



2016 Competitive HTC Application Cycle Frequently Asked Questions (FAQs)

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

Following is a list of questions that the Department has received with respect to the 2016 Uniform Multifamily Rules and QAP and how various provisions of the rules will be applied to Applications submitted and reviewed by the Department during the 2016 competitive cycle. Each of the questions was received via email or phone over the past several weeks and at the application workshops held in early December. Each time an update is made the most recently updated date will be added to the box at the top right of this page. The FAQ is an opportunity to provide all Applicants and the public the same information that was relayed to the individuals who asked the questions. There are other questions which have been posed and addressed, but it was staff's assessment that they did not raise questions or issues with broad application.

Questions and answers are in the same order that their related sections appear in the rules. If questions and answers are added after the initial posting, the revision dates will appear at the top of this page and will be included next to each of the added questions. The Department may not send out a new listserv each time an update is made unless the update is extensive. Staff encourages interested individuals to check back periodically. At the January 28, 2016, board meeting, staff will present to the Board all questions and answers included in this FAQ for acceptance. However, staff will continue to supplement this FAQ; questions and answers with dates subsequent to any Board action will not have been reviewed by the board.

Pre-Application Submission:

Q: *Can we set up ServeU before we are ready to submit the pre-application?*

A: No. ServeU will require an application number, which will not be available prior to submission of the pre-application or submission of an Electronic Filing Agreement in lieu of filing a pre-application.

Q: *Can we submit multiple pre-applications with one upload?*

A: FTP upload does not apply to the pre-application. FTP upload will be required for full Application only.

Pre-applications will be submitted via JotForm. Per §11.8, Pre-Application Requirements, each pre-application will require its own JotForm submission. Multiple pre-applications may not be submitted in a single JotForm submission.

Q: *For the pre-application, will we be turning in an original of the Electronic Filing Form?*

A: No. The Electronic Filing Form will be a part of the JotForm submission.

Q: *Who do we send the pre-application fee to?*

A: All checks for fees should be made payable to TDHCA and must include the application number. Separate checks must be submitted for each pre-application. Address all submissions to Marni Holloway, Director, Multifamily Finance Division.

If delivering via U.S. Mail, send to:

TDHCA
P.O. Box 13941
Austin, Texas, 78711-3941;

If delivering via courier, send to:

TDHCA
221 East 11th Street
Austin, Texas, 78701

Pre-Application Requirements:

Q: *When something doesn't apply, can we just insert the tab and put "NA" without including all the documents behind it?*

A: Yes; however be sure that the item really does not apply since failing to provide required documents in their entirety behind any one tab could result in a determination that the pre-application or full application is materially incomplete and, therefore, could be grounds for termination of the pre application or full application.

Q: *Are there any waiver requests for the Pre-Application?*

A: There are no waiver requests specifically identified to be submitted at pre-application, but this is a good time to submit them if you believe you will need them.

Q: *What about PTAC waivers?*

A: PTAC waivers can be submitted at pre-application if all information needed to support the waiver can be provided at the time. The waiver will need to go to TDHCA Board for consideration, and, therefore, the earlier you do so the more time there will be to get the issue resolved.

Q: *Is a pre-application required for the Direct Loan Program?*

A: No. A certification for the Multifamily Direct Loan Program will be posted as part of the Application materials.

Q: *We mistakenly checked the wrong box on Target population on the Pre-Application. How do we get the required correction noted?*

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A: The Department will not consider any corrections to a Pre-Application after the Pre-Application Submission Deadline has passed. Note that Per §11.9(e)(3) of the QAP, you can make the change when you submit the Application; however, making such a change would forfeit the Pre-Application points.

Application Submission

Q: *Is there a separate account per Application?*

A: Yes. When each pre-application or Electronic Filing agreement is submitted, it will receive an Application number. A ServeU FTP account will be created for each of those numbers. None will share an account.

Q: *Will we submit the Electronic Filing Form with the Application?*

A: Only if you did not submit a pre-application will you need to submit the Electronic Filing Agreement but in such case the Electronic Filing Agreement will need to be submitted **prior** to getting a ServeU FTP account which of course must be completed prior to uploading a full Application. Staff believes that if you target February 25, 2016, for submitting the Electronic Filing Agreement you should have sufficient time to get the ServeU FTP account set up and tested. Set up and testing is the Applicant's responsibility. The Department will not be responsible for any delays, deficiencies, or missed deadlines as a result of an applicant not requesting a ServeU FTP account via the Electronic Filing Agreement in sufficient time to meet the full Application deadline.

Q: *How will the Department handle revisions if there are changes needed after a document is uploaded to the FTP site?*

A: Once an Application document is uploaded, the document cannot be altered. You will, however, be able to upload revised documents by logging in to the site. You will upload the revised document and label the new upload as revised. The FTP will date and time stamp each upload.

Q: *Who has access to FTP that can go in and make changes to posted documents?*

A: Any person that you give your account information to will have access to go in and make additions prior to the Application deadline. Each Applicant only has access to the files uploaded under that account. An Applicant with more than one Application will not be able to access multiple Applications by signing in to one account. No other Applicant will have access to the files uploaded to your account. Staff will not change FTP submittals.

TDHCA multifamily and REA staff will access the site to copy your documents from the FTP site to our internal drive. We will not revise any documents on the FTP site.

Q: *How do you want us to convert site control docs?*

A: Those will be among the few documents that you may have to scan. Make sure you don't scan maps however because they generally cannot be read; get the originals of maps electronically so that you can attach the full color and full sized document, ensuring that they will be readable.

Q: *Should the Previous Participation and credit limit documents be included in the FTP upload?*

A: The Previous Participation and credit limit documents should both be included in the FTP upload.

Q: *Should the Previous Participation and credit limit documents be uploaded in PDF or Excel version?*

A: Both the completed Excel and PDF versions of those forms will need to be uploaded as part of the full Application.

Application Requirements

§10.3. Definitions and Staff Determinations

Q: *Is the elderly limitation for the single county or whole region?*

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A: The limitation applies to the entire region, not just the affected county(ies).

Q: *What funds would fall under which label? HTC is Limitation or Preference? HTC plus HOME is Limitation or Preference?*

A: The Applicant does not choose whether the development is Elderly Limitation or Elderly Preference. Classification as Elderly Limitation or Elderly Preference is a function of the funding that is or may be received by the development.

If the development will be financed with LIHTC 9% credits and conventional financing (meaning that no federal funding with an elderly classification is being obtained), and the development is targeting elderly, then the development is Elderly Limitation.

For federal funding, if the funding requires that a Development lease to Elderly Households with Children, the classification is Elderly Preference. Some examples of this are Project-Based Vouchers and Section 202. If the federal funding would allow leasing options for Elderly only, the classification is Elderly Limitation. An example of this may be the HOME Program (depending on the requirements from the Participating Jurisdiction that awards the funds).

TDHCA's Direct Loan Program (currently HOME and TCAP-RF) requires that Developments targeted toward the elderly be Elderly Limitation. The exception is if the Development has another federal funding source that requires an Elderly Preference, in which case an Elderly Preference would be allowed, but the units not covered by the other federal funding source could have no age restrictions.

The final determination would be up to the Governing Board, but Staff believes that if a funding source changes between submission of the Pre-Application and the full Application resulting in a change from Elderly Limitation to Elderly Preference, or vice versa, the deal is still an Elderly deal and changing between the two will not affect Pre-Application points.

You will need to consult the requirements of the other Federal funding that you are receiving and determine whether the Elderly Preference designation does, or could potentially, apply to you.

For more information, see Item 3b of the September 3, 2015 TDHCA Board Book at <http://www.tdhca.state.tx.us/board/docs/books/150903-book-150827.pdf>. The discussion of this issue begins on page 29 of the meeting transcript.

Q: *Would the following development be considered a Rehabilitation or New Construction project: A total of 116 units, of which 104 are existing units that will be rehabbed and 12 units will be new construction.*

A: Assuming there were only 104 existing units, Staff believes the definition for Rehabilitation does not allow for any additional New Construction. Therefore, assuming there were only 104 existing units, the development will be considered New Construction since the 12 units would be added to the development.

Q: *Is Supportive Housing considered a "type" of household vs. senior/elderly or General?*

A: Supportive Housing is considered a target population. A development targeting Supportive Housing populations could also be designated as an Elderly Limitation or Elderly Preference in the application, but could not receive points for Elderly items. If not specifically designated as Elderly Limitation in the application, such a Development would be considered General and would not be able to discriminate against (i.e. turn away) a household with a child.

Q: *Is there a formal process to get a staff determination?*

A: Per §10.3(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).”

§10.101.Site and Development Requirements and Restrictions

Q: If we have 2 scattered sites- one senior, one family, could there be an intergenerational issue?

A: The answer is a qualified “yes”, and that could be a concern unless existing or new Federal funding specifically required one site to target senior while the other was family. If there is no Federal funding that allows this tenant mix, then the senior site would not be able to be mixed with a family site and the tax credit application would be a General Development (tenants would have to be accepted irrespective of familial status and an age restriction would generally be prohibited).

Q: Regarding Undesirable Neighborhood Characteristics, do the Elementary, Middle, and High School all have to have the Met Standard rating?

A: All three have to meet the rating. If one or more does not, you have to disclose.

Mandatory Community Assets

Note that with limited information, TDHCA is not able to state unequivocally that a given asset does or does not meet the requirements as outlined in the QAP. Some of the determinations will be made on a case by case basis as an Application is reviewed. Applicants must be sure to provide evidence of why they believe the asset should be determined to meet the requirements. Where possible, TDHCA has provided a determination. Be advised that as more information about the asset becomes available, the determinations below may be revised or changed.

Q: Does a convenience store that now has a menu for food inside (“fresh to order” pizzas, hot sandwiches, etc.) count as a restaurant? How about a cafeteria inside a hospital?

A: This kind of determination will be made on a case by case basis as the Application is reviewed. Applicants should provide sufficient information to assist staff in the determination.

Q: How many tables and chairs would be considered “adequate tables and seating” for (xx) Community Dining Room with full or warming kitchen furnished with adequate tables and seating?

A: “Adequate tables and seating” would be at minimum enough tables and seating so that every resident could be served during reasonable meal times.

Q: Does an indoor shooting range count as recreation?

A: This kind of determination will be made on a case by case basis as the Application is reviewed. Applicants should provide sufficient information to assist staff in the determination, including availability to the general public, membership requirements, age restrictions, and other information that will assist with the review.

Q: A gym has a retail section within the building that sells girls clothing, costumes, accessories, etc....Is this considered retail?

A: More information would be needed to make a determination in a case like this. The Applicant would need to provide evidence that the asset is open to serve the general public. For instance, are non-members of the gym able to easily access the shop? If the shop has access that is restricted to members it would not be considered retail on its own.

Q: Is a Chiropractor a general practice physician as required by mandatory Community Assets?

A: A chiropractor that does not provide general medical care is not considered a general practice physician for this definition.

Q: Is an Orthodontist a dentist for this definition?

A: An orthodontist who does not provide general dental would not be considered a dentist for this definition.

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Q: *Would a movie theater be considered an indoor public recreation facility (or anything else)?*

A: A movie theater (not an adult-oriented theater) would be considered an indoor public recreation facility.

Q: *Does a pawn shop count as a retail merchandise store?*

A: A pawn shop which is open to the general public and contains general retail merchandise could qualify as a retail merchandise store for this definition.

Q: *Is the one- or two-mile radius a distance measured from the proposed site property edge to property line, parking lot, or the building of an amenity?*

A: The one-mile or two-mile distance is measured between the closest boundaries by a straight line on a map. The point from which the distance is measured will vary based on the considered boundaries of the amenity.

Q: *Is senior services defined anywhere? Would you need to measure from the development? There are organizations popping up that serve elderly populations with all kinds of services and referrals. Would these count?*

A: "Senior services" is not a defined term. Services specific to seniors should meet the requirements of the point item in which they are mentioned, i.e. "specific case management services offered by a qualified Owner or Developer or through external, contracted parties for seniors..." If you have any that you would like for us to review prior to pre-application, you can submit them to us.

Q: *If all of the community assets are in one place, like a Super Wal-Mart, can you count all of them?*

A: Assets are no longer required to be in separate buildings; so you can count each of the distinct assets contained in one location (e.g. full service grocery, pharmacy, general retail, banking center, etc.).

Q: *If all of the community assets are in one place, like a Super Wal-Mart, how does this affect the radius requirements?*

A: As long as the location meets the radius requirements, all the contained assets will meet the requirements as well.

Q: *My understanding is that medical office/facility is counted only one time regardless of there being multiple offices in the area. For example, if there are three doctor's offices within a 1.5 mile radius of a rural development site, I can only count the medical point once, not get three points (1 point each) - correct?*

A: Correct. Per §10.101(a)(2), "Only one community asset of each type listed will count towards the number of assets required."

Q: *(Added January 21, 2016) Regarding Mandatory Community Assets, in the past, we have been allowed to use services that have an admission fee. For example, public golf courses. For the item regarding indoor public recreation that now specifically mentions fitness club/gym, can we use a gym like Planet Fitness that requires a membership?*

A: A gym that requires a membership can count for points as long as memberships are generally marketed to and available to the public in a non-discriminatory manner.

Q: *(Added January 21, 2016) As a related question, can we use a membership club like Sam's Club for a supermarket or retail store?*

A: As long as any member of the public can access membership it would count a supermarket or retail store.

§10.202. Ineligible Applicants and Applications

Q: *Please explain termination in a partnership? What kind of termination?*

A: The rules describe the termination as "voluntarily or involuntarily within the past ten (10) years or plans to or is negotiating to terminate their relationship with any other affordable housing development..."

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Q: *On termination of relationships, what about partners that withdrew for their own reasons? Should we report those?*

A: It would be to an Applicant's advantage to disclose and document all changes and let the Department make a determination rather than not disclosing and having another party reveal a disputed withdrawal or termination in a partnership later.

Q: *Does this apply only to Texas transactions or Nationwide?*

A: The rule does not limit the disclosure to applications filed in Texas; therefore, it applies Nationwide.

Q: *What about exit of limited partners?*

A: The rule requires disclosure for a Principal or any entity or Person in the Development ownership structure that was or is involved as a Principal. A true Limited Partner with no other role would not typically be considered a Principal.

§10.203. Public Notifications

Q: *Are the eligible neighborhood associations those that are registered with the state or those within the boundaries of the development?*

A: Both. Per §11.9(d)(4), "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 or county in which the Development Site is located."

"On record with the state" can include TDHCA registration if desired, however such registration is not the only potential way to meet the requirement to be on record with the state or county.

Q: *Neighborhood orgs must be established by Jan 8, 2016; by what date do they need to be on record?*

A: Per §11.9(d)(4), "Neighborhood Organizations may request to be on record with the Department for the current Application Round by submitting documentation (such as evidence of board meetings, bylaws, etc.) not later than 30 days prior to the Full Application Delivery Date."

"Not later than 30 days prior to the Full Application Delivery Date" means by 5:00 p.m. Austin local time on January 29, 2016.

Q: *Will you provide a list of registered Neighborhood Organizations?*

A: We do not maintain an active or comprehensive list of all Neighborhood Organizations that are on record with the state or county. We will, however, post a QCP scoring log which will reflect all letters received and reviewed by TDHCA for points under §11.9(d)(4).

Q: *Is there a deadline for public comment for the 2016 HTC round?*

A: In order for comment to be included in the summary presented to the Board, the comments must be received by the Department by June 12, 2016, at 5:00 p.m. Austin local time.

§10.204. Required Documentation for Application Submission

Q: *Under Evidence of Experience, what if you don't know who the guarantors will be?*

A: You may enter "To Be Determined" or some other signifier; however doing so could establish the lack of certainty in the documentation to support a claim of the maximum points under financial feasibility. There could also be future impacts with regard to ownership and applicant "control" issues that may be required to be addressed.

Q: *Regarding site control: the Application form has no place for an option agreement for a ground lease. What should we check if that is what we will be submitting?*

A: The submitted option documents will be treated the same as a ground lease. The option documents must include all the information that would be included in ground lease documents.

§10.205. Required Third Party Reports.

Q: *For preservation, if we are not claiming any portion of the building acquisition in Eligible Basis, do we need an appraisal?*

A: If there is no identity of interest pursuant to §10.302(e)(1)(B) and eligible basis is not requested on the buildings, an appraisal is not likely required. If there is an identity of interest and eligible basis is not requested on the buildings and the acquisition cost reported on the development cost schedule is less than the original acquisition cost (non-depreciated amount), an appraisal would not provide any additional necessary information in determining the appropriateness of the transfer value for tax credit sizing. For an identity of interest transaction, an appraisal is required if the acquisition cost reported on the development cost schedule is greater than the original acquisition cost (non-depreciated amount) regardless of whether eligible basis is requested on the building acquisition.

Q: *Is it true that an appraisal is not needed if it is an identity of interest acquisition, no acquisition credits are being used and the acquisition price is equal to outstanding debt which is lower than the original (non-depreciated) value of the (building & land) asset on the latest audit?*

A: If there is an identity of interest pursuant to §10.302(e)(1)(B) and eligible basis is not requested on the buildings and the acquisition cost reported on the development cost schedule is less than the original acquisition cost (non-depreciated amount), an appraisal is likely not required (see further discussion above). The amount of debt (original or current) is not a factor in determining whether an appraisal is required.

Q: *If yes, would the balance sheet from the last audit be sufficient documentation to include in the application?*

A: A balance sheet from the last audit with applicable auditor notes is generally sufficient documentation to evidence the original acquisition cost. Preferably and if available, an executed original settlement statement and original G702 would be superior documentation.

Q: *How old can a market study be?*

A: The Market Analysis 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 if they express that it is appropriate to do so. 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.

§10.901. Fee Schedule

Q: *Are fees required for the direct loan program?*

A: There is a fee of \$1,000 per application, plus any tax credit fees that apply. Pursuant to Texas Government Code, §2306.147(b), the Department is required to waive Application fees for private nonprofit organizations that offer expanded services such as child care, nutrition programs, job training assistance, health services, or human services.

§11.3. Housing De-Concentration Factors.

Q: *Do resolutions other than support need to be repeated twice?*

A: **None of the resolutions require repetition.**

Q: *It is clear that both county and municipal resolutions are required for Local Government Support if a project is located in a municipality's ETJ. Can you confirm that only one governing body is required for the Twice the State Average Per Capita, One Mile Three Year Rule, and Limitations on Developments in Certain Census Tracts resolutions?*

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A: A resolution from the municipality or the county (whichever has jurisdiction or both) is required for each of the Housing De-Concentration Factors.

For an Application to qualify for maximum points under Local Government Support, both county and municipal resolutions are required if a project is located in a municipality's ETJ.

Q: *Does the resolution under §11.3(d) of the QAP, relating to Limitation in Certain Census Tracts resolution, need to come from both the city and the county if the development is located in the ETJ or can it be either one?*

A: A resolution from both bodies must be submitted.

Q: *City of Austin has limited purpose jurisdictions, annexed but considered limited: Is that considered within the City, so that no county resolution would be needed?*

A: The answer to this question is very much specific to the facts of this situation. The Applicant must ensure that the correct entity provides the resolution, and this can often best be corroborated with discussions and or documentation with both entities.

Q: *City of Houston has Census Designated Places within the City. Would that require a city resolution, so that no county resolution would be needed?*

A: The answer to this question is very much specific to the facts of this situation. In the case of a Census Designated Place, the appropriate entity is the entity that has jurisdiction over development in the CDP. It could be the city, the county, or both. The Applicant must ensure that the correct entity provides the resolution and this can often best be corroborated with discussions and or documentation with both entities.

Q: *Can multiple HTC awards be awarded to different entities in a specific geographical area? I am a real estate agent here in the DFW area and have a client who is getting multiple offers on close by land tracts from different entities that are applying for the THDCA Tax Credits.*

A: Yes it is possible for multiple HTC awards to different entities in a specific geographical area, but only to the extent that the applications do not violate any of the housing de-concentration factors indicated in §11.3 of the QAP (particularly the two and three mile rules as applicable).

Q: *(Added January 21, 2016) If there are two applications that are not in a county with a population that exceeds 1 million, so that the 11.3(a) Two Mile Same Year Rule does not apply, can those two applications be both General applications and be next to each other sharing a site boundary; and can both be awarded if they score competitively and the Market Study supports both deals? They are not additional phases of an Application, but would be two applications in the same round from two different unrelated developers that would be awarded at the same time at the HTC awards*

A: A plain language reading of §11.3(e), indicates that one of the two applications you describe would not be eligible for award. This subsection states: "...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."

§11.4. Tax Credit Request and Award Limits

Q: *Do the elderly limits established by HB 3311 apply to both rural and urban?*

A: Only urban regions are triggered for the 2016 QAP. This is subject to the final determination by the TDHCA Board; however, Staff believes that since the data for urban regions has been set by the existing designation of urban places it should follow that if a place identified by TDHCA as urban requests to be designated as rural the limitation may still apply to that place to the extent that the limitation calculation included that place as urban.

§11.6.Competitive HTC Allocation Process.

Q: *How will elderly preference impact scoring items?*

A: This is subject to the final determination by the TDHCA Board; however, Staff believes generally (and except where specifically stated otherwise in the Texas Administrative Code) an elderly preference development is still considered an elderly development. Any scoring item that has special requirements for Elderly Developments would be impacted by elderly requirements, including but not limited to common amenities, unit mix, tenant supportive services, and cost per square foot. The Development could be eligible for points under Tenant Populations with Special Housing Needs.

Q: *If there are many elderly applications in a region and there are not enough other applications, how will that be handled?*

A: The cap is for the region, so when the cap is reached, we will stop awarding elderly developments in that region. It is not anticipated that there will be insufficient eligible non elderly development applications; however, if that were to occur, the statute provides that additional elderly developments could be awarded.

Q: *Since we cannot change our population from pre-application to Application, what if finance changes require a change that results in the need to change our selection from Limitation to Preference? What do we do?*

A: A change is highly discouraged. It presents a problem for entities that indicate support for the development based on its population, to have that population change after their support has been registered. If it is anticipated that the development will receive funding that cause it to be an Elderly Preference development, then it is strongly encouraged that all units in the development be restricted by the preference for elderly. If the anticipated funding that caused the development to be an Elderly Preference is not provided or otherwise no longer in the deal at the time the LURA is executed, but the deal is still seen as an Elderly deal it might be converted to an Elderly Limitation at that time. However, the reverse is significantly more complicated because the development will not have been designed with children in mind, and required disclosures about schools would potentially not have been made. TDHCA encourages Applicants to solidify their funding sources as early in the process as possible.

Q: *We understand that the Agency will award allocations based on final scoring and underwriting regardless of the target population until Maximum Elderly Funding Limit is exceeded in those regions where this limit applies. If the next highest scoring elderly application requires more allocation than remains in this regional limit will the Agency skip that application and fund the next highest scoring elderly project that fits under this cap or will they continue to fund applications based on scoring alone leaving a portion of the Maximum Elderly Funding Limit unspent?*

A: The Maximum Elderly Funding Limit is a cap to avoid, not a requirement to meet. If funding the next highest scoring eligible development in a region also happens to be the next elderly development and that development exceeds the elderly cap, we would go to the next highest scoring eligible non elderly development. If no eligible non elderly developments remain in the region then we would go back to the elderly development. The rules do not contemplate skipping a larger elderly development for a smaller elderly development to remain within the cap just as the rules do not contemplate skipping a larger higher scoring development which would go over the sub regions allocation if funded in favor of a lower scoring smaller allocation to fit within the sub regional allocation amount.

Q: *How will the Agency rank “at risk” elderly properties combined with new construction or other applications in the regional set aside under the Maximum Elderly Funding Limit? Will the highest scored elderly property in a region receive the allocation within the Maximum Elderly Funding Limit regardless of whether it is “at risk” or new construction?*

A: At risk developments are considered separate from the regional set aside and as such will not be restricted via the Maximum Elderly Funding Limit. Elderly projects in the sub-regions will be ranked alongside all other deals according to score and awarded based on their rank within the sub-region unless the regional Maximum Elderly Funding Limit has been reached. New Construction versus rehabilitation has no bearing on the Maximum Elderly Funding Limit to the extent that both exist in the sub regional set aside.

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Q: *Will the At-Risk Elderly project awards in regions 3, 6, 7, and 9 be included in the Maximum Elderly Funding Limits?*

A: **No.** Credits made available under the At-Risk set-aside are not included in the competitive tax credits subject to the cap on elderly developments.

Q: *Can you go over the collapse again? It sounds different from last year.*

A: The collapse will be handled in the same way as previous years. Refer to §11.6(2) Credits Returned and National Pool Allocated After January 1 for a full description.

§11.7. Tie Breaker Factors.

Q: *We are looking at a site that is in two different counties and therefore two different census tracts. How is this going to work for the tiebreaker that refers to tract poverty? Are you going to take the poverty rate for the tract that has the majority of the land and/or the majority of the residential buildings?*

A: We will compare the poverty rates of both of the developments' census tracts and use the higher of the two for the tiebreaker.

Q: *How will scattered site work with regard to the last tiebreaker, distance from the closest LIHTC-assisted development? What if one of your scattered sites is closer than the tied application but the second scattered site is farther than the tied application?*

A: We will compare the distance from both sites and use the closer of the two.

Q: *The third tie breaker is the highest average rating for the elementary, middle, and high schools designated for attendance by the development site. Are you taking the average of all three schools? And if so, in communities where there are two schools (an elementary and a middle/high school) are you taking the average of the two schools or are you always using three numbers to average? In the case of a two-school town, would you use the same rating for the middle and high to average three numbers?*

A: We will take the average of all three schools. In communities where there are two schools combined for one rating we will use that rating to represent the score for a third school and take the average of the three scores.

§11.9. Competitive HTC Selection Criteria.

Q: *(Added January 21, 2016) I just want to confirm whether or not the Department will allow a decrease in the original amount of tax credit equity being requested at Pre-App, to a lesser amount requested at Full App, without triggering any loss of points.*

A: The actual equity amount is subject to change based on the final equity pricing. Section 11.9(e)(3) of the QAP lists the requirements for maintaining Pre-Application points. A decrease in the original amount of tax credits from Pre-Application to full Application is not listed as one of the requirements. Other scoring criteria may be impacted by the amount of credits requested and therefore the amount of credits requested may have an indirect effect on score and thereby affect the score for pre app points.

Sponsor Characteristics

Q: *On Sponsor Characteristics, will instrumentalities that qualified last year qualify this year?*

A: They should assume nothing else about them has changed or has been identified differently. As long as the ownership structure includes a HUB certified by the Texas Comptroller of Public Accounts by the Full Application Delivery Date, or a Qualified Nonprofit Organization provided the Application is under the Nonprofit Set-Aside. A_PHA will qualify as a Qualified Nonprofit Organization under this item.

Opportunity Index

Q: *High opportunity in rural is based on proximity to services. Take a deal with 75% of the units in a historic renovation and 25% new construction on a non-contiguous parcel. The site with 75% of the units warrants 7 high opportunity points, the 25% site warrants 5. The majority of the project yields 7 opportunity points and the minority yields 5. How would the high opportunity points be allocated in this scenario?*

2016 Competitive Application Cycle FAQ

A: The definition of the Development Site is “the area, or if scattered site areas, on which the Development is proposed and to be encumbered by a LURA.” The rule refers to the Development Site being within the census tract so if a portion of the site is within an area scoring 7 but the whole Development Site is within an area scoring 5, then the development would score 5.

Q: *How do we prove up transportation for schools more than 2 miles away?*

A: Support documentation can include a letter from the applicable school district’s department of transportation (may be included in a support letter), a policy statement from the School District, a Parent/Student handbook or similar, or information from the website <http://www.Infofinderi.com/tfi/> (note that not all school districts are listed).

Q: *There is no place on the Site Information Form part II under opportunity index for senior services. If urban is checked, is there a drop-down box to select from?*

A: There is the option to indicate that the Development Site is located within 1.5 linear miles of a senior center. This is the only “senior service” allowed by the rules.

Underserved Area

Q: *If a site is in the ETJ of a city, is the evaluation of Underserved Area under Section 11.9(c)(6)(C) based on that city, or is it based on the county?*

A: Per 11.9(c)(6)(C), a site may receive points if it is located in “A Place, or if outside of the boundaries of any Place, a county...” This is subject to the final determination by the TDHCA Board; however, Staff believes if the site is in the ETJ, then it is generally considered outside the limit of a Place, so that would presumably make the evaluation one focused on the county.

Q: *(Added January 21, 2016) Regarding the 11.9(c)(6)(E) ‘Underserved Area’ when does the clock start ticking? We have a deal in the census tract that was allocated in 7/2006. By the time this year’s deals are awarded, it will be ten years past 7/2006? Do we qualify for the 1 point, or does the clock start ticking at application submission?*

A: The 10 years will start as of March 1, 2016, the Application submission deadline for the new Application.

Q: *(Added January 21, 2016) For the underserved areas scoring item, does it mean the original date of the project’s allocation or the date of any subsequent allocations?*

A: You should consider the date of the most recent allocation.

Tenant Populations with Special Needs

Q: *Can you explain A, B, and C under Tenant Populations with Special Housing Needs?*

A: To qualify under A, you will need to visit the Department’s 811 website at <http://www.tdhca.state.tx.us/section-811-pra/announcements.htm>. Posted there is an RFA from owners wishing to have existing developments approved for Section 811 program eligibility. To qualify under B, the development must not be disqualified based on the listed criteria. A Development can still qualify for points under item C if the development does not qualify for 811 but will set aside units for tenants with special housing needs.

Q: *If the application is Elderly Limitation, should you automatically check C for points?*

A: The Application could be eligible for points under A if it meets the criteria of the NOFA mentioned above. If the development is Elderly Limitation, the development is not eligible for 811 as the development cannot include other populations, so B would not be an option. Select item C if the development does not qualify for 811 but would still like to be considered for points for setting aside units for tenants with special housing needs that qualify under the Elderly Limitation criteria.

Local Government Support

Q: *Where do we attach support documents from elected officials?*

A: Behind Tab 47, Community Input Scoring.

2016 Competitive Application Cycle FAQ

Q: *Is a resolution sufficient or is an actual letter needed?*

A: Resolutions are required by 11.9(d)(1) in order to access the available points. A letter is acceptable only to document a Commitment of Development Funding by Local Political Subdivision under 11.9(d)(2), so long as all of the information required to evaluate the contribution is present in the submitted documentation.

Q: *Can you get a letter from the appraisal district, as by statute it is considered a local political subdivision?*

A: Section 2306.6710 only includes “the governing body of a municipality” and the commissioner’s court of a county” as bodies from which a letter can be obtained.

Q: *Does a property tax exemption provided through an Appraisal District count for LPS?*

A: A property tax exemption that is required by law is not evidence of support. A negotiated exception or pilot agreement where the appraisal district is acting on behalf of the governing body would be extremely rare, but in theory, could serve as documentation for LPS.

Q: *Our site is not within City limits but located in the ETJ of City. For the funding commitment, we would seek reduced utility connection fees from City who would be the provider of the utilities to the site. We also intend to seek incorporation of site into City but this will not occur prior to application. Does City’s reduced fee satisfy requirements for this point category?*

A: If the City owns the utility, yes it does. Otherwise, no.

Q: *(Added January 21, 2016) I have a question pertaining to this year's cycle. For "Local Government Support" (11.9(d)(1)), can the "expression of support" from the local governmental entity include a contingency about a minimum score being established? For example can the resolution say something like:*

We, the city of _____, TX support the _____ development as long as the development scores a minimum score of _____ when the scoring notice is issued by TDHCA.

A: A letter with funding conditioned upon a minimum score requirement does not satisfy the requirement of “expressly setting forth that a municipality supports” the application. .

Commitment of Funding by Local Political Subdivision

Q: *What is the “de minimis amount” for local political subdivision?*

A: There is no set amount for de minimis.

Q: *Does the contribution have to match sources and uses?*

A: Yes, the amounts must be consistent.

Q: *If the contribution the LPS is providing is not factored into the underwriting, does an amount have to be specified or can it just state that there is a de minimis amount being provided?*

A: An amount or value of the LPS must be specified.

Q: *A letter from the City of Austin regarding Smart Housing provides list of waived fees but does not indicate the amounts of the waivers. Would this be acceptable?*

A: The letter can include flexibility with respect to the type of funding being committed. However, an amount value of the LPS must still be specified.

Q: *Can match be used for LPS contribution?*

A: Yes.

Q: *Can an Economic Development Corporation, where 100% of the Board of Directors is elected by the City Council, provide the commitment of Development Funding? An entity such as the EDC was allowed under the 2015 QAP provided 100% of the Board was elected by the City Council.*

A: If the EDC is an instrumentality of the City and can claim jurisdiction over the site then its commitment for funding can be used to document the LPS funding.

2016 Competitive Application Cycle FAQ

Q: (Added January 21, 2016) *The City of Houston is looking into whether or not they can provide a letter to tax credit applicants seeking 1-pt. for LPS development funding. If the City elects to provide such a letter can the letter be conditioned on the following?*

1. an award of 2016 9% HTCs; and
2. that the stated contribution (i.e. reduction in fees, etc.) described in the letter is subject to the passage of a City ordinance granting approval of such contribution.

A: While a letter with funding conditioned upon receipt of an award of credits would be acceptable, a letter including a condition that the contribution is conditioned upon passage of a city ordinance granting approval of the contribution would not be acceptable.

Q: (Added January 21, 2016) *Does funding from a city count for points under §11.9(d)(2) Commitment of Development Funding by Local Political Subdivision for developments located in the ETJ of that city?*

A: If the city is the entity that has jurisdiction over development in the ETJ, then the city is the appropriate entity to provide LPS funding.

Q: (Added January 21, 2016) *Is future annexation by a city a condition for funding from the city to count for LPS points for an ETJ deal? If so, what documentation would be required?*

A: If the city is the entity that has jurisdiction over development in the ETJ, future annexation is not a condition for the funding to count under §11.9(d)(2)

Declared Disaster Area

Q: *On the Declared Disaster Area scoring item, the language states the following:*

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.

Can you confirm whether the "time of Application submission" and "date of submission" refers to the submission of the Full Application or the Pre-Application? If Full Application, that would mean that if a County not included on the list released by TDHCA experiences a disaster and is included in a disaster declaration on, say, February 25, 2016, it could be eligible for the points.

A: It means full Application. And yes staff believes you would be able to claim the points at Application with the proper documentation. Note though that the score cannot change by more than 6 points between pre-application and Application and still qualify for pre-application participation points, so adding these ten points would make your pre-application points go away but net you 4 points.

Quantifiable Community Participation

Q: *Have you considered establishing a dedicated email address to help neighborhood organizations submit their documents for QCP with fewer delivery issues?*

A: We will check with our Information Systems Divisions to see if we can offer such a service. Fax is still an option for submission as well.

Input from Community Organizations

Q: *Can we use a community support letter from last year?*

A: No. The organization must be given the opportunity to indicate their support again this year.

Concerted Revitalization Plans

Q: *Are revitalization plans from last year acceptable?*

A: If past revitalization plans meet the current requirements, they will be accepted.

Cost of Development per Square Foot

Q: *Under what Cost of Development per Square Foot category would the Department evaluate an elevator-served Elderly development that receives 6 Opportunity Index points (as opposed to qualifying for 5 or 7 points under Opportunity Index, which is one of the criteria for being considered a high cost development).*

2016 Competitive Application Cycle FAQ

- A: Per §11.9(e)(2)(A), the high cost development does not require both elderly and opportunity index criteria be met. The Development would be considered a high cost development under either §11.9(e)(2)(A)(i) or (iv). Note that the 2016 QAP was revised to replace the “5 or 7 points” with “a minimum of 5 points”.

Pre-application Participation

- Q: *We can submit one site in the pre-application, then make changes to the site within limits. How does that work between pre-application and Application?*
- A: Per §11.9(e)(3)(F), the site submitted at Application cannot be an entirely new site from that submitted at pre-application if pre-application points are to be preserved. “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.”

This flexibility was intended to be needed in rare instances and that changes to the site may have additional unintended consequences such as necessitating, among other things, re-notification, per §10.203. Public Notifications.

- Q: *Can we drop a parcel and reduce units and keep pre-application points?*
- A: These actions alone would not result in the loss of pre-application points assuming the changes are made prior to full application. Refer to §11.9(e)(3) Pre-application Participation for other requirements. Again note that changes to the pre application site could, have additional unintended consequences such as necessitating, among other things, re-notification, per §10.203. Public Notifications.

Leveraging of Private, State and Federal Resources

- Q: *On leveraging, do funds have to come from CDBG, etc. to get the points, or is just meeting 8% or 9% okay?*
- A: The leveraged funds must meet or exceed the percentages, and funds have to be private, state, or federal but they do not have to come from CDBG.
- Q: *Can you go through the rounding for determining the percentage of the total development cost?*
- A: You may not round up; i.e. 7.99% will not round up to 8. You must meet or exceed threshold for the point category.