incidence of unplanned pregnancies; and encourages the formation and maintenance of two-parent families (1 point);
- (U) contracted career training and placement partnerships with local worksorce offices, culinary programs, or vocational counseling services; also resident training programs that train and hire residents for job opportunities inside the development in areas like leasing, tenant services, maintenance, landscaping, or food and beverage operation (2 points);
- (V) external partnerships for provision of weekly AA or NA meetings at the Development Site (2 points);
- (W) contracted onsite occupational or physical therapy services for seniors and Persons with Disabilities (2 points);

(X) a full-time resident services coordinator with a dedicated office space at the ~~d~~Development (2 points); ~~and~~

(Y) a resident-run pea patch or community garden (1 point); ~~and~~

(Z) Development Sites located within a one mile radius of one of the following can also qualify for one (1) point:

(i) Facility for treatment of alcohol and/or drug dependency;

(ii) Facility for treatment of PTSD and other significant psychiatric or psychological conditions;

(iii) Facility providing therapeutic and/or rehabilitative services relating to mobility, sight, speech, cognitive, or hearing impairments; or

(iv) Facility providing medical and/or psychological and/or psychiatric assistance for persons of limited financial means.

STATUTORY AUTHORITY. The new section is adopted pursuant to Texas Government Code §2306.053, which authorizes the Department to adopt rules. Additionally, the new section is adopted pursuant to §2306.67022, which specifically authorizes the Department to adopt a qualified allocation plan.

Subchapter B – Site and Development Requirements and Restrictions

§10.101. Site and Development Requirements and Restrictions.

(a) Site Requirements and Restrictions. The purpose of this section is to identify specific requirements and restrictions related to a Development Site seeking multifamily funding or assistance from the Department.

(1) Floodplain. ~~All Developments must be able to obtain flood insurance.~~ New Construction or Reconstruction Developments located within a one-hundred (100) year floodplain as identified by the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps must develop the site in full compliance with the National Flood Protection Act and all applicable federal and state statutory and regulatory requirements. Even if not required by such provisions, the Site must be developed so that all finished ground floor elevations are at least one foot above the floodplain and parking and drive areas are no lower than six inches below the floodplain. If there are more stringent local requirements they must also be met. If no FEMA Flood Insurance Rate Maps are available for the proposed Development Site, flood zone documentation must be provided from the local government with jurisdiction identifying the one-hundred (100) year floodplain. Rehabilitation (excluding Reconstruction) Developments with existing and ongoing federal funding assistance from the U.S. Department of Housing and Urban Development (HUD) or U.S. Department of Agriculture (USDA) are exempt from this requirement. However, where existing and ongoing federal assistance is not applicable such Rehabilitation (excluding Reconstruction) Developments will be allowed in the one-hundred (100) year floodplain provided the state or local government has undertaken and can substantiate sufficient mitigation efforts and such documentation is submitted in the Application or the existing structures meet the requirements that are applicable for New Construction or Reconstruction Developments.

(2) Mandatory Community Assets. Development Sites must be located within a one mile radius (two-mile radius for Developments located in a Rural Area), unless otherwise required by the specific asset as noted below, of at least six (6) community assets listed in subparagraphs (A) – ~~(Y)~~ of this paragraph. Supportive Housing Developments located in an Urban Area must ~~be located within a one mile radius of at least one of the community assets listed~~ meet the requirement in subparagraphs ~~(T) – (Y)~~ of this paragraph. Only one community asset of each type listed will count towards the number of assets required. A map must be included identifying the Development Site and the location of each of the community assets by name. All assets must exist or, if under construction, must be under active construction, post pad (e.g. framing the structure) by the date the Application is submitted:

- (A) full service grocery store;
- (B) pharmacy;
- (C) convenience store/mini-market;
- (D) department or retail merchandise store;
- (E) bank/credit union;
- (F) restaurant (including fast food, but not including establishments that are primarily bars and serve food as an incidental item);
- (G) indoor public recreation facilities, such as, community centers and libraries accessible to the general public;
- (H) outdoor public recreation facilities such as parks, golf courses, and swimming pools accessible to the general public;
- (I) medical office (physician, dentistry, optometry) or hospital/medical clinic;
- (J) public schools (only eligible for Developments that are not Qualified Elderly Developments);
- (K) senior center accessible to the general public;
- (L) religious institutions;
- (M) community, civic or service organizations, such as Kiwanis or Rotary Club;

- (N) child care center (must be licensed - only eligible for Developments that are not Qualified Elderly Developments);
- (O) post office;
- (P) city hall;
- (Q) county courthouse;
- (R) fire station;
- (S) police station;
- (T) Development Site is located within ½ mile of a designated public transportation stop at which public transportation (not including “on demand” transportation) stops on a regular, scheduled basis; a site's eligibility for on demand transportation ~~or transportation provided directly or indirectly by the Development Owner does~~ not meet this requirement. However, accessible transportation provided at no cost to the tenant when the Property Management Office is open, such as cab vouchers or a specialized van on-site, to a bus or other public transit stop, does qualify;
- ~~(U) Centers for treatment of alcohol and/or drug dependency;~~
- ~~(V) Centers for treatment of PTSD and other significant psychiatric or psychological conditions;~~
- ~~(W) Centers providing therapeutic and/or rehabilitative services relating to mobility, sight, speech, cognitive, or hearing impairments;~~
- ~~(X) Clinics providing medical and/or psychological and/or psychiatric assistance for persons of limited financial means; or~~
- ~~(Y) Other assistive services designed to support the households in which one or more household members have disabilities.~~

(3) Undesirable Site Features. Development Sites within the applicable distance of any of the undesirable features identified in subparagraphs (A) - (J) of this paragraph will be considered ineligible. Rehabilitation (excluding Reconstruction) Developments with ongoing and existing federal assistance from HUD or USDA may be granted an exemption by the Board. Such an exemption must be requested at the time of or prior to the filing of an Application and must include a letter from the fair housing or civil rights office of the existing federal oversight entity indicating that the Rehabilitation of the existing units is consistent with the Fair Housing Act. The distances are to be measured from the nearest boundary of the Development Site to the undesirable feature. If Department staff identifies what it believes would constitute an undesirable site feature not listed in this paragraph or covered under subparagraph (J) of this paragraph, staff may request a determination from the Board as to whether such feature is acceptable or not. If the Board determines such feature is not acceptable and that, accordingly, the Site is ineligible, the Application shall be terminated and such determination of Site ineligibility and termination of the Application cannot be appealed.

- (A) Development Sites located within 300 feet of junkyards;
- (B) Development Sites located within 100 feet of active railroad tracks, unless the Applicant provides evidence that the city/community has adopted a Railroad Quiet Zone or the railroad in question is commuter or light rail;
- (C) Development Sites located within 500 feet of heavy industrial or dangerous uses such as manufacturing plants, fuel storage facilities (excluding gas stations), refinery blast zones, etc.;
- (D) Development Sites located within 2 miles of potentially hazardous uses such as nuclear plants, or large refineries (e.g. oil refineries producing more than 100,000 barrels of crude oil daily), or large oil field operations;
- (E) Development Sites located within 300 feet of a solid waste or sanitary landfills;

(F) Development Sites in which the buildings are located within the easement of any overhead high voltage transmission line, support structures for high voltage transmission lines, radio antennae, satellite towers, or other similar structures. This does not apply to local service electric lines and poles;

(G) Development Sites in which the buildings are located within the accident zones or clear zones for commercial or military airports;

(H) Development Sites located within 300 feet of a sexually-oriented business. For purposes of this paragraph, a sexually-oriented business shall be defined as stated in Local Government Code, §243.002;

(I) Development Sites that contain one or more pipelines, situated underground or aboveground, which carry highly volatile liquids, ~~hazardous substances, acutely hazardous materials, or hazardous wastes, unless the pipeline is a natural gas line which is used only to supply natural gas to the Development Site or neighborhood~~; or

(J) Any other Site deemed unacceptable, which would include, without limitation, those with exposure to an environmental factor that may adversely affect the health and safety of the residents and which cannot be adequately mitigated.

(4) Undesirable Neighborhood Characteristics.

(A) If the Development Site has any of the characteristics described in subparagraph (B) of this paragraph, the Applicant must disclose the presence of such characteristics to the Department. Disclosure of undesirable characteristics must be made at the time the Application is submitted to the Department. Alternatively, An Applicant may choose to disclose the presence of such characteristics at the time the pre-application (if applicable) is submitted to the Department or after inducement (for Tax-Exempt Bond Developments) but must be accompanied by the Undesirable Neighborhood Characteristic Disclosure Fee pursuant to §10.901(21) of this chapter (relating to Fee Schedule). Should staff determine that the Development Site has any of the characteristics described in subparagraph (B) of this paragraph and such characteristics were not disclosed, the Application may be subject to termination. Termination due to non-disclosure may be appealed pursuant to §10.902 of this chapter (relating to Appeals Process (§2306.0321; §2306.6715)). The presence of any characteristics listed in subparagraph (B) of this paragraph will prompt staff to perform an assessment of the Development Site and neighborhood, which may include a site visit, and which will include, where applicable, a review as described in subparagraph (C) of this paragraph. The assessment of the Development Site and neighborhood will be presented to the Board in a report, with a recommendation with respect to the eligibility of the Development Site. Should the Board uphold staff's recommendation or make a determination that a Development Site is ineligible based on staff's report, the termination of the Application resulting from such Board action is not subject to appeal. In order for the Development Site to be found eligible by the Board, despite the existence of undesirable neighborhood characteristics, the use of Department funds at the Development Site must be consistent with achieving at least one of the goals in clauses (i) – (iii) of this subparagraph.

(i) Preservation of existing occupied affordable housing units that are subject to existing federal rent or income restrictions, that will not result in a further concentration of poverty and the Application includes a letter from the fair housing or civil rights office of the existing federal oversight entity indicating that the Rehabilitation of the existing units is consistent with the Fair Housing Act;

(ii) Improvement of housing opportunities for low income households and members of protected classes in areas that do not have high concentrations of existing affordable housing; or

(iii) Provision of affordable housing in areas where there has been significant recent community investment and evidence of new private sector investment; and

(iv) The Board may consider whether or not funding sources requested for the Development Site would otherwise be available for activities that would more closely align with the Department's and state's goals.

(B) The existence of any one of the three undesirable neighborhood characteristics in clauses (i) – (iii) of this subparagraph must be disclosed by the Applicant and will prompt further review as outlined in subparagraph (C) of this paragraph:

(i) The Development Site is located within a census tract that has a poverty rate above ~~35~~40 percent for individuals (or 55 percent for Developments in regions 11 and 13).

(ii) The Development Site is located in an Urban Area and the rate of Part I violent crimes is greater than 18 per 1,000 persons (annually) for the immediately surrounding area. "Immediately surrounding area" for the purposes of this provision is defined as the census tract within which the Development Site is located, the police beat within which the Development Site is located for a city's police department, or within a one half mile radius of the Development Site. The data used must include incidents recorded during the entire 2013 or 2014 calendar year but may include up to 36 consecutive months of data. Sources such as the written statement from a local police department or data from neighborhoodscout.com may be used to document compliance with this provision ~~a census tract that has a crime index of 40 or less, according to neighborhoodscout.com;~~

(iii) The Environmental Site Assessment for the Development Site indicates any facilities listings within the ASTM-required search distances from the approximate site boundaries on any one of the following databases:

(I) U.S. Environmental Protection Agency ("USEPA") National Priority List ("NPL"); Comprehensive Environmental Response, Compensation, and Liability Information System ("CERCLIS");

(II) Federal Engineering and/or Institutional Controls Registries ("EC"); Resource Conservation and Recovery Act ("RCRA") facilities associated with treatment, storage, and disposal of hazardous materials that are undergoing corrective action ("RCRA CORRACTS"); ~~or~~

(III) RCRA Generators/Handlers of hazardous waste; or

(IV) State voluntary cleanup program.

(C) Should any one of the undesirable neighborhood characteristics described in subparagraph (B) of this paragraph exist, staff will conduct a further Development Site and neighborhood review which will include assessments of those items identified in clauses (i) – (viii) of this paragraph.

(i) A determination regarding neighborhood boundaries, which will be based on the review of a combination of natural and manmade physical features (rivers, highways, etc.), apparent changes

in land use, the Primary Market Area as defined in the Market Analysis, census tract or municipal boundaries, and information obtained from any Site visits;

(ii) An assessment of blight in the neighborhood, evidenced by boarded up or abandoned residential and/or commercial businesses and/or the visible physical decline of property or properties;

(iii) An assessment of general land use in the neighborhood, including comment on the prevalence of residential uses;

(iv) An assessment concerning any of the features reflected in paragraph (3) of this subsection if they are present in the neighborhood, regardless of whether they are within the specified distances referenced in paragraph (3).

(v) An assessment of the number of existing affordable rental units (generally includes rental properties subject to TDHCA, HUD, or USDA restrictions) in the neighborhood, including comment on concentration based on neighborhood size;

(vi) An assessment of the percentage of households residing in the census tract that have household incomes equal to or greater than the median household income for the MSA or county where the Development Site is located;

(vii) An assessment of the number of market rate multifamily units in the neighborhood and their current rents and levels of occupancy; and

(viii) An assessment of the number and/or strength of mitigating factors for otherwise undesirable neighborhood characteristics, including but not limited to community revitalization plans, demographic data that suggests increasing socio-economic diversity, crime statistics evidencing trends that crime rates are decreasing, new construction in the area, and any other evidence of public and/or private investment in the neighborhood.

(D) During or after staff's review of the Development Site, the Department may request additional information from the Applicant. This information is not required to be submitted with the initial disclosure but must be made available at the Department's request. Information regarding mitigation of undesirable characteristics should be relevant to the undesirable characteristics that are present in the neighborhood. For instance, a plan to clean up an environmental hazard is an appropriate response to disclosure of a facility listed in the environmental site assessment, while a management plan and/or efforts of the local police department are appropriate to address issues of crime. Mitigation of undesirable characteristics should also include timelines that evidence a reasonable expectation that the issue(s) being addressed will be resolved or at least improved by the time the proposed Development is placed in service. Information likely to be requested may include but is not limited to those items in clauses (i) – (iv) of this subparagraph.

(i) Community revitalization plans (whether or not submitted for points under §11.9(d)(7) of this title);

(ii) Evidence of public and/or private plans to develop or redevelop in the neighborhood, whether residential or commercial;

(iii) Mitigation plans for any adverse environmental features; and/or

(iv) Statements from appropriate local elected officials regarding how the development will accomplish objectives in meeting obligations to affirmatively further fair housing and will

address the goals set forth in the Analysis of Impediments and Consolidated Plan(s) of the local government and/or the state.

(b) Development Requirements and Restrictions. The purpose of this section is to identify specific restrictions on a proposed Development submitted for multifamily funding by the Department.

(1) Ineligible Developments. A Development shall be ineligible if any of the criteria in subparagraphs (A) and (B) of this paragraph are deemed to apply.

(A) General Ineligibility Criteria.

- (i) Developments comprised of hospitals, nursing homes, trailer parks, dormitories (or other buildings that will be predominantly occupied by students) or other facilities which are usually classified as transient housing (as provided in the §42(i)(3)(B)(iii) and (iv) of the Code);
- (ii) Any Development with any building(s) with four or more stories that does not include an elevator;
- (iii) A Housing Tax Credit Development that provides on-site continual or frequent nursing, medical, or psychiatric services. Refer to IRS Revenue Ruling 98-47 for clarification of assisted living;
- (iv) A Development that violates §1.15 of this title (relating to Integrated Housing Rule);
- (v) A Development seeking Housing Tax Credits that will not meet the general public use requirement under Treasury Regulation, §1.42-9 or a documented exception thereto; or
- (vi) A Development utilizing a Direct Loan that is subject to the Housing and Community Development Act, §104(d) requirements and proposing Rehabilitation or Reconstruction, if the Applicant is not proposing the one-for-one replacement of the existing unit mix. Adding additional units would not violate this provision.

(B) Ineligibility of Qualified Elderly Developments.

- (i) Any Qualified Elderly Development of two stories or more that does not include elevator service for any Units or living space above the first floor;
- (ii) Any Qualified Elderly Development with any Units having more than two bedrooms with the exception of up to three employee Units reserved for the use of the manager, maintenance, and/or security officer. These employee Units must be specifically designated as such; or
- (iii) Any Qualified Elderly Development (including Qualified Elderly in a Rural Area) proposing more than 70 percent two-bedroom Units.

(2) Development Size Limitations. The minimum Development size is 16 Units. New Construction or Adaptive Reuse Developments in Rural Areas are limited to a maximum of 80 Units. Other Developments do not have a limitation as to the maximum number of Units.

(3) Rehabilitation Costs. Developments involving Rehabilitation must establish a scope of work that will substantially improve the interiors of all units and exterior deferred maintenance. The following

minimum Rehabilitation amounts must be maintained through the issuance of IRS Forms 8609 or at the time of the close-out documentation, as applicable:

(A) For Housing Tax Credit Developments under the USDA Set-Aside the minimum Rehabilitation will involve at least \$19,000 per Unit in Building Costs and Site Work;

(B) For Tax-Exempt Bond Developments, less than twenty (20) years old, the minimum Rehabilitation will involve at least \$15,000 per Unit in Building Costs and Site Work. If such Developments are greater than twenty (20) years old, the minimum Rehabilitation will involve at least \$25,000 per Unit in Building Costs and Site Work;

(C) For all other Developments, the minimum Rehabilitation will involve at least \$25,000 per Unit in Building Costs and Site Work; or

(D) Rehabilitation Developments financed with Direct Loans provided through the HOME program (or any other program subject to 24 CFR 92) that triggers the rehabilitation requirements of 24 CFR 92 will be required to meet all applicable state and local codes, ordinances, and standards; the 2012 International Existing Building Code ("IEBC"); and the requirements in clauses (i) - (iv) of this subparagraph.

(i) recommendations made in the Environmental Assessment and Physical Conditions Assessment with respect to health and safety issues, major systems (structural support; roofing; cladding and weatherproofing; plumbing; electrical; and heating, ventilation, and air conditioning), and lead based paint must be implemented;

(ii) all accessibility requirements pursuant to 10 TAC §1.206 (relating to Applicability of the Construction Standards for Compliance with §504 of the Rehabilitation Act of 1973) and §1.209 (relating to Substantial Alteration of Multifamily Developments) must be met;

(iii) properties located in the designated catastrophe areas specified in 28 TAC §5.4008 must comply with 28 TAC §5.4011 (relating to Applicable Building Code Standards in Designated Catastrophe Areas for Structures Constructed, Repaired or to Which Additions Are Made On and After January 1, 2008); and

(iv) should IEBC be more restrictive than local codes, or should local codes not exist, then the Development must meet the requirements imposed by IEBC.

(4) Mandatory Development Amenities. (§2306.187) New Construction, Reconstruction or Adaptive Reuse Units must include all of the amenities in subparagraphs (A) - (M) of this paragraph. Rehabilitation (excluding Reconstruction) Developments must provide the amenities in subparagraphs (D) - (M) of this paragraph unless stated otherwise. Supportive Housing Developments are not required to provide the amenities in subparagraph (B), (E), (F), (G), (I), or (M) of this paragraph; however, access must be provided to a comparable amenity in a common area. These amenities must be at no charge to the tenants. Tenants must be provided written notice of the elections made by the Development Owner.

- (A) All Units must be wired with RG-6/U COAX or better and CAT3 phone cable or better, wired to each bedroom, dining room and living room;
- (B) Laundry Connections;
- (C) Exhaust/vent fans (vented to the outside) in the bathrooms;
- (D) Screens on all operable windows;
- (E) Disposal and Energy-Star rated dishwasher (not required for USDA; Rehabilitation Developments exempt from dishwasher if one was not originally in the Unit);
- (F) Energy-Star rated refrigerator;
- (G) Oven/Range;
- (H) Blinds or window coverings for all windows;
- (I) At least one Energy-Star rated ceiling fan per Unit;
- (J) Energy-Star rated lighting in all Units which may include compact fluorescent or LED light bulbs;
- (K) Plumbing fixtures (toilets and faucets) must meet design standards at 30 TAC §290.252 (relating to Design Standards);
- (L) All Units must have central heating and air-conditioning (Packaged Terminal Air Conditioners meet this requirement for SRO or Efficiency Units only); and
- (M) Adequate parking spaces consistent with local code, unless there is no local code, in which case the requirement would be one and a half (1.5) spaces per Unit for non-Qualified Elderly Developments and one (1) space per Unit for Qualified Elderly Developments. The minimum number of required spaces must be available to the tenants at no cost.

(5) Common Amenities.

(A) All Developments must include sufficient common amenities as described in subparagraph (C) of this paragraph to qualify for at least the minimum number of points required in accordance with clauses (i) - (vi) of this subparagraph. For Developments with 41 Units or more, at least two (2) of the required threshold points must come from subparagraph (C)(xxxi) of this paragraph.

- (i) Developments with 16 to 40 Units must qualify for four (4) points;
- (ii) Developments with 41 to 76 Units must qualify for seven (7) points;
- (iii) Developments with 77 to 99 Units must qualify for ten (10) points;
- (iv) Developments with 100 to 149 Units must qualify for fourteen (14) points;
- (v) Developments with 150 to 199 Units must qualify for eighteen (18) points; or
- (vi) Developments with 200 or more Units must qualify for twenty-two (22) points.

(B) These points are not associated with any selection criteria points. The amenities must be for the benefit of all tenants and made available throughout normal business hours and maintained throughout the Compliance Period. Tenants must be provided written notice of the elections made by the Development Owner. If fees in addition to rent are charged for amenities, then the amenity may not be included among those provided to satisfy the requirement. All amenities must meet accessibility standards and spaces for activities must be sized appropriately to serve the proposed Target Population. Applications for non-contiguous scattered site housing, excluding non-contiguous single family sites, will have the test applied based on the number of Units per individual site.

(C) The common amenities and respective point values are set out in clauses (i) - (xxxii) of this subparagraph. Some amenities may be restricted for Applicants proposing a specific Target Population. An Applicant can only count an amenity once; therefore combined functions (a library which is part of a community room) will only qualify for points under one category:

- (i) Full perimeter fencing (2 points);
- (ii) Controlled gate access (2 points);
- (iii) Gazebo w/sitting area (1 point);
- (iv) Accessible walking/jogging path separate from a sidewalk and in addition to required accessible routes to Units or other amenities (1 point);
- (v) Community laundry room with at least one washer and dryer for every 40 Units (3 points);
- (vi) Barbecue grill and picnic table with at least one of each for every 50 Units (1 point);
- (vii) Covered pavilion that includes barbecue grills and tables with at least one grill and table for every 50 Units (2 points);
- (viii) Swimming pool (3 points);
- (ix) Splash pad/water feature play area (1 point);
- (x) Furnished fitness center. Equipped with fitness equipment options with at least one option per every 40 Units or partial increment of 40 Units: stationary bicycle, elliptical trainer, treadmill, rowing machine, universal gym, multi-functional weight bench, sauna, stair-climber, or other similar equipment. Equipment shall be commercial use grade or quality. All Developments must have at least two equipment options but are not required to have more than five equipment options regardless of number of Units (2 points);
- (xi) Equipped and functioning business center or equipped computer learning center. Must be equipped with 1 computer for every 30 Units loaded with basic programs, 1 laser printer for every 3 computers (minimum of one printer) and at least one scanner which may be integrated with printer (2 points);
- (xii) Furnished Community room (2 points);
- (xiii) Library with an accessible sitting area (separate from the community room) (1 point);
- (xiv) Enclosed community sun porch or covered community porch/patio (1 point);
- (xv) Service coordinator office in addition to leasing offices (1 point);
- (xvi) Senior Activity Room stocked with supplies (Arts and Crafts, etc.) (2 points);
- (xvii) Health Screening Room (1 point);
- (xviii) Secured Entry (applicable only if all Unit entries are within the building's interior) (1 point);
- (xix) Horseshoe pit; putting green; shuffleboard court; video game console(s) with a variety of games and a dedicated location accessible to all tenants to play such games (1 point);
- (xx) Community Dining Room with full or warming kitchen furnished with adequate tables and seating (3 points);
- (xxi) One Children's Playscape Equipped for 5 to 12 year olds, or one Tot Lot (1 point). Can only select this item if clause (xxii) of this subparagraph is not selected; or
- (xxii) Two Children's Playscapes Equipped for 5 to 12 year olds, two Tot Lots, or one of each (2 points). Can only select this item if clause (xxi) of this subparagraph is not selected;
- (xxiii) Sport Court (Tennis, Basketball or Volleyball) (2 points);

- (xxiv) Furnished and staffed Children's Activity Center that must have age appropriate furnishings and equipment. Appropriate levels of staffing must be provided during after-school hours and during school vacations (3 points);
- (xxv) Community Theater Room equipped with a 52 inch or larger screen with surround sound equipment; DVD player; and theater seating (3 points);
- (xxvi) Dog Park area that is fully enclosed and intended for tenant owned dogs to run off leash or a dog wash station with plumbing for hot and cold water connections and tub drainage (requires that the Development allow dogs) (1 point);
- (xxvii) Common area Wi-Fi (1 point);
- (xxviii) Twenty-four hour live monitored camera/security system in each building (3 points);
- (xxix) Secured bicycle parking (1 point);
- (xxx) Rooftop viewing deck (2 points); or

(xxxi) **Green Building Features.** Points under this item are intended to promote energy and water conservation, operational savings and sustainable building practices. Points may be selected from only one of four categories: Limited Green Amenities, Enterprise Green Communities, Leadership in Energy and Environmental Design (LEED), and ~~National Green Building Standard (NAHB) Green~~ICC 700 National Green Building Standard. A Development may qualify for no more than four (4) points total under this clause.

(I) **Limited Green Amenities** (2 points). The items listed in subclauses (I) - (IV) of this clause constitute the minimum requirements for demonstrating green building of multifamily Developments. Six (6) of the nine (9) items listed under items (-a-) - (-I-) of this subclause must be met in order to qualify for the maximum number of two (2) points under this subclause;

(-a-) a rain water harvesting/collection system and/or locally approved greywater collection system;

(-b-) native trees and plants installed that reduce irrigation requirements and are appropriate to the Development Site's soil and microclimate to allow for shading in the summer and heat gain in the winter;

(-c-) water-conserving fixtures that meet the EPA's WaterSense Label. Such fixtures must include low-flow or high efficiency toilets, bathroom lavatory faucets, showerheads, and kitchen faucets. Rehabilitation Developments may install compliant faucet aerators instead of replacing the entire faucets;

(-d-) all of the HVAC condenser units located so they are fully shaded 75 percent of the time during summer months (i.e. May through August) as certified by the design team at cost certification;

(-e-) Energy-Star qualified hot water heaters or install those that are part of an overall Energy-Star efficient system;

(-f-) install individual or sub-metered utility meters. Rehabilitation Developments may claim sub-meter only if not already sub-metered at the time of Application;

(-g-) healthy finish materials including the use of paints, stains, adhesives, and sealants consistent with the Green Seal 11 standard or other applicable Green Seal standard;

- (-h-) install daylight sensor, motion sensors or timers on all exterior lighting and install fixtures that include automatic switching on timers or photocell controls for all lighting not intended for 24-hour operation or required for security;
- (-i-) recycling service provided throughout the Compliance Period;
- (-j-) for Rehabilitation Developments or Developments with 41 units or less, construction waste management system provided by contractor that meets LEEDs minimum standards;
- (-k-) for Rehabilitation Developments or Developments with 41 units or less, clothes dryers vented to the outside;
- (-l-) for Developments with 41 units or less, at least 25% by cost FSC certified salvaged wood products;
- (-m-) locate water fixtures within 20 feet of hot water heater;
- (-n-) drop irrigate at non-turf areas;
- (-o-) radiant barrier decking for new Construction developments or "cool" roofing materials;
- (-p-) permanent shading devices for windows with solar orientation;
- (-q-) energy star certified insulation products;
- (-r-) full cavity spray foam insulation in walls;
- (-s-) energy star rated windows;
- (-t-) floor score certified flooring;
- (-u-) sprinkler system with rain sensors;
- (-v-) NAUF (No Added Urea Formaldehyde) cabinets.

(II) **Enterprise Green Communities** (4 points). The Development must incorporate all mandatory and optional items applicable to the construction type (i.e. New Construction, Rehabilitation, etc.) as provided in the most recent version of the Enterprise Green Communities Criteria found at <http://www.greencommunitiesonline.org>.

(III) **LEED** (4 points). The Development must incorporate, at a minimum, all of the applicable criteria necessary to obtain a LEED Certification, regardless of the rating level achieved (i.e., Certified, Silver, Gold or Platinum).

(IV) ~~**National Green Building Standard (NAHB Green)**~~ ICC 700 National Green Building Standard (4 points). The Development must incorporate, at a minimum, all of the applicable criteria necessary to obtain a NAHB Green Certification, regardless of the rating level achieved (i.e. Bronze, Silver, Gold, or Emerald).

(6) Unit Requirements.

(A) Unit Sizes. Developments proposing New Construction or Reconstruction will be required to meet the minimum sizes of Units as provided in clauses (i) - (v) of this subparagraph. These minimum requirements are not associated with any selection criteria. Developments proposing Rehabilitation (excluding Reconstruction) or Supportive Housing Developments will not be subject to the requirements of this subparagraph.

- (i) five hundred (500) square feet for an Efficiency Unit;
- (ii) six hundred (600) square feet for a one Bedroom Unit;
- (iii) eight hundred (800) square feet for a two Bedroom Unit;
- (iv) one thousand (1,000) square feet for a three Bedroom Unit; and
- (v) one thousand, two-hundred (1,200) square feet for a four Bedroom Unit.

(B) Unit and Development 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 seven (7) points. Applications not funded with Housing Tax Credits (e.g. Direct Loan Applications) 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 Compliance 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 (3) points and Supportive Housing Developments will start with a base score of five (5) points.

- (i) Covered entries (0.5 point);
- (ii) Nine foot ceilings in living room and all bedrooms (at minimum) (0.5 point);
- (iii) Microwave ovens (0.5 point);
- (iv) Self-cleaning or continuous cleaning ovens (0.5 point);
- (v) Refrigerator with icemaker (0.5 point);
- (vi) Storage room or closet, of approximately 9 square feet or greater, separate from and in addition to bedroom, entryway or linen closets and which does not need to be in the Unit but must be on the property site (0.5 point);
- (vii) Energy-Star qualified laundry equipment (washers and dryers) for each individual Unit; must be front loading washer and dryer in required accessible Units (1.5 points);
- (viii) Covered patios or covered balconies (0.5 point);
- (ix) Covered parking (including garages) of at least one covered space per Unit (1.5 points);
- (x) R-15 Walls / R-30 Ceilings (rating of wall/ceiling system) (1.5 points);
- (xi) 14 SEER HVAC (or greater) for New Construction, Adaptive Reuse, and Reconstruction or radiant barrier in the attic for Rehabilitation (excluding Reconstruction) (1.5 points);
- (xii) High Speed Internet service to all Units (can be wired or wireless; required equipment for either must be provided) (1 point); ~~and~~
- (xiii) Desk or computer nook (0.5 point);
- (xiv) Thirty (30) year shingle or metal roofing (0.5 point); and
- (xv) Greater than 30 percent stucco or masonry (includes stone, cultured stone, and brick but excludes cementitious siding) on all building exteriors; the percentage calculation may exclude exterior glass entirely (2 points).

(7) Tenant Supportive Services. The supportive services include those listed in subparagraphs (A) - (T) of this paragraph. Tax Exempt Bond Developments must select a minimum of eight (8) points; Applications not funded with Housing Tax Credits (e.g. HOME Program or other Direct Loans) must include enough services to meet a minimum of four (4) points. The points selected and complete list of supportive services will be

included in the LURA and the timeframe by which services are offered must be in accordance with §10.619 of this chapter (relating to Monitoring for Social Services) and maintained throughout the Compliance Period. The Owner may change, from time to time, the services offered; however, the overall points as selected at Application must remain the same. Tenants must be provided written notice of the elections made by the Development Owner. No fees may be charged to the tenants for any of the services and there must be adequate space for the intended services. Services must be provided on-site or transportation to those off-site services identified on the list must be provided. The same service may not be used for more than one scoring item.

- (A) joint use library center, as evidenced by a written agreement with the local school district (2 points);
- (B) weekday character building program (shall include at least on a monthly basis a curriculum based character building presentation on relevant topics, for example teen dating violence, drug prevention, teambuilding, internet dangers, stranger danger, etc.) (2 points);
- (C) daily transportation such as bus passes, cab vouchers, specialized van on-site (4 points);
- (D) Food pantry/common household items accessible to residents at least on a monthly basis (1 point);
- (E) GED preparation classes (shall include an instructor providing on-site coursework and exam) (1 point);
- (F) English as a second language classes (shall include an instructor providing on-site coursework and exam) (1 point);
- (G) quarterly financial planning courses (i.e. homebuyer education, credit counseling, investing advice, retirement plans, etc.). Courses must be offered through an on-site instructor; a CD-ROM or online course is not acceptable (1 point);
- (H) annual health fair (1 point);
- (I) quarterly health and nutritional courses (1 point);
- (J) organized youth programs offered by the Development (1 point);
- (K) scholastic tutoring (shall include weekday homework help or other focus on academics) (3 points);
- (L) Notary Services during regular business hours (§2306.6710(b)(3)) (1 point);
- (M) weekly exercise classes (2 points);
- (N) twice monthly arts, crafts, and other recreational activities such as Book Clubs and creative writing classes (2 points);
- (O) annual income tax preparation (offered by an income tax prep service) (1 point);
- (P) monthly transportation to community/social events such as mall trips, community theatre, bowling, organized tours, etc. (1 point);
- (Q) twice monthly on-site social events (i.e. potluck dinners, game night, sing-a-longs, movie nights, birthday parties, etc.) (1 point);
- (R) specific case management services offered by a qualified Owner or Developer or through external, contracted parties for seniors, Persons with Disabilities or Supportive Housing (1 point);
- (S) weekly home chore services (such as valet trash removal, assistance with recycling, furniture movement, etc., and quarterly preventative maintenance including light bulb replacement) for seniors and Persons with Disabilities (2 points);
- (T) any of the programs described under Title IV-A of the Social Security Act (42 U.S.C. §§601, et seq.) which enables children to be cared for in their homes or the homes of relatives; ends the dependence of needy families on government benefits by promoting job preparation, work and marriage; prevents and

reduces the incidence of unplanned pregnancies; and encourages the formation and maintenance of two-parent families (1 point);

(U) contracted career training and placement partnerships with local worksource offices, culinary programs, or vocational counseling services; also resident training programs that train and hire residents for job opportunities inside the development in areas like leasing, tenant services, maintenance, landscaping, or food and beverage operation (2 points);

(V) external partnerships for provision of weekly AA or NA meetings at the Development Site (2 points);

(W) contracted onsite occupational or physical therapy services for seniors and Persons with Disabilities (2 points);

(X) a full-time resident services coordinator with a dedicated office space at the ~~d~~Development (2 points); ~~and~~

(Y) a resident-run pea patch or community garden (1 point); ~~and~~

(Z) Development Sites located within a one mile radius of one of the following can also qualify for one (1) point:

(i) Facility for treatment of alcohol and/or drug dependency;

(ii) Facility for treatment of PTSD and other significant psychiatric or psychological conditions;

(iii) Facility providing therapeutic and/or rehabilitative services relating to mobility, sight, speech, cognitive, or hearing impairments; or

(iv) Facility providing medical and/or psychological and/or psychiatric assistance for persons of limited financial means.

(8) Development Accessibility Requirements. All Developments must meet all specifications and accessibility requirements as identified in subparagraphs (A) - (C) of this paragraph and any other applicable state or federal rules and requirements. The accessibility requirements are further identified in the Certification of Development Owner as provided in the Application.

(A) The Development shall comply with the accessibility requirements under §504, Rehabilitation Act of 1973 (29 U.S.C. §794), as specified under 24 C.F.R. Part 8, Subpart C, and as further defined in Chapter 1, Subchapter B of this title (relating to Accessibility Requirements).

(B) New Construction (excluding New Construction of non-residential buildings) Developments where some Units are normally exempt from Fair Housing accessibility requirements, a minimum of 20% of each unit type of otherwise exempt units (*i.e.*, one bedroom one bath, two bedroom one bath, two bedroom two bath, three bedroom two bath) must provide an accessible entry level and all common-use facilities in compliance with the Fair Housing Guidelines, and include a minimum of one bedroom and one bathroom or powder room at the entry level.

(C) The Development Owner is and will remain in compliance with state and federal laws, including but not limited to, fair housing laws, including Chapter 301, Property Code, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), the Fair Housing Amendments Act of 1988 (42 U.S.C. §§3601 et seq.); the Civil Rights Act of 1964 (42 U.S.C. §§2000a et seq.); the Americans with Disabilities Act of 1990 (42 U.S.C. §§12101 et seq.); the Rehabilitation Act of 1973 (29 U.S.C. §§701 et seq.); Fair Housing Accessibility; the

Texas Fair Housing Act; and that the Development is designed consistent with the Fair Housing Act Design Manual produced by HUD, the Code Requirements for Housing Accessibility 2000 (or as amended from time to time) produced by the International Code Council and the Texas Accessibility Standards. (§2306.257; §2306.6705(7))

(D) All Applications proposing Rehabilitation (including Reconstruction) will be treated as Substantial Alteration, in accordance with §1.205 of this title.

Preamble, Reasoned Response, and New Rule

The Texas Department of Housing and Community Affairs (the “Department”) adopts new 10 TAC, Chapter 10 Uniform Multifamily Rules, Subchapter C, concerning Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules for Applications. Sections 10.202 – 10.205 and 10.207 are adopted with changes to the text as published in the September 19, 2014, issue of the *Texas Register* (39 TexReg 7413). Sections 10.201 and 10.206 are adopted without changes and will not be republished.

REASONED JUSTIFICATION. The Department finds that the adoption of the rule will result in a more consistent approach to governing multifamily activity and to the awarding of funding or assistance through the Department and to minimize repetition. The comments and responses include both administrative clarifications and corrections to the Uniform Multifamily Rule based on the comments received. After each comment title, numbers are shown in parentheses. These numbers refer to the person or entity that made the comment as reflected at the end of the reasoned response. If comment resulted in recommended language changes to the Draft Uniform Multifamily Rule as presented to the Board in September, such changes are indicated.

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS.

Public comments were accepted through October 20, 2014 with comments received from (19) Texas Association of Affordable Housing Providers (TAAHP), (20) Alyssa Carpenter, (24) Cynthia Bast, (36) S Anderson Consulting, (40) Cleopatra Investments, Inc., (43) Star – Equities, LLC, (51) RealTex Development.

22. §10.202(1)(D) – Subchapter C – Ineligible Applicants (24)

COMMENT SUMMARY: Commenter (24) indicated that some contractual breaches are not capable of cure and the language that has been added to this item might imply that every contractual breach should be entitled to cure; therefore, the following modification was suggested:

“(D) has breached a contract with a public agency, and, if such breach is permitted to be cured under the contract, has been given notice of the breach and a reasonable opportunity to cure, and failed to cure that breach within the time specified in the notice of breach;”

Commenter (24) suggested that the following item needs to tie to the Department’s Previous Participation rule, as revised. Specifically, that it does not apply to certain members of the Development Team, to the extent they are board members of a non-profit organization; that the Previous Participation rule identifies both uncured noncompliance and noncompliance that was not cured during the corrective action period; and that the Previous Participation rule measures more than just noncompliance.

“(F) has been found by the Board to be ineligible ~~because of material uncured noncompliance reflected in the Applicant's compliance history to the extent and where allowed by law or as assessed based upon a previous participation review~~

performed in accordance with §1.5 of this title ~~(relating to Previous Participation Reviews);~~”

Commenter (24) suggested a clarification to the item below that would give the Executive Director 30 days to make a determination, rather than the current language which could be interpreted to require the matter be brought to the Board within 30 days.

“(M) fails to disclose, in the Application, any Principal or any entity or Person in the Development ownership structure who was or is involved as a Principal in any other affordable housing transaction, voluntarily or involuntarily, that has terminated within the past ten (10) years or plans to or is negotiating to terminate their relationship with any other affordable housing development.... ~~If, not later than thirty (30) days after the date on which the Applicant has made full disclosure, including providing information responsive to any supplemental Department staff requests, the~~The Executive Director ~~shall~~ shall makes an initial determination ~~whether that~~ the person or persons should ~~not~~ be involved in the Application within thirty (30) days after the date on which the Applicant has made full disclosure, including providing information responsive to any supplemental Department requests. ~~, that initial determination shall be brought to the Board for a hearing and final determination. The decision of the Executive Director may be appealed in accordance with §10.902 of this chapter...~~”

Commenter (24) proposed the following modification to the following item in this section:

“(N) is found to have participated in the dissemination of misinformation about affordable housing and the persons it serves or about a competing Applicant that would likely have the effect of fomenting opposition to an Application where such opposition is not based in substantive and legitimate concerns that do not implicate potential violations of fair housing laws.”

STAFF RESPONSE: Staff agrees with the commenter and is recommending all of the suggested revisions.

23. §10.203 – Subchapter C – Public Notifications (19), (20), (36), (51)

COMMENT SUMMARY: Commenter (19) suggested the following modifications regarding the public notification requirement:

“...A certification, as provided in the Application, that the Applicant met the requirements and deadlines identified in paragraphs (1) - (3) of this section must be submitted with the Application....If evidence of these notifications was submitted with the pre-application (if applicable to the program) for the same Application and satisfied the Department's review of the pre-application threshold, then no additional notification is required at Application, even if additional Neighborhood Organizations have become of record between the beginning of the Application Acceptance Period and 30 days prior to the Full Application Delivery Deadline. However, re-notification is required by all Applicants who have submitted a change in the Application, whether from pre-

application to Application or as a result of an Administrative Deficiency that reflects a total Unit increase of greater than 10 percent or a 5 percent change in density (calculated as units per acre) as a result of a change in the size of the Development Site....”

Commenters (20), (36) requested a change to this section that would require re-notification only if there is an increase in density and further stated that a decrease is not something that would concern the community and rise to the level of necessitating additional notification.

“...However, re-notification is required by all Applicants who have submitted a change in the Application, whether from pre-application to Application or as a result of an Administrative Deficiency that reflects a total Unit increase of greater than 10 percent or a 5 percent ~~change~~ increase in density (calculated as units per acre) as a result of a change in the size of the Development Site....”

Commenter (51) recommended removing the language requiring Applicants to re-notify if there is a 5% change in density.

STAFF RESPONSE: In response to Commenter (51), staff disagrees with removal of the requirement to re-notify if there is an increase in density as staff believes this is important to those who may comment on an application. However, staff agrees with commenters (20) and (36) regarding re-notification only if density increases, and the section has been modified accordingly. In response to commenter (19), staff is not recommending the change. Applicants will be responsible for notifying any neighborhood organizations that are on record with the county or state as of 30 days prior to the Full Application Delivery Date, whether or not those organizations were on record with the county or state at the time the pre-application was filed. This timing gives developers enough opportunity to research what organizations should be notified while ensuring that statutory requirements regarding notifications are met. Staff is recommending the following clarifying language with respect to notification requirements:

“§10.203.Public Notifications (§2306.6705(9)). A certification, as provided in the Application, that the Applicant met the requirements and deadlines identified in paragraphs (1) - (3) of this section must be submitted with the Application. For Applications utilizing Competitive Housing Tax Credits, notifications must not be older than three (3) months from the first day of the Application Acceptance Period. For Tax-Exempt Bond Developments notifications and proof thereof must not be older than three (3) months prior to the date Parts 5 and 6 of the Application are submitted, and for all other Applications no older than three (3) months prior to the date the Application is submitted. If ~~evidence of these~~ notifications ~~was submitted~~ were made in order to satisfy requirements of with the pre-application submission (if applicable to the program) for the same Application ~~and satisfied the Department's review of the pre-application threshold,~~ then no additional notification is required at Application. However, re-notification is required by all Applicants who have submitted a change ~~in the Application, whether~~ from pre-application to Application ~~or as a result of an Administrative Deficiency~~ that reflects a total Unit increase of greater than 10 percent or a 5 percent ~~change~~ increase in density (calculated as units per acre) as a result of a change in the size of the Development Site. In addition, should a change in elected official occur between the submission of a pre-application and the submission of an Application, Applicants are required to notify the newly elected (or appointed) official.”

24. §10.204(9) – Subchapter C – Architectural Drawings (51)

COMMENT SUMMARY: Commenter (51) supported the additional language in this section that excludes rehabilitation developments from having to submit the building floor plans when the floor plans will not be changing.

STAFF RESPONSE: Staff appreciates the expression of support.

25. §10.204(13)(A) – Subchapter C – Ownership Structure (24)

COMMENT SUMMARY: Commenter (24) suggested the following modification to this section, consistent with those modifications proposed to the definition of Principal and the belief that the organizational charts should identify the proposed development owner, the entities that will be part of the ownership structure and the individuals that will own or control those entities.

“(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 or Guarantor, identifying all Principals thereof and providing the names and ownership percentages of all Persons having an ownership interest in the Development Owner or the Developer or Guarantor, as applicable, whether directly or through one or more subsidiaries. ~~Nonprofit entities, public housing authorities, publicly traded corporations, individual board members, and executive directors must be included in this exhibit 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.~~”

Commenter (24) with comments proposed along the same lines as those indicated above, proposed the following modification to ensure consistency with the Previous Participation rule as well.

“(B) Previous Participation. Evidence must be submitted that each entity shown on the organizational chart described in subparagraph (A) of this paragraph that has ownership interest in the Development Owner, Developer or Guarantor, has provided a copy of the completed and executed Previous Participation and Background Certification Form to the Department. ~~Nonprofit entities, public housing authorities, other government instrumentalities and publicly traded corporations are required to submit documentation for the entities involved, individual board members, and executive directors.~~ Individual Principals of such entities identified on the organizational chart must provide the Previous Participation and Background Certification Form, unless excluded from such requirement pursuant to §1.5 of this title. Any Person (regardless of any Ownership interest or lack thereof) receiving more than 10 percent of the Developer fee is also required to submit this document. The form must include a list of all developments that are, or were, previously under ownership or Control of the Applicant and/or each Principal, including any Person providing the required experience. All participation in any Department funded or monitored activity, including non-housing activities, as well as Housing Tax Credit developments or other programs administered by other states using state or

federal programs must be disclosed. The Previous Participation and Background Certification Form will authorize the parties overseeing such assistance to release ~~compliance histories~~ previous participation information to the Department.”

STAFF RESPONSE: Staff agrees with the commenter and recommends the suggested revisions. However, staff is not recommending any change to the definition of Principal as suggested by the same commenter, and all board members of corporations are considered Principals. Staff is recommending the following revision to §10.204(2), related to Certification of Principal:

“(2) Applicant Eligibility Certification of Principal. This form, as provided in the Application, must be executed by ~~all Principals~~ any individuals required to be listed on the organizational chart and also identified in subparagraphs (A) – (D) below. The ~~and~~ form identifies the various criteria relating to eligibility requirements associated with multifamily funding from the Department, including but not limited to the criteria identified under §10.202 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.”

26. §10.204(14) – Subchapter C – Nonprofit Ownership (43)

COMMENT SUMMARY: Commenter (43) suggested the requirement that the majority of the nonprofit’s Board of Directors either principally reside in the state (if the development is located in a Rural Area) or not more than 90 miles (if not in a Rural Area) be removed. Commenter (43) believed this requirement unnecessarily eliminates numerous nonprofit entities which have a national development footprint, but which have a majority of its Directors principally located in other states from competing under the Nonprofit Set-Aside and further pointed out that such requirement is not contained in §42(h)(5)(c) of the IRS Code.

STAFF RESPONSE: While the requirement that applications competing in the Nonprofit Set-Aside include a certification that the majority of the nonprofit’s Board of Directors principally reside in the state (if in a Rural Area) or not more than 90 miles from the site (if not in a Rural Area) is not a requirement of §42 of the IRS Code; it is a requirement of the Department’s Governing Statute, Texas Government Code §2306.6706. As a result the Department does not have the authority to remove.

Staff recommends no change based on this comment.

27. §10.205(5)(B) – Subchapter C – Site Design and Development Feasibility Report (19)

COMMENT SUMMARY: Commenter (19) proposed the following modification to the requirement of this third party report:

“(B) Survey or current plat as defined by the Texas Society of Professional Surveyors in their Manual of Practice for Land Surveying in Texas (Category 1A - Land Title Survey or Category 1B - Standard Land Boundary Survey). Surveys may not be older than twelve (12) months from the beginning of the Application Acceptance Period. Plats must include evidence that it has been recorded with the from an appropriate local entityofficial that, as of the date of submission, itand is the most current plat...”

STAFF RESPONSE: Staff agrees with the commenter and has modified the section accordingly.

28. §10.207(a)(1) – Subchapter C – Waiver of Rules for Applications (40)

COMMENT SUMMARY: Commenter (40) stated the waiver process allows waivers for rehabilitation developments but not adaptive reuse and suggested the following modification on the basis that adaptive reuse, especially where historic structures are involved, can make it impossible for an applicant to fulfill all of the Department’s rules and requirements.

“(1) The waiver request must establish good cause for the Board to grant the waiver which may include limitations of local building or zoning codes, limitations of existing building structural elements for Rehabilitation or Adaptive Reuse (excluding Reconstruction ~~or Adaptive Reuse~~) Developments, required amenities or design elements in buildings designated as historic structures that would conflict with retaining the historic nature of the building(s), or provisions of the design element or amenity that would not benefit the tenants due to limitations of the existing layout or design of the units for Rehabilitation or Adaptive Reuse (excluding Reconstruction) Developments. Staff may recommend the Board’s approval for such a waiver if the Executive Director, the Deputy Executive Director with oversight of multifamily programs, and Deputy Executive Director with oversight of asset management find that the Applicant has established good cause for the waiver...”

STAFF RESPONSE: Staff agrees with the commenter and has modified the section accordingly.

STATUTORY AUTHORITY. The new sections are adopted pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules. Additionally, the new sections are adopted pursuant to Texas Government Code, §2306.67022, which specifically authorizes the Department to adopt a qualified allocation plan.

Subchapter C

Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules for Applications.

§10.201.Procedural Requirements for Application Submission. The purpose of this section is to identify the procedural requirements for Application submission. Only one Application may be submitted for a Development Site in an Application Round. While the Application Acceptance Period is open or prior to the Application deadline, an Applicant may withdraw an Application and subsequently file a new Application utilizing the original pre-application fee (as applicable) that was paid as long as no substantive evaluation was performed by the Department. Applicants are subject to the schedule of fees as set forth in §10.901 of this chapter (relating to Fee Schedule).

(1) General Requirements.

(A) An Applicant requesting funding from the Department must submit an Application in order to be considered for an award. An Application must be complete (including all required exhibits and supporting materials) and submitted by the required program deadline. If an Application, including the corresponding Application fee as described in §10.901 of this chapter, is not submitted to the Department on or before the applicable deadline, the Applicant will be deemed not to have made an Application.

(B) Applying for multifamily funds from the Department is a technical process that must be followed completely. As a result of the competitive nature of some funding sources, an Applicant should proceed on the assumption that deadlines are fixed and firm with respect to both date and time, and cannot be waived except where authorized, and for truly extraordinary circumstances, such as the occurrence of a significant natural disaster that makes timely adherence impossible. If an Applicant chooses to submit by delivering an item physically to the Department, it is the Applicant's responsibility to be within the Department's doors by the appointed deadline. Applicants are strongly encouraged to submit the required items well in advance of established deadlines. Applicants should ensure that all documents are legible, properly organized and tabbed, and that digital media is fully readable by the Department. Department staff receiving an application may perform a cursory review to see if there are any glaring problems. This is a cursory review and may not be relied upon as confirmation that the Application was complete or in proper form.

(C) The Applicant must deliver one (1) CD-R containing a PDF copy and Excel copy of the complete Application to the Department. Each copy must be in a single file and individually bookmarked in the order required by the Multifamily Programs Procedures Manual. Additional files required for Application submission (e.g., Third Party Reports) outside the Uniform Application may be included on the same CD-R or a separate CD-R as the Applicant sees fit.

(D) Applications must include materials addressing each and all of the items enumerated in this chapter and other chapters as applicable. If an Applicant does not believe that a specific item should be applied, the Applicant must include, in its place, a statement identifying the required item, stating that it is not being supplied, and a statement as to why the Applicant does not believe it should be required.

(2) Filing of Application for Tax-Exempt Bond Developments. Applications may be submitted to the Department as described in subparagraphs (A) and (B) of this paragraph. Multiple site applications for Tax-Exempt Bond Developments will be considered to be one Application as identified in Texas Government Code, Chapter 1372. Applications will be required to satisfy the requirements of the Qualified Allocation Plan (QAP) and Uniform Multifamily Rules in place at the time the Application is received by the Department. Applications that receive a Traditional Carryforward designation after November 15 will not be accepted until after January 2 and will be subject to the QAP and Uniform Multifamily Rules in place at the time the Application is received by the Department.

(A) Lottery Applications. For Applicants participating in the TBRB lottery for private activity bond volume cap and whereby advance notice is given regarding a Certificate of Reservation, the Applicant must submit a Notice to Submit Lottery Application form to the Department no later than the Notice to Submit Lottery Application Delivery Date described in §10.4 of this chapter (relating to Program Dates). The complete Application, accompanied by the Application Fee described in §10.901 of this chapter must be submitted no later than the Applications Associated with Lottery Delivery Date described in §10.4 of this chapter.

(B) Waiting List Applications. Applications designated as Priority 1 or 2 by the TBRB and receiving advance notice of a Certificate of Reservation for private activity bond volume cap must submit Parts 1 - 4 of the Application and the Application Fee described in §10.901 of this chapter prior to the issuance of the Certificate of Reservation by the TBRB. The remaining parts of the Application must be submitted at least seventy-five (75) days prior to the Board meeting at which the decision to issue a Determination Notice would be made. An Application designated as Priority 3 will not be accepted until after the issuer has induced the bonds and is subject to the following additional timeframes:

(i) The Applicant must submit to the Department confirmation that a Certificate of Reservation from the TBRB has been issued not more than thirty (30) days after the Application is received by the Department. The Executive Director may, for good cause, approve an extension for up to an additional fifteen (15) days to submit confirmation the Certificate of Reservation has been issued. The Application will be terminated if the Certificate of Reservation is not received within the required timeframe;

(ii) The Department will require at least seventy-five (75) days to review an Application, unless Department staff can complete its evaluation in sufficient time for Board consideration. Applicants should be aware that unusual financing structures, portfolio transactions, and the need to resolve Administrative Deficiencies may require additional time to review and the prioritization of Applications will be subject to the review priority established in paragraph (6) of this subsection;

(iii) Department staff may choose to delay presentation to the Board in instances in which an Applicant is not reasonably expected to close within sixty (60) days of the issuance of a Determination Notice.

(3) Certification of Tax Exempt Bond Applications with New Docket Numbers. Applications that receive an affirmative Board Determination, but for which closing on the bonds does not occur prior to the Certificate of Reservation expiration date, and which subsequently have that docket number withdrawn from the TBRB, may have their Determination Notice reinstated. In the event that the Department's Board has not yet approved the Application, the Application will continue to be processed and ultimately provided to the Board for consideration. The Applicant would need to receive a new docket number from the TBRB and meet the requirements described in subparagraphs (A) - (C) of this paragraph:

(A) The Application must remain unchanged, which means that at a minimum, the following cannot have changed: Site Control, total number of Units, unit mix (bedroom sizes and income restrictions), design/site plan documents, financial structure including bond and Housing Tax Credit amounts, development costs, rent schedule, operating expenses, sources and uses, ad valorem tax exemption status, Target Population, scoring criteria (if TDHCA is bond issuer) or TBRB priority status including the effect on the inclusive capture rate. The entities involved in the Applicant entity and Developer cannot change; however, the certification can be submitted even if the lender, syndicator or issuer changes, as

long as the financing structure and terms remain unchanged. Notifications under §10.203 of this chapter (relating to Public Notifications (§2306.6705(9))) are not required to be reissued. A revised Determination Notice will be issued once notice of the assignment of a new docket number has been provided to the Department and the Department has confirmed that the capture rate and market demand remain acceptable. This certification must be submitted no later than thirty (30) calendar days after the date the TBRB issues the new docket number.; or

(B) the new docket number may not be issued more than four (4) months from the date the original application was withdrawn from the TBRB. The new docket number must be from the same program year as the original docket number or, for Applications that receive a new docket number from the program year that is immediately succeeding the program year of the original docket number, the requirements in clauses (i) and (ii) of this subparagraph must be met:

(i) The Applicant must certify that the Development will meet all rules and requirements in effect at the time the new docket number is issued; and

(ii) The Department must determine that the changes in the rules applicable to the program(s) under which the Application was originally awarded are not of a material nature that would necessitate a new Application and that any new forms and clarifications to the Application are of a nature that can be resolved through the Administrative Deficiency process; or

(C) if there are changes to the Application as referenced in subparagraph (A) of this paragraph or if such changes in the rules pursuant to subparagraph (B)(ii) of this paragraph are of a material nature the Applicant will be required to submit a new Application in full, along with the applicable fees, to be reviewed and evaluated in its entirety for a new Determination Notice to be issued. If there is public opposition but the Application remains the same pursuant to subparagraph (A) of this paragraph, a new Application will not be required to be submitted; however, the Application must be presented before the Board for consideration of the re-issuance of the Determination Notice.

(4) Withdrawal of Application. An Applicant may withdraw an Application prior to or after receiving an award of funding by submitting to the Department written notice of the withdrawal. An Applicant may be subject to a fee associated with a withdrawal if warranted and allowable under §10.901 of this chapter.

(5) Evaluation Process. Priority Applications, which shall include those Applications believed likely to be competitive, will undergo a program review for compliance with submission requirements and selection criteria, as applicable. In general, Application reviews by the Department shall be prioritized based upon the likelihood that an Application will be competitive for an award based upon the set-aside, self score, received date, or other ranking factors. Thus, non-competitive or lower scoring Applications may never be reviewed. The Director of Multifamily Finance will identify those Applications that will receive a full program review based upon a reasonable assessment of each Application's priority, but no Application with a competitive ranking shall be skipped or otherwise overlooked. This initial assessment may be a high level assessment, not a full assessment. Applications deemed to be priority Applications may change from time to time. The Department shall underwrite Applications that received a full program review and remain competitive to determine financial feasibility and an appropriate funding amount. In making this determination, the Department will use §10.302 of this chapter (relating to Underwriting Rules and Guidelines) and §10.307 of this chapter (relating to Direct Loan Requirements). The Department may have an external party perform all or part or none of the underwriting evaluation to the extent it determines appropriate. The expense of any external underwriting shall be paid by the Applicant prior to the commencement of the aforementioned

evaluation. Applications will undergo a previous participation review in accordance with §1.5 of this title (relating to Previous Participation Reviews) and Development Site conditions may be evaluated through a physical site inspection by the Department or its agents.

(6) Prioritization of Applications under various Programs. This paragraph identifies how ties or other prioritization matters will be handled when dealing with de-concentration requirements, capture rate calculations, and general review priority of Applications submitted under different programs.

(A) De-concentration and Capture Rate. Priority will be established based on the earlier date associated with an Application. The dates that will be used to establish priority are as follows:

- (i) For Tax-Exempt Bond Developments, the issuance date of the Certificate of Reservation issued by the TBRB; and
- (ii) For all other Developments, the date the Application is received by the Department; and
- (iii) Notwithstanding the foregoing, after July 31, a Tax-Exempt Bond Development with a Certificate of Reservation from the TBRB will take precedence over any Housing Tax Credit Application from the current Application Round on the waiting list.

(B) General Review Priority. Review priority for Applications under various multifamily programs will be established based on Department staff's consideration of any statutory timeframes associated with a program or Application in relation to the volume of Applications being processed. In general, those with statutory deadlines or more restrictive deadlines will be prioritized for review and processing ahead of those that are not subject to the same constraints. In general, any non-Competitive Housing Tax Credit Applications received during the competitive tax credit round will take longer to process due to the statutory constraints on the award and allocation of competitive tax credits.

(7) Administrative Deficiency Process. The purpose of the Administrative Deficiency process is to allow staff to request that an Applicant provide clarification, correction, or non-material missing information to resolve inconsistencies in the original Application or to assist staff in evaluating the Application. Staff will request such information via a deficiency notice. The review may occur in several phases and deficiency notices may be issued during any of these phases. Staff will send the deficiency notice via an e-mail, or if an e-mail address is not provided in the Application, by facsimile to the Applicant and one other contact party if identified by the Applicant in the Application. The time period for responding to a deficiency notice commences on the first business day following the deficiency notice date. Deficiency notices may be sent to an Applicant prior to or after the end of the Application Acceptance Period and may also be sent in response to reviews on post-award submissions. Responses are required to be submitted electronically as a PDF or multiple PDF files. A review of the response provided by the Applicant may reveal that issues initially identified as an Administrative Deficiency are actually determined to be beyond the scope of an Administrative Deficiency process, meaning that they in fact implicated matters of a material nature not susceptible to being resolved. Department staff may in good faith provide an Applicant confirmation that an Administrative Deficiency response has been received or that such response is satisfactory. Communications from staff that the response was satisfactory do not establish any entitlement to points, eligibility status, or to any presumption of having fulfilled any requirements. Final determinations regarding the sufficiency of documentation submitted to cure an Administrative Deficiency as well as the distinction between material and non-material missing information are reserved for the Director of Multifamily Finance, Executive Director, and Board.

(A) Administrative Deficiencies for Competitive HTC Applications. Unless an extension has been timely requested and granted, if an Administrative Deficiency is not resolved to the satisfaction of the Department by 5:00 p.m. on the fifth business day following the date of the deficiency notice, then (5 points) shall be deducted from the selection criteria score for each additional day the deficiency remains unresolved. If Administrative Deficiencies are not resolved by 5:00 p.m. on the seventh business day following the date of the deficiency notice, then the Application shall be terminated. An Applicant may not change or supplement any part of an Application in any manner after the filing deadline or while the Application is under consideration for an award, and may not add any set-asides, increase the requested credit amount, revise the Unit mix (both income levels and Bedroom mixes), or adjust their self-score except in response to a direct request from the Department to do so as a result of an Administrative Deficiency. (§2306.6708(b); §2306.6708) To the extent that the review of Administrative Deficiency documentation alters the score assigned to the Application, Applicants will be re-notified of their final adjusted score.

(B) Administrative Deficiencies for all other Applications or sources of funds. If Administrative Deficiencies are not resolved to the satisfaction of the Department by 5:00 p.m. on the fifth business day following the date of the deficiency notice, then an Administrative Deficiency Notice Late Fee of \$500 for each business day the deficiency remains unresolved will be assessed, and the Application will not be presented to the Board for consideration until all outstanding fees have been paid. Applications with unresolved deficiencies after 5:00 p.m. on the tenth day following the date of the deficiency notice may be terminated. The Applicant will be responsible for the payment of fees accrued pursuant to this paragraph regardless of any termination. Department staff may or may not assess an Administrative Deficiency Notice Late Fee for or terminate Applications for Tax-Exempt Bond or Direct Loan Developments during periods when private activity bond volume cap or Direct Loan funds are undersubscribed. Applicants should be prepared for additional time needed for completion of staff reviews as described in paragraph (2)(B) of this section.

(8) Limited Priority Reviews. If, after the submission of the Application, an Applicant identifies an error in the Application that would generally be the subject of an Administrative Deficiency, the Applicant may request a limited priority review of the specific and limited issues in need of clarification or correction. The issue may not relate to the score of an Application. This limited priority review may only cover the specific issue and not the entire Application. If the limited priority review results in the identification of an issue that does indeed need correction or clarification, staff will request such through the Administrative Deficiency process as stated in paragraph (7) of this section, if deemed appropriate. A limited priority review is intended to address:

(A) clarification of issues that Department staff would have difficulty identifying due to the omission of information that the Department may have access to only through Applicant disclosure, such as a prior removal from a tax credit transaction or participation in a Development that is not identified in the previous participation portion of the Application; or

(B) technical correction of non-material information that would cause an Application deemed non-competitive to be deemed competitive and, therefore, subject to a staff review. For example, failure to mark the Nonprofit Set-Aside in an Application that otherwise included complete submission of documentation for participation in the Nonprofit Set-Aside.

(9) Challenges to Opposition for Tax-Exempt Bond Developments. Any written statement from a Neighborhood Organization expressing opposition to an Application may be challenged if it is contrary to findings or determinations, including zoning determinations, of a municipality, county, school district, or

other local Governmental Entity having jurisdiction or oversight over the finding or determination. If any such comment is challenged, the challenger must declare the basis for the challenge and submit such challenge by the Challenges to Neighborhood Organization Opposition Delivery Date as identified in §10.4 of this chapter. The Neighborhood Organization expressing opposition will be given seven (7) calendar days to provide any information related to the issue of whether their assertions are contrary to the findings or determinations of a local Governmental Entity. All such materials and the analysis of the Department's staff will be provided to a fact finder, chosen by the Department, for review and a determination of the issue presented by this subsection. The fact finder will not make determinations as to the accuracy of the statements presented, but only with regard to whether the statements are contrary to findings or determinations of a local Governmental Entity. The fact finder's determination will be final and may not be waived or appealed.

§10.202. Ineligible Applicants and Applications. The purpose of this section is to identify those situations in which an Application or Applicant may be considered ineligible for Department funding and subsequently terminated. If such ineligibility is determined by staff to exist, then prior to termination the Department may send a notice to the Applicant and provide them the opportunity to explain how they believe they or their Application is eligible. The items listed in this section include those requirements in §42 of the Code, Texas Government Code, Chapter 2306, and other criteria considered important by the Department, and does not represent an exhaustive list of ineligibility criteria that may otherwise be identified in applicable rules or a NOFA specific to the programmatic funding.

(1) Applicants. An Applicant shall be considered ineligible if any of the criteria in subparagraphs (A) - (N) of this paragraph apply to the Applicant. If any of the criteria apply to any other member of the Development Team, the Applicant will also be deemed ineligible unless a substitution of that Development Team member is specifically allowable under the Department's rules and sought by the Applicant or appropriate corrective action has been accepted and approved by the Department. An Applicant is ineligible if the Applicant:

(A) has been or is barred, suspended, or terminated from procurement in a state or Federal program or listed in HUD's System for Award Management (SAM); (§2306.0504)

(B) has been convicted of a state or federal felony crime involving fraud, bribery, theft, misrepresentation of material fact, misappropriation of funds, or other similar criminal offenses within fifteen (15) years preceding the Application submission;

(C) is, at the time of Application, subject to an enforcement or disciplinary action under state or federal securities law or by the NASD; subject to a federal tax lien; or the subject of a proceeding in which a Governmental Entity has issued an order to impose penalties, suspend funding, or take adverse action based on an allegation of financial misconduct or uncured violation of material laws, rules, or other legal requirements governing activities considered relevant by the Governmental Entity;

(D) has breached a contract with a public agency, [and, if such breach is permitted to be cured under the contract](#), has been given notice of the breach and a reasonable opportunity to cure, and failed to cure that breach within the time specified in the notice of breach;

(E) has misrepresented to a subcontractor the extent to which the Developer has benefited from contracts or financial assistance that has been awarded by a public agency, including the scope of the Developer's participation in contracts with the agency, and the amount of financial assistance awarded to the Developer by the agency;

(F) has been found by the Board to be ineligible ~~because of material uncured noncompliance reflected in the Applicant's compliance history to the extent and where allowed by law or as assessed based on a previous participation review performed~~ in accordance with §1.5 of this title ~~(relating to Previous Participation Reviews)~~;

(G) is delinquent in any loan, fee, or escrow payments to the Department in accordance with the terms of the loan, as amended, or is otherwise in default with any provisions of such loans;

(H) has failed to cure any past due fees owed to the Department at least ten (10) days prior to the Board meeting at which the decision for an award is to be made;

(I) is in violation of a state revolving door or other standard of conduct or conflict of interest statute, including Texas Government Code, §2306.6733, or a provision of Texas Government Code, Chapter 572, in making, advancing, or supporting the Application;

(J) has previous contracts or commitments that have been partially or fully deobligated during the twelve (12) months prior to the submission of the Application, and through the date of final allocation due to a failure to meet contractual obligations, and the Party is on notice that such deobligation results in ineligibility under this chapter;

(K) has provided fraudulent information, knowingly falsified documentation, or other intentional or negligent material misrepresentation or omission in an Application or Commitment, as part of a challenge to another Application or any other information provided to the Department for any reason. The conduct described in this subparagraph is also a violation of this chapter and will subject the Applicant to the assessment of administrative penalties under Texas Government Code, Chapter 2306 and this title;

(L) was the owner or Affiliate of the owner of a Department HOME-assisted rental development for which the federal affordability requirements were prematurely terminated and the affordability requirements have not re-affirmed or HOME funds repaid;

(M) fails to disclose, in the Application, any Principal or any entity or Person in the Development ownership structure who was or is involved as a Principal in any other affordable housing transaction, voluntarily or involuntarily, that has terminated within the past ten (10) years or plans to or is negotiating to terminate their relationship with any other affordable housing development. Failure to disclose is grounds for termination. The disclosure must identify the person or persons and development involved, the identity of each other development, and contact information for the other Principals of each such development, a narrative description of the facts and circumstances of the termination or proposed termination, and any appropriate supporting documents. An Application may be terminated based upon factors in the disclosure. ~~If, not later than thirty (30) days after the date on which the Applicant has made full disclosure, including providing information responsive to any supplemental Department staff requests, the Executive Director shall makes an initial determination that whether the person or persons should not be involved in the Application within thirty (30) days after the date on which the Applicant has made full disclosure, including providing information responsive to any supplemental Department requests, that initial determination shall be brought to the Board for a hearing and final determination. The decision of the Executive Director may be appealed in accordance with §10.902 of this chapter.~~ If the Executive Director has not made and issued such an initial determination on or before the day thirty (30) days after the date on which the Applicant has made full disclosure, including providing information responsive to any supplemental Department staff requests, the person or persons

made the subject of the disclosure shall be presumptively fit to proceed in their current role or roles. Such presumption in no way affects or limits the ability of the Department staff to initiate debarment proceedings under the Department's debarment rules at a future time if it finds that facts and circumstances warranting debarment exist. In the Executive Director's making an initial determination or the Board's making a final determination as to a person's fitness to be involved as a principal with respect to an Application, the factors described in clauses (i) - (v) of this subparagraph shall be considered:

- (i) the amount of resources in a development and the amount of the benefit received from the development;
- (ii) the legal and practical ability to address issues that may have precipitated the termination or proposed termination of the relationship;
- (iii) the role of the person in causing or materially contributing to any problems with the success of the development;
- (iv) the person's compliance history, including compliance history on other developments; and
- (v) any other facts or circumstances that have a material bearing on the question of the person's ability to be a compliant and effective participant in their proposed role as described in the Application; or

(N) is found to have participated in the dissemination of misinformation about affordable housing and the persons it serves or about a competing Applicant that would likely have the effect of fomenting opposition to an Application where such opposition is not based in substantive and legitimate concerns that do not implicate potential violations of fair housing laws. Nothing herein shall be construed or effectuated in a manner to deprive a person of their right of free speech, but it is a requirement of those who voluntarily choose to participate in this program that they refrain from participating in the above-described inappropriate behaviors. Applicants may inform Department staff about activities potentially prohibited by this provision outside of the challenge process described in §11.10 of this title (relating to Challenges of Competitive HTC Applications). An Applicant submitting documentation of a potential violation may not appeal any decision that is made with regard to another competing Applicant's application.

(2) Applications. An Application shall be ineligible if any of the criteria in subparagraphs (A) - (C) of this paragraph apply to the Application:

(A) a violation of Texas Government Code, §2306.1113, exists relating to Ex Parte Communication. An ex parte communication occurs when an Applicant or Person representing an Applicant initiates substantive contact (other than permitted social contact) with a board member, or vice versa, in a setting other than a duly posted and convened public meeting, in any manner not specifically permitted by Texas Government Code, §2306.1113(b). Such action is prohibited. For Applicants seeking funding after initial awards have been made, such as waiting list Applicants, the ex parte communication prohibition remains in effect so long as the Application remains eligible for funding. The ex parte provision does not prohibit the Board from participating in social events at which a Person with whom communications are prohibited may, or will be present; provided that no matters related to any Application being considered by the Board may be discussed. An attempted but unsuccessful prohibited ex parte communication, such as a letter sent to one or more board members but not opened, may be cured by full disclosure in a public meeting, and the

Board may reinstate the Application and establish appropriate consequences for cured actions, such as denial of the matters made the subject to the communication.

(B) the Application is submitted after the Application submission deadline (time or date); is missing multiple parts of the Application; or has a Material Deficiency; or

(C) for any Development utilizing Housing Tax Credits or Tax-Exempt Bonds:

(i) at the time of Application or at any time during the two-year period preceding the date the Application Round begins (or for Tax-Exempt Bond Developments any time during the two-year period preceding the date the Application is submitted to the Department), the Applicant or a Related Party is or has been a member of the Board or employed by the Department as the Executive Director, Chief of Staff, General Counsel, a Deputy Executive Director, the Director of Multifamily Finance, the Chief of Compliance, the Director of Real Estate Analysis, a manager over the program for which an Application has been submitted, or any person exercising such responsibilities regardless of job title; or (§2306.6703(a)(1))

(ii) the Applicant proposes to replace in less than fifteen (15) years any private activity bond financing of the Development described by the Application, unless the exceptions in §2306.6703(a)(2) of the Texas Government Code are met.

§10.203.Public Notifications (§2306.6705(9)). A certification, as provided in the Application, that the Applicant met the requirements and deadlines identified in paragraphs (1) - (3) of this section must be submitted with the Application. For Applications utilizing Competitive Housing Tax Credits, notifications must not be older than three (3) months from the first day of the Application Acceptance Period. For Tax-Exempt Bond Developments notifications and proof thereof must not be older than three (3) months prior to the date Parts 5 and 6 of the Application are submitted, and for all other Applications no older than three (3) months prior to the date the Application is submitted. If ~~evidence of these notifications was submitted were made in order to satisfy requirements of~~with the pre-application submission (if applicable to the program) for the same Application ~~and satisfied the Department's review of the pre-application threshold~~, then no additional notification is required at Application. However, re-notification is required by all Applicants who have submitted a change ~~in the Application, whether~~ from pre-application to Application ~~or as a result of an Administrative Deficiency~~ that reflects a total Unit increase of greater than 10 percent or a 5 percent ~~change increase~~in density (calculated as units per acre) as a result of a change in the size of the Development Site. In addition, should a change in elected official occur between the submission of a pre-application and the submission of an Application, Applicants are required to notify the newly elected (or appointed) official.

(1) Neighborhood Organization Notifications.

(A) The Applicant must identify and notify all Neighborhood Organizations on record with the county or the state as of 30 days prior to the ~~date the~~ Full Application Delivery Date and whose boundaries include the proposed Development Site.

(B) The Applicant must list, in the certification form provided in the Application, all Neighborhood Organizations on record with the county or state as of 30 days prior to the Full Application Delivery Date and whose boundaries include the proposed Development Site as of the submission of the Application.

(2) Notification Recipients. No later than the date the Application is submitted, notification must be sent to all of the persons or entities identified in subparagraphs (A) - (H) of this paragraph. Developments located in an Extra Territorial Jurisdiction (ETJ) of a city are required to notify both city and county officials. The notifications may be sent by e-mail, fax or mail with return receipt requested or similar tracking mechanism in the format required in the Application Notification Template provided in the Application. Evidence of notification is required in the form of a certification provided in the Application. The Applicant is encouraged to retain proof of delivery in the event it is requested by the Department. Evidence of proof of delivery is demonstrated by a signed receipt for mail or courier delivery and confirmation of receipt by recipient for fax and e-mail. Officials to be notified are those officials in office at the time the Application is submitted. Note that between the time of pre-application (if made) and full Application, such officials may change and the boundaries of their jurisdictions may change. By way of example and not by way of limitation, events such as redistricting may cause changes which will necessitate additional notifications at full Application. Meetings and discussions do not constitute notification. Only a timely and compliant written notification to the correct person constitutes notification.

- (A) Neighborhood Organizations on record with the state or county as of 30 days prior to the Full Application Delivery Date whose boundaries include the Development Site;
- (B) Superintendent of the school district in which the Development Site is located;
- (C) Presiding officer of the board of trustees of the school district in which the Development Site is located;
- (D) Mayor of the municipality (if the Development Site is within a municipality or its extraterritorial jurisdiction);
- (E) All elected members of the Governing Body of the municipality (if the Development Site is within a municipality or its extraterritorial jurisdiction);
- (F) Presiding officer of the Governing Body of the county in which the Development Site is located;
- (G) All elected members of the Governing Body of the county in which the Development Site is located;
- and
- (H) State Senator and State Representative of the districts whose boundaries include the Development Site.

(3) Contents of Notification.

- (A) The notification must include, at a minimum, all information described in clauses (i) - (vi) of this subparagraph.
 - (i) the Applicant's name, address, individual contact name, and phone number;
 - (ii) the Development name, address, city and county;
 - (iii) a statement indicating the program(s) to which the Applicant is applying with the Texas Department of Housing and Community Affairs;
 - (iv) whether the Development proposes New Construction, Reconstruction, Adaptive Reuse or Rehabilitation;
 - (v) the physical type of Development being proposed (e.g. single family homes, duplex, apartments, townhomes, high-rise etc.); and
 - (vi) the total number of Units proposed and total number of low-income Units proposed.

(B) The notification may not contain any false or misleading statements. Without limiting the generality of the foregoing, the notification may not create the impression that the proposed Development will serve the elderly unless 100 percent of the Units will be for Qualified Elderly, and it may not imply or indicate that it will target or prefer any subpopulation unless such targeting or preference is in full compliance with all applicable state and federal laws, including state and federal fair housing laws.

§10.204.Required Documentation for Application Submission. The purpose of this section is to identify the documentation that is required at the time of Application submission, unless specifically indicated or otherwise required by Department rule. If any of the documentation indicated in this section is not resolved, clarified or corrected to the satisfaction of the Department through either original Application submission or the Administrative Deficiency process, the Application will be terminated. Unless stated otherwise, all documentation identified in this section must not be dated more than six (6) months prior to the close of the Application Acceptance Period or the date of Application submission as applicable to the program. The Application may include, or Department staff may request, documentation or verification of compliance with any requirements related to the eligibility of an Applicant, Application, Development Site, or Development.

(1) Certification of Development Owner. This form, as provided in the Application, must be executed by the Development Owner and address the specific requirements associated with the Development. The Person executing the certification is responsible for ensuring all individuals referenced therein are in compliance with the certification, that they have given it with all required authority and with actual knowledge of the matters certified. Applicants must read the certification carefully as it contains certain construction and Development specifications that each Development must meet.

(A) The Development will adhere to the Texas Property Code relating to security devices and other applicable requirements for residential tenancies, and will adhere to local building codes or, if no local building codes are in place, then to the most recent version of the International Building Code.

(B) This Application and all materials submitted to the Department constitute records of the Department subject to Texas Government Code, Chapter 552, and the Texas Public Information Act.

(C) All representations, undertakings and commitments made by Applicant in the Application process for Development assistance expressly constitute conditions to any Commitment, Determination Notice, Carryover Allocation, or Direct Loan Commitment for such Development which the Department may issue or award, and the violation of any such condition shall be sufficient cause for the cancellation and rescission of such Commitment, Determination Notice, Carryover Allocation, or Direct Loan Commitment by the Department. If any such representations, undertakings and commitments concern or relate to the ongoing features or operation of the Development, they shall each and all shall be enforceable even if not reflected in the Land Use Restriction Agreement. All such representations, undertakings and commitments are also enforceable by the Department and the tenants of the Development, including enforcement by administrative penalties for failure to perform, in accordance with the Land Use Restriction Agreement.

(D) The Development Owner has read and understands the Department's fair housing educational materials posted on the Department's website as of the beginning of the Application Acceptance Period.

(E) The Development Owner agrees to implement a plan to use Historically Underutilized Businesses (HUB) in the development process consistent with the Historically Underutilized Business Guidelines for

contracting with the State of Texas. The Development Owner will be required to submit a report of the success of the plan as part of the cost certification documentation, in order to receive IRS Forms 8609 or, if the Development does not have Housing Tax Credits, release of retainage.

(F) The Applicant will attempt to ensure that at least 30 percent of the construction and management businesses with which the Applicant contracts in connection with the Development are Minority Owned Businesses as further described in Texas Government Code, §2306.6734.

(G) The Development Owner will affirmatively market to veterans through direct marketing or contracts with veteran's organizations. The Development Owner will be required to identify how they will affirmatively market to veterans and report to the Department in the annual housing report on the results of the marketing efforts to veterans. Exceptions to this requirement must be approved by the Department.

(H) The Development Owner will comply with any and all notices required by the Department.

(2) Applicant Eligibility Certification of Principal. This form, as provided in the Application, must be executed by all Principals any individuals required to be listed on the organizational chart and also identified in subparagraphs (A) - (D) below. The ~~and~~ form identifies the various criteria relating to eligibility requirements associated with multifamily funding from the Department, including but not limited to the criteria identified under §10.202 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.

(3) Architect Certification Form. This form, as provided in the Application, must be executed by the Development engineer, an accredited architect or Department-approved Third Party accessibility specialist. (§2306.6722 and §2306.6730)

(4) Notice, Hearing, and Resolution for Tax-Exempt Bond Developments. In accordance with Texas Government Code, §2306.67071, the following actions must take place with respect to the filing of an Application and any Department awards for a Tax-Exempt Bond Development.

(A) Prior to submission of an Application to the Department, an Applicant must provide notice of the intent to file the Application in accordance with §10.203 of this chapter (relating to Public Notifications (§2306.6705(9))).

(B) The Governing Body of a municipality must hold a hearing if the Development Site is located within a municipality or the extra territorial jurisdiction (ETJ) of a municipality. The Governing Body of a county must hold a hearing unless the Development Site is located within a municipality. For Development Sites located in an ETJ the county and municipality must hold hearings; however, the county and municipality may arrange for a joint hearing. The purpose of the hearing(s) must be to solicit public input concerning the Application or Development and the hearing(s) must provide the public with such an opportunity. The Applicant may be asked to substantively address the concerns of the public or local government officials.

(C) An Applicant must submit to the Department a resolution of no objection from the applicable Governing Body. Such resolution(s) must specifically identify the Development whether by legal description, address, Development name, Application number or other verifiable method. In providing a resolution, a municipality or county should consult its own staff and legal counsel as to whether such resolution will be consistent with Fair Housing laws as they may apply, including, as applicable, consistency with any FFAST form on file, any current Analysis of Impediments to Fair Housing Choice, or any current plans such as one year action plans or five year consolidated plans for HUD block grant funds, HOME or CDBG funds. For an Application with a Development Site that is:

- (i) Within a municipality, the Applicant must submit a resolution from the Governing Body of that municipality;
- (ii) Within the extraterritorial jurisdiction (ETJ) of a municipality, the Applicant must submit both:
 - (I) a resolution from the Governing Body of that municipality; and
 - (II) a resolution from the Governing Body of the county; or
- (iii) Within a county and not within a municipality or the ETJ of a municipality, a resolution from the Governing Body of the county.

(D) For purposes of meeting the requirements of subparagraph (C) of this paragraph, the resolution(s) must be submitted no later than the Resolutions Delivery Date described in §10.4 of this chapter (relating to Program Dates). An acceptable, but not required, form of resolution may be obtained in the Multifamily Programs Procedures Manual. Applicants should ensure that the resolutions all have the appropriate references and certifications or the Application may be terminated. The resolution(s) must certify that:

- (i) Notice has been provided to the Governing Body in accordance with Texas Government Code, §2306.67071(a) and subparagraph (A) of this paragraph;
- (ii) The Governing Body has had sufficient opportunity to obtain a response from the Applicant regarding any questions or concerns about the proposed Development;
- (iii) The Governing Body has held a hearing at which public comment may be made on the proposed Development in accordance with Texas Government Code, §2306.67071(b) and subparagraph (B) of this paragraph; and
- (iv) After due consideration of the information provided by the Applicant and public comment, the Governing Body does not object to the proposed Application.

(5) Designation as Rural or Urban. Each Application must identify whether the Development Site is located in an Urban Area or Rural Area of a Uniform State Service Region. The Department shall make available a list of Places meeting the requirements of Texas Government Code, §2306.004(28-a)(A) and (B), for designation as a Rural Area and those that are an Urban Area in the Site Demographics Characteristics Report. Some Places are municipalities. For any Development Site located in the ETJ of a municipality and not in a Place, the Application shall have the Rural Area or Urban Area designation of the municipality whose ETJ within which the Development Site is located. For any Development Site not located within the boundaries of a Place or the ETJ of a municipality, the applicable designation is that of the closest Place.

(6) Experience Requirement. Evidence that meets the criteria as stated in subparagraph (A) of this paragraph must be provided in the Application, unless an experience certificate was issued by the Department in 2014 which may be submitted as acceptable evidence of this requirement. Experience of multiple parties may not be aggregated to meet this requirement.

(A) A Principal of the Developer, Development Owner, or General Partner must establish that they have experience in the development and placement in service of 150 units or more. Acceptable documentation to meet this requirement shall include any of the items in clauses (i) - (ix) of this subparagraph:

- (i) American Institute of Architects (AIA) Document (A102) or (A103) 2007 - Standard Form of Agreement between Owner and Contractor;
- (ii) AIA Document G704--Certificate of Substantial Completion;
- (iii) AIA Document G702--Application and Certificate for Payment;
- (iv) Certificate of Occupancy;
- (v) IRS Form 8609, (only one per development is required);
- (vi) HUD Form 9822;
- (vii) Development agreements;
- (viii) Partnership agreements; or
- (ix) other documentation satisfactory to the Department verifying that a Principal of the Development Owner, General Partner, , or Developer has the required experience.

(B) The names on the forms and agreements in subparagraph (A)(i) - (ix) of this paragraph must reflect that the individual seeking to provide experience is a Principal of the Development Owner, General Partner, or Developer as listed in the Application. For purposes of this requirement any individual attempting to use the experience of another individual or entity must demonstrate they had the authority to act on their behalf that substantiates the minimum 150 unit requirement.

(C) Experience may not be established for a Person who at any time within the preceding three years has been involved with affordable housing in another state in which the Person or Affiliate has been the subject of issued IRS Form 8823 citing non-compliance that has not been or is not being corrected with reasonable due diligence.

(D) If a Principal is determined by the Department to not have the required experience, an acceptable replacement for that Principal must be identified prior to the date the award is made by the Board.

(E) Notwithstanding the foregoing, no person may be used to establish such required experience if that Person or an Affiliate of that Person would not be eligible to be an Applicant themselves.

(7) Financing Requirements.

(A) Non-Department Debt Financing. Interim and permanent financing sufficient to fund the proposed Total Housing Development Cost less any other funds requested from the Department must be included in the Application. For any Development that is a part of a larger development plan on the same site, the Department may request and evaluate information related to the other components of the development plan in instances in which the financial viability of the Development is in whole or in part dependent upon the other portions of the development plan. Any local, state or federal financing identified in this section which restricts household incomes at any level that is lower than restrictions required pursuant to this chapter or elected in accordance with Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan) must be identified in the rent schedule and the local, state or federal income restrictions must include corresponding rent levels in accordance with §42(g) of the Code. The income and corresponding rent restrictions will be imposed by the LURA and monitored for compliance. Financing amounts must be consistent throughout the Application and acceptable documentation shall include those described in clauses (i) and (ii) of this subparagraph.

(i) Financing is in place as evidenced by:

(I) a valid and binding loan agreement; and

(II) a valid recorded deed(s) of trust lien on the Development in the name of the Development Owner as grantor covered by a lender's policy of title insurance;

(ii) Term sheets for interim and permanent loans issued by a lending institution or mortgage company that is actively and regularly engaged in the business of lending money must:

(I) have been signed by the lender;

(II) be addressed to the Development Owner or Affiliate;

(III) for the permanent loan, include a minimum loan term of fifteen (15) years with at least a thirty (30) year amortization;

(IV) include anticipated interest rate, including the mechanism for determining the interest rate;

(V) include any required Guarantors, if known;

(VI) include the principal amount of the loan; and

(VII) include and address any other terms and conditions applicable to the financing. The term sheet may be conditional upon the completion of specified due diligence by the lender and upon the award of tax credits, if applicable; or

(iii) For Developments proposing to refinance an existing USDA Section 515 loan, a letter from the USDA confirming receipt of the loan transfer application.

(B) Gap Financing. Any anticipated federal, state, local or private gap financing, whether soft or hard debt, must be identified in the Application. Applicants must provide evidence that an application for such gap financing has been made. Acceptable documentation may include a letter from the funding entity confirming receipt of an application or a term sheet from the lending agency which clearly describes the amount and terms of the financing. Other Department funding requested with Housing Tax Credit Applications must be on a concurrent funding period with the Housing Tax Credit Application, and no term sheet is required for such a request. Permanent loans must include a minimum loan term of fifteen (15) years with at least a thirty (30) year amortization or for non-amortizing loan structures a term of not less than thirty (30) years.

(C) Owner Contributions. If the Development will be financed in part by a capital contribution by the General Partner, Managing General Partner, any other partner that is not a partner providing the syndication equity, a guarantor or a Principal in an amount that exceeds 5 percent of the Total Housing Development Cost, a letter from a Third Party CPA must be submitted that verifies the capacity of the contributor to provide the capital from funds that are not otherwise committed or pledged. Additionally, a letter from the contributor's bank(s) or repository(ies) must be submitted confirming sufficient funds are readily available to the contributor. The contributor must certify that the funds remain readily available at Commitment. Regardless of the amount, all capital contributions other than syndication equity will be added to the Deferred Developer Fee for feasibility purposes under §10.302(i)(2) of this chapter (relating to Underwriting Rules and Guidelines) or where scoring is concerned, unless the Development is a Supportive Housing Development, the Development is not supported with Housing Tax Credits, or the ownership structure includes a nonprofit organization with a history of fundraising to support the development of affordable housing.

(D) Equity Financing. (§2306.6705(2) and (3)) If applicable to the program, the Application must include a term sheet from a syndicator that, at a minimum, includes:

- (i) an estimate of the amount of equity dollars expected to be raised for the Development;
- (ii) the amount of Housing Tax Credits requested for allocation to the Development Owner;
- (iii) pay-in schedules;
- (iv) anticipated developer fees paid during construction; and
- (v) syndicator consulting fees and other syndication costs. No syndication costs should be included in the Eligible Basis.

(E) Financing Narrative. (§2306.6705(1)) A narrative must be submitted that describes the complete financing plan for the Development, including but not limited to, the sources and uses of funds; construction, permanent and bridge loans, rents, operating subsidies, and replacement reserves; and the status of commitments for all funding sources. For applicants requesting HOME funds, Match in the amount of at least 5 percent of the HOME funds requested must be documented with a letter from the anticipated provider of Match indicating the provider's willingness and ability to make a financial commitment should the Development receive an award of HOME funds. The information provided must be consistent with all other documentation in the Application.

(8) Operating and Development Cost Documentation.

(A) 15-year Pro forma. All Applications must include a 15-year pro forma estimate of operating expenses, in the form provided by the Department. Any "other" debt service included in the pro forma must include a description.

(B) Utility Allowances. This exhibit, as provided in the Application, must be submitted along with documentation from the source of the utility allowance estimate used in completing the Rent Schedule provided in the Application. This exhibit must clearly indicate which utility costs are included in the estimate and must comply with the requirements of §10.614 of this chapter (relating to Utility Allowances). Where the Applicant uses any method that requires Department review, such review must have been requested prior to submission of the Application.

(C) Operating Expenses. This exhibit, as provided in the Application, must be submitted indicating the anticipated operating expenses associated with the Development. Any expenses noted as "other" in any of the categories must be identified. "Miscellaneous" or other nondescript designations are not acceptable.

(D) Rent Schedule. This exhibit, as provided in the Application, must indicate the type of Unit designation based on the Unit's rent and income restrictions. The rent and utility limits available at the time the Application is submitted should be used to complete this exhibit. Gross rents cannot exceed the maximum rent limits unless documentation of project-based rental assistance is provided. The unit mix and net rentable square footages must be consistent with the site plan and architectural drawings. For Units restricted in connection with Direct Loans, the restricted Units will generally be designated "floating" unless specifically disallowed under the program specific rules. For Applications that propose utilizing HOME funds, at least 90 percent of the Units restricted in connection with the HOME program must be available to families whose incomes do not exceed 60 percent of the Area Median Income.

(E) Development Costs. This exhibit, as provided in the Application, must include the contact information for the person providing the cost estimate and must meet the requirements of clauses (i) and (ii) of this subparagraph.

(i) Applicants must provide a detailed cost breakdown of projected Site Work costs (excluding site amenities), if any, prepared by a Third Party engineer or cost estimator. If Site Work costs (excluding site amenities) exceed \$15,000 per Unit and are included in Eligible Basis, a letter must be provided from a certified public accountant allocating which portions of those site costs should be included in Eligible Basis.

(ii) If costs for Off-Site Construction are included in the budget as a line item, or embedded in the site acquisition contract, or referenced in the utility provider letters, then the Off-Site Cost Breakdown prepared by a Third Party engineer must be provided. The certification from a Third Party engineer must describe the necessity of the off-site improvements, including the relevant requirements of the local jurisdiction with authority over building codes. If any Off-Site Construction costs are included in Eligible Basis, a letter must be provided from a certified public accountant allocating which portions of those costs should be included in Eligible Basis. If off-site costs are included in Eligible Basis based on PLR 200916007, a statement of findings from a CPA must be provided which describes the facts relevant to the Development and affirmatively certifies that the fact pattern of the Development matches the fact pattern in PLR 200916007.

(F) Rental Assistance/Subsidy. (§2306.6705(4)) If rental assistance, an operating subsidy, an annuity, or an interest rate reduction payment is proposed to exist or continue for the Development, any related contract or other agreement securing those funds or proof of application for such funds must be provided. Such documentation shall, at a minimum, identify the source and annual amount of the funds, the number of units receiving the funds, and the term and expiration date of the contract or other agreement.

(G) Occupied Developments. The items identified in clauses (i) - (vi) of this subparagraph must be submitted with any Application where any structure on the Development Site is occupied at any time after the Application Acceptance Period begins or if the Application proposes the demolition of any housing occupied at any time after the Application Acceptance Period begins. If the current property owner is unwilling to provide the required documentation then a signed statement from the Applicant attesting to that fact must be submitted. If one or more of the items described in clauses (i) - (vi) of this

subparagraph is not applicable based upon the type of occupied structures on the Development Site, the Applicant must provide an explanation of such non-applicability. Applicant must submit:

(i) at least one of the items identified in subclauses (I) - (IV) of this clause:

(I) historical monthly operating statements of the Existing Residential Development for twelve (12) consecutive months ending not more than three (3) months from the first day of the Application Acceptance Period;

(II) the two (2) most recent consecutive annual operating statement summaries;

(III) the most recent consecutive six (6) months of operating statements and the most recent available annual operating summary; or

(IV) all monthly or annual operating summaries available; and

(ii) a rent roll not more than six (6) months old as of the first day the Application Acceptance Period that discloses the terms and rate of the lease, rental rates offered at the date of the rent roll, Unit mix, and tenant names or vacancy;

(iii) a written explanation of the process used to notify and consult with the tenants in preparing the Application; (§2306.6705(6))

(iv) a relocation plan outlining relocation requirements and a budget with an identified funding source; (§2306.6705(6))

(v) any documentation necessary for the Department to facilitate, or advise an Applicant with respect to or to ensure compliance with the Uniform Relocation Act and any other relocation laws or regulations as may be applicable; and

(vi) if applicable, evidence that the relocation plan has been submitted to the appropriate legal or governmental agency. (§2306.6705(6))

(9) Architectural Drawings. All Applications must include the items identified in subparagraphs (A) - (D) of this paragraph, unless specifically stated otherwise, and must be consistent with all applicable exhibits throughout the Application. The drawings must have a legible scale and show the dimensions of each perimeter wall and floor heights.

(A) A site plan which:

(i) includes a unit and building type table matrix that is consistent with the Rent Schedule and Building/Unit Configuration forms provided in the Application;

(ii) identifies all residential and common buildings;

(iii) clearly delineates the flood plain boundary lines and shows all easements;

(iv) if applicable, indicates possible placement of detention/retention pond(s); and

(v) indicates the location of the parking spaces;

(B) Building floor plans must be submitted for each building type. Applications for Rehabilitation (excluding Reconstruction) are not required to submit building floor plans unless the floor plan changes. Applications for Adaptive Reuse are only required to include building plans delineating each Unit by number and type. Building floor plans must include square footage calculations for balconies, breezeways, corridors and any other areas not included in net rentable area;

(C) Unit floor plans for each type of Unit must be included in the Application and must include the square footage for each type of Unit. Applications for Adaptive Reuse are only required to include Unit floor plans for each distinct typical Unit type such as one-bedroom, two-bedroom and for all Unit types that vary in Net Rentable Area by 10 percent from the typical Unit; and

(D) Elevations must be submitted for each building type and include a percentage estimate of the exterior composition and proposed roof pitch. Applications for Rehabilitation and Adaptive Reuse may submit photographs if the Unit configurations are not being altered and post-renovation drawings must be submitted if Unit configurations are proposed to be altered.

(10) Site Control.

(A) Evidence that the Development Owner has Site Control must be submitted. If the evidence is not in the name of the Development Owner, then an Affiliate of the Development Owner must have Site Control that does not expressly preclude an ability to assign the Site Control to the Development Owner or another party. All of the sellers of the proposed Property for the thirty-six (36) months prior to the first day of the Application Acceptance Period and their relationship, if any, to members of the Development Team must be identified at the time of Application. The Department may request documentation at any time after submission of an Application of the Development Owner's ability to compel title and the Development Owner must be able to promptly provide such documentation or the Application, award, or Commitment may be terminated. The Department acknowledges and understands that the Property may have one or more encumbrances at the time of Application submission and the Department will use a reasonableness standard in determining whether such encumbrance is likely to impede an Applicant's ability to meet the program's requirements. Tax-Exempt Bond Lottery Applications must have Site Control valid through December 1 of the prior program year with the option to extend through March 1 of the current program year.

(B) In order to establish Site Control, one of the items described in clauses (i) - (iii) of this subparagraph must be provided. In the case of land donations, Applicants must demonstrate that the entity donating the land has Site Control as evidenced through one of the items described in clauses (i) - (iii) of this subparagraph or other documentation acceptable to the Department.

- (i) a recorded warranty deed with corresponding executed settlement statement (or functional equivalent for an existing lease with at least forty-five (45) years remaining); or
- (ii) a contract or option for lease with a minimum term of forty-five (45) years that includes a price; address and/or legal description; proof of consideration in the form specified in the contract; and expiration date; or
- (iii) a contract for sale or an option to purchase that includes a price; address and/or legal description; proof of consideration in the form specified in the contract; and expiration date;

(C) If the acquisition can be characterized as an identity of interest transaction, as described in §10.302 of this chapter, then the documentation as further described therein must be submitted in addition to that of subparagraph (B) of this paragraph.

(11) Zoning. (§2306.6705(5)) Acceptable evidence of zoning for all Developments must include one of subparagraphs (A) - (D) of this paragraph.

(A) No Zoning Ordinance in Effect. The Application must include a letter from a local government official with appropriate jurisdiction stating that the Development is located within the boundaries of a political subdivision that has no zoning.

(B) Zoning Ordinance in Effect. The Application must include a letter from a local government official with appropriate jurisdiction stating the Development is permitted under the provisions of the zoning ordinance that applies to the location of the Development.

(C) Requesting a Zoning Change. The Application must include evidence in the form of a letter from a local government official with jurisdiction over zoning matters that the Applicant or Affiliate is in the process of seeking a zoning change, that a zoning application was received by the political subdivision, and that the jurisdiction received a release agreeing to hold the political subdivision and all other parties harmless in the event the appropriate zoning is denied. Documentation of final approval of appropriate zoning must be submitted to the Department with the Commitment or Determination Notice.

(D) Zoning for Rehabilitation Developments. The Application must include documentation of current zoning. If the Property is currently conforming but with an overlay that would make it a non-conforming use as presently zoned, the Application must include a letter from a local government official with appropriate jurisdiction which addresses the items in clauses (i) - (iv) of this subparagraph:

- (i) a detailed narrative of the nature of non-conformance;
- (ii) the applicable destruction threshold;
- (iii) Owner's rights to reconstruct in the event of damage; and
- (iv) penalties for noncompliance.

(12) Title Commitment/Policy. A title commitment or title policy must be submitted that includes a legal description that is consistent with the Site Control. If the title commitment or policy is dated more than six (6) months prior to the beginning of the Application Acceptance Period, then a letter from the title company indicating that nothing further has transpired during the six-month period on the commitment or policy must be submitted.

(A) The title commitment must list the name of the Development Owner as the proposed insured and lists the seller or lessor as the current owner of the Development Site.

(B) The title policy must show that the ownership (or leasehold) of the Development Site is vested in the name of the Development Owner.

(13) Ownership Structure.

(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 or Guarantor, identifying all Principals thereof and providing the names and ownership percentages of all Persons having an ownership interest in the Development Owner or the Developer or Guarantor, as applicable, whether directly or through one or more subsidiaries. Nonprofit entities, public housing authorities, publicly traded corporations, individual board members, and executive directors must be included in this exhibit 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.

(B) Previous Participation. Evidence must be submitted that each entity shown on the organizational chart described in subparagraph (A) of this paragraph that has ownership interest in the Development Owner, Developer or Guarantor, has provided a copy of the completed and executed Previous Participation and Background Certification Form to the Department. Individual Principals of such entities identified on the organizational chart must provide the Previous Participation and Background Certification Form, unless excluded from such requirement pursuant to §1.5 of this title. Nonprofit entities, public housing authorities, other government instrumentalities and publicly traded corporations are required to submit documentation for the entities involved, individual board members, and executive directors. Any Person (regardless of any Ownership interest or lack thereof) receiving more than 10 percent of the Developer fee is also required to submit this document. The form must include a list of all developments that are, or were, previously under ownership or Control of the Applicant and/or each Principal, including any Person providing the required experience. All participation in any Department funded or monitored activity, including non-housing activities, as well as Housing Tax Credit developments or other programs administered by other states using state or federal programs must be disclosed. The Previous Participation and Background Certification Form will authorize the parties overseeing such assistance to release compliance histories to the Department.

(14) Nonprofit Ownership. Applications that involve a §501(c)(3) or (4) nonprofit General Partner or Owner shall submit the documentation identified in subparagraph (A) or (B) of this paragraph as applicable.

(A) Competitive HTC Applications. Applications for Competitive Housing Tax Credits involving a §501(c)(3) or (4) nonprofit General Partner and which meet the Nonprofit Set-Aside requirements, must submit all of the documents described in this subparagraph and indicate the nonprofit status on the carryover documentation and IRS Forms 8609. (§2306.6706) Applications that include an affirmative election to not be treated under the set-aside and a certification that they do not expect to receive a benefit in the allocation of tax credits as a result of being affiliated with a nonprofit only need to submit the documentation in subparagraph (B) of this paragraph.

- (i) An IRS determination letter which states that the nonprofit organization is a §501(c)(3) or (4) entity;
- (ii) The Nonprofit Participation exhibit as provided in the Application, including a list of the names and contact information for all board members, directors, and officers;
- (iii) A Third Party legal opinion stating:
 - (I) that the nonprofit organization is not affiliated with or Controlled by a for-profit organization and the basis for that opinion;
 - (II) that the nonprofit organization is eligible, as further described, for a Housing Credit Allocation from the Nonprofit Set-Aside pursuant to §42(h)(5) of the Code and the basis for that opinion;
 - (III) that one of the exempt purposes of the nonprofit organization is to provide low-income housing;
 - (IV) that the nonprofit organization prohibits a member of its board of directors, other than a chief staff member serving concurrently as a member of the board, from receiving material compensation for service on the board;
 - (V) that the Qualified Nonprofit Development will have the nonprofit entity or its nonprofit Affiliate or subsidiary be the Developer or co-Developer as evidenced in the development agreement;

- (iv) a copy of the nonprofit organization's most recent financial statement as prepared by a Certified Public Accountant; and
- (v) evidence in the form of a certification that a majority of the members of the nonprofit organization's board of directors principally reside:
 - (I) in this state, if the Development is located in a Rural Area; or
 - (II) not more than ninety (90) miles from the Development, if the Development is not located in a Rural Area.

(B) All Other Applications. Applications that involve a §501(c)(3) or (4) nonprofit General Partner or Owner must submit an IRS determination letter which states that the nonprofit organization is a §501(c)(3) or (4) entity and the Nonprofit Participation exhibit as provided in the Application. If the Application involves a nonprofit that is not a §501(c)(3) or (4), then they must disclose in the Application the basis of their nonprofit status.

§10.205. Required Third Party Reports. The Environmental Site Assessment, Property Condition Assessment, Appraisal (if applicable), Market Analysis, and the Site Design and Development Feasibility Report must be submitted no later than the Third Party Report Delivery Date as identified in §10.4 of this chapter (relating to Program Dates). For Competitive HTC Applications, the Environmental Site Assessment, Property Condition Assessment, Appraisal (if applicable), the Site Design and Development Feasibility Report, and the Primary Market Area map (with definition based on census tracts, zip codes or census place in electronic format) must be submitted no later than the Full Application Delivery Date as identified in §11.2 of this title (relating to Program Calendar for Competitive Housing Tax Credits) and the Market Analysis must be submitted no later than the Market Analysis Delivery Date as identified in §11.2 of this title. For Competitive HTC Applications, if the reports, in their entirety, are not received by the deadline, the Application will be terminated. An electronic copy of the report in the format of a single file containing all information and exhibits clearly labeled with the report type, Development name and Development location are required. All Third Party reports must be prepared in accordance with Subchapter D of this chapter (relating to Underwriting and Loan Policy). The Department may request additional information from the report provider or revisions to the report as needed. In instances of non-response by the report provider, the Department may substitute in-house analysis. The Department is not bound by any opinions expressed in the report.

(1) Environmental Site Assessment. This report, required for all Developments and prepared in accordance with the requirements of §10.305 of this chapter (relating to Environmental Site Assessment Rules and Guidelines), must not be dated more than twelve (12) months prior to the first day of the Application Acceptance Period. If this timeframe is exceeded, then a letter or updated report must be submitted, dated not more than three (3) months prior to the first day of the Application Acceptance Period from the Person or organization which prepared the initial assessment confirming that the site has been re-inspected and reaffirming the conclusions of the initial report or identifying the changes since the initial report.

(A) Developments funded by USDA will not be required to supply this information; however, it is the Applicant's responsibility to ensure that the Development is maintained in compliance with all state and federal environmental hazard requirements.

(B) If the report includes a recommendation that an additional assessment be performed, then a statement from the Applicant must be submitted with the Application indicating those additional assessments and recommendations will be performed prior to closing. If the assessments require further

mitigating recommendations, then evidence indicating the mitigating recommendations have been carried out must be submitted at cost certification.

(2) Market Analysis. The Market Analysis, required for all Developments and prepared in accordance with the requirements of §10.303 of this chapter (relating to Market Analysis Rules and Guidelines), must not be dated more than six (6) months prior to the first day of the Application Acceptance Period. If the report is older than six (6) months, but not more than twelve (12) months prior to the first day of the Application Acceptance Period, the Qualified Market Analyst that prepared the report may provide a statement that reaffirms the findings of the original Market Analysis. The statement may not be dated more than six (6) months prior to the first day of the Application Acceptance Period and must be accompanied by the original Market Analysis.

(A) The report must be prepared by a Qualified Market Analyst approved by the Department in accordance with the approval process outlined in §10.303 of this chapter;

(B) Applications in the USDA Set-Aside proposing Rehabilitation with residential structures at or above 80 percent occupancy at the time of Application submission, the appraisal, required for Rehabilitation Developments and Identity of Interest transactions prepared in accordance with §10.304 of this chapter (relating to Appraisal Rules and Guidelines), will satisfy the requirement for a Market Analysis; however, the Department may request additional information as needed. (§2306.67055; §42(m)(1)(A)(iii))

(C) It is the responsibility of the Applicant to ensure that this analysis forms a sufficient basis for the Applicant to be able to use the information obtained to ensure that the Development will comply with fair housing laws.

(3) Property Condition Assessment (PCA). This report, required for Rehabilitation (excluding Reconstruction) and Adaptive Reuse Developments and prepared in accordance with the requirements of §10.306 of this chapter (relating to Property Condition Assessment Guidelines), must not be dated more than six (6) months prior to the first day of the Application Acceptance Period. If the report is older than six (6) months, but not more than twelve (12) months prior to the first day of the Application Acceptance Period, the report provider may provide a statement that reaffirms the findings of the original PCA. The statement may not be dated more than six (6) months prior to the first day of the Application Acceptance Period and must be accompanied by the original PCA. For Developments which require a capital needs assessment from USDA the capital needs assessment may be substituted and may be more than six (6) months old, as long as USDA has confirmed in writing that the existing capital needs assessment is still acceptable and it meets the requirements of §10.306 of this chapter. All Rehabilitation Developments financed with Direct Loans must also submit a capital needs assessment estimating the useful life of each major system. This assessment must include a comparison between the local building code and the International Existing Building Code of the International Code Council.

(4) Appraisal. This report, required for all Rehabilitation Developments and prepared in accordance with the requirements of §10.304 of this chapter, is required for any Application claiming any portion of the building acquisition in Eligible Basis, and Identity of Interest transactions pursuant to Subchapter D of this chapter, must not be dated more than six (6) months prior to the first day of the Application Acceptance Period. For Developments that require an appraisal from USDA, the appraisal may be more than six (6) months old, as long as USDA has confirmed in writing that the existing appraisal is still acceptable.

(5) Site Design and Development Feasibility Report. This report, compiled by the Applicant or Third Party Consultant, and prepared in accordance with this paragraph, which reviews site conditions and development requirements of the Development and Development Site, is required for any New Construction or Reconstruction Development.

(A) Executive Summary as a narrative overview of the Development in sufficient detail that would help a reviewer of the Application better understand the site, the site plan, off site requirements (including discussion of any seller contributions or reimbursements), any other unique development requirements, and their impact on Site Work and Off Site Construction costs. The summary should contain a general statement regarding the level of due diligence that has been done relating to site development (including discussions with local government development offices). Additionally, the overview should contain a summary of zoning requirements, subdivision requirements, property identification number(s) and millage rates for all taxing jurisdictions, development ordinances, fire department requirements, site ingress and egress requirements, building codes, and local design requirements impacting the Development (include website links but do not attach copies of ordinances). Careful focus and attention should be made regarding any atypical items materially impacting costs.

(B) Survey or current plat as defined by the Texas Society of Professional Surveyors in their Manual of Practice for Land Surveying in Texas (Category 1A - Land Title Survey or Category 1B - Standard Land Boundary Survey). Surveys may not be older than twelve (12) months from the beginning of the Application Acceptance Period. Plats must include evidence that it has been recorded with the~~from an~~ appropriate local official entity and that, as of the date of submission, it is the most current plat. Applications proposing noncontiguous single family scattered sites are not required to submit surveys or plats at Application, but this information may be requested during the Real Estate Analysis review.

(C) Preliminary site plan prepared by the civil engineer with a statement that the plan materially adheres to all applicable zoning, site development, and building code ordinances. The site plan must identify all structures, site amenities, parking spaces (include handicap spaces and ramps) and driveways, topography (using either existing seller topographic survey or U.S. Geological Survey (USGS)/other database topography), site drainage and detention, water and waste water utility tie-ins, general placement of retaining walls, set-back requirements, and any other typical or locally required items. Off-site improvements required for utilities, detention, access or other requirement must be shown on the site plan or ancillary drawings.

(D) Architect or civil engineer prepared statement describing the entitlement, site development permitting process and timing, building permitting process and timing, and an itemization specific to the Development of total anticipated impact, site development permit, building permit, and other required fees.

§10.206.Board Decisions (§§2306.6725(c); 2306.6731; and 42(m)(1)(A)(iv)). The Board's decisions regarding awards shall be based upon the Department's and the Board's evaluation of the proposed Developments' consistency with, and fulfillment of, the criteria and requirements set forth in this chapter, Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan) and other applicable Department rules. The Board shall document the reasons for each Application's selection, including any discretionary factors used in making its determination, including good cause, and the reasons for any decision that conflicts with the recommendations made by Department staff. Good cause includes the Board's decision to apply discretionary factors where authorized. The Department reserves the right to reduce the amount of funds requested in an Application, condition the award recommendation or terminate the Application based on the Applicant's inability to demonstrate compliance with program requirements.

§10.207. Waiver of Rules for Applications.

(a) General Waiver Process. This waiver section is applicable only to Subchapter B of this chapter (relating to Site and Development Requirements and Restrictions), Subchapter C of this chapter (relating to Application Submission Requirements, Ineligibility Criteria, Board Decisions, and Waiver of Rules or Pre-clearance for Applications), Subchapter E of this chapter (relating to Post Award and Asset Management Requirements), and Subchapter G of this chapter (relating to Fee Schedule, Appeals, and Other Provisions), Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan), and Chapter 12 of this title (relating to Multifamily Housing Revenue Bond Rules). An Applicant may request a waiver in writing at or prior to the submission of the pre-application (if applicable) or the Application or subsequent to an award. Waiver requests will not be accepted between submission of the Application and any award for the Application. Where appropriate, the Applicant is encouraged to submit with the requested waiver any plans for mitigation or alternative solutions. Any such request for waiver must be specific to the unique facts and circumstances of an actual proposed Development and must be submitted to the Department in the format required in the Multifamily Programs Procedures Manual. Any waiver, if granted, shall apply solely to the Application and shall not constitute a general modification or waiver of the rule involved. Waiver requests that are limited to Development design and construction elements not specifically required in Texas Government Code, Chapter 2306 must meet the requirements of paragraph (1) of this subsection. All other waiver requests must meet the requirements of paragraph (2) of this subsection.

(1) The waiver request must establish good cause for the Board to grant the waiver which may include limitations of local building or zoning codes, limitations of existing building structural elements for [Adaptive Reuse or Rehabilitation](#) (excluding Reconstruction ~~or Adaptive Reuse~~) Developments, required amenities or design elements in buildings designated as historic structures that would conflict with retaining the historic nature of the building(s), or provisions of the design element or amenity that would not benefit the tenants due to limitations of the existing layout or design of the units for [Adaptive Reuse or Rehabilitation](#) (excluding Reconstruction) Developments. Staff may recommend the Board's approval for such a waiver if the Executive Director, the Deputy Executive Director with oversight of multifamily programs, and Deputy Executive Director with oversight of asset management find that the Applicant has established good cause for the waiver. A recommendation for a waiver may be subject to the Applicant's provision of alternative design elements or amenities of a similar nature or that serve a similar purpose. Waiver requests for items that were elected to meet scoring criteria or where the Applicant was provided a menu of options to meet the requirement will not be considered under this paragraph.

(2) The waiver request must establish how it is necessary to address circumstances beyond the Applicant's control and how, if the waiver is not granted, the Department will not fulfill some specific requirement of law. In this regard, the policies and purposes articulated in Texas Government Code, §§2306.001, 2306.002, 2306.359, and 2306.6701, are general in nature and apply to the role of the Department and its programs, including the Housing Tax Credit program.

(b) Waivers Granted by the Executive Director. The Executive Director may waive requirements as provided in this rule. Even if this rule grants the Executive Director authority to waive a given item, the Executive Director may present the matter to the Board for consideration and action. Neither the Executive Director nor the Board shall grant any waiver to the extent such requirement is mandated by statute. Denial of a waiver by the Executive Director may be appealed to the Board in accordance with §10.902 of this chapter (relating to Appeals Process (§2306.0321; §2306.6715)). Applicants should expect that waivers granted by the Executive Director will generally be very limited. The Executive Director's decision to defer to the Board will not automatically be deemed an adverse staff position with regard to the waiver request as

public vetting of such requests is generally appropriate and preferred. However, this does not preclude a staff recommendation to approve or deny any specific request for a waiver.

(c) Waivers Granted by the Board. The Board, in its discretion, may waive any one or more of the rules in Subchapters B, C, E, and G of this chapter except no waiver shall be granted to provide forward commitments or if the requested waiver is prohibited by statute (i.e., statutory requirements may not be waived). The Board, in its discretion, may grant a waiver that is in response to a natural, federally declared disaster that occurs after the adoption of the multifamily rules.

Preamble, Reasoned Response, and New Rule

The Texas Department of Housing and Community Affairs (the “Department”) adopts new 10 TAC, Chapter 10 Uniform Multifamily Rules, Subchapter G, §§10.901 – 10.904 concerning Fee Schedule, Appeals and Other Provisions. Sections 10.901 - 10.904 are adopted without changes to text as published in the September 19, 2014, issue of the *Texas Register* (39 TexReg 7470) and will not be republished.

REASONED JUSTIFICATION. The Department finds that the adoption of the sections will result in a more consistent approach to governing multifamily activity and to the awarding of funding or assistance through the Department and to minimize repetition. The comments and responses include both administrative clarifications and corrections to the Uniform Multifamily Rule based on the comments received. After each comment title numbers are shown in parentheses. These numbers refer to the person or entity that made the comment as reflected at the end of the reasoned response. If comment resulted in recommended language changes to the proposed Uniform Multifamily Rule as presented to the Board in September, such changes are indicated.

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS.

Public comments were accepted through October 20, 2014 with comments received from (15) DMA Development Company, LLC, (24) Cynthia Bast, (48) Texas Applesed and Texas Low Income Housing Information Service.

29. §10.901(18) – Subchapter G – Unused Credit and Penalty Fees (15)

COMMENT SUMMARY: Commenter (15) suggested the following modification to this item:

“Development Owners who have more tax credits allocated to them than they can substantiate through Cost Certification will return those excess tax credits prior to issuance of IRS Form 8609....If an Applicant returns a full credit allocation after the Carryover Allocation deadline required for that allocation, the Executive Director will recommend to the Board the imposition of a penalty on the score for any Competitive Housing Tax Credit Applications submitted by that Applicant or any Affiliate for any Application in an Application Round occurring concurrent to the return of credits or if no Application Round is pending, the Application Round immediately following the return of credits, unless the Applicant has demonstrated by a preponderance of the evidence that the Applicant returned the full credit amount due to circumstances that were beyond the Applicant’s or any Affiliate’s control in which case penalties will not be assessed. Such circumstances excepting an Applicant from penalties include, but are not limited to: acts of God, such as fire, tornado, flooding, significant and unusual rainfall or subfreezing temperatures; loss of access to necessary water or utilities as a direct result of significant weather events; explosion; vandalism; orders or acts of military authority; litigation; material delay cause by governmental agency action or inaction; changes in law, rules or regulations; national emergency or insurrection; riot, acts of terrorism; supplier failures or material and/or labor shortages. If any such point penalty is recommended to be assessed and presented for final determination by the Board, it must include notice from the Department to the affected party not less than fourteen (14) calendar days prior to the scheduled Board meeting...”

STAFF RESPONSE:

Staff disagrees with the proposed change. The proposed language appears to attempt to mirror the Force Majeure Event language being contemplated in §11.6(5) of the QAP but is not entirely consistent with that language. Staff believes that if the proposed Force Majeure Event language is approved and such an event occurs, the issues that define such an event could also be considered in the application of any penalties provided for in this section.

Staff recommends no change based on this comment.

30. §10.901(21) – Subchapter G – Fee Schedule (24), (48)

COMMENT SUMMARY: With regards to the Undesirable Neighborhood Characteristic Disclosure Fee, commenter (24) suggested the second sentence of this fee is in conflict with the language under §10.101(a)(4) because it contemplates a credit if an application is submitted subsequent to paying such fee while §10.101 states the disclosure must be submitted concurrently with an application.

Commenter (48) stated the \$500 challenge processing fee is prohibitive for low-income community residents or tenants of assisted properties and further noted the waiver language that allows the Executive Director the ability to grant a waiver for extenuating and extraordinary circumstances is not encouraging since poverty is not considered extraordinary. Commenter (48) recommended fee waivers for indigent challengers be available either under §10.901 or by Board waiver under §10.207(d) and further stated the families and communities most affected by a HTC application should have access to the process that determines whether the application is eligible and are likely to have access to information that may not be readily available to the Department.

STAFF RESPONSE: To clarify the concerns of commenter (24), if the disclosure fee and application fee are submitted simultaneously, the credit will still apply; in other words, the total application fee is the same for those with and without disclosures. The disclosure fee is calculated separately in order to give potential applicants the ability to have staff review a site before submitting a full application.

In response to Commenter (48), the fees related to challenges are necessary in order cover agency expenses and to prevent frivolous challenges, which history has shown will be submitted if no fee is associated with them. In addition, while there is not specific language to address the waiver of these specific fees, the Executive Director and the Board can give consideration to such waivers, particularly in instances when those in the community wish to challenge an application.

Staff recommends no change based on these comments.

STATUTORY AUTHORITY. The new sections are adopted pursuant to Texas Government Code §2306.053, which authorizes the Department to adopt rules. Additionally, the new sections are adopted pursuant to Texas Government Code, §2306.67022, which specifically authorizes the Department to adopt a qualified allocation plan, and Texas Government Code, §2306.144, §2306.147, and §2306.6716.

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Subchapter G – Fee Schedule, Appeals and other Provisions

§10.901. Fee Schedule. Any fees, as stated in this section, not paid will cause an Applicant to be ineligible to apply for Department funding, ineligible to receive additional Department funding associated with a Commitment, Determination Notice or Contract, and ineligible to submit extension requests, ownership transfers, and Application amendments until such time the Department receives payment. Payments of the fees shall be in the form of a check and to the extent there are insufficient funds available, it may cause the Application, Commitment, Determination Notice or Contract to be terminated or Allocation rescinded. The Executive Director may grant a waiver for specific extenuating and extraordinary circumstances, provided the Applicant submits a written request for a waiver no later than ten (10) business days prior to the deadline associated with the particular fee. For those requests that do not have a specified deadline, the written request for a fee waiver and description of extenuating and extraordinary circumstances must be included in the original request cover letter.

(1) Competitive Housing Tax Credit Pre-Application Fee. A pre-application fee, in the amount of \$10 per Unit, based on the total number of Units reflected in the pre-application, must be submitted with the pre-application in order for the pre-application to be considered accepted by the Department. Pre-applications in which a Community Housing Development Corporation (CHDO) or Qualified Nonprofit Organization intends to serve as the Managing General Partner of the Development Owner, or Control the Managing General Partner of the Development Owner, will receive a discount of 10 percent off the calculated pre-application fee. (§2306.6716(d))

(2) Refunds of Pre-application Fees. (§2306.6716(c)) Upon written request from the Applicant, the Department shall refund the balance of the pre-application fee for a pre-application that is withdrawn by the Applicant and that is not fully processed by the Department. The amount of refund will be commensurate with the level of review completed. Intake and data entry will constitute 50 percent of the review, threshold review prior to a deficiency issued will constitute 30 percent of the review, and deficiencies submitted and reviewed constitute 20 percent of the review.

(3) Application Fee. Each Application must be accompanied by an Application fee.

(A) Housing Tax Credit Applications. The fee will be \$30 per Unit based on the total number of Units. For Applicants having submitted a competitive housing tax credit pre-application which met the pre-application threshold requirements, and for which a pre-application fee was paid, the Application fee will be \$20 per Unit based on the number of Units in the full Application. Applications in which a CHDO or Qualified Nonprofit Organization intends to serve as the Managing General Partner of the Development Owner, or Control the Managing General Partner of the Development Owner, will receive a discount of 10 percent off the calculated Application fee. (§2306.6716(d))

(B) Direct Loan Applications. The fee will be \$1,000 per Application. Pursuant to Texas Government Code, §2306.147(b), the Department is required to waive Application fees for nonprofit organizations that offer expanded services such as child care, nutrition programs, job training assistance, health services, or human services. In lieu of the Application fee, these organizations must include proof of their exempt status and a description of their supportive services as part of the Application. An Application fee is not required for Applications that have an existing Housing Tax Credit Allocation or HOME Contract with the Department, and construction on the development has not begun or if requesting an increase in the existing HOME award. The Application fee is not a reimbursable cost under the HOME Program.

(4) Refunds of Application Fees. Upon written request from the Applicant, the Department shall refund the balance of the Application fee for an Application that is withdrawn by the Applicant and that is not fully processed by the Department. The amount of refund will be commensurate with the level of review

completed. Intake and data entry will constitute 20 percent, the site visit will constitute 20 percent, eligibility and selection review will constitute 20 percent, threshold review will constitute 20 percent, and underwriting review will constitute 20 percent.

(5) Third Party Underwriting Fee. Applicants will be notified in writing prior to the evaluation in whole or in part of a Development by an independent external underwriter in accordance with §10.201(5) of this chapter (relating to Procedural Requirements for Application Submission), if such a review is required. The fee must be received by the Department prior to the engagement of the underwriter. The fees paid by the Development Owner to the Department for the external underwriting will be credited against the Commitment or Determination Notice Fee, as applicable, established in paragraphs (8) and (9) of this section, in the event that a Commitment or Determination Notice is issued by the Department to the Development Owner.

(6) Administrative Deficiency Notice Late Fee. (Not applicable for Competitive Housing Tax Credit Applications). Applications that fail to resolve Administrative Deficiencies pursuant to §10.201(7) of this chapter shall incur a late fee in the amount of \$500 for each business day the deficiency remains unresolved.

(7) Challenge Processing Fee. For Competitive Housing Tax Credits (HTC) Applications, a fee equal to \$500 for challenges submitted per Application.

(8) Housing Tax Credit Commitment Fee. No later than the expiration date in the Commitment, a fee equal to 4 percent of the annual Housing Credit Allocation amount must be submitted. If the Development Owner has paid the fee and returns the credits by November 1 of the current Application Round, then a refund of 50 percent of the Commitment Fee may be issued upon request.

(9) Tax Exempt Bond Development Determination Notice Fee. No later than the expiration date in the Determination Notice, a fee equal to 4 percent of the annual Housing Credit Allocation amount must be submitted. If the Development Owner has paid the fee and is not able close on the bonds within ninety (90) days of the issuance date of the Determination Notice, then a refund of 50 percent of the Determination Notice Fee may be issued upon request.

(10) Building Inspection Fee. (For Housing Tax Credit and Tax-Exempt Bond Developments only.) No later than the expiration date on the Commitment or Determination Notice, a fee of \$750 must be submitted. Building inspection fees in excess of \$750 may be charged to the Development Owner not to exceed an additional \$250 per Development.

(11) Tax-Exempt Bond Credit Increase Request Fee. Requests for increases to the credit amounts to be issued on IRS Forms 8609 for Tax-Exempt Bond Developments must be submitted with a request fee equal to 4 percent of the amount of the credit increase for one (1) year.

(12) Extension Fees. All extension requests for deadlines relating to the Carryover, 10 Percent Test (submission and expenditure), or Cost Certification requirements submitted at least thirty (30) calendar days in advance of the applicable deadline will not be required to submit an extension fee. Any extension request submitted fewer than thirty (30) days in advance or after the original deadline must be accompanied by an extension fee of \$2,500. An extension fee will not be required for extensions requested on Developments that involve Rehabilitation when the Department or U.S. Department of Agriculture (USDA) is the primary lender if USDA or the Department is the cause for the Applicant not meeting the deadline.

(13) Amendment Fees. An amendment request for a non-material change that has not been implemented will not be required to pay an amendment fee. Material amendment requests (whether implemented or not), or non-material amendment requests that have already been implemented will be required to submit an amendment fee of \$2,500. Amendment fees are not required for the Direct Loan programs.

(14) Right of First Refusal Fee. Requests for approval of the satisfaction of the Right of First Refusal provision of the Land Use Restriction Agreement (LURA) must be accompanied by a non-refundable fee of \$2,500.

(15) Qualified Contract Pre-Request Fee. A Development Owner must file a preliminary Qualified Contract Request to confirm eligibility to submit a Qualified Contract request. The Pre-Request must be accompanied by a non-refundable processing fee of \$250.

(16) Qualified Contract Fee. Upon eligibility approval of the Qualified Contract Pre-Request, the Development Owner may file a Qualified Contract Request. Such request must be accompanied by a non-refundable processing fee of \$3,000.

(17) Ownership Transfer Fee. Requests to approve an ownership transfer must be accompanied by a non-refundable processing fee of \$500.

(18) Unused Credit or Penalty Fee. Development Owners who have more tax credits allocated to them than they can substantiate through Cost Certification will return those excess tax credits prior to issuance of IRS Form 8609. For Competitive Housing Tax Credit Developments, a penalty fee equal to the one year credit amount of the lost credits (10 percent of the total unused tax credit amount) will be required to be paid by the Owner prior to the issuance of IRS Form 8609 if the tax credits are not returned, and 8609's issued, within one hundred eighty (180) days of the end of the first year of the credit period. This penalty fee may be waived without further Board action if the Department recaptures and re-issues the returned tax credits in accordance with Internal Revenue Code, §42. If an Applicant returns a full credit allocation after the Carryover Allocation deadline required for that allocation, the Executive Director will recommend to the Board the imposition of a penalty on the score for any Competitive Housing Tax Credit Applications submitted by that Applicant or any Affiliate for any Application in an Application Round occurring concurrent to the return of credits or if no Application Round is pending, the Application Round immediately following the return of credits. If any such point penalty is recommended to be assessed and presented for final determination by the Board, it must include notice from the Department to the affected party not less than fourteen (14) calendar days prior to the scheduled Board meeting. The Executive Director may, but is not required, to issue a formal notice after disclosure if it is determined that the matter does not warrant point penalties. The penalty will be assessed in an amount that reduces the Applicant's final awarded score by an additional 20 percent.

(19) Compliance Monitoring Fee. (HTC and HOME Developments Only.) Upon receipt of the cost certification for HTC or HTC and HOME Developments, or upon the completion of the 24-month development period and the beginning of the repayment period for HOME only Developments, the Department will invoice the Development Owner for compliance monitoring fees. The amount due will equal \$40 per tax credit Unit and \$34 per HOME designated Unit, with two fees due for units that are dually designated. For HTC Developments, the fee will be collected, retroactively if applicable, beginning with the first year of the credit period. For HOME only Developments, the fee will be collected beginning with the first year of the repayment period. The invoice must be paid prior to the issuance of IRS Form 8609 for HTC properties. Subsequent anniversary dates on which the compliance monitoring fee payments are due shall be determined by the

month the first building is placed in service. Compliance fees may be adjusted from time to time by the Department.

(20) Public Information Request Fee. Public information requests are processed by the Department in accordance with the provisions of the Texas Government Code, Chapter 552. The Department uses the guidelines promulgated by the Office of the Attorney General to determine the cost of copying and other costs of production.

(21) Undesirable Neighborhood Characteristic Disclosure Fee. Applicants that disclose the presence of undesirable neighborhood characteristics pursuant to §10.101(a)(4) of this chapter (relating to Site and Development Requirements and Restrictions) must submit a \$500 fee for Department review of such characteristics. Subsequent to paying the Undesirable Neighborhood Characteristics Disclosure Fee, if an Applicant submits an Application for the same Development Site, the Application Fee assessed pursuant to paragraph (3) of this section shall be reduced by \$500.

(22) Adjustment of Fees by the Department and Notification of Fees. (§2306.6716(b)) All fees charged by the Department in the administration of the tax credit and HOME programs will be revised by the Department from time to time as necessary to ensure that such fees compensate the Department for its administrative costs and expenses. Unless otherwise determined by the Department, all revised fees shall apply to all Applications in process and all Developments in operation at the time of such revisions.

§10.902.Appeals Process (§2306.0321; §2306.6715).

(a) An Applicant or Development Owner may appeal decisions made by the Department pursuant to the process identified in this section. Matters that can be appealed include:

- (1) A determination regarding the Application's satisfaction of applicable requirements, Subchapter B of this chapter (relating to Site and Development Requirements and Restrictions) and Subchapter C of this chapter (relating to Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules or Pre-clearance for Applications), pre-application threshold criteria, underwriting criteria;
- (2) The scoring of the Application under the applicable selection criteria;
- (3) A recommendation as to the amount of Department funding to be allocated to the Application;
- (4) Misplacement of an Application or parts of an Application, mathematical errors in scoring an Application, or procedural errors resulting in unequal consideration of the Applicant's proposal;
- (5) Denial of a change to a Commitment or Determination Notice;
- (6) Denial of a change to a loan agreement;
- (7) Denial of a change to a LURA;
- (8) Any Department decision that results in the erroneous termination of an Application; and
- (9) Any other matter for which an appeal is permitted under this chapter.

(b) An Applicant or Development Owner may not appeal a decision made regarding an Application filed by or an issue related to another Applicant or Development Owner.

(c) An Applicant or Development Owner must file its appeal in writing with the Department not later than seven (7) calendar days after the date the Department publishes the results of any stage of the Application evaluation or otherwise notifies the Applicant or Development Owner of a decision subject to appeal. The appeal must be signed by the person designated to act on behalf of the Applicant or an attorney that represents the Applicant. For Application related appeals, the Applicant must specifically identify the Applicant's grounds for appeal, based on the original Application and additional documentation filed with the original Application as supplemented in accordance with the limitations and requirements of this chapter.

(d) The Executive Director may respond in writing not later than fourteen (14) calendar days after the date of actual receipt of the appeal by the Department. If the Applicant is not satisfied with the Executive Director's response to the appeal or the Executive Director does not respond, the Applicant may appeal directly in writing to the Board. While additional information can be provided in accordance with any rules related to public comment before the Board, the Department expects that a full and complete explanation of the grounds for appeal and circumstances warranting the granting of an appeal be disclosed in the appeal documentation filed with the Executive Director. Full disclosure allows the Executive Director to make a fully informed decision based on a complete analysis of the circumstances, and verification of any information that may warrant a granting of the appeal in the Applicant's or Development Owner's favor.

(e) An appeal filed with the Board must be received by Department staff not more than seven (7) days after a response from the Executive Director and at least seven (7) days prior to the applicable Board meeting or if the period for an Executive Director response has elapsed the appeal can be heard by the Board if filed at least three (3) days prior to the applicable meeting.

(f) Board review of an Application related appeal will be based on the original Application.

(g) The decision of the Board regarding an appeal is the final decision of the Department.

(h) The Department will post to its website an appeal filed with the Department or Board and any other document relating to the processing of an Application related appeal. (§2306.6717(a)(5))

§10.903. Adherence to Obligations. (§2306.6720) Any Applicant, Development Owner, or other Person that fails to adhere to its obligations with regard to the programs of the Department, whether contractual or otherwise, made false or misleading representations to the Department with regard to an Application, request for funding, or compliance requirements, or otherwise violated a provision of Texas Government Code, Chapter 2306 or a rule adopted under that chapter, may be subject to:

(1) Assessment of administrative penalties in accordance with the Department's rules regarding the assessment of such penalties. Each day the violation continues or occurs is a separate violation for purposes of imposing a penalty; and/or

(2) in the case of the competitive Low Income Housing Tax Credit Program, a point reduction of up to ten (10) points for any Application involving that Applicant over the next two Application Rounds succeeding the date on which the Department first gives written notice of any such failure to adhere to obligations or false or misleading representations. Point reductions under this section may be appealed to the Board.

§10.904. Alternative Dispute Resolution (ADR) Policy. In accordance with Texas Government Code, §2306.082, it is the Department's policy to encourage the use of appropriate ADR procedures under the Governmental Dispute Resolution Act, Texas Government Code, Chapter 2010, to assist in resolving disputes under the Department's jurisdiction. As described in Civil Practices and Remedies Code, Chapter 154, ADR procedures include mediation. Except as prohibited by law and 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 any time an Applicant or other person would like to engage the Department in an ADR procedure, the person may send a proposal to the Department's Dispute Resolution Coordinator. For additional information on the Department's ADR Policy, see the Department's General Administrative Rule on ADR at §1.17 of this title. Any Applicant may request an informal conference with staff to attempt to resolve any appealable matter, and the Executive Director may toll the running of periods for appeal to accommodate such meetings. In the event a successful resolution cannot be reached, the statements made in the meeting process may not be used by the Department as admissions.

Index of all Commenters on Subchapters A, B, C and G

- (4) Churchill Residential
- (6) City of Fort Worth
- (10) Motivation Education & Training, Inc. (MET)
- (13) Rural Rental Housing Association (RRHA) of Texas
- (15) DMA Development Company, LLC
- (17) Coats Rose, (18) National Church Residences
- (19) Texas Association of Affordable Housing Providers (TAAHP)
- (20) Alyssa Carpenter
- (21) Randy Plitt
- (23) Sallie Burchett
- (24) Cynthia Bast
- (25) Greater East End District
- (26) Sarah Andre
- (27) City of Houston
- (30) Marque Real Estate Consultants
- (32) Daniel & Beshara
- (33) Foundation Communities
- (34) New Hope Housing
- (36) S Anderson Consulting
- (40) Cleopatra Investments, Inc.
- (41) Avenue CDC
- (42) Local Initiatives Support Coalition (LISC)
- (43) Star – Equities, LLC
- (45) Houston Housing Authority
- (46) Texas Association of Community Development Corporations (TACDC)
- (47) National Housing Trust
- (48) Texas Appleseed and Texas Low Income Housing Information Service
- (49) Inclusive Communities Housing Development Corporation
- (50) Bonner Carrington
- (51) RealTex Development
- (52) Roundstone Development

Preamble, Reasoned Response, and Repealed Rule

The Texas Department of Housing and Community Affairs (the “Department”) adopts the repeal of 10 TAC, Chapter 10, Uniform Multifamily Rules Subchapter A §§10.1 - 10.4, concerning General Information and Definitions without changes to the proposed text as published in the September 19, 2014, of the *Texas Register* (39 TexReg 7395) and will not be republished.

REASONED JUSTIFICATION. The Department finds that the purpose of the repeal is to replace the sections with a new rule that encompasses all funding made available to multifamily programs. Accordingly, the repeal provides for consistency and minimizes repetition among the programs.

The Department accepted public comments between September 19, 2014, and October 20, 2014. Comments regarding the repealed were accepted in writing and by fax. No comments were received concerning the repeal.

The Board approved the final order adopting the repeal on November 13, 2014.

STATUTORY AUTHORITY. The repeal is adopted pursuant to Texas Government Code §2306.053, which authorizes the Department to adopt rules. Additionally, the repeal is adopted pursuant to Texas Government Code §2306.67022, which specifically authorizes the Department to adopt a qualified allocation plan.

§10.1. Purpose.

§10.2. General.

§10.3. Definitions.

§10.4. Program Dates.

Preamble, Reasoned Response, and Repealed Rule

The Texas Department of Housing and Community Affairs (the “Department”) adopts the repeal of 10 TAC Chapter 10, Uniform Multifamily Rules Subchapter B §10.101, concerning Site and Development Requirements and Restrictions without changes to the proposed text as published in the September 19, 2014, issue of the *Texas Register* (39 TexReg 7404) and will not be republished.

REASONED JUSTIFICATION. The Department finds that the purpose of the repeal is to replace the sections with a new rule that encompasses all funding made available to multifamily programs. Accordingly, the repeal provides for consistency and minimizes repetition among the programs.

The Department accepted public comments between September 19, 2014 and October 20, 2014. Comments regarding the repeal were accepted in writing and by fax. No comments were received concerning the repeal.

The Board approved the final order adopting the repeal on November 13, 2014.

STATUTORY AUTHORITY. The repeal is adopted pursuant to Texas Government Code §2306.053, which authorizes the Department to adopt rules. Additionally, the repeal is adopted pursuant to Texas Government Code §2306.67022, which specifically authorizes the Department to adopt a qualified allocation plan.

§10.101. Site and Development Requirements and Restrictions.

Preamble, Reasoned Response, and Repealed Rule

The Texas Department of Housing and Community Affairs (the “Department”) adopts the repeal of 10 TAC Chapter 10, Uniform Multifamily Rules Subchapter C §§10.201 - 10.207, concerning Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules without changes to the proposed text as published in the September 19, 2014, issue of the *Texas Register* (39 TexReg 7412) and will not be republished.

REASONED JUSTIFICATION. The Department finds that the purpose of the repeal is to replace the sections with a new rule that encompasses all funding made available to multifamily programs. Accordingly, the repeal provides for consistency and minimizes repetition among the programs.

The Department accepted public comments between September 19, 2014 and October 20, 2014. Comments regarding the repeal were accepted in writing and by fax. No comments were received concerning the repeal.

The Board approved the final order adopting the repeal on November 13, 2014.

STATUTORY AUTHORITY. The repeal is adopted pursuant to Texas Government Code §2306.053, which authorizes the Department to adopt rules. Additionally, the repeal is adopted pursuant to Texas Government Code §2306.67022, which specifically authorizes the Department to adopt a qualified allocation plan.

§10.201. Procedural Requirements for Application Submission.

§10.202. Ineligible Applicants and Applications.

§10.203. Public Notifications.

§10.204. Required Documentation for Application Submission.

§10.205. Required Third Party Reports.

§10.206. Board Decisions.

§10.207. Waiver of Rules for Applications.

Preamble, Reasoned Response, and Repealed Rule

The Texas Department of Housing and Community Affairs (the “Department”) proposes the repeal of 10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter G §§10.901 - 10.904, concerning Fee Schedule, Appeals and Other Provisions, without changes to the proposed text as published in the September 19, 2014, issue of the *Texas Register* (39 TexReg 7470) and will not be republished.

REASONED JUSTIFICATION. The Department finds that the purpose of the repeal is to replace the sections with a new rule that encompasses all funding made available to multifamily programs. Accordingly, the repeal provides for consistency and minimizes repetition among the programs.

The Department accepted public comments between September 19, 2014 and October 20, 2014. Comments regarding the repeal were accepted in writing and by fax. No comments were received concerning the repeal.

The Board approved the final order adopting the repeal on November 13, 2014.

STATUTORY AUTHORITY. The repeal is adopted pursuant to Texas Government Code §2306.053, which authorizes the Department to adopt rules. Additionally, the repeal is adopted pursuant to Texas Government Code §2306.67022, which specifically authorizes the Department to adopt a qualified allocation plan.

§10.901. Fee Schedule.

§10.902. Appeals Process.

§10.903. Adherence to Obligations.

§10.904. Alternative Dispute Resolution (ADR) Policy.

5a

BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION
NOVEMBER 13, 2014

Presentation, Discussion, and Possible Action on a Request for a Waiver of §11.3(e) of the 2014 Qualified Allocation Plan Relating to Developments in Certain Sub-regions and Counties for Villas at Plano Gateway

RECOMMENDED ACTION

WHEREAS, a 4% Housing Tax Credit application for Villas at Plano Gateway Apartments was submitted to the Department on September 22, 2014;

WHEREAS, the application proposes a new construction, Qualified Elderly development to be located in Plano, Collin County;

WHEREAS, §11.3(e) of the 2014 Qualified Allocation Plan (“QAP”) states that Qualified Elderly developments in Collin County are considered ineligible for consideration of multifamily funding in the 2014 application round;

WHEREAS, the applicant has requested a waiver of this prohibition stating, in part, that the 2015 proposed QAP removes this restriction against Qualified Elderly developments, thus contending that the perceived imbalance of Qualified Elderly developments in certain sub-regions and counties no longer exists; and

WHEREAS, staff believes that despite the proposed removal of the prohibition of Qualified Elderly developments in certain regions and counties in the 2015 proposed QAP, the prohibition remains in effect under the program rules under which the application was submitted;

NOW, therefore, it is hereby

RESOLVED, that the request for a waiver of §11.3(e) of the 2014 QAP for Villas at Plano Gateway Apartments is hereby denied.

BACKGROUND

Villas at Plano Gateway Apartments, a proposed Qualified Elderly development located in Plano, Collin County, proposes the new construction of a 292-unit mixed income development of which 233 units will be rent and income restricted at 60% of AMFI and the remaining 59 units will be market rate with no rent or income restrictions.

The 2014 QAP includes a prohibition against Qualified Elderly Developments in certain areas. Specifically, §11.3(e) reads “*In the 2014 Application Round the following Counties are ineligible for*

Qualified Elderly Developments: Collin; Denton; Ellis; Johnson; Hays; and Guadalupe, unless the Application is made in a Rural Area. In the 2014 Application Round Regions five (5); six (6); and eight (8) are ineligible for Qualified Elderly Developments, unless the Application is made in a Rural Area. These limitations will be reassessed prior to the 2015 Application Round and are based on the fact that data evaluated by the Department has shown that in the ineligible areas identified above, the percentage of qualified elderly households residing in rent restricted tax credit assisted units exceeds the percentage of the total Qualified Elderly-eligible low income population for that area.” The applicant is requesting a waiver of this prohibition and has stated that the 2015 Draft QAP removes the restriction against Qualified Elderly developments, thus contending that the perceived imbalance indicated in the rule no longer exists.

As required under §10.207(a) of the Uniform Multifamily Rules regarding the general waiver process, “...*The waiver request must establish how it is necessary to address circumstances beyond the Applicant's control and how, if the waiver is not granted, the Department will not fulfill some specific requirement of law. In this regard, the policies and purposes articulated in Texas Government Code, §§2306.001, 2306.002, 2306.359, and 2306.6701, are general in nature and apply to the role of the Department and its programs, including the Housing Tax Credit program. Where appropriate, the Applicant is encouraged to submit with the requested waiver any plans for mitigation or alternative solutions. Any such request for waiver must be specific to the unique facts and circumstances of an actual proposed Development and must be submitted to the Department in the format required in the Application materials.* The request submitted by the applicant submitted the following argument:

1. Texas Government Code, §2306.001: 1(B) tasks TDHCA purposes: “to assist local government in overcoming financial social and environmental problems.” This development is sponsored by the City of Plano Housing Corporation to implement a plan to provide affordable housing in the City of Plano. The departments is obligated by statute to assist them in implementing this plan to address the social need for more senior living in this specific location in a zero vacancy market.
2. Texas Government Code, §2306.001: (2) tasks TDHCA to “provide for the housing needs of individuals and families of low, very low, and extremely low income and families of moderate income.” So the development of MF rental for independent seniors at or below 60% of AMFI is a primary purpose of TDHCA. This site is uniquely suited for senior housing in a rare qualified census tract in Collin County where 4% credits can be use in an economically feasible manner to serve senior households of low income.
3. Texas Government Code, §2306.002: (b) The statute mandates a policy for TDHCA making it “The highest priority of the department is to provide assistance to individuals and families of low and very low income who are not assisted by private enterprise or other governmental programs so that they may obtain affordable housing or other services and programs offered by the department.” So denying low income seniors who are special needs under the Statute is contrary to statutory mandated policy. It is a rule the Executive Director and or the Board has authority to approve or waive to insure the department’s policies are fully implemented.

4. Texas Government Code, §2306.511: Simply defines elderly as a population meeting the special needs definition by Statute and relates to the other comments in this letter related to special needs household. In addition, the development is providing 10% of all units equipped for handicapped residents with special needs. Plano Housing Corporation, PHC, in cooperation with the North Texas Veterans Coalition have targeted these equipped units for seniors who are veterans in need of housing. The nonprofit general partner, PHC, has applied for a HOME Depot grant which would expand this obligation to 60 of the 292 units, for senior veteran households. So the department is affirmatively addressing the special needs population, including Veterans\Wounded Warriors in need a fully equipped living unit.

5. Texas Government Code, §2306.6710: In evaluating this request and this application, the Department is obligated to consider community support for the development in review and approval processes. The development has a resolution of support, unanimously passed by the Plano City Council. The development received its bond inducement by resolution, unanimously passed by the Collin County Commissioners Court to support this development plan. So under this standard weight should be given in reviewing this request related to the total community support enjoyed by this applicant for this development in this location.

This waiver request was previously presented before the Board at the October 9, 2014 Board meeting. The Board took action to table the decision regarding the waiver until the November 13, 2014 Board meeting. Staff acknowledges that the 2015 proposed QAP removes the restriction on Qualified Elderly developments in certain sub-regions and counties of the State. However, this application was submitted in the 2014 program year, and staff believes those rules should apply, as they were applied to every other application submitted in 2014. Moreover, it is possible for the applicant to proceed with submission of the application in the 2015 program year assuming the prohibition is lifted when the 2015 QAP is adopted. Staff does not believe the timing of the submission of the application or the funding source applied for constitutes a justification for a waiver allowing the development to move forward in this program year.

TX Collin Apartments, L.P.
Attn: Jean Brown and Kent Conine
5430 LBJ Freeway, Suite 1200
Dallas, TX 75240
972-663-9368
972-663-9301 FAX

TDHCA Executive Staff
ATTN: Tim Irvine, Executive Director
211 E. 11th Street
Austin, TX 77011

September 19, 2014

RE: Request to the TDHCA staff for a pre clearance or waiver under the 2014 MR rules related to senior housing development in Region 3, Collin County

Dear Tim:

Please consider our request for a pre clearance or waiver of the prohibition on affordable senior housing development in Region 3, Collin County under the 2014 MF rules. Please note in your consideration that the proposed development is mixed income, senior living in Plano, Texas. The development location is part of a master planned development, Plano Gateway. The site is owned by the applicant and specifically zoned for independent senior living, long before the 2014 rule took effect. The site is institutional investment quality located directly across the street, Shiloh, from a medical complex of doctor's office, rehabilitation hospital and medical services. More significantly, it is across Renner from the newly expanded and modernized Richardson Methodist Hospital. More significantly for the statute, the development is a 4% HTC tax exempt bond financed development. A resource the State has not been fully utilizing for the past several years.

We support the department's efforts to use and focus 9% credit resources to affirmatively further fair housing choice for Texas families. But Texas is not using large amounts (hundreds of millions) of tax-exempt volume cap and related non-competitive 4% tax credit equity to fulfill the department's obligations under statute as outlined below. ICP and the department both recognize these developments are only feasibility, as a rule, in QCT's. In addition, the board voted, relying on staff recommendation, for a QAP and rule draft for 2015 that removes this prohibition.

Staff is on record that the prohibition policy started with the 2014 QAP and rules in late 2013 has served its purpose. There is no longer the perceived imbalance that led to the current rule, at least through the close of business 2015. Given this back ground, the applicant respectfully asks for approval by the Executive Director for a preclearance or waiver to proceed with our application for 4% housing tax credits at this time. A request to the board is also requested should you choose to defer action to them.

The good causes in compliance with the Statute are as follows:

1. 2306.001: 1 B tasks TDHCA purposes: “to assist local government in overcoming financial social and environmental problems.” This development is sponsored by the City of Plano Housing Corporation to implement a plan to provide 1,000 units of affordable housing in the City of Plano. The department is tasked by statute to assist the City of Plano and Collin County in implementing this plan to address the social need for more senior living in this specific location in a zero vacancy market with long wait lists.
2. 2306.001: 2 tasks TDHCA to “provide for the housing needs of individuals and families of low, very low, and extremely low income and families of moderate income.” So the development of MF rental for independent seniors at or below 60% of AMFI is a primary purpose of TDHCA. This site is uniquely suited for senior housing in a rare qualified census tract in Collin County where 4% credits can be used in an economically feasible manner to serve senior households of low income.
3. 2306.002: (b) The statute mandates a policy for TDHCA making it “The highest priority of the department is to provide assistance to individuals and families of low and very low income who are not assisted by private enterprise or other governmental programs so that they may obtain affordable housing or other services and programs offered by the department.” So denying low income seniors who are special needs under the Statute is contrary to statutory mandated policy. It is a rule the Executive Director and or the Board has authority to approve or waive to insure the department’s policies are fully implemented.
4. 2306.511: Simply defines elderly as a population meeting the special needs definition by Statute and relates to the other comments in this letter related to special needs household. In addition, the development is providing 10% of all units equipped for handicapped residents with special needs. Plano Housing Corporation, PHC, in cooperation with the North Texas Veterans Coalition have targeted these equipped units for seniors who are veterans in need of housing. The non-profit general partner, PHC, has applied for a HOME Depot grant which would expand this obligation to 60 of the 292 units, for senior veteran households. So the department is affirmatively addressing the special needs population, including Veterans\Wounded Warriors in need of a fully equipped living unit.
5. 2306.6710: In evaluating this request and this application, the Department is obligated to consider community support for the development in review and approval processes. The development has a resolution of support, unanimously passed by the Plano City Council. The development received its bond inducement by resolution, unanimously passed by the Collin County Commissioners court to support this development plan. So under this standard, weight should be given in reviewing this request related to the total community support enjoyed by this applicant for this development in this location.

Mitigation of the need for this pre clearance or waiver: The site is specifically zoned for this use and was zoned for this very appropriate land use before the 2014 rule was adopted. It is the highest and best use given the location and surrounding amenities. The City and County recognize that recent growth in their affordable senior housing needs coupled with an explosion of rental rates in this zero vacancy market is

preventing long-time residents of Plano and Collin County from staying in the community fabric. So given the demand for the housing and existing master plan zoning, no mitigation is available but to ask for affirmative approval by TDHCA to allow this development to proceed. This development plan began implementation in June 2013, long before the rule was put in place. By the time TDHCA adopted this prohibition, the developer had incurred over \$300,000 in non-recoverable costs. So it was not with a cavalier approach the applicant is in this position. They have operated in good faith under the rules at all times.

At a minimum, Applicant respectfully requests your approval to proceed with a 4% application that can be approved no later than the December 2014 board meeting. This would move the item to a time when the board has approved the final rule and QAP for 2015, consistent with this request. It would also move the final approval to a point when the Governor has signed the new QAP and or rules, without this senior housing prohibition. So we need your approval for staff to proceed with a fully review of the application at this time.

This timing is critical to the viability of this development opportunity due to possible changes in QCT's. If the development lapsed into 2015 and the QCT 130% boost is lost, the current financing plan would no longer meet TDHCA requirements for underwriting feasibility.

The applicant is asking for your approval in time for the October 2014 board meeting to allow for a closing of the financing in November 2014. Applicant represents that this 4% HTC and tax exempt bond financed development is permit ready, the applicant owns the site, all the debt and equity financing is in place. Please allow this development to proceed with alacrity.

One behalf of the sponsors, including Plano Housing Corporation and Conine Residential, I ask you to approve this application for eligibility at this time.

Your consideration of this request is appreciated.

Sincerely,



Kent Conine
Conine Residential

CC: Plano Housing Corporation
Jean Brown
Bill Fisher, SHA

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Another huge mixed-use development is on the drawing boards in Richardson



By [Steve Brown](#)
stevebrown@dallasnews.com
10:45 am on September 25, 2014 | [Permalink](#)

92 19 0 14

Next door to State Farm Insurance's towering new office campus in Richardson, developers are working on another huge mixed-use development that will bring millions of square feet of additional construction.

The proposed project – which was just approved by Richardson's planning and zoning commission – would take up the vacant 55 acres between U.S. Highway 76 and the CityLine development anchored by State Farm.

DART's Bush Turnpike commuter rail station sits in the middle of the two properties.

The vacant property, which is being rezoned, is at the southeast corner of Bush Turnpike and U.S. 75 and is owned by the Caruth Foundation.

Real estate investor and developer Parliament Group Inc. is buying the property and has been working with the owners, city officials and Good Fulton & Farrell architects to plan the new project.

Zoning was just approved by the Richardson Plan Commission for 1.35 million square feet of office space, a 150-room hotel and 60,000 square feet of shopping.

There will be 1,250 urban style apartments, to be developed by Trammell Crow Residential.

"The velocity and scope of this is impressive," said Richardson City Manager Dan Johnson. "We are excited that these firms see the value of Richardson."

Johnson said the just-approved zoning changes for the Caruth property were “tweaks” on planning done back in 2010 and 2011.

That’s when initial designs for the Caruth land and the adjacent CityLine property were down.

In 2012 developer KDC bought the 186-acre CityLine tract on the south side of Bush Turnpike at Plano Road and began work on a \$1.5 billion mixed-use project.

The smaller Caruth property – which fronts on U.S. 75 – has remained vacant while State Farm’s office towers have gone up to the east.

But that’s soon going to change.

“The projects will be very symbiotic to each other,” Johnson said. “Combined they are over \$2 billion in tax base.”

The latest zoning allows for high-rise office construction at the northeast corner of Renner Road and U.S. 75 and “freeway hi-rise” buildings of up to 300 feet tall at the southeast corner of Bush and 75.

Mid-rise mixed-use buildings would be constructed along the DART line.

Designs for the project include a greenbelt along Spring Creek.

“A corridor has been left to construct the proposed Cotton Belt rail line,” Johnson said.

Parliament Group plans to start taking ownership of the property in December, according to partner Joe Altmore.

“This project is going to be huge,” Altmore said. “It’s going to be a bookend for the CityLine development.

“We are getting a great reception to the project,” from commercial real estate firms that will buy development sites and build, he said.

Trammell Crow Residential is working on plans for the first phase of apartment communities it will build, which will be designed by Good Fulton & Farrell, Altmore said.

Next door at CityLine, construction is already underway on four office towers for State Farm, a half-million-square-foot campus for Raytheon Corp. and almost 1,000 apartments.

A shopping center anchored by Whole Foods Market and an Aloft Hotel are about to start construction.

Combined, CityLine and the Caruth tract development will create one of the largest, most dense transit oriented, mixed-use developments in the country.

“This is an active urban market – not suburban,” Johnson said. “The intensity and quality of the development is so strong.”

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2013 PRIVATE ACTIVITY BOND ALLOCATION PROGRAM**

STATUS OF 2014 ALLOCATION PROGRAM AS OF -

9/19/2014

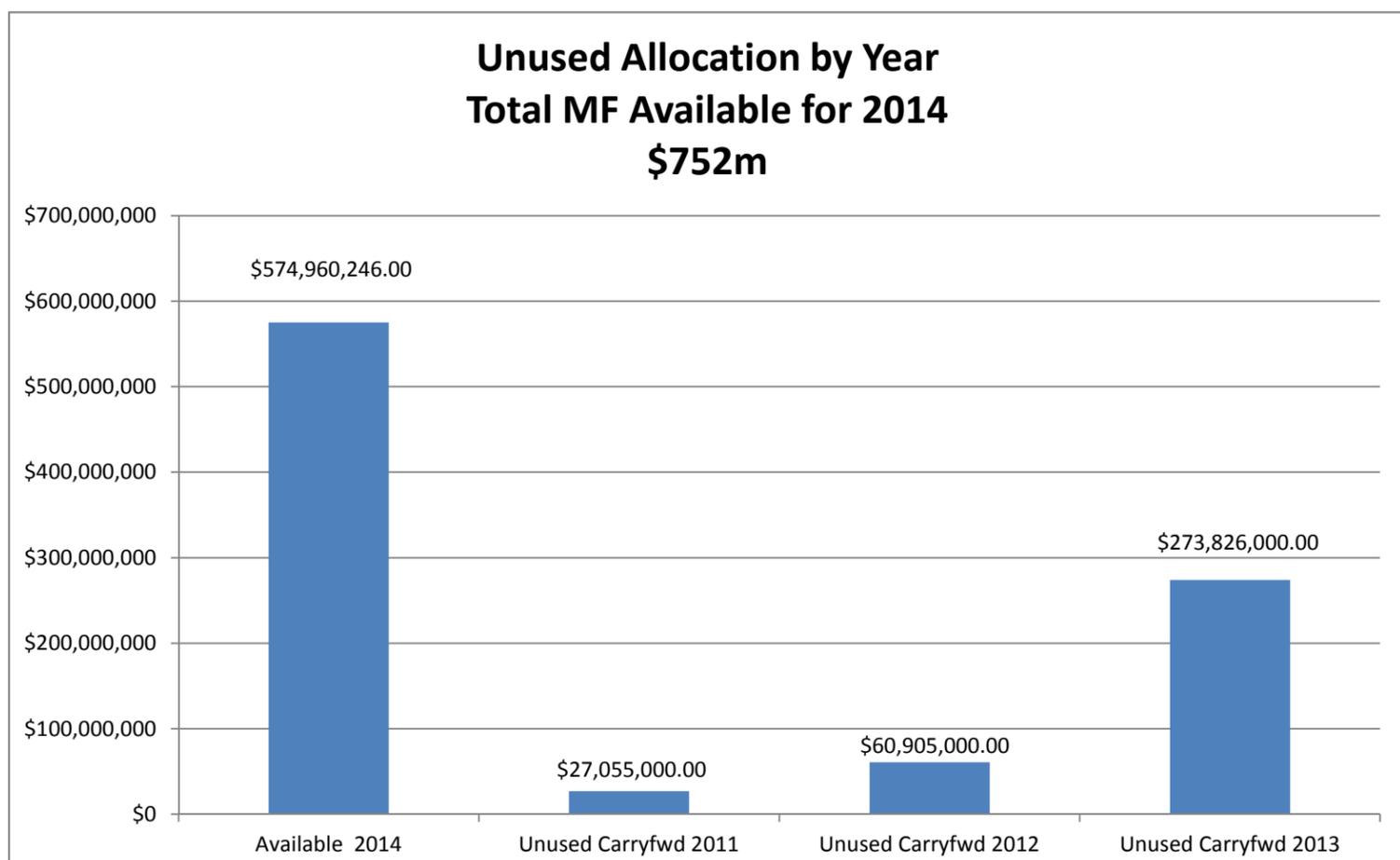
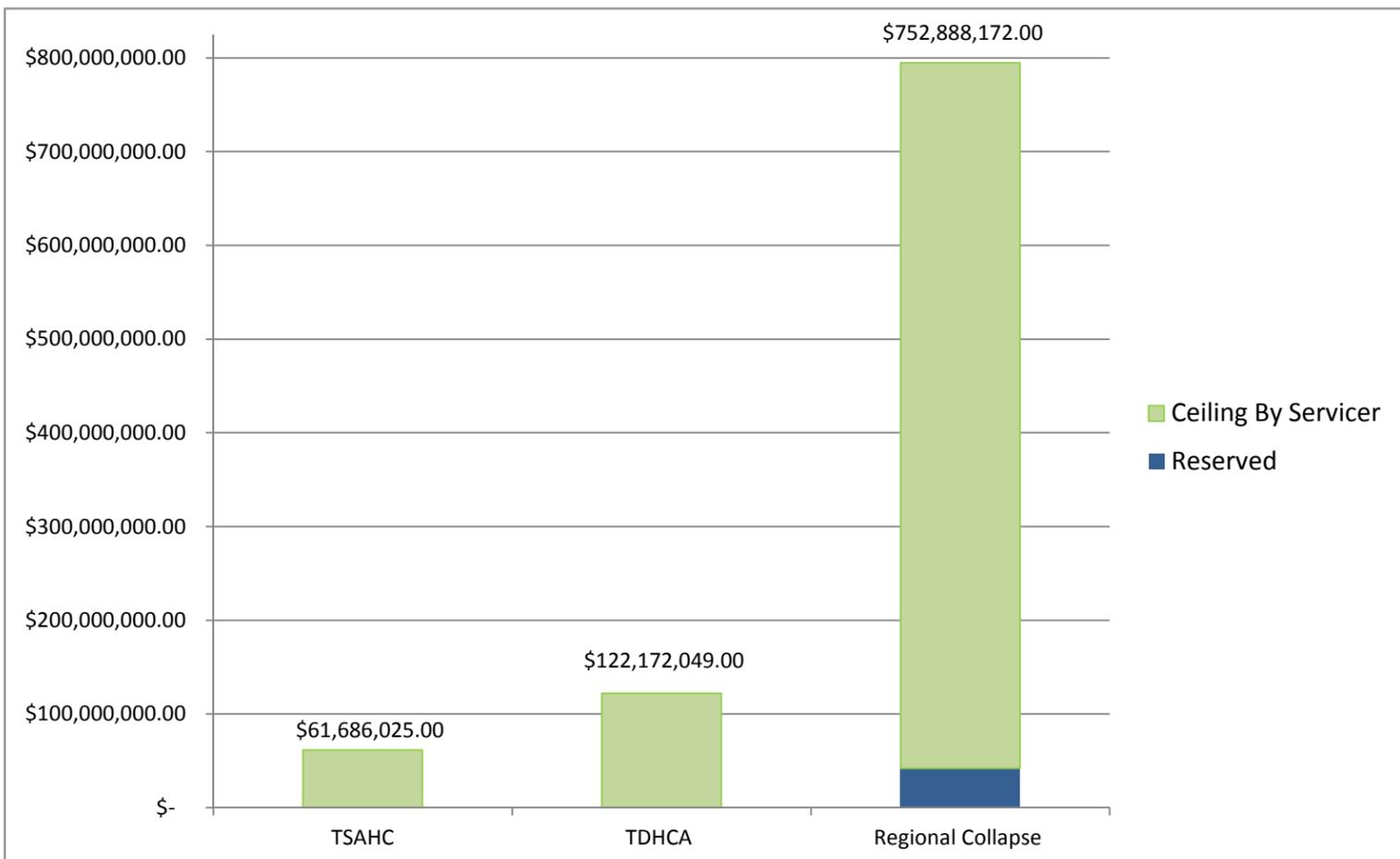
UN-USED MF BOND CAP INCLUDING CARRYOVER 2011-2014

\$ 936,746,246

	100.00%	28.00%	8.00%	2.00%	2.20%	4.40%	15.40%	10.50%	29.50%	
	TOTAL	SC 1 MRB's	SC 2 State Voted	SC 3 IDBs	SC 4 TSAHC - MF	SC 4 TDHCA - MF	SC 4 Local HFC's MF	SC 5 Student Loan	SC 6 All Other	
2014 STATE CEILING	\$ 2,644,819,300	\$ 740,549,404	\$ 211,585,544	\$ 52,896,386	\$ 58,186,025	\$ 116,372,049	\$ 407,302,172	\$ 277,706,027	\$ 780,221,693	
ELIGIBLE REQUESTS TO DATE	\$ 1,444,516,000	\$ 956,266,000	\$ -	\$ 3,650,000	\$ -	\$ 8,300,000	\$ 5,300,000	\$ -	\$ 471,000,000	54.62%
RESERVATIONS TO DATE	\$ 1,440,516,000	\$ 956,266,000	\$ -	\$ 3,650,000	\$ -	\$ 4,300,000	\$ 5,300,000	\$ -	\$ 471,000,000	54.47%
CERTIFIED TO DATE	\$ 1,388,516,000	\$ 956,266,000	\$ -	\$ 3,650,000	\$ -	\$ 8,300,000	\$ 5,300,000	\$ -	\$ 415,000,000	52.50%
ALLOCATIONS TO DATE	\$ 60,516,000	\$ 31,266,000	\$ -	\$ 3,650,000	\$ -	\$ 5,600,000	\$ -	\$ -	\$ 20,000,000	2.29%
RESERVATIONS RELEASED	\$ 578,700,000	\$ 525,000,000	\$ -	\$ -	\$ -	\$ 2,700,000	\$ -	\$ -	\$ 51,000,000	21.88%
UNSATISFIED REQUESTS	\$ 4,000,000	\$ -	\$ -	\$ -	\$ -	\$ 4,000,000	\$ -	\$ -	\$ -	0.15%
AVAILABLE ALLOCATION 14	\$ 1,783,003,300	\$ 309,283,404	\$ 211,585,544	\$ 49,246,386	\$ 58,186,025	\$ 114,772,049	\$ 402,002,172	\$ 277,706,027	\$ 360,221,693	67.41%
CARRYFORWARD 2011	\$ 428,605,012	\$ 170,400,000	\$ 81,150,012	\$ -	\$ -	\$ -	\$ 27,055,000	\$ 100,000,000	\$ 50,000,000	
CARRYFORWARD 2012	\$ 660,905,000	\$ -	\$ -	\$ -	\$ 3,500,000	\$ -	\$ 57,405,000	\$ 300,000,000	\$ 300,000,000	
CARRYFORWARD 2013	\$ 773,412,213	\$ 499,586,213	\$ -	\$ -	\$ -	\$ 7,400,000	\$ 266,426,000	\$ -	\$ -	
	\$ 3,645,925,525	\$ 979,269,617	\$ 292,735,556	\$ 49,246,386	\$ 61,686,025	\$ 122,172,049	\$ 752,888,172	\$ 677,706,027	\$ 710,221,693	

2014 Private Activity Bond Cap and Availability

	TOTAL PAB	TSAHC - MF	TDHCA - MF	Local HFC's MF	TOTAL MF
2014 STATE CEILING	\$ 2,644,819,300.00	\$ 58,186,025.00	\$ 116,372,049.00	\$ 407,302,172.00	\$ 581,860,246.00
ELIGIBLE REQUESTS TO DATE	\$ 1,444,516,000.00	\$ -	\$ 8,300,000.00	\$ 5,300,000.00	\$ 13,600,000.00
RESERVATIONS TO DATE	\$ 1,440,516,000.00	\$ -	\$ 4,300,000.00	\$ 5,300,000.00	\$ 9,600,000.00
CERTIFIED TO DATE	\$ 1,388,516,000.00	\$ -	\$ 8,300,000.00	\$ 5,300,000.00	\$ 13,600,000.00
ALLOCATIONS TO DATE	\$ 60,516,000.00	\$ -	\$ 5,600,000.00	\$ -	\$ 5,600,000.00
RESERVATIONS RELEASED	\$ 578,700,000.00	\$ -	\$ 2,700,000.00	\$ -	\$ 2,700,000.00
UNSATISFIED REQUESTS	\$ 4,000,000.00	\$ -	\$ 4,000,000.00	\$ -	\$ 4,000,000.00
AVAILABLE ALLOCATION 14	\$ 1,783,003,300.00	\$ 58,186,025.00	\$ 114,772,049.00	\$ 402,002,172.00	\$ 574,960,246.00
CARRYFORWARD 2011	\$ 428,605,011.80	\$ -	\$ -	\$ 27,055,000.00	\$ 27,055,000.00
CARRYFORWARD 2012	\$ 660,905,000.00	\$ 3,500,000.00	\$ -	\$ 57,405,000.00	\$ 60,905,000.00
CARRYFORWARD 2013	\$ 773,412,213.00	\$ -	\$ 7,400,000.00	\$ 266,426,000.00	\$ 273,826,000.00
AVAILABLE ALLOCATION 14	\$ 3,645,925,524.80	\$ 61,686,025.00	\$ 122,172,049.00	\$ 752,888,172.00	\$ 936,746,246.00



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ORAL PRESENTATION