Texas Department of Housing and Community Affairs

STAFF DRAFT of the 2027 Qualified Allocation Plan

10 TAC Chapter 11

This is the informal staff draft of the 2027 Qualified Allocation Plan. This draft document has been prepared by staff but has not been approved by the Department's Governing Board.

This version of the DRAFT QAP incorporates a significant number of copy-edits along with recommendations from the Texas Regulatory Efficiency Office (TREO), both aimed at enhancing the readability of the QAP. Staff has highlighted the more significant changes that were not part of the copy-editing process.

Please note that this is a working document and, as a result, paragraph numbering/lettering and citations may not be fully updated. Staff will address these matters in the formal QAP presented to the Governing Board for approval.

Please direct all input on this draft to Dominic DeNiro at dominic.deniro@tdhca.texas.gov. For input to be considered on this Preliminary Draft, it must be received by **5 p.m., Central Time, on Friday August 14th, 2026**.

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SUBCHAPTER A. PRE-APPLICATION, DEFINITIONS, THRESHOLD REQUIREMENTS, AND COMPETITIVE SCORING

10 TAC §§11.1 - 11.10

§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 Competitive Housing Tax Credits ("HTC"), the state Housing Tax Credit, and the issuance of Determination Notices for non-Competitive Housing Tax Credits. Pursuant to Tex. Gov't Code, Chapter 2306, Subchapter DD, the Department is responsible for this activity and pursuant to Tex. Gov't Code, Chapters 171 and 233, the Department is assigned responsibility for the adoption of rules relating to the State Housing Tax Credit. As required by Internal Revenue Code (the Code), §42(m)(1), the Department has developed this Qualified Allocation Plan (QAP). All requirements herein and all those applicable to a Housing Tax Credit Development or an Application under Chapter 10 of this title collectively constitute the QAP. Unless otherwise specified, this section, §11.2 - §11.4 of this title, and Subchapters B - E of this chapter also apply to non-Competitive HTCs and Direct Loans. Applicants must certify that they have familiarized themselves with the relevant rules. This subchapter does not apply to 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. This chapter is subject to change based on any changes in applicable rule or law.

(b) Due Diligence and Applicant Responsibility.

(1) Department staff may make available information and informal guidance, but staff will apply the rules of the QAP to each specific situation as it is presented in the submitted Application. The *Multifamily Programs Procedures Manual* is not a rule. In all respects the statutes and rules governing the Low Income Housing Tax Credit program supersede these guidelines and are controlling. After staff provides guidance, additional information may mean the issue itself continues to develop. Until confirmed through final action of the Board, staff guidance is merely an aid and an Applicant continues to assume full responsibility for its actions, including any due diligence to research, confirm, and verify any data, opinions, interpretations, or other information.

(2) Developments with Existing LURAs. Applicants submitting an Application for a Development with existing LURA(s)must include copies, identify potential conflict(s), and, if applicable, consult with staff regarding how to resolve conflicts with the new LURA if awarded. Resolving such issues may not coincide with the timing needed for a new award.

(c) Reasonable Accommodation. See §1.1 of this title regarding requests for reasonable accommodation.

(d) Definitions. The capitalized terms or phrases used herein are defined below. Any terms not capitalized or defined in this document have the meaning as defined in Tex. Gov't Code Chapter 2306, Code §42, the HOME Final Rule, and other federal or Department rules, as applicable. Defined terms, when not capitalized, are to be read in context and construed according to common usage.

(1) Achievable Affordable Rent--The achievable rent at the subject Property for a Unit with rent and income restrictions. The Market Analyst or Underwriter will determine the amounts after adjusting to actual rents achieved on Comparable Units at LURA restricted Developments in the PMA stabilized within 5 years. The adjustments must account for differences in net rentable square footage, functionality, overall condition, geographic location (proximity to primary employment centers, amenities, services, and travel patterns), age, Unit amenities, utility structure, Common Area amenities, and the percent of market Units. If no other LURA restricted Developments exist within the PMA, the Market Analyst may use other LURA restricted Developments within a 10-mile radius to support their conclusion.

(2) 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, into a building which will be used, in whole or in part, for residential purposes. At least 75% of the original building must remain at completion of the proposed Development. Ancillary non-residential buildings (clubhouse, leasing office, amenity center) may be newly constructed outside the walls of the existing building or as detached buildings on the Site. Adaptive Reuse Developments will be considered as New Construction.

(3) Administrative Deficiency--Information requested by Department staff to clarify, explain, confirm, or restrict the Development proposal to a logical and definitive plan or to provide missing information in the original Application or pre-application; or assist staff in evaluating the Application or pre-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 or pre-application. Staff may issue Administrative Deficiencies at any time while the Application or pre-application is under consideration by the Department, including at any time after award or allocation and throughout the Affordability Period. A matter may begin as an Administrative Deficiency but later become a Material Deficiency. Applicants may not rely on the Administrative Deficiency process when applying for funding.

(A) Staff will treat the following as Administrative Deficiencies curable through the Deficiency process only if the issues, when taken as a whole, do not constitute a Material Deficiency:

(i) For Applications that are substantially complete, a minor quantity of missing signatures, documents, or similar clerical matters, the curing of which will not create change within the Application, unless the missing documentation must have existed as of the appropriate deadline and did not, or is otherwise not susceptible to resolution. For Competitive HTC or Direct Loan Applications, this may include documents submitted to substantiate points claimed in the Application only if:

(I) the documents can be readily identified to have existed prior to the Full Application Delivery Date (Competitive HTC) or the Application Acceptance Date (Direct Loan), and the submission of the documents does not necessitate additional changes in the Application to qualify for the points; or

(II) for scoring items predicated solely on third-party data, characteristics inherent to the proposed Site, or are otherwise not influenced by the Applicant, the Application can clearly establish eligibility existed prior to the Full Application Delivery Date (Competitive HTC) or the Application Acceptance Date (Direct Loan), and submitting the documents does not necessitate additional changes in the Application to qualify for the points.

(ii) Inconsistencies that exist between facts presented in the Application and/or its supporting documentation. The Department will not treat a discrepancy between the requested points and the points supported by the Application as an inconsistency if the facts presented within the Application are otherwise consistent.

(iii) At the Department's sole discretion, additional information that is necessary to assist in the review of the Application.

(B) The following issues are not Administrative Deficiencies curable through the Deficiency process:

(i) Any matter that will materially change the Application, except for matters that must be addressed in accordance with 10 TAC §11.1(d), in which case staff will direct the Applicant to resolve the inconsistency in the manner that creates the least change within the Application. Under no circumstance can the resolution of an Administrative Deficiency increase the Application's score from the initial request.

(ii) Changes to the Application submitted only to qualify for points claimed in the Application.

(iii) Except at staff’s written request, changes to the Application that alter the amount of Housing Tax Credits or Direct Loan requested.

(C) In all cases, staff and the Board make the final determinations regarding the sufficiency of documentation submitted to cure a Deficiency as well as the distinction between material and non-material missing information.

(4) 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.

(5) Affordability Period--The Affordability Period commences as specified in the Land Use Restriction Agreement (LURA) or pursuant to Code §42(i)(1) or federal regulation, and continues through the appropriate program's affordability requirements or termination of the LURA, whichever is earlier. The term of the Affordability Period is in the LURA or other deed restriction. The Department has the authority to extend the Affordability Period for Developments that fail to meet program requirements.

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

(7) Applicant--Any Person or a group of Persons and any Affiliates of those Persons who file an Application with the Department requesting funding or a tax credit allocation.

(8) Application Acceptance Period--That period during which Applications may be submitted to the Department. For Tax-Exempt Bond Developments it is the date of Application submission.

(9) Award Letter --A document that may be issued to an awardee of a Direct Loan before the issuance of a Contract.

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

(11) Bathroom—either:

(A) Full Bathroom—A portion of a Unit that is self-contained and includes all components of a Half Bathroom, plus a shower or bathtub (including a shower curtain rod if applicable) and towel bar. Rehabilitation (excluding Reconstruction) Developments in which Full Bathroom configurations are not being altered are exempt, except as needed to comply with accessibility requirements.

(B) Half Bathroom—A portion of a Unit that is self-contained with a door and that has at least one toilet, wall-hung toilet paper holder, ventilation fan, electrical outlets, wall mirror, sink, and a faucet. Rehabilitation (excluding Reconstruction) Developments in which Half Bathroom configurations are not being altered are exempt, except as needed to comply with accessibility requirements.

(12) Bedroom--A portion of a Unit, including a den, study, or other similar space, which is no less than 100 square feet; has no width or length less than eight feet; is self-contained with either 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 two feet deep and three feet wide and high enough to accommodate five feet of hanging space. Rehabilitation (excluding Reconstruction) Developments in which Unit configurations are not being altered and Supportive Housing Developments are exempt from the bedroom and closet width, length, and square footage requirements.

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

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

(15) Carryover Allocation Agreement--A document issued by the Department, and executed by the Owner, pursuant to §11.907 of this title.

(16) Cash Flow--The funds available from operations after paying all expenses and debt service required.

(17) Certificate of Reservation or Traditional Carryforward Designation--The notice given by the Texas Bond Review Board (TBRB) to an issuer reserving a specific amount of the private activity bond state ceiling for a specific Development.

(18) Code--The Internal Revenue Code of 1986, as amended, 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).

(19) 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.*

(20) Commitment Notice (also referred to as Commitment)--An agreement issued pursuant to §11.905(a) of this title setting forth the Department's terms and conditions for Competitive HTCs (not the Direct Loan Program).

(21) Commitment of Funds--Occurs after Board approval and Contract execution.

(22) Common Area-- All enclosed or covered space not included in Net Rentable Area or any other area that is, or is intended to be, leased. Parking facilities are not included in Common Area.

(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, geographic location, age, Unit amenities, utility structure, and common amenities.

(24) Competitive Housing Tax Credits--Referred to as Competitive HTC. Tax credits available from the State 9% Housing Credit Ceiling.

(25) Compliance Period-- The period of 15 taxable years, beginning with the first taxable year of the credit period, pursuant to Code §42(i)(1).

(27) Contract--A legally binding agreement between the Owner and the Department for Direct Loan Program funds.

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

(29) Contractor--See General Contractor.

(30) Control (including the terms “Controlling,” “Controlled by,” and “under common Control with”)--The power, ability, or authority, acting alone or in concert with others, directly or indirectly, to manage, direct, superintend, restrict, regulate, govern, administer, or oversee. As used herein “acting in concert” involves more than merely serving as a single member of a multi-member body. A member of a multi-member body is not acting in concert and therefore does not exercise control in that role, but may have other roles, such as executive officer positions, which involve actual or apparent authority to exercise control. Controlling entities of a partnership include the general partners, may include special limited partners when applicable, but not investor limited partners or special limited partners who do not possess other factors or attributes that give them Control. Persons with Control of a Development must be identified in the Application. Controlling individuals and entities are set forth in subparagraphs (A) - (E) below. Multiple Persons may have Control simultaneously.

(A) For for-profit corporations, any officer authorized by the board of directors, regardless of title, to act on behalf of the corporation, including, but not limited to, the president, vice president, secretary, treasurer, and all other executive officers, and each stock holder having a 50% or more interest in the corporation, and any individual who has Control with respect to such stockholder.

(B) For nonprofit 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.

(D) For limited liability companies, all managers, managing members, members having a 50% 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.

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

(31) 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, and as described in §11.302(d)(4) of this chapter.

(32) Deferred Developer Fee--The portion of the Developer Fee used as a source of funds to finance the development and construction of the Property, and as described in §11.302(i)(2) of this chapter.

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

(35) Developer--Any Person entering into a contractual relationship with the Owner to provide Developer Services with respect to the Development and receiving the right to earn 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. The Developer may or may not be a Related Party or Principal of the Owner.

(36) Developer Fee--Compensation in amounts defined in §11.302(e)(7) of this chapter 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.

(37) Developer Services--A scope of work relating to the duties, activities, and responsibilities for pre-development, development, design coordination, and construction oversight. See §11.302(e)(7)(A) of this chapter.

(38) 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 proposed qualified low income housing project as defined by Code §42(g) financed under a common plan. If consisting of multiple buildings located on scattered sites, it may contain only rent restricted Units. (§2306.6702(a)(6)).

(A) A Development is scattered site if the Property where buildings or amenities are located does not share a common boundary and there is no accessible pedestrian route that the Development Owner controls (transportation in a motor vehicle is not an accessible route).

(B) A Development for which several parcels comprise the Development Site is contiguous if separated only by a private road controlled by the Owner, or a public road or similar barrier where the Owner has a written agreement with the public entity for at least the term of the LURA stating that the accessible pedestrian route will remain. The written agreement with the public entity must be in place by the earlier of the 10% Test for Competitive HTC, the Determination Notice date for a Tax-Exempt Bond Development issued by the Department, Cost Certification for Tax-Exempt Bond Developments where the Determination Notice is issued administratively, or the execution of the Direct Loan Contract, as applicable.

(39) Development Consultant or Consultant--Any Person who provides professional or consulting services relating to the filing of an Application or post award documents.

(40) Development Owner (see “Owner”)

(41) Development Site--(see “Site”)

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

(43) Direct Loan--Funds provided through lending programs available through the Department for multifamily development (excluding the tax-exempt bond program).

(44) Educational Provider-- A school district; open-enrollment charter school; or Education Service Center. Private schools and private childcare providers, whether nonprofit or for profit, are not eligible parties, unless the private school or private childcare provider has entered into a partnership with a school district or open-enrollment charter school to provide a HQ Pre-K program in accordance with Texas Education Code Chapter 29, Subchapter E-1.

(45) Economically Distressed Area--An area that is in a municipality and census tract that has a median household income that is 75% or less of the statewide median household

income or, if not a municipality, a county that has been awarded funds under the Economically Distressed Areas Program administered by the Texas Water Development Board. Notwithstanding all other requirements, for funds awarded to another type of political subdivision (e.g., a water district), the Site must be within the jurisdiction of the political subdivision.

(46) Effective Gross Income (EGI)--As provided for in §11.302(d)(1)(D) of this chapter (relating to Operating Feasibility). EGI is the sum total of Pro Forma Rent for all Units plus Miscellaneous Income 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.

(48) Elderly Development--A Development that meets the requirements for an exception to the federal Fair Housing prohibition against discriminating based on family status.

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

(50) 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 §11.305 of this chapter.

(51) Existing Residential Development--Any Site which contains any type of existing residential dwelling at any time as of 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 LURA; or

(B) The date which is 15 years after the close of the Compliance Period.

(53) First Lien Lender--A lender whose lien has first priority.

(54) Forward Commitment--the issuance of a Commitment of Housing Tax Credits from the State Housing Credit Ceiling for the calendar year following the year of issuance.

(55) General Contractor (including "Contractor")--One who contracts to perform the construction or rehabilitation of an entire Development, rather than a portion of the work. The General Contractor hires subcontractors, coordinates all work, and is responsible for payment to the subcontractors. A prime subcontractor counts as a General Contractor (and any fees payable to it counts as fees to the General Contractor) in the scenarios described in subparagraphs (A) or (B) below:

(A) Any subcontractor, material supplier, or equipment lessor receiving more than 50% of the contract sum in the construction contract; or

(B) If more than 75% of the contract sum in the construction contract is subcontracted to three or fewer subcontractors, material suppliers, and equipment lessors.

(56) General Partner--Any person or entity identified as a general partner in a certificate of formation for the partnership or is later admitted to an existing partnership as a general partner that is the Owner and that Controls the partnership. The manager or managing member of a limited liability corporation is, for the purposes of these rules, the functional equivalent of a general partner.

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

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

(59) Gross Capture Rate (GCR)--Defined in §11.303(d)(10)(F) of this chapter.

(60) Gross Demand--Defined in §11.303(d)(9)(E)(ii) of this chapter.

(61) Gross Program Rent--The Department's published maximum applicable rent limits.

(62) 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.

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

(65) HOME Match Eligible Unit—A Unit in the Development that would qualify as eligible for Match under 24 CFR Part 92 and CPD Notice 97-03 or subsequent HUD guidance.

(67) Housing Credit Allocation--An allocation of Housing Tax Credits by the Department to a Owner as provided for in Code.

(68) Housing Credit Allocation Amount--With respect to a Development or a building within a Development, the amount of Housing Tax Credits listed initially in a Carryover Allocation Agreement or Determination Notice, then later in one or more IRS Form(s) 8609.

(69) HTC Development--A Development subject to an active LURA for Housing Tax Credits allocated by the Department.

(71) Initial Affordability Period--The Compliance Period or such longer period elected by the Owner as the minimum period for which the Development will be restricted under the LURA.

(73) Land Use Restriction Agreement (LURA)--An agreement, regardless of its title that encumbers the Development with respect to program requirements. (§2306.6702)

(74) Low-Income Unit--A Unit that is intended to be restricted for occupancy by an income eligible household.

(75) Managing General Partner--See General Partner.

(76) Market Analysis--An evaluation of the economic conditions of supply, demand, and rental rates conducted in accordance with §11.303 of this chapter (relating to Market Analysis Rules and Guidelines) as it relates to a specific Development.

(77) Market Analyst--A professional satisfying the qualifications in §11.303(c) of this chapter.

(78) 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 making adjustments to actual rents on Comparable Units to account for differences in net rentable square footage, functionality, overall condition, geographic location, 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.

(80) Material Deficiency--Any deficiency in a pre-application or an Application or other documentation that exceeds the scope of an Administrative Deficiency, including

(A) inability to provide documentation that existed prior to submission of an Application to substantiate claimed points or meet threshold requirements; or

(B) multiple deficiencies that could individually be characterized as Administrative Deficiencies, when taken as a whole, would create a need for substantial re-review of the Application.

(81) Multifamily Programs Procedures Manual--The manual produced and amended from time to time by the Department which provides guidance. The Manual is not a rule, rather is only good faith assistance.

(82) National Standards for the Physical Inspection of Real Estate (NSPIRE)-- As developed by the Real Estate Assessment Center of HUD.

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

(84) Net Program Rent--Defined in §11.302(d)(1)(A)(v) of this chapter.

(85) Net Rentable Area (NRA)--Unit space available exclusively to the tenant and heated and cooled by a mechanical HVAC system, measured to the outside of either

(A) the studs of a Unit or to the middle of walls in common with other Units or

(B) if the construction does not use studs, the material to which the drywall is affixed.

Remote Storage of no more than 25 square feet per Unit may be included in NRA, although only if it shares a wall with the living space for Developments using Direct Loan funds. NRA does not include areas not actually available to the tenants for their furnishings nor the enclosing walls of such areas, including common hallways, stairwells, elevator shafts, janitor closets, electrical closets, balconies, porches, or patios.

(86) Non-HTC Development-- Any Development not utilizing Housing Tax Credits or Exchange funds.

(87) Notice of Funding Availability (NOFA)--A notice issued by the Department announcing funding availability for multifamily rental programs.

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

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

(91) Owner--Any Person, General Partner, or Affiliate of a Person who owns or proposes a Development or expects to acquire Control of a Development and is responsible for performing under the allocation or Commitment. (§2306.6702(a)(7)).

(92) Parcel—Unless required by statute, all references to parcels and parcel boundaries in this chapter refer to the parcels defined by the central appraisal district.

(92) 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 includes any group of Persons acting in concert toward a common goal, including the individual members of the group.

(93) Person or Persons with Disabilities--With respect to an individual, means that such person has a source of income based on a determination of having a disability or is regarded as having an impairment.

(94) Physical Needs Assessment--See Scope and Cost Review.

(95) 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 known as Census Designated Places. Any part of a Census Designated Place that, at the time of Application, is within the boundaries of an incorporated city, town, or village will be considered as part of the incorporated area. Areas annexed by a city, town, or village through limited-purpose annexation are part of that incorporated area for purposes of this chapter. The Department may provide a list of Places for reference.

(97) Potential Demand--Defined in §11.303(d)(9)(E)(iii) of this chapter.

(98) Preservation--Activities that extend the Affordability Period for rent-restricted Developments that are at risk of losing low-income use restrictions or subsidies.

(99) Primary Market-- See "Primary Market Area."

(100) Primary Market Area (PMA)--Defined in §11.303(d)(8) of this chapter.

(101) Principal--Persons that will be capable of exercising Control pursuant to §11.1(d) of this chapter over a partnership, corporation, limited liability company, trust, or any other private entity.

(102) Pro Forma Rent--For a restricted Unit, either Contract Rents or the lesser of the Net Program Rent, Achievable Affordable Rent, or the Market Rent. For an unrestricted Unit, the Market Rent.

(103) 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 or rehabilitated thereon in connection with the Application.

(104) Qualified Census Tract (QCT)--those tracts designated as such by the U.S. Department of Housing and Urban Development (HUD).

(105) Qualified Contract (QC)--A bona fide contract for an amount not less than as defined in Code §42(h)(6)(F).

(106) Qualified Contract Price (QC Price)--Calculated purchase price of the Development as defined within Code §42(h)(6)(F) and as further delineated in §10.408 of this title.

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

(108) Qualified Entity--Any entity permitted under Code §42(i)(7)(A) and any entity controlled by such a qualified entity.

(109) Qualified Nonprofit Development--A Development which meets the requirements of Code §42(h)(5), Tex. Gov't Code §2306.6729, and §2306.6706(b), includes the required involvement of a Qualified Nonprofit Organization, and is seeking Competitive HTCs.

(110) Qualified Nonprofit Organization--An organization that meets the requirements of Code §42(h)(5)(C), Tex. Gov't Code §2306.6729, and §2306.6706(b) for all purposes.

(111) Reconstruction--The demolition of one or more residential buildings in an Existing Residential Development and the construction of Units on the same or another Site. At least one Unit must be reconstructed in order to qualify as Reconstruction. Reconstructed Units will count as New Construction for purposes of calculating the Replacement Reserves under §11.302(d)(2)(I).

(112) Rehabilitation--The improvement or modification of an Existing Residential Development through alteration, incidental addition, or enhancement, including the following: repair, refurbishment, or replacement of existing components, fixtures, and finishes; correcting deferred maintenance; reducing functional obsolescence; and the addition of energy efficient components and appliances, life and safety systems, site and resident amenities, and other improvements typical of new Developments. The term includes the demolition of an Existing Residential Development and the Reconstruction of any Development Units on the Site, but does not include Adaptive Reuse. (§2306.004(26-a))

(113) Relevant Supply--Defined in §11.303(d)(10)(E) of this chapter.

(114) Report--See Underwriting Report.

(115) Request--See Qualified Contract Request.

(116) Reserve Account--An individual account:

(A) Created to fund any necessary repairs or other needs for a Development; and

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

(117) Right of First Refusal (ROFR)--An Agreement to provide a series of priority rights to negotiate for the purchase of a Property by a Qualified Entity or a Qualified Nonprofit Organization at a negotiated price at or above the amount defined in Code §42(i)(7) or as established in accordance with an applicable LURA.

(118) Rural Area--

(A) A Place that is located:

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

(ii) within the boundaries of 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; or

(iii) within the boundaries of a local political subdivision that is outside the boundaries of 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 §11.204(5)(A) of this chapter (relating to Required Documentation for Application Submission) or as requested in accordance with §11.204(5)(B) of this chapter.

(119) Scope and Cost Review (SCR)--Sometimes referred to as "Physical Needs Assessment," "Project Capital Needs Assessment," or "Property Condition Report." An evaluation of the physical condition of an existing Property to determine the immediate cost to rehabilitate and of future capital improvements. An SCR must be prepared in accordance with §11.306 of this chapter.

(120) Scoring Notice—Notification(s) provided to an Applicant of the score for their Application after staff review.

(121) Site--The area or areas on which the Development is proposed and to be encumbered by a LURA, including access easements.

(122) Site Control--Ownership or a current contract or series of contracts that meets the requirements of §11.204(9) of this chapter.

(122) Site Demographics Characteristics Report—A report published by the Department that contains necessary information for preparing an Application. Unless otherwise required by statute, the report published no later than November 30, 2026, is final and authoritative for Applications submitted under this rule.

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

(124) State Housing Credit Ceiling--The aggregate amount of Competitive HTC Allocations that may be made by the Department during any calendar year.

(125) 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 residents.

(126) Supportive Housing--A residential rental Development and Target Population meeting the requirements of subparagraphs (A) - (F) below:

(A) Be intended for and targeting occupancy for households who may benefit from specialized and specific non-medical services.

(B) Be owned and operated by an Applicant or General Partner that must:

(i) offer supportive services provided by the Applicant, an Affiliate of the Applicant, or a Third Party provider able to demonstrate a record of providing substantive services similar to those proposed in the Application in residential settings for at least three years prior to the beginning of the Application Acceptance Period, or Application Acceptance Date for Direct Loan Applications;

(ii) provide no less than 30 square feet of Common Area space per Unit that is specifically used for the delivery of supportive services or an amenity for the residents;

(iii) secure sufficient funds necessary to maintain the Supportive Housing Development's operations throughout the entire Affordability Period;

(iv) provide evidence of a history of fundraising activities reasonably sufficient to address any unanticipated operating losses;

(v) provide a fully executed guaranty agreement whereby the Applicant or its Affiliate assume financial responsibility of any outstanding operating deficits throughout the entire Affordability Period; and

(vi) have Tenant Selection Criteria that fully comply with §10.802 of this title which require a process for evaluation of prospective residents against a clear set of credit, criminal conviction, and prior eviction history that may disqualify a potential resident. This process must also follow §1.204 of this title and:

(I) The criminal screening criteria must not allow residents to reside in the Development who are subject to a lifetime sex offender registration requirement; and provide at least, for temporary denial for a minimum of:

(-a-) seven years from the date of conviction based on criminal history at application or recertification of any felony conviction for murder related offense, sexual assault, kidnapping, arson, or manufacture of a controlled substance as defined in §102 of the Controlled Substances Act (21 U.S.C. 802); and

(-b-) three years from the date of conviction based on criminal history at application or recertification of any felony conviction for aggravated assault, robbery, drug possession, or drug distribution.

(II) The criminal screening criteria must include provisions for approving applications and recertification despite the tenant's criminal history on the basis of mitigation evidence. Applicants/tenants must receive written notice of their ability to provide materials that support mitigation during initial tenant application or upon appeal after denial. Mitigation may include personal statements/certifications, documented drug/alcohol treatment, participation in case management, letters of recommendation from mental health professionals, employers, case managers, or others with personal knowledge of the tenant. The criteria must include provision for individual review of permanent or temporary denials if the conviction is more than seven years old, or if the applicant/resident is over 50 years of age, and the prospective resident has no additional felony convictions in the last seven years. The criteria must prohibit consideration of any previously accepted criminal history or mitigation at recertification, unless new information becomes available. Criminal screening criteria and mitigation must conform to federal regulations and official guidance, including HUD's 2016 Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records.

(III) Disqualifications in a Development's Tenant Selection Criteria cannot be a total prohibition, unless such a prohibition is required by federal statute or regulation. The Development must have an appeal process for other required criteria where the prospective resident is allowed to demonstrate that information in a third party database is incorrect.

(C) Where supportive services are tailored for members of a household with specific needs, such as:

(i) homeless or persons at-risk of homelessness;

(ii) persons with disabilities;

(iii) youth aging out of foster care;

(iv) persons eligible to receive primarily non-medical home or community-based services;

(v) persons transitioning out of institutionalized care;

(vi) persons unable to secure permanent housing elsewhere due to specific, non-medical, or other high barriers to access and maintain housing;

(vii) Persons with Special Housing Needs including households where one or more individuals have alcohol or drug addictions, Violence Against Women Act Protections (domestic violence, dating violence, sexual assault, and stalking), HIV/AIDS, or is a veteran with a disability; or

(viii) other target populations that are served by a federal or state housing program in need of the type and frequency of supportive services characterized herein, as represented in the Application and determined by the Department.

(D) Supportive services must meet the minimum requirements provided in this subparagraph:

(i) regularly and frequently offered to all residents, primarily on-site;

(ii) easily accessible and offered at times that residents are able to use them;

(iii) either aid in addressing debilitating conditions or assist residents in securing skills, assets, and connections; and

(iv) not be required to qualify for or maintain tenancy in a Unit that the household otherwise qualifies for.

(E) Supportive Housing Developments must meet the criteria of either clause (i) or (ii) below.

(i) Not financed with any debt containing foreclosure provisions or debt that contains scheduled or periodic repayment provisions, except for the following:

(I) Construction financing.

(II) A direct Loan from the Department.

(III) A permanent foreclosable loan from a local, state, or federal government or instrumentality thereof if the loan is deferred-forgivable, deferred payable, or cash-flow contingent, the foreclosure provisions are triggered only by default on non-monetary default provisions, and the maturity date is after the end of the Affordability Period.

(IV) A permanent foreclosable loan from an Affiliate if the funds are originally sourced from charitable contributions, nonprofit equity, the Federal Home Loan Bank's Affordable Housing Program, Capital Magnet Fund, or pass-through government funds, if the loan is deferred-forgivable, deferred-payable, or cash-flow contingent, and if the foreclosure provisions are triggered only by default on non-monetary default provisions, and the maturity date is after the end of the Affordability Period.

(V) For tax credit applications only, permanent foreclosable debt that contains scheduled or periodic repayment provisions (including subject to available cash-flow) is permissible if sourced by federal funds and structured to meet valid debt requirements.

Any amendment to an Application or Underwriting Report resulting in the addition of debt prohibited under this definition will result in the revocation of IRS Form(s) 8609, and may not be made for Developments that have Direct Loans after a LURA is executed, except as a part of Work Out approved by the Department.

(ii) Financed with debt that meets feasibility requirements under Subchapter D of this chapter without exemptions and also supported by project-based rental or project-based operating subsidies for at least 25% of the Units evidenced by an executed agreement with an unaffiliated or governmental third party able to make that commitment, and meet all of the criteria in this clause:

(I) the Application includes documentation of how resident feedback has been incorporated into Development's design;

(II) the Development is located less than 1/2 mile from regularly-scheduled public transportation, including evenings and weekends;

(III) at least 10% of the Units in the proposed Development meet the 2010 ADA standards with the exceptions listed in "Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities" 79 Federal Register 29671 for persons with mobility impairments;

(IV) multiple systems will be in place for residents to provide feedback to Development staff;

(V) the Development will have a comprehensive written eviction prevention policy that includes an appeal process; and

(VI) the Development will have a comprehensive written services plan that describes the available services, identifying whether they are provided directly or through referral linkages, by whom, and in what location and during what days and hours. A copy of the services plan will be readily accessible to residents.

(F) Supportive housing Units included in an otherwise non-Supportive Housing Development do not meet the requirements of this definition.

(127) Target Population--The designation of types of housing populations, including Elderly and Supportive Housing Developments. All others serve general populations. An Application may request to target other populations required for a federal or state fund source.

(128) Tax-Exempt Bond Development--A Development requesting or having been issued a Determination Notice for Housing Tax Credits and that receives a portion of its financing from the proceeds of Tax-Exempt Bonds subject to the state volume cap.

(131) Third Party--A Person who is not:

(A) An Applicant, General Partner, Developer, or General Contractor;

(B) An Affiliate to the Applicant, General Partner, Developer, or General Contractor;

(C) Anyone receiving any portion of the administration, contractor, or Developer Fee from the Development; or

(D) In Control with respect to the Owner.

(132) 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 Owner in the acquisition, construction, rehabilitation, and financing of the Development.

(134) Underwriter--The author(s) of the Underwriting Report.

(135) Underwriting Report--Sometimes referred to as the Report. A decision making tool prepared by the Department that contains a synopsis of the proposed Development and reconciles the Application information.

(136) Uniform Multifamily Application Templates--The collection of sample resolutions and form letters produced by the Department, as may be required under this chapter or Chapters 12 and 13 of this title.

(137) 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.

(138) Unit Type--Units will be considered different Unit Types if there is any variation in the number of Bedrooms, bathrooms, features, or a square footage difference equal to or more than 120 square feet.

(139) U.S. Department of Agriculture (USDA)--Texas Rural Development Office (TRDO) serving the State of Texas.

(140) HUD-regulated Building--A building for which the rents and utility allowances of the building are reviewed by HUD.

(141) Unstabilized Development--A Development with Comparable Units that has been approved by the Department and has not maintained a 90% occupancy level for at least 90 days following construction completion. The Market Analyst may not consider such development stabilized in the Market Analysis.

(142) Urban Area--A Place that is located within the boundaries of a metropolitan statistical area other than a Place described in paragraph (117)(A) of this subsection, definition of Rural Area. For areas not meeting the definition of a Place, the designation as a Rural Area or Urban Area is assigned in accordance with §11.204(5) of this chapter.

(143) Utility Allowance--The estimate of tenant-paid utilities made in accordance with Treasury Regulation, §1.42-10 and §10.614 of this title.

(144) Work Out Development--A financially distressed Development for which the Owner or a primary financing participant is seeking a change in the terms of Department funding or program restrictions.

(e) Data. Where this chapter requires the use of American Community Survey (ACS) or HUD data, the Department will use the most current data available as of August 1 of the year prior to Application, unless specifically otherwise provided in federal or state law or in the rules. ACS data must be 5-year estimates (not more specific data) unless otherwise specified. The Department will use ACS data for population determination. Where this chapter specifically requires other sources, data available after August 1 but before Full Application Final Delivery Date is permissible. The Department will use, and references to census tracts in this chapter mean, the 2020 Census boundaries unless otherwise noted. Applicants may need to provide Census tract information based on the 2020 and 2010 boundaries if 2020 data are not available as of August 1, 2026 for the specific item in question. All references to QCTs throughout this chapter mean those designated by HUD to be effective in 2027.

Where this chapter requires the division of Census tracts into quartiles, and the number of tracts is not evenly divisible by four, the Department will divide in the manner below. If the division of the tracts into quartiles leaves:

(1) one excess tract, then the first quartile will contain the excess tract;

(2) two excess tracts, then the first and second quartiles will contain an excess tract each; or

(3) three excess tracts, then the first, second, and third quartiles will contain one excess tract each.

(f) Deadlines. Where the chapter identifies a specific date or deadline, the Department must receive the relevant information or documentation on or before 5:00 p.m. Austin local time on the day of the deadline if the Department is open for general operation, or if not, the first day after when it is open. Unless otherwise noted or provided in statute, deadlines are based on calendar days. The Department will not waive deadlines, with respect to both date and time, except where authorized and for truly extraordinary circumstances, such as the occurrence of a significant natural disaster that could not have been anticipated and makes timely adherence impossible. All required documents must be legible, properly organized, and tabbed. Materials involving digital media must be in the required format, complete, and fully readable.

(g) Documentation to Substantiate Items and Representations in a Competitive HTC Application. The Department posts Applications and all correspondence and other information on its website and updated on a regular basis. Applicants must use the Application form posted online to provide appropriate support for each item substantiating a claim or representation.

(h) Board Standards for Review. The Board is not constrained to a particular standard and its actions on one matter are not binding as to how it will address another matter.

(i) Scattered Site Applications. As it relates to calculating any distances (tie determinations, proximity to features, etc.), year of initial construction, or determining satisfaction of scoring, the Department will use the site that scores or ranks the lowest for that analysis. Higher scoring or performing sites cannot elevate the score or performance of other sites in a scattered site Application.

(j) Public Information Requests. 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. (§2306.6717) The filing of a pre-application or Application with the Department is consent to the release of any and all information contained therein. The Applicant will certify that the authors of reports, documents, and other information submitted with the Application have given their consent for the Department to publish anything submitted with the Application on its website and use such information and documents for authorized purposes.

(**k) Responsibilities of Municipalities and Counties.** Municipalities and counties are responsible for determining whether their handling of actions regarding resolution(s) required under this chapter are consistent with Fair Housing laws or any current plans such as one year action plans or five year consolidated plans for HUD block grant funds.

(l) Request for Staff Determinations. An Applicant may request and Department staff may provide a determination explaining how staff will review an Application in relation to the applicable rules, other than for a scoring item. The Department must receive such request in writing prior to submission of the pre-application (if applicable to the program) or Application (if not). Staff may, in its sole discretion, provide the request to the Board for it to make the determination. Staff's determination may take into account

(1) the articulated purpose of or policies addressed by a particular rule or requirement,

(2) materiality of elements,

(3) substantive elements of the development plan that relate to a term or definition,

(4) a common usage of the particular term, or

(5) other issues relevant to a rule or requirement.

If the determination is finalized after submission of the pre-application or Application, the Department may allow corrections to directly related issues. An Applicant may not rely on any determination for another Application regardless of similarities. For any Application that does not receive a determination, the definitions and applicable rules will apply as used and defined herein. An Applicant may appeal a staff determination for their Application, following the Appeal Process in §11.902 of this chapter (including being timely), if the determination provides for a treatment that relies on factors other than the explicit definition. A Board determination may not be appealed.

§11.2.Program Calendar for Housing Tax Credits.

(a) Competitive HTC Deadlines. The Department may extend non-statutory deadlines in the Program Calendar for up to five business days if the Applicant has, in writing, requested an extension prior to the original deadline and established good cause for the extension.

Deadline	Documentation Required
01/__/2027	Application Acceptance Period Begins. Public Comment period starts.

01/__/2027	Pre-Application Final Delivery Date (including waiver requests).
02/__/2027	Deadline for submission of Request for Preliminary Determination in accordance with §11.8(d) of this chapter.
02/__/2027	Deadline for submission of Application for .ftp access if pre-application not submitted.
Deadline	**Documentation Required**
02/__/2027	End of Application Acceptance Period and Full Application Delivery Date (including Quantifiable Community Participation documentation for Applications that were initially submitted as a pre-application; ESAs, SCRs; Appraisals; Primary Market Area Map; Feasibility Report; all Resolutions necessary under §11.3 of this chapter related to Housing De- Concentration Factors). 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.
04/__/2027	Market Analysis due date. Deadline for Quantifiable Community Participation (QCP) documentation for Applications that were not initially submitted as a Pre-Application.

04/__/2027	Deadline for Third Party Request for Administrative Deficiency.
Early June 2027	Scoring Notices Issued for Majority of Applications Considered “Competitive.”
06/__/2027	Public comment deadline for the comment to be included in the Board materials relating to the July presentation of awards are due in accordance with §1.10.
June 2027	On or before June 30, publication of the list of Eligible Applications for Consideration for Award in July.
July 2027	On or before July 31, Board issuance of Final Awards.
Deadline	Documentation Required
August 2027	Commitments are Issued.
11/__/2027	Carryover Documentation Delivery Date.
07/__/2028	10% Test Documentation Delivery Date.
12/__/2029	Placement in Service.
Five business days after the date on the Deficiency Notice (without incurring point loss)	Administrative Deficiency Response Deadline (unless an extension has been granted).

(b) Tax-Exempt Bond and Direct Loan-only Application Dates and Deadlines. Other deadlines are in Chapters 12 and 13 or a NOFA.

(1) The Full Application Delivery Date is the deadline by which the Department must receive the Application, including the applicable NOFA for Direct Loan Applications and §11.201 of this chapter for Tax-Exempt Bond Developments.

(2) The Administrative Deficiency Response Deadline is five business days after the date on the deficiency notice, unless extended under §11.201(6) of this chapter.

(3) For Direct Loan Applications not also requesting Tax Credits or Bonds, Applicants must submit the Third Party reports meeting the applicable NOFA requirements. For Tax-Exempt Bond Developments, the Department must receive Third Party Reports pursuant to §11.201(2) of this chapter.

(4) The Department must receive resolutions required for Tax-Exempt Bond Developments no later than 14 calendar days before the Board meeting or prior to the issuance of the Determination Notice, as applicable.

(5) The Department must receive challenges no later than 45 calendar days prior to the Board meeting at which consideration of the award will occur.

§11.3.Housing De-Concentration Factors.

(a) To the extent these rules deviate from the statute, the statutory language is controlling. The Multifamily Uniform Application Templates contain acceptable, but not required, forms of resolution referenced herein.

(b) Two Mile Same Year Rule (Competitive HTC Only).

(1) Staff will not recommend, and the Board will not award, an Application that proposes a Site less than two linear miles from the proposed Site of another Application in a county with a population that exceeds one million awarded in the same calendar year. (§2306.6711(f)) If awarding two or more Applications would violate §2306.6711(f), the Department will use following priorities, in rank order, to determine which to award:

(A) The steps the Award Recommendation Methodology described in §11.6(3).

(B) The higher-scoring Application, including consideration of tie breakers.

Regardless of the priority established by (A) or (B), the Department will not give priority to an Application not recommended for an award at the July Board meeting over another Application that otherwise would be recommended for an award.

(2) This subsection does not apply if an Application is in any municipality with a population of two million or more where

(A) a federal disaster has been declared by the Full Application Delivery Date,

(B) the Governing Body has by vote specifically authorized the allocation of housing tax credits for the Development in a resolution submitted by the Full Application Delivery Date, and

(C) the municipality is authorized to administer disaster recovery funds as a subgrant recipient. (§2306.6711(f-1))

(c) Twice the State Average Per Capita (Competitive HTC and Tax-Exempt Bond Only). If a proposed Development is in a municipality, or if 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 Acceptance Period begins (or for Tax-Exempt Bond Developments, Applications submitted after the Application Acceptance Period begins), then the appropriate Governing Body must approve the Development. (§2306.6703(a)(4)) Such approval must include an adopted resolution setting forth a written statement of support, specifically citing Tex. Gov't Code §2306.6703(a)(4) in the text, and authorizing an allocation of Housing Tax Credits for the Development. Applicants must submit required documentation by the Full Application Delivery Date or Resolutions Delivery Date, as applicable.

(d) One Mile Three Year Rule (Competitive HTC and Tax-Exempt Bond Only). (§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 the criteria in subparagraphs (A) - (C) below will be ineligible:

(A) serves the same Target Population as the proposed Development, regardless of whether the Development serves general, Elderly, or Supportive Housing; and

(B) has received a new or supplemental 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) has not been withdrawn or terminated from the Housing Tax Credit Program.

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

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

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

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

(D) 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) in a county with a population of less than one million;

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

(G) approved by the Governing Body of the appropriate municipality or county by vote specifically allowing the construction of a new Development located within one linear mile or less from a Development described under paragraph (1)(A) of this subsection. Required documentation must be submitted by the Full Application Delivery Date or Resolutions Delivery Date, as applicable.

(3) Where a specific source of funding is referenced in paragraphs (2)(A) - (D) of this subsection, the Application must provide a commitment or resolution documenting a commitment of the funds.

(e) Limitations on Developments in Certain Census Tracts. An Application that proposes a New Construction or Adaptive Reuse Development in a census tract that has more than 20% Housing Tax Credit Units per total households as reflected in the Department's current Site Demographic Characteristics Report will be ineligible unless the appropriate Governing Body adopts a resolution of no objection. (Rehabilitation Developments are exempt.) The Department must receive the resolution by the Full Application Delivery Date or Resolutions Delivery Date, as applicable.

(f) Proximity of Sites. (Competitive HTC Only) In a county with a population of less than one million, if two or more HTC Applications, regardless of the Applicant(s), propose Developments serving the same Target Population on sites separated by 1,000 feet or less, the lower scoring of the Application(s), including consideration of tie breakers, will be ineligible unless the higher scoring Application is terminated or withdrawn.

(g) One Award per Census Tract Limitation (Competitive HTC Only). If two or more Competitive HTC Applications propose Developments in the same census tract in an urban subregion, the lower scoring of the Application(s), including consideration of tie breakers, will be ineligible unless the higher scoring Application is terminated or withdrawn. This subsection does not apply to Applications submitted under §11.5(2) or §11.5(3) of this chapter.

§11.4.Tax Credit Request, Award Limits, and Increase in Eligible Basis.

(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 or provides the guaranty only during the construction period, and is not a Principal of the Applicant, Developer or Affiliate of the Owner) Housing Tax Credits in an aggregate amount greater than $6 million in a single Application Round. All entities under common Control are Affiliates. Prior to posting the agenda for the last Board meeting in June, an Applicant with Applications pending for more than $6 million may notify staff in writing or by email of the Application(s) they will not pursue. Such Applications will remain on the waiting list if not otherwise terminated. If the Applicant does not self-select by this date, staff will first select the Application(s) that will enable compliance with the state and federal non-profit set-asides, and then the highest scoring Application(s), including consideration of tie breakers. A Person is not 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;

(4) receives fees as a consultant or advisor that do not exceed $200,000; or

(5) is a mezzanine finance company that does not have Control.

(b) Maximum Request Limit (Competitive HTC Only).

(1) For all Applications, an Applicant may not request more than 150% of the credit amount available in the subregion based on estimates released by the Department on December 1, or $2,000,000, whichever is less.

(2) For Elderly Developments in a Uniform State Service Region containing a county with a population that exceeds one million, the request may not exceed the final amount published on the Department's website after the release of the IRS notice regarding the credit ceiling. (2306.6711(h))

(3) For all Applications, the HTC amount requested in the pre-application and Application is final unless the Department reduces it.

(4) The Tax Credit request amount cannot change through the Administrative Deficiency process under §11.1(d) of this chapter.

(5) 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% Boost). The Department will evaluate Applications for an increase of up to 30% in Eligible Basis based on meeting any one of the criteria in paragraphs (1) - (4) of this subsection. Staff will recommend an increase only to the extent necessary for financial feasibility.

(1) The Development is for New Construction or Adaptive Reuse and is in a QCT

(A) that has less than 20% Housing Tax Credit Units per total households as reflected in the Department's current Site Demographic Characteristics Report, or

(B) the Application includes a resolution of no objection by the appropriate Governing Body acknowledging the Development is located in a census tract that has more than 20% Housing Tax Credits Units per total households.

All Rehabilitation Developments are eligible for the boost and not required to obtain a resolution. The Department must receive required documentation by the Full Application Delivery Date or Resolutions Delivery Date, as applicable. The Application must include a census map that includes the 11-digit census tract number and shows that the proposed Development is in a QCT.

(2) The Development is in a Small Area Difficult Development Area (SADDA) or Difficult Development Area (DDA). The Application must include a map that shows the proposed Development is in a SADDA or DDA.

(3) For Competitive HTC only, Development meets one of the criteria described in subparagraphs (A) - (F) below:

(A) is in a Rural Area;

(B) is entirely Supportive Housing in accordance with §11.1(d) of this chapter;

(C) meets the criteria for the Opportunity Index as defined in §11.9(c)(5) of this chapter;

(D) restricts 10% of the proposed low income Units for households at or below 30% of AMGI (these Units may not be used to meet any scoring criteria or any Direct Loan program requirement);

(E) in an area covered by a concerted revitalization plan (eligible for and elects points under §11.9(d)(7) of this chapter), is not an Elderly Development, and is not in a QCT; or

(F) in a Qualified Opportunity Zone.

(4) The Department will underwrite Tax-Exempt Bond Developments, to include the 30% boost if the designation coincides with the Certificate of Reservation program year or the bond issuer certifies having received a complete application in the year the QCT, DDA, or SADDA designation was effective. If the issuer is a member of the organizational structure, then such certification must come from its bond counsel.

§11.5.Competitive HTC Set-Asides. (§2306.111(d)).

An Applicant may elect to compete in each of the Set-asides for which the proposed Development qualifies as of the Full Application Delivery Date. The Board will apply commitments to each Set-aside, Rural regional allocation, Urban regional allocation, and USDA Set-aside for the current Application round as appropriate.

(1) Nonprofit Set-Aside. (§2306.6729 and §2306.6706(b)). The Department will allocate at least 10% of the State Housing Credit Ceiling for each calendar year to Qualified Nonprofit Developments. Qualified Nonprofit Organizations must have the controlling interest in the Owner applying for this Set-aside (i.e., greater than 50% ownership in the General Partner). If the Application is filed on behalf of a limited partnership, the Qualified Nonprofit Organization must be the manager of the Managing General Partner limited liability company, the Qualified Nonprofit Organization must be the Manager of the controlling Managing Member. The nonprofit entity or its nonprofit Affiliate or subsidiary must be the Developer or a co-Developer as evidenced in the development agreement and materially participate in the development and operation of the Development throughout the Compliance Period. Material participation means regular, continuous, and substantial involvement in providing services integral to the Development Team (serving as an independent contractor is insufficient). The Department will consider an Applicant that meets the Qualified Nonprofit Set-Aside requirements to be applying under that Set-aside unless their Application specifically includes an affirmative election otherwise 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 may request a change in this election or to not recommend an award for those unwilling to change elections if it receives insufficient Applications in the Nonprofit Set-Aside. 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)). The Department will allocate 5% of the State Housing Credit Ceiling for each calendar year to Rural Developments financed through USDA. If an Application in this Set-aside involves Rehabilitation it will come from the At- Risk Development Set-aside. If New Construction it will come from the applicable Uniform State Service Region and compete within the applicable subregion (unless the Application is receiving USDA Section 514 funding). Applications must also meet all requirements of Tex. Gov't Code §2306.111(d-2).

(A) A proposed or Existing Residential Development that, before September 1, 2013, has been awarded or has received federal financial assistance provided under §§514, 515, or 516 of the Housing Act of 1949 may be attributed to and come from the At-Risk Development Set-aside or the Uniform State Service Region in which the Development is located, regardless of whether in a Rural Area. (§2306.111 (d-4))

(B) All Applications that are eligible to participate under the USDA Set-aside are Rural for all scoring items under this chapter. A Property receiving USDA financing unable to participate under the USDA Set-aside in an Urban subregion will be scored as Urban.

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

(A) The Department will allocate at least 15% of the State Housing Credit Ceiling for each calendar under the At-Risk Development Set-aside to Applications involving preservation of Developments identified as At-Risk. (§2306.6714) and will deduct it prior to the application of the regional allocation formula under §11.6 of this chapter. Rehabilitation Developments under the USDA Set-aside will have priority for 5% of the State Housing Credit Ceiling associated with this Set-aside. Additional Applications that qualify under the USDA Set-Aside may compete within this Set-Aside only if they meet the definition for an At-Risk Development, have submitted the required supporting documentation, and were not submitted under the USDA Set-Aside. Applications submitted under the USDA Set-Aside in excess of meeting the 5% priority do not qualify for the At-Risk Set-Aside.

(B) An At-Risk Development must meet the following requirements: (§2306.6702(a)(5)(A))

(i) Received a subsidy from any of the programs provided in subclauses (I) to (VIII) of this clause. Applications must include evidence of the qualifying subsidy.

(I) Sections 221(d)(3) and (5), National Housing Act (12 U.S.C. §1715l);

(II) Section 236, National Housing Act (12 U.S.C. §1715z-1);

(III) Section 202, Housing Act of 1959 (12 U.S.C. §1701q);

(IV) Section 101, Housing and Urban Development Act of 1965 (12 U.S.C. §1701s);

(V) the Section 8 Additional Assistance Program for housing developments with HUD-Insured and HUD-Held Mortgages as specified by 24 CFR Part 886, Subpart A;

(VI) the Section 8 Housing Assistance Program for the Disposition of HUD-Owned Projects as specified by 24 CFR Part 886, Subpart C; (VII) §§514, 515, and 516, Housing Act of 1949 (42 U.S.C. §§1484, 1485, and 1486);

(VII) §§514, 515, and 516, Housing Act of 1949 (42 U.S.C. §§1484, 1485, and 1486); or

(VIII) Code §42.

(ii) The Department will consider any stipulation to maintain affordability in the contract granting the subsidy or any HUD-insured or HUD-held mortgage as described in §2306.6702(a)(5)(A)(ii)(a) to be nearing expiration or nearing the end of its term if the contract expiration will occur or the term will end within two years after July 31 of the year the Application is submitted. Developments with HUD-insured or HUD-held mortgages will qualify as At-Risk if such mortgage is eligible for prepayment.

(iii) Developments with existing Department LIHTC LURAs must have completed all applicable ROFR procedures prior to the pre-application Final Delivery Date.

(C) An At-Risk Development must meet one of the requirements under clause (i), (ii) or (iii) below: (§2306.6702(a)(5)(B))

(i) Units to be Rehabilitated or Reconstructed are owned by a public housing authority (or a public facility corporation created by one under Chapter 303, Local Government Code) and received assistance under §9, United States Housing Act of 1937 (42 U.S.C. §1437g); or

(ii) Units to be Rehabilitated or Reconstructed are proposed to be disposed of or demolished, or already have been within the two-year period preceding the date the Application is submitted, by a public housing authority (or public facility corporation created by one under Chapter 303, Local Government Code) and received assistance under §9, United States Housing Act of 1937 (42 U.S.C. §1437g); or

(iii) The Development receives assistance through the Rental Assistance Demonstration (RAD) program or Section 18 disposition administered by HUD, participation is included in the applicable public housing plan most recently approved by HUD, and HUD approved the Units proposed for Rehabilitation or Reconstruction for participation. (§2306.6702(a)(5)(B)(iii))

Notwithstanding any other provision of law, an At-Risk Development previously allocated housing tax credits set aside under subsection (a) of this section does not lose eligibility for those credits if the public housing Units are later converted under RAD. (§2306.6702(a)(5)(B))

(D) An Application for a Development that includes the demolition of the existing Units which have received the financial benefit described in Tex. Gov't Code §2306.6702(a)(5)(i) 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: (§2306.6702(a)(5)(B))

(i) the affordability restrictions and any At-Risk eligible subsidies are approved to be transferred with the units proposed for Rehabilitation or Reconstruction prior to the tax credit Carryover deadline;

(ii) the Applicant seeking tax credits proposes at least the same number of restricted Units (the Applicant may add market rate Units); and

(iii) either:

(I) the new Development Site qualifies for points on the Opportunity Index under §11.9(c)(5) of this chapter; or

(II) the local Governing Body of the applicable municipality or county (if completely outside of a municipality) submits a resolution supporting the proposed Development in order to carry out a previously adopted plan that meets the requirements of §11.9(d)(7) of this chapter (Sites crossing jurisdictional boundaries must provide such resolutions from both governing bodies).

(E) Developments must retain, renew, or replace existing financial benefits and affordability unless regulatory barriers necessitate otherwise.

(i) The application includes evidence of the legal requirements that will unambiguously cause the loss of affordability within the two calendar years of July 31 of the year the Application is submitted.

(ii) Developments qualifying under Tex. Gov't Code §2306.6702(a)(5)(B) must retain only a portion of the subsidy, but no less than 25% of the proposed Units must be public housing units. (§2306.6714(a-1). If less than 100% of the public housing benefits are transferred to the proposed Development, the Application must include an explanation of the disposition of the rest and a copy of the HUD-approved plan for demolition and disposition.

(F) Developments within the three-year period described at Code, §42(h)(6)(E)(ii) count as nearing expiration.

(G) Developments eligible to request a Qualified Contract count as nearing expiration on a requirement to maintain affordability. Applications must include

(i) a copy of the recorded LURA,

(ii) the first year's IRS Form(s) 8609 for all buildings showing Part II completed and,

(iii) if applicable, documentation from the original application regarding the ROFR and evidence that any applicable ROFR procedures have been completed prior to the pre-application Final Delivery Date.

(H) The Department will not accept an amendment to any aspect of the existing tax credit property sought to enable the Development to qualify as an At-Risk Development submitted after the Application has been filed.

§11.6.Competitive HTC Allocation Process.

(1) Regional Allocation Formula. The Department will initially make available in each Rural Area and Urban Area of each Uniform State Service Region (subregion) Housing Tax Credits in an amount not less than $750,000. (§2306.1115 and §2306.111(d-3)). The process of awarding within each subregion will follow this section. In the event of a situation not addressed explicitly herein, staff will make a recommendation to the Board based on the objectives of the regional allocation formula and Tex. Gov't Code, Chapter 2306. In general the recommendation will not involve broad reductions in resource request amounts or rearranging Applications' competitive ranking.

The Department will provide the public the opportunity to comment on and propose alternatives.

If staff determines an allocation would cause a violation of the $6 million credit limit per Applicant, then their recommendation will be based on the criteria described in §11.4(a) of this chapter.

The Department will publish on its website, on or before December 1 of each year, initial estimates of Regional Allocation Formula percentages and limits of credits available, and other times if those calculations change, until the credits are fully allocated.

(2) Credits Returned and National Pool Allocated After January 1. The Department will first replace any returned credits to its original subregion or set-aside (not including force majeure returns and reallocations), treating the credits in a manner consistent with the allocation process in this section. Credits returned to the USDA or At-Risk Set-Asides are not eligible to flow to another subregion or set-aside unless no eligible Applications remain in the Set-Aside to which the credits were returned.

The Department will award anything received from the "national pool" after the initial awards in late July to the next Application on the waiting list for the state collapse, if sufficient to fund the Application.

(3) Award Recommendation Methodology. (§2306.6710(a) - (f); §2306.111) The Department will conduct applications reviews in the order described in subparagraphs (A) - (F) of this paragraph based upon the Applicant self-score and an initial program review. Staff also will use the procedure below in making recommendations to the Board. Staff may review additional Applications beyond those described below; however, the Department cannot accommodate requests for specific additional Applications to be reviewed.

(A) USDA Set-Aside Application Selection (Step 1). Applications with the highest scores in the USDA Set-Aside until attaining the minimum requirements stated in §11.5(2) of this chapter. The Department may exceed the minimum requirement to fully award the last Application.

(B) At-Risk Set-Aside Application Selection (Step 2). Applications with the highest scores in the At-Risk Set-Aside statewide until attaining the minimum requirements stated in §11.5(3) of this chapter. The Department may exceed the minimum to fully award the last Application. This step may leave less than originally anticipated in the 26 subregions to award under the remaining steps. If the Department awards all eligible Applications and does not meet the minimum , the Department will award the highest scoring Application(s) pursuant to §11.5(3)(A) of this chapter until meeting the minimum.

(C) Initial Application Selection in Each Subregion (Step 3). The Department will then select the highest scoring Applications within each of the 26 subregions for which there are sufficient funds make full awards. Applications electing the At-Risk or USDA Set-Asides are ineligible for an award from a subregion. In Urban subregions in which credits available do not allow achieving all the priorities in clauses (iii) to (v) of this subparagraph, the Department will follow the priorities in the order reflected in this subparagraph.

(i) In Uniform State Service Regions containing a county with a population that exceeds one million, the Board may not allocate more than the maximum percentage of credits available for Elderly Developments, unless there are no other qualified Applications in the subregion. The Department will, for each such Urban subregion, publish the maximum percentage on its website. (§2306.6711(h))

(ii) In Uniform State Service Regions containing a county with a population that exceeds 1.7 million, the Board will allocate credits to the highest scoring Development, if any, that is

(I) part of a concerted revitalization plan that meets the requirements of §11.9(d)(7) (except for §11.9(d)(7)(A)(ii)(III) and §11.9(d)(7)(B)(iii)),

(II) in an Urban subregion, and

(III) within the boundaries of a municipality with a population that exceeds 500,000. (§2306.6711(g))

(iii) In Urban subregions containing a county with a population that exceeds 750,000, the Board will allocate credits to the highest scoring Development, if any, that is in a neighborhood which is a recipient of a HUD Choice Neighborhood Planning or Implementation grant in the preceding five years from the date of Application submission and includes funds from the HUD Choice Neighborhood awardee in the Application's Sources and Uses.

(iv) In Urban subregions containing a county with a population that exceeds 1,000,000, the Board will allocate credits to the highest scoring Development, if any, that elects to provide a High-Quality Pre-Kindergarten (HQ Pre-K) program and associated educational space at the Site that meets the requirements of items (a)-(c) of subparagraph (C)(i)(I) of §11.101(b)(5). Elderly and Supportive Housing Developments are not eligible for this item.

(v) Not more than one Application with a Supportive Housing Target Population per subregion may be awarded, plus one additional Application with a Supportive Housing Target Population in any subregion containing a county with a population of at least 2,500,000, unless there are no other eligible Applications in the subregion. Awards made in the At-Risk Set-Aside will not count towards this limitation..

(D) Rural Collapse (Step 4). If any credits set-aside for Developments in a Rural Area in a specific Uniform State Service Region (Rural subregion) remain after award under subparagraph (C) of this paragraph, the Department will combine such credits into one “pool” available in any other Rural Area to the Application in the most underserved Rural subregion as compared to the subregion's allocation, continuing with the priorities and limitations established in §11.6(3)(C). This redistribution will continue until the Department allocates all credits in the “pool” to Rural Applications and at least 20% of the credits available to the State to Applications in Rural Areas. (§2306.111(d)(3)) In the event more than one subregion is underserved by the same percentage, the Department will use clauses (i) - (ii) below to select the next most underserved subregion:

(i) no recommended At-Risk Applications from the same Application Round; then

(ii) was the most underserved during the Application Round during the year immediately preceding the current Application Round.

(E) Statewide Collapse (Step 5). The Department will combine any credits remaining after the Rural Collapse, including those in any subregion in the State, into one "pool" to award the highest scoring Application, and pursuant to §11.6(3)(C), in the most underserved subregion in the State compared to the amounts originally available in each. This process will continue until the funds remaining are insufficient to award the next highest scoring eligible Application in the next most underserved subregion. In Uniform State Service Regions containing a county with a population that exceeds one million, the Board may not allocate to an Urban subregion more than the maximum percentage of credits available as calculated through the Regional Allocation Formula (RAF) for Elderly Developments (as a result, some may be excluded from the pool). The Department will publish the maximum percentage for each such Urban subregion on its website. (§2306.6711(h)).At least seven calendar days prior to the July Board meeting the Department will post on its website the most current State of Texas Competitive HTC Ceiling Accounting Summary which includes the Regional Allocation Formula percentages including the maximum funding request/award limits, the Elderly Development maximum percentages and limits of credits available, and the methodology used for the determination of the awards within the State Collapse. If more than one subregion is underserved by the same degree, the Department will use the priorities clauses (i) and (ii) below to select the next most underserved subregion:

(i) no recommended At-Risk Applications from the same Application Round; and

(ii) 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 the criteria in subparagraphs (A) - (E) of this paragraph would result in an insufficient number of Nonprofit Set-Aside awards, the Department will repeat the criteria described in subparagraphs (C) - (E) of this paragraph after selection of the highest scoring Nonprofit Application(s) statewide to meet the minimum requirements.

(4) Waiting List. The Department will place Applications that do not receive an award by July 31 and remain active and eligible on the waiting list. The Department will use allocation process to determine awards, including making returned HTCs first available in the set-aside or subregion from which they were originally awarded.

(A) The Department will hold all credit available after the late-July Board meeting until September 30 and may make award(s) if fully sufficient for one or more Applications.

(B) The Department may make award(s) of credits available after September 30 when the amount is fully sufficient for the next Application(s).

Notwithstanding the foregoing, the Department may delay awards until resolution of appeals other challenges to decisions related to returns or recissions. Compliance with Set-Aside requirements may result in awarding a lower-ranked application. Staff may allow flexibility in meeting the Carryover Allocation submission deadline and changes to the Application as necessary to help ensure allocation of credits by December 31. (§2306.6710(a) - (f); §2306.111).

(5) Credit Returns Resulting from Force Majeure Events. If the Department receives a return of Competitive HTCs from an Application that received an award during any of the preceding three program years, and the Development cannot be completed within six months of its initial deadline to place in service, such returned credit will not be subject to the requirements of paragraph (2) of this section if the Board determines that all of the requirements of this paragraph are met to its satisfaction. For purposes of this paragraph, returns after September 30 of the preceding program year may be considered to have happened on January 1 of the current year. The Board will allocate such credits separately, making a determination of the year of the Multifamily Rules which apply to the Development. The Board may impose conditions, including an earlier Placed in Service Deadline. The Department will not consider requests to allocate returned credit separately where all of the requirements of this paragraph have not been met, waivers of any part of this paragraph, or presentations not within 180 days of the applicable Placed in Service deadline. The Board may approve the execution of a current program year Carryover Agreement with the Owner that returned such credits only if:

(A) The return was a result of the following sudden and unforeseen “Force Majeure” events outside the control of the Owner that occurred before issuance of Forms 8609: 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; unrelated party litigation; changes in law, rules, or regulations; national emergency or insurrection; riot; acts of terrorism; supplier failures; or materials or labor shortages. The event must make construction activity impossible or materially impede its progress. Under no circumstance will the Board consider acts or events caused by the negligent or willful act or omission of the Owner, Affiliate or a Related Party to be caused by Force Majeure. The Owner must clearly explain how rainfall, material shortages, or labor shortages to constitute Force Majeure and document how such events could not have been reasonably foreseen and mitigated through appropriate planning and risk management. Staff may use Construction Status reports for the subject or other Developments in forming a recommendation.

(B) If a Force Majeure event also a presidentially declared disaster, the Department may treat the matter under the applicable federal provisions.

(C) Construction of the Development must have already commenced.

(D) A Owner must provide evidence of the type of event when it, and that the loss was a direct result of the event.

(E) The Owner must prove that it took reasonable steps to minimize or mitigate any delay or damages, the Owner substantially fulfilled all obligations not impeded by the event, including timely closing of all financing and start of construction, the Development and Owner were properly insured, and the Department received timely notification of the likelihood or actual occurrence.

(F) The event prevents the Owner from meeting the placement in service requirements of the original allocation.

(G) The requested current year Carryover Agreement allocates the same amount as was returned.

(H) The Department determines that the Development continues to be financially feasible after taking into account any insurance proceeds.

(6) Credit Returns Due to Unforeseen Short-term Delays. If the Department receives a return of Competitive HTCs from an Application that received an award during any of the preceding three program years, and the Development can be completed within six months of its initial deadline to place in service, such returned credit will not be subject to the requirements of paragraph (2) of this section if staff determines that all of the requirements of this paragraph are met. For purposes of this paragraph, staff may consider returns after September 30 of the preceding program year to have happened on January 1 of the current year. The Board will allocate such credits separately, making a determination of which year of Multifamily Rules apply to the Development. The Multifamily Rules from the initial year of allocation will apply to the Development, to the extent allowed by federal or state law. The new deadline to place in service will be no more than six months from the original deadline. The Department will not consider either requests to allocate returned credit separately where all requirements of this paragraph have not been met or requests for waivers of any part of this paragraph. Staff may either execute a current program year Carryover Agreement with the Owner that returned such credits if the following requirements are met or present the matter to the Board for determination.

(A) The credits were returned for good cause as solely determined by staff or the Board.

(B) A Owner claiming good cause provided evidence of the circumstances.

(C) The Owner proved it took reasonable steps to minimize or mitigate any delay or damages, it substantially fulfilled all reasonable obligations, it and the Development were properly insured, and that the Department received timely notice of the likelihood of delay.

(D) The good cause event prevents the Owner from meeting the placement in service requirements of the original allocation.

(E) The requested current year Carryover Agreement allocates the same amount as was returned.

(F) The Department determines that the Development continues to be financially feasible after taking into account any insurance proceeds.

(G) The Owner has not previously returned the credit allocation.

§11.7.Tie Breaker Factors.

If Competitive HTC Applications receive the same number of points in a set-aside category, rural regional allocation or urban regional allocation, or rural or statewide collapse, the Department will use the factors in this section, in the listed order, to determine awards. For the purposes of this section, all measurements will include ingress/egress requirements and any easements regardless of how they will be held. The tie breaker factors do not address a tie between equally underserved subregions in the rural or statewide collapse.

(1) For the USDA Set-Aside:

(A) Applications proposed to rehabilitate the Property with the earliest year of initial construction as a residential Development.

(i) Only the year of initial construction, not the specific date of construction or conversion. A tie will persist if Applications have the same year.

(ii) If a Development was constructed over a number of years, the earliest year.

(iii) The Year submitted must be evidenced by the initial USDA loan documentation to be eligible.

(B) No further applications with USDA financing will receive preference under this tie breaker after the Department meets the requirements of this set-aside, but may receive preference under subsections (2) and (3) of this paragraph.

(2) For all other competitive Applications:

(A) Applications proposed in closest proximity to the following features as of the Full Application Delivery Date. A feature will be disqualified if, as of the Full Application Delivery Date, a public announcement has been made regarding its anticipated closure.

(i) A park or a parcel of land dedicated for public use by either a governmental entity or an entity authorized or created by a governmental entity that is used as parkland or for a recreational purpose. This feature must have been designated by the relevant authority and operating as a public park one year prior to the Full Application Delivery Date. Neither features that charge admission for the general public to access the entire property for the majority of the calendar year nor a school campus' facilities count. Unimproved land that has been dedicated but is not operating as a public park will not qualify unless it is a wilderness areas with an intentional recreational use (e.g., established hiking trails, bird-watching areas, community gardens, or natural retreats).

(ii) The closest public school campus of any grade level that is part of an independent school district.

(iii) A full service grocery store of sufficient size and volume to provide for the needs of the surrounding neighborhood (including the proposed Development) offering the following: a wide variety of fresh, frozen, canned and prepared foods, including but not limited to a variety of fresh meats and poultry; a wide selection of fresh produce including a selection of different fruits and vegetables; a selection of baked goods and a wide array of dairy products including cheeses; and a wide variety of household goods, paper goods and toiletry items.

(iv) A Public Library with indoor space, physical books that can be checked out and that are of general and wide-ranging subject matter, computers and internet access and is open 35 hours or more per week in an Urban Area and 25 hours or more per week in a Rural Area. The library must not be age or subject-restricted and must be at least partially funded with government funding.

(v) A pharmacy. To qualify, the pharmacy must be classified as community pharmacy by the Texas State Board of Pharmacy (TSBP), be listed in the license verification system available on TSBP's website, and hold regular hours for in-person retail business. Delivery-only pharmacies are not eligible. Qualifying pharmacies located inside of grocery stores may be counted regardless of whether the grocery store is also used for this tie-breaker.

(B) The Department will determine linear measurements from the closest parcel boundary of the Site to the closest parcel boundary of each feature. The Department may prescribe a specific form to be used for these calculations.

(C) The Application with the lowest sum of proximities for its three shortest distances will receive preference.

(D) If one of the shortest distances to a feature is disqualified due to not conforming to the definitions provided or a substantial misrepresentation, the sum will include the fourth. If multiple features are disqualified, the Application will not receive preference. If the competing application(s) also has multiple disqualified features, the tie will persist.

(E) If the sum proximities described under §11.7(2)(B) for two tied Applications differ by 100 or fewer feet, the tie will persist.

(3) If the tie persists, the award will go to the Application that proposes the lowest Housing Tax Credit request per Low-Income Unit. This calculation will be determined based on the initial Application request, not a lower amount as adjusted by staff.

(4) If the tie persists, the award will go to Applications proposed to be located the greatest linear distance from the nearest Housing Tax Credit assisted Development that serves the same Target Population and was awarded 15 or fewer years ago. Developments included are those in the HTC Site Demographic Characteristics Report (regardless of whether a LURA is in place). Years are measured in whole years (not month and date) and calculated by deducting the "Board Approval" year on the Site Demographics Characteristics report from the current year. The linear measurement is between closest boundaries as presented at Pre-Application or Application, whichever is closest.

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

(a) General Submission Requirements. A pre-application is complete if it meets the criteria in subsections (a) and (b) of this section.

(1) Applicants must submit pre-applications using the URL provided by the Department, as outlined in the Multifamily Programs Procedures Manual, along with the required pre-application fee in §11.901 of this chapter not later than the pre-application Final Delivery Date in §11.2(a) of this chapter.

(2) Applicants may submit only one pre-application for each Site and for each Site Control document.

(3) Acceptance by staff of a pre-application does not ensure that an Applicant satisfies all Application eligibility, threshold or documentation requirements. Pre-applications are subject to the same limitations, restrictions, or causes for disqualification or termination as Applications and consequences for violation, including but not limited to loss of points and termination of the pre-application.

(4) The pre-application becomes part of the full Application if the full Application claims pre-application points.

(5) Regardless of whether a Full Application is submitted, a pre-application may not be withdrawn after the Full Application Delivery Date.

(b) Pre-Application Threshold Criteria. The Department will terminate pre-applications unless they meet the threshold criteria described in subsection (a) of this section and paragraphs (1) and (2) of this subsection. (§2306.6704(c))

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

(A) Site Control meeting the requirements of §11.204(9) of this title. Proof of consideration and any documentation required for identity of interest transactions is not required for pre-application submission but is for full application submission.

(B) Funding request.

(C) Target Population.

(D) Requested set-asides (At-Risk, USDA, Nonprofit, or Rural).

(E) Total Number of Units proposed.

(F) Census tract number or numbers in which the Site is located, and a map of the census tract(s) with an outline of the proposed Site.

(G) Expected score for each of the scoring items identified in the pre-application materials.

(H) Proposed name of ownership entity.

(I) Supporting documentation of points to be claimed related to Underserved Area and/or Proximity to Jobs.

(J) The name and coordinates of the features to be used for the Tie Breaker.

(K) For Applications funded through the USDA Set-Aside; year of initial construction as evidenced by the initial USDA loan documentation.

(L) If a high-quality Pre-Kindergarten will be provided under §11.6(3)(C)(v), the election must be made at pre-application and may not change at full Application.

(M) The name and address of the nearest HTC assisted Development as described in §11.7(4) of this chapter.

(2) Evidence in the form of a certification that the notifications required under this paragraph have been made. (§2306.6704).

(A) The Applicant must conduct a reasonable search for all Neighborhood Organizations on record with the county or Secretary of State 30 days prior to the beginning of the Application Acceptance Period whose boundaries include the entire proposed Development and list them in the pre-application.

(B) Notification Recipients. Developments located in an extraterritorial jurisdiction (ETJ) of a municipality must notify both municipal and county officials by e-mail, fax or mail with registered return receipt (or similar tracking mechanism). The format must be either what is included in the Public Notification Template provided in the Uniform Multifamily Application Template or an alternative format that meets the applicable requirements and achieves the intended purpose. Meetings and discussions do not constitute notification. The Applicant must retain proof of delivery. Acceptable evidence of such delivery includes signed receipt for mail or courier delivery and confirmation of delivery for fax and e-mail.

Officials to be notified are those in office at the time the pre-application is submitted. A mailed notification correctly addressed to the entity or officeholder rather than a specific person is acceptable so long as it otherwise meets all requirements. If a change in jurisdiction between pre-application and the Full Application Delivery Date results in the Development being in a new jurisdiction, the Applicant must make additional notifications at full Application to any entity not previously notified.

No later than the date the pre-application is submitted, notification must be sent to the entities prescribed in clauses (i) - (viii) below:

(i) Neighborhood Organizations described in (b)(2)(A) above.

(ii) Superintendent of the school district in which the Site is located.

(iii) Presiding officer of the board of trustees of the school district in which the Site is located.

(iv) Mayor of the municipality (if the Site is within a municipality or its extraterritorial jurisdiction).

(v) All elected members of the Governing Body of the municipality (if the Site is within a municipality or its extraterritorial jurisdiction).

(vi) Presiding officer of the Governing Body of the county in which the Site is located.

(vii) All elected members of the Governing Body of the county in which the Site is located.

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

(C) Contents of Notification.

(i) The notification must include, at a minimum, the information described in subclauses (I) - (IX) below:

(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, high-rise, etc.);

(VI) the approximate total number of Units and approximate total number of Low-Income Units;

(VII) the residential density of the Development (i.e., the number of Units per acre);

(VIII) information on how and when an interested party or Neighborhood Organization can provide input to the Department; and

(IX) information on any proposed property tax exemption.

(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 a population exclusively or as a preference unless doing so is documented in the Application and is in full compliance with all applicable state and federal laws (including fair housing).

(iii) Notifications or any other communications may not contain any statement that violates Department rules, statute, code, or federal requirements.

(c) Pre-Application Results. Only pre-applications which satisfy the pre-application requirements will be eligible for pre-application points. The information released on the pre-application Submission Log do not represent a Commitment on the part of the Department or the Board to allocate credits to any Development and the Department bears no liability for decisions made by Applicants based on the pre-application Submission Log. Inclusion on the pre-application Submission Log does not ensure receiving points for a pre-application.

(d) Applicants that might request a Direct Loan may submit a Request for Preliminary Determination on or before February __, 2027. The Department may use the results of evaluation of the Request as evidence of review of the Development and the Principals for purposes of scoring under §11.9(e)(1)(F) of this chapter. Submission of a Request for Preliminary Determination does not obligate the Applicant to request a Direct Loan.

§11.9.Competitive HTC Selection Criteria.

(a) General Information. This section identifies the scoring criteria used in evaluating and ranking Applications. Unless explicitly allowed, there is no rounding of numbers in this section for any of the calculations to meet a requirement or limitation. The Development's LURA may reflect some or all Application representations.

(1) The Application must include maps indicating the distances to the applicable facilities, measured from the nearest boundary of the Site to the nearest boundary of the property or easement containing the facility, unless otherwise noted. For the purposes of this section, all measurements will include ingress/egress requirements and any easements regardless of how they will be held.

(2) The Department will review only point items specifically elected in the Application (including the Self-Scoring form, as applicable). Except for scoring items awarded based on tiered categories, if an Application does not qualify for the points elected, staff will not determine whether it might qualify for alternative points.

(3) The Department will not reassess points when costs or financing change after completion of underwriting or award (whichever occurs later) unless there is clear evidence that the information in the Application was intentionally misleading or incorrect.

(b) Criteria promoting development of high quality housing.

(1) Size and Quality of the Units. (§2306.6710(b)(1)(D); 2306.6725(b)(1)) An Application may qualify for up to fifteen (15) points under subparagraphs (A) and (B) below.

(A) Unit Sizes (6 points). The Development must either

- meet the minimum requirements in this subparagraph, or
- involve Rehabilitation (excluding Reconstruction), receive funding from USDA, or for be a Supportive Housing Development.

If the Development involves both Rehabilitation and Reconstruction or New Construction, the Reconstruction or New Construction Units must meet these requirements:

(i) 500 square feet for an Efficiency Unit;

(ii) 600 square feet for a one Bedroom Unit;

(iii) 850 square feet for a two Bedroom Unit;

(iv) 1,050 square feet for a three Bedroom Unit; and

(v) 1,250 square feet for a four Bedroom Unit.

(B) Unit, Development Construction, and Energy and Water Efficiency Features (9 points). Applicants electing to provide specific amenity and quality features in every Unit at no extra charge to the tenant will earn points based on the criteria in §11.101(b)(6)(B) of this title . Rehabilitation Developments and Supportive Housing Developments will start with a base score of five (5) points.

(2) Sponsor Characteristics. An Application may qualify to receive either one (1) or two (2) points if it meets the requirements of either subparagraphs (A), (B), (C), or (D) below.

(A) Qualified Nonprofit Organization. The ownership structure contains a Qualified Nonprofit Organization and the Application is submitted in the Nonprofit Set-Aside, meeting the criteria in §11.5(a) of this chapter. The 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 50%, and no less than 5% for any category. For HUD 202 Rehabilitation projects, ownership will not be required for a nonprofit, only for Cash Flow or Developer Fee; the total percentage must still equal 50%, even if it is only attributable to one category.

(i) The Qualified Nonprofit Organization must materially participate and have directly related housing experience, which may include property management, construction, development, financing, or compliance.

(ii) A Principal of the Qualified Nonprofit Organization is not a Related Party to or Affiliate, including the spouse, of any other Principal of the Applicant, Developer, or Guarantor (excluding another Principal of the Qualified Nonprofit Organization). (2 points).

(iii) The Qualified Nonprofit Organization meets the criteria in (ii) above and is involved with the Development Services or in the provision of on-site tenant services during the Affordability Period. (1 point).

(B) Nonprofit Organization. The ownership structure contains a nonprofit organization that meets the requirements of Code §42(h)(5)(C) on the Application Delivery Date, with at least 51% ownership in the General Partner of the Applicant. (2 points)

(i) The nonprofit organization must maintain Control of the Development and materially participate in the operation of the Development throughout the Compliance Period. Nonprofit organizations that formally operate under a parent organization may assign Control to that parent organization, doing so meets the requirements of Code §42(h)(5)(C).

(ii) The nonprofit organization, or individuals with Control of it, must provide verifiable documentation of at least 10 years' experience in the continuous operation of a housing that provides services similar to those in the proposed Development.

(iii) The Application qualifies for at least 3 additional points under §11.101(7) of this chapter, in addition to points selected under subsection (c)(3) of this section.

(C) Property Tax Status. The Application includes a certification that the Owner will not seek or effect any exemptions, abatements, rebates, or similar reductions in ad valorem taxes imposed by the relevant taxing units prior to the expiration of the federal Compliance period.

(D) Housing Authority or HFC. The ownership structure contains a Housing Finance Corporation organized under Local Government Code Chapter 394, a Housing Authority organized under Local Government Code Chapter 392 or an instrumentality thereof, and the entire Site is within that entity’s area of operation. (2 points)

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

(1) Income Levels of Residents. (§§2306.111(g)(3)(B) and (E); 2306.6710(b)(1)(C) and (e)) 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), (B), (C), or (D) below.

(A) At least the following percentages of all Low-Income Units for any Development located within a non-Rural Area of the Dallas, Fort Worth, Houston, San Antonio, or Austin MSAs that propose to use either the 20-50 or 40-60 election (Code §42(g)(1)):

(i) 60% at 50% or less of AMGI in a Supportive Housing Development proposed by a Qualified Nonprofit (16 points);

(ii) 40% at 50% or less of AMGI (15 points);

(iii) 30% at 50% or less of AMGI (13 points); or

(iv) 20% at 50% or less of AMGI (11 points).

(B) At least the following percentages of all Low-Income Units for Developments located in areas other than those listed in subparagraph (A) of this paragraph that propose to use either the 20-50 or 40-60 election (Code §42(g)(1)):

(i) 60% at 50% or less of AMGI in a Supportive Housing Development proposed by a Qualified Nonprofit (16 points);

(ii) 20% at 50% or less of AMGI (15 points);

(iii) 15% at 50% or less of AMGI (13 points); or

(iv) 10% at 50% or less of AMGI (11 points).

(C) For any Development located within a non-Rural Area of the Dallas, Fort Worth, Houston, San Antonio, or Austin MSAs that propose to use the average Income election (§42(g)(1)(C) of the Code), the Average Income and Rent restriction for all Low-Income Units will be:

(i) 54% or lower (15 points);

(ii) 55% or lower (13 points); or

(iii) 56% or lower (11 points).

(D) For Developments located in the areas other than those listed in subparagraph (C) of this paragraph that propose to use the average Income election (Code §42(g)(1)(C)) the Average Income and Rent restriction for all Low-Income Units will be:

(i) 55% or lower (15 points);

(ii) 56% or lower (13 points); or

(iii) 57% or lower (11 points).

(2) Rent Levels of Tenants. (§2306.6710(b)(1)(E)) An Application may qualify to receive up to thirteen (13) points for rent and income restricting. These points are in addition to paragraph (1)(A) or paragraph (1)(B) of this subsection. If selecting points from paragraph (1)(C) or paragraph (1)(D) of this subsection, these levels are included in the income average calculation. These units must be maintained at the indicated rent level throughout the Affordability Period. Scoring options include:

(A) At least 20% of all Low-Income Units at 30% or less of AMGI for Supportive Housing Developments proposed by a Qualified Nonprofit (13 points);

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

(C) At least 5% of all Low-Income Units at 30% or less of AMGI (7 points).

(3) Resident Supportive Services. (§2306.6710(b)(3) and (1)(G), and §2306.6725(a)(1)) A Development may qualify to receive up to eleven (11) points.

(A) The Applicant certifies that the Development will provide a combination of resident supportive services equaling at least ten points under §11.101(b)(7) of this chapter and meet the requirements of that section. (10 points).

(B) The Applicant certifies that the Development will contact local nonprofit and governmental providers of services that would support the health and well-being of the Department's residents and will make Development community space available to them on a regularly-scheduled basis to provide outreach services and education to the tenants. The service providers may be those on the Department list or other providers serving the general area. (1 point).

(4) Section 811 Project Rental Assistance Program (811 PRA) and Residents with Special Housing Needs. (§2306.6710(b)(4)) An Application may qualify to receive up to four (4) points under this paragraph. Only Applications unable to meet the requirements of subparagraph (A) of this paragraph may qualify for points under subparagraphs (B) or (C) of this paragraph. The point under subparagraph (D) of this paragraph is available to all Applications. The Units identified for this scoring item may not be the same Units identified previously for the Section 811 PRA Program. The Department will work with Applicants to resolve any errors made in good faith pertaining to 811 PRA to allow the Application to maintain the requested points.

(A) Section 811 Project Rental Assistance Program (811 PRA). An Application may qualify to receive three (3) points for participation in 811 PRA, as described in this subparagraph. The Applicant will comply with 10 TAC Chapter 8.

(i) An Applicant or Affiliate that Owns or Controls an Existing Development, including those that have been awarded but have not yet completed construction, that is eligible to participate in 811 PRA and commits at least 5% of its total Units to 811 PRA, unless limited to fewer under 10 TAC §1.15 or 10 TAC Chapter 8. The same Units cannot be used to qualify for points in more than one Application. (3 points)

(ii) An Applicants commits at least 5% of the total Units in the proposed Development for participation in 811 PRA, unless limited to fewer under 10 TAC §1.15 or 10 TAC Chapter 8. (3 points)

(B) The Development commits at least 5% of the total Units to Persons with Special Housing Needs as described in §11.1(d)(126)(C)(vii) plus Colonia residents, Persons with a Disability, and farmworkers. The Owner agrees to the following. (2 points)

(i) Specifically market Units to Persons with Special Housing Needs throughout the Compliance Period (unless otherwise permitted by the Department).

(ii) For an initial minimum twelve-month period, Units must either be occupied by Persons with Special Housing Needs or held vacant (unless the Units receive HOME funds from any source).

(C) If the Development has committed Units under subparagraph (B) of this paragraph and the applicant also commits to the following. (1 point)

(i) Specifically market at least an additional 2% of the total Units to Persons referred from the Continuum of Care or local homeless service providers throughout the Compliance Period (unless otherwise permitted by the Department). Rejection of an applicant's tenancy for those referred may not be for reasons of credit history or prior rental payment history.

(ii) For an initial minimum six-month period in Urban subregions, and an initial three-month period in Rural subregions, Units must either be occupied by Persons referred or held vacant (unless the Units receive HOME funds from any source). After the initial six-month or three-month period, the Owner will provide quarterly notifications to the Continuum of Care and other local homeless service providers on the availability of Units.

(D) If the Development is Supportive Housing, on a site owned by the U.S. Department of Veterans Affairs (VA), and has a proposed occupancy preference or limitation for Veterans or a subgroup of only Veterans that is required or allowed by other federal or state financing by the Full Application Delivery Date. (1 point)

(5) Opportunity Index. Based on the ACS data, a Development is eligible for a maximum of seven (7) opportunity index points from subparagraphs (A) and (B) below.

(A) If it is located entirely within a census tract with a poverty rate less than 20% or the median poverty rate among tracts for the region, whichever is greater, and meets the requirements in clause (i),(ii), or (iii) below:

(i) a median household income in the two highest quartiles among census tracts within the uniform service region (2 points); or

(ii) a median household income in the third quartile among census tracts within the region, is contiguous to a census tract in the first or second quartile among tracts for median household income in the region, and the Site is no more than two miles from the boundary between the census tracts (1 point); or

(iii) The Site is in a Rural Area and a Place which experienced an increase in population since the 2010 Decennial Census according to the Site Demographics Characteristics Report. (1 point)

(B) An Application that meets one of the foregoing criteria in subparagraph (A) of this paragraph may qualify for additional points for any one or more of the factors in clause (i) or (ii) of this subparagraph. Each amenity may be used only once for scoring purposes, unless allowed within the scoring item, regardless of the number of categories it fits. No member of the Applicant or Affiliates can have had an ownership position in the amenity or served on the board or staff of a nonprofit that owned or managed that amenity within the year preceding the Pre-Application Final Delivery Date. All amenities must be operational or have started Site Work at the Pre-Application Final Delivery Date. Any age restrictions associated with an amenity must positively correspond to the Target Population of the proposed Development. The neighborhoodScout report must include the date.

(i) Applications for Developments located in an Urban Area (unless competing in the USDA Set- Aside) may qualify to receive points through a combination of requirements in subclauses (I) - (XVI) of this clause.

(I) The Site is on a route, with sidewalks for pedestrians, that is 1/2 mile or less from either a multiuse hike-bike trail or the entrance to a public park with a playground. The entirety of the sidewalk route must consist of smooth hard surfaces, curb ramps, and marked pedestrian crossings when traversing a street. (1 point).

(II) The Site is on a route, with sidewalks that is within a specified distance from the entrance of a public transportation stop or station with a route schedule that provides regular service to employment and basic services. The entirety of the sidewalk route must consist of smooth hard surfaces, curb ramps, and marked pedestrian crossings when traversing a street. Applicants may select only one of the following:

(-a-) 1/2 mile or less from the stop or station and the scheduled service is beyond 8 a.m. to 5 p.m., plus weekend service (both Saturday and Sunday) (1 point); or

(-b-) 1/2 mile or less from the stop or station and the scheduled service arrives every 15 minutes, on average, between 6 a.m. and 8 p.m., every day of the week (2 points).

(III) The Site is within two miles of a full-service grocery store described under §11.7(2)(A)(iii). (2 points)

(IV) The Site is within two miles of a pharmacy. For the purposes of this subclause only, the pharmacy may qualify if within the same building as a grocery store. (2 points).

(V) The Site is within four miles of a health-related facility, such as a full service hospital, community health center, minor emergency center, emergency room or urgent care facility. Physician offices and physician specialty offices do not qualify. (1 point).

(VI) The Site is within three miles of a center licensed by the Department of Family and Protective Services (DFPS) specifically to provide a school-age program or to provide a child care program for infants, toddlers, or pre-kindergarten. The Application must include evidence from DFPS that the center meets the above requirements. (1 point)

(VII) The Site is in a census tract with a property crime rate of 26 per 1,000 persons or less as defined by either neighborhoodscout.com or local law enforcement data sources. If employing the latter source, the formula for determining the crime rate will include only data relevant to the Site's census tract. (1 point)

(VIII) The Site is within two miles of a public library that has indoor meeting space, physical books that can be checked out and that are of a general and wide-ranging subject matter, computers and internet access, and is open 50 hours or more per week. The library must not be age or subject-restricted and must be at least partially funded with government funding. (1 point)

(IX) The Site is within six miles of an accredited university or community college (including two-year colleges), as confirmed by the Texas Higher Education Coordination Board (THECB), with a physical campus where classes are regularly held. Universities must confer bachelor's degrees and community colleges must confer at least associate's degrees. Online-only institutions do not qualify. (1 point)

(X) The Site is in a census tract where 27% or more of adults age 25 and older has an Associate's Degree or higher as tabulated by the ACS 5-year Estimate. (1 point)

(XI) The Site is within two miles of an indoor recreation facility available to the public, including but not limited to a gym, health club, a bowling alley, a theater, or a municipal or county community center. A facility that is primarily a restaurant or bar with recreational facilities does not qualify. (1 point)

(XII) The Site is within two miles of an outdoor, dedicated, and permanent recreation facility available to the public, including but not limited to swimming pools or splash pads, tennis courts, golf courses, softball fields, or basketball courts. (1 point).

(XIII) The Site is within two miles of community, civic or service organizations that provide regular and recurring substantive services available to the entire community (not exclusively for members or a congregation). (1 point)

(XIV) The Site is in the current service area of Meals on Wheels or similar nonprofit service that provides regular visits and meals to individuals in their homes. (1 point)

(XV) At Application the Site is in a county with a population of 1.2 million or more, but less than 4 million, and is not more than two miles from a veteran's hospital, veteran's affairs medical center, or veteran's affairs health care center, which include all providers listed under the Veteran's Health Administration categories, excluding Benefits Administration offices, listed at this link https://www.va.gov/directory/guide/fac_list_by_state.cfm?State=TX&dnum=ALL, and has federal or state financing that requires or allows preference for leasing units in the Development to low income veterans, and agrees to provide that preference. (1 point) (§2306.6710(b)(4))

(ii) For Developments located in a Rural Area and any Application qualifying under the USDA set- aside, an Application may qualify to receive points through a combination of requirements in subclauses (I) - (XIV) of this clause.

(I) The Site is within five miles of a full-service grocery store described under §11.7(2)(A)(iii). (2 points).

(II) The Site is within two miles of a pharmacy. For the purposes of this subclause only, the pharmacy may qualify if within the same building as a grocery store. (2 points).

(III) The Site is within five miles of health-related facility, such as a full service hospital, community health center, minor emergency center, or a doctor with a general practice that takes walk-in patients. Physician specialty offices do not qualify. (1 point).

(IV) The Site is within five miles of a center that is licensed by the DFPS specifically to provide a school-age program or to provide a child care program for infants, toddlers, or pre-kindergarten. The Application must include evidence from DFPS that the center meets the above requirements. (1 point).

(V) The Site is in a census tract with a property crime rate 26 per 1,000 persons or less, as defined by either neighborhoodscout.com or local law enforcement data sources. If employing the latter source, the formula for determining the crime rate will include only data relevant to the census tract. (1 point).

(VI) The Site is within five miles of a public library that has indoor meeting space, physical books that can be checked out and that are of a general and wide-ranging subject matter, computers and internet access, and is open 40 hours or more per week. The library must not be age or subject-restricted and must be at least partially funded with government funding. (1 point).

(VII) The Site is within five miles of a public park with a playground. (1 point).

(VIII) The Site is within 15 miles of an accredited university or community college (including two-year colleges), as confirmed by THECB, with a physical campus where classes are regularly held. Universities must confer bachelor’s degrees and community colleges must confer at least associate’s degrees. Online-only institutions do not qualify. (1 point).

(IX) The Site is in a census tract where 27% or more of adults age 25 and older has an Associate's Degree or higher as tabulated by the ACS 5-year Estimate. (1 point).

(X) The Site is within four miles of an indoor recreation facility available to the public including but not limited to a gym, health club, a bowling alley, a theater, or a municipal or county community center. A facility that is primarily a restaurant or bar with recreational facilities does not qualify. (1 point).

(XI) The Site is within four miles of an outdoor, dedicated, and permanent recreation facility available to the public including but are not limited to swimming pools or splash pads, tennis courts, golf courses, softball fields, or basketball courts. (1 point).

(XII) The Site is within two miles of community, civic or service organizations that provide regular and recurring substantive services available to the entire community (not exclusively for members or a congregation). (1 point).

(XIII) The Site is in the current service area of Meals on Wheels or similar nonprofit service that provides regular visits and meals to individuals in their homes. (1 point).

(6) Underserved Area. An Application may qualify to receive up to five (5) points if the Site meets any one of the criteria described in subparagraphs (A) - (G) of this paragraph; an Applicant is limited to selecting one subparagraph. If an Application qualifies for points under paragraph (5) of this subsection it is not eligible for points under subparagraphs (A) and (B) of this paragraph. Years are measured in whole years (not month and date) and calculated by deducting the "Board Approval" year on the Site Demographics Characteristics report from the current year. ""The Application must include evidence that the Site meets the requirements. ((§§2306.6725(a)(4) and (b)(2); 2306.127(3))

(A) The Site is wholly or partially within the boundaries of a colonia as determined by the Office of the Attorney General and within 150 miles of the Rio Grande River border. (5 points) (§2306.127(3)

(B) The Site is entirely within the boundaries of an Economically Distressed Area that has been awarded funds by the Texas Water Development Board in the previous five years ending at the beginning of the Application Acceptance Period. (1 point) (§2306.127(3)

(C) The Site is entirely within a census tract that does not have another Development that was awarded 20 or fewer years ago that serves the same Target Population as the proposed Development. The same Development's prior allocation(s) do not count as another development for the purposes of this scoring item. (5 points) (§2306.6725(b)(2)

(D) For areas not scoring points for subparagraph (C), the Site is entirely within a census tract that does not have another Development that was awarded 15 or fewer years ago according to the Department's property inventory tab of the Site Demographic Characteristics Report. (4 points)

(E) For areas not scoring points for subparagraphs (C) or (D), the Site is entirely within a census tract that does not have another Development that was awarded 10 or fewer years ago according to the Department's property inventory in the Site Demographic Characteristics Report. (3 points)

(F) Neither the census tract containing the Site nor any of its contiguous census tracts have another Development awarded 10 or fewer years ago that serves the same Target Population as the proposed Development. The same Development's prior allocation(s) do not count as another development for the purposes of this scoring item. This item will apply to Sites located entirely in a Place, or its ETJ, with a population of 50,000 or more for Urban subregions and 10,000 or more for Rural subregions, and will not apply in the At-Risk or USDA Set-Asides. (5 points)

(i) The Site may intersect the boundaries of multiple Places so long as each has a population of at least 50,000 for Urban subregions, and 10,000 for Rural subregions.

(ii) Contiguous census tracts include those that touch at a point.

(G) An At-risk or USDA Development placed in service 25 or more years ago, that is still occupied, and has not received federal funding or LIHTC equity for the purposes of Rehabilitation for the Development. If the Application involves multiple sites, the age of all sites will be averaged for the purposes of this scoring item. (3 points)

(H) The Site is entirely within a Census tract with a median household income in the highest quartile among Census tracts within the uniform service region according to the Site Demographics Characteristics Report. (5 points)

(7) Proximity to Job Areas. An Application may qualify to receive up to four (4) points if the Site is in one of the areas described in subparagraphs (A), (B), or (C) of this paragraph, and the Application contains evidence substantiating qualification for the points. The data considered is solely what is available through US Census' OnTheMap tool posted on or before August 1, 2026. Jobs counted are limited to those based on the work area, all workers, and all primary jobs. The Applicant will import OnTheMap's GPS coordinates for the Site and submit the resulting chart/map (including the report date). This scoring item will not apply to Applications under the At-Risk or USDA Set-Aside.

(A) Proximity to Jobs. Sites in Urban subregions may qualify for points under this subparagraph if within five miles of:

(i) 10,000 jobs (4 points)

(ii) 8,000 jobs (3 points)

(iii) 6,500 jobs (2 points)

(iv) 4,500 jobs (1 points)

(B) Proximity to Jobs. Sites in Rural subregions may qualify for points under this subparagraph if within five miles of:

(i) 6,000 jobs (4 points)

(ii) 4,500 jobs (3 points)

(iii) 3,000 jobs (2 points)

(iv) 1,500 jobs (1 points)

(C) Access to Jobs. A Site which qualifies for at least 2 points under subparagraph (A) or (B) may qualify for up to 2 additional points under this subparagraph if the Site is on a route, with sidewalks within one half-mile from the entrance of a public transportation stop or station with a route schedule that provides regularly scheduled service to employment and basic services. The entirety of the sidewalk route must consist of smooth hard surfaces, curb ramps, and marked pedestrian crossings when traversing a street. (2 points)

(d) Criteria promoting community support and engagement. .

(1) Local Government Support. (§2306.6710(b)(1)(B)) 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 on or before the Final Input from Elected Officials Delivery Date; be submitted to the Department no later than the Final Input from Elected Officials Delivery Date as identified in §11.2(a) of this chapter; and specifically identify the Development whether by legal description, address, Development name, Application number or other verifiable method. Resolutions received by the Department stating the municipality and/or county objects to or opposes the Application or Development will result in zero points awarded for that Governing Body. If a Site is located partially within a municipality and partially within a county or extraterritorial jurisdiction, an Application will receive positive points only if a resolution is obtained from both entities. Once a resolution is submitted to the Department it may not be changed or withdrawn.

(A) Within a municipality, the Application will receive points for a resolution from the municipality's Governing Body expressly stating it:

(i) supports the Application or Development; (17 points) or

(ii) has no objection to the Application or Development. (14 points)

(B) Within the extraterritorial jurisdiction of a municipality, the Application may receive points under clause (i) or (ii) and clause (iii) or (iv) of this subparagraph for a resolution from the Governing Body expressly setting stating the following.

(i) The municipality supports the Application or Development. (8.5 points)

(ii) The municipality has no objection to the Application or Development. (7 points)

(iii) The county supports the Application or Development. (8.5 points)

(iv) The county has no objection to the Application or Development. (7 points)

(C) Within a county and not within a municipality or the extraterritorial jurisdiction of a municipality, the Application will receive points for a resolution from the county's Governing Body expressly stating it:

(i) supports the Application or Development; (17 points) or

(ii) has no objection to the Application or Development. (14 points)

(2) Commitment of Development Funding by Local Political Subdivision. (§2306.6725(a)(5)) The source of the funding cannot be the Applicant, Developer, or an Affiliate of the Applicant and must be a financial benefit to the Development (a source on the Sources and Uses Form or lower cost in the Development Cost Schedule). Documentation must include a letter from an official of a relevant municipality, county, or other instrumentality w stating they will provide a loan, grant, reduced fees or contribution of other value for the benefit of the Development that equals $500 or more in Urban subregions or $250 or more in Rural subregions, and describe the value and form of the contribution (reduced fees or gap funding and any caveats to delivering). Once a letter is submitted to the Department it may not be changed or withdrawn. (1 point)

(3) Declared Disaster Area. (§2306.6710(b)(1)(H)) An Application may receive ten (10) points if the Site is in a declared disaster area under the Tex. Gov't Code §418.014 at the time of Application submission or at any time within the two-year period preceding the date of submission.

(4) Quantifiable Community Participation. (§2306.6710(b)(1)(I); §2306.6725(a)(2)) An Application may qualify for up to nine (9) points for written statements from a Neighborhood Organization in current, valid existence with boundaries that contain the entire Site, and on record with the Secretary of State or relevant county 30 days prior to the beginning of the Application Acceptance period. Once a letter is submitted to the Department it may not be changed or withdrawn. The written statement must meet all requirements in subparagraph (A) of this paragraph and be sent by the Neighborhood Organization to the Department (letters only included in the Application will not qualify).

(A) Statement Requirements. An organization must make the following affirmative certifications or statements to be considered a Neighborhood Organization for purposes of this paragraph:

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

(ii) The boundaries contain the entire Site and that the Neighborhood Organization meets the definition in Tex. Gov't Code §2306.004(23-a) and includes at least two separate residential households.

(iii) No person required to be listed in accordance with Tex. Gov't Code §2306.6707 with respect to the Application requiring their listing participated in any way in the deliberations of the Neighborhood Organization or took any votes.

(iv) At least 80% of the current membership of the Neighborhood Organization consists of homeowners and/or tenants living within the boundaries of the Neighborhood Organization.

(v) An explicit expression of support, opposition, or neutrality. Any expression of opposition must be accompanied with at least one reason for the basis.

(B) Technical Assistance. If no Neighborhood Organization exists or is on record, the Applicant, Owner, or Developer may provide technical assistance in creating one. 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;

(iii) presentation of information and response to questions at duly held meetings where such matter is considered; and

(iv) notification regarding deadlines for submission of responses to Administrative Deficiencies.

(C) Point Values for Quantifiable Community Participation. An Application may receive points based on only one of the clauses (i) - (vi) of this subparagraph (not cumulative). Where the Department receives more than one written statement for an Application, the score will be the average of all.

(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 in opposition that qualified as QCP 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 in opposition that qualified as QCP and whose boundaries remain unchanged.

(iv) Four (4) points for statements of neutrality, statements not explicitly stating support or opposition, or no statement of either support, opposition or neutrality from a Neighborhood Organization.

(v) Four (4) points for areas where no Neighborhood Organization meets the requirements of this section.

(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) of a local Governmental Entity (including municipality, county, school district) with jurisdiction or oversight. Any such challenge must include the basis and be submitted by the Challenges to Neighborhood Organization Opposition Delivery Date. The Neighborhood Organization expressing opposition will have seven calendar days to provide information. The Department will provide all such materials and its analysis to a fact finder of its choice for a determination. The fact finder will make determinations 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. If the Neighborhood Organization does not respond within seven days or the fact finder finds its statements to be contrary to findings or determinations of a local Government Entity, then the Application will receive four (4) points under subparagraph (C)(v) of this subsection.

(5) Community Support from State Representative. (§2306.6710(b)(1)(J); §2306.6725(a)(2); §2306.6710(f) and (g)) Applications may receive up to eight (8) points for express support, zero points for neutral statements (or not specifically referring to the Development), or have deducted up to eight (8) points for express opposition.

(A) Letter from a State Representative. To qualify under this subparagraph, letters must

(i) be on the State Representative's letterhead or submitted in such a manner as to verify the sender,

(ii) be signed by the State Representative,

(iii) identify the specific Development

(iv) express whether the letter conveys support, neutrality, or opposition, and

(v) be submitted no later than the Final Input from Elected Officials Delivery Date.

The Department will accept documentation with the Application or through delivery either from the Applicant or the State Representative. Once a letter is submitted to the Department it may not be changed or withdrawn. State Representatives to be considered are those in office at the time the letter is submitted and whose district boundaries include the Site. If the office is vacant, the points will be those for a neutral letter. A letter from a state representative expressing the level of community support may be expressly based on an understanding or assessments of indications of support by others. In the letter a representative may express their position without or without expressing their personal views.

(B) No Letter from a State Representative. To qualify under this subparagraph, the Department must receive no written statement for an Application from the State Representative whose district boundaries include the Site, unless the sole content is to convey he or she will not provide a written statement. Points available under this subparagraph will be based on how an Application scores under paragraph (1) of this subsection. If a Site is located partially within a municipality and partially within a county or extraterritorial jurisdiction, the Application will earn positive points only with a resolution from both entities. For an Application with a Site that, at the time of the initial filing of the Application, is:

(i) Within a municipality, the Application will receive the following points for a resolution from the Governing Body of that municipality expressly setting forth its position on the Application or Development:

(I) Eight (8) points for support; or

(II) Zero (0) points for no objection or resolution; or

(III) Negative eight (-8) points for opposition.

(ii) Within the extraterritorial jurisdiction of a municipality, the Application will receive points under subclause (I) or (II) or (III) and under subclause (IV) or (V) or (VI) for a resolution from the Governing Body of that municipality expressly setting forth its position on the Application or Development.

(I) Four (4) points for support.

(II) Zero (0) points for no objection resolution.

(III) Negative four (-4) points for opposition.

(IV) Four (4) points for support.

(V) Zero (0) points for no objection or resolution.

(VI) Negative four (-4) points for opposition.

(iii) Within a county and not within a municipality or the extraterritorial jurisdiction of a municipality, the Application will receive the following points for a resolution from the Governing Body of the county expressly setting forth its position on the Application or Development:

(I) Eight (8) points for support; or

(II) Zero (0) points for no objection or resolution; or

(III) Negative eight (-8) points for opposition.

(6) Input from Community Organizations. (§2306.6725(a)(2)) Where, at the time of Application, the Site does not fall within the boundaries of any qualifying Neighborhood Organization or one has given either no statement or a statement of neutrality (as described in subparagraph B(4)(C)(iv) or (v)), then an Application may receive up to a maximum of four (4) points for letters that qualify for points under subparagraphs (A), (B), or (C) of this paragraph submitted within the Application. Once a letter is submitted to the Department it may not be changed or withdrawn. An Applicant electing this option will lose one (1) point from the score under this paragraph for each letter in opposition from an organization that would otherwise qualify under this paragraph (not to be lower than zero (0)).

(A) An Application may receive two (2) points for each letter of support submitted from a community or civic organization that serves the community where the Site is located identifying the specific Development and stating support of the specific Development at the proposed location. The organization must be qualified as tax exempt and have as a primary purpose the overall betterment, development, or improvement of the community as a whole or of a major aspect of the community (e.g., schools, fire protection, law enforcement, city-wide transit, flood mitigation). Neighborhood organizations, governmental entities (excluding Special Management Districts described in subparagraph C) and taxing entities do not qualify for purposes of this subparagraph. The Applicant must provide evidence the organization is tax exempt from a federal or state government database and participates in the community in which the Site is located (including a listing of services or members, brochures, annual reports).

(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 Site and that does not meet the requirements of a Neighborhood Organization under paragraph (4) of this subsection.

(C) An Application may receive two (2) points for a letter of support from a Special Management District formed under Tex. Local Gov't Code chapter 375 whose boundaries, as of the Full Application Delivery Date, include the Site.

(D) The Department will not consider either input that evidences unlawful discrimination against classes of persons protected by Fair Housing law or scoring it determines to be contrary to affirmatively furthering fair housing. The Department may refer matters to the Texas Workforce Commission for investigation, but doing so will not, standing alone, terminate the Application. Staff will report all such referrals to the Board.

(7) Concerted Revitalization Plan or Opportunity Zone. An Application may qualify for up to seven (7) points under this paragraph only if no points are elected under subsection (c)(5) of this section.

(A) Concerted Revitalization Plans for Developments located in an Urban Area:

(i) An Application may qualify to receive points if the Site is geographically located within an area for which a concerted revitalization plan (plan or CRP) has been developed and published by the municipality.

(ii) A plan may consist of one or two (at most) complementary documents the municipality approved as a plan to revitalize the specific area and may be a Tax Increment Reinvestment Zone, Tax Increment Finance, or similar plan. A city- or county-wide comprehensive plan (including HUD consolidated or one-year action plans) does not qualify unless it includes plans for specific areas targeted for revitalization and meets all requirements of this section.

(iii) The Site must be entirely located within the targeted revitalization area.

(iv) The Applicant must submit the plan and supporting documentation using the CRP Application Packet. The Application must include a description of where to find the specific information required below. The plan must:

(I) have been published by the municipality or county in which the Site is located; and

(II) be current at the time of Application.

(v) If the Application includes an acceptable Concerted Revitalization Plan, the Department will award points as follows:

(I) the Site is or is not in a QCT and includes a letter from the appropriate municipal official (or county if the Site is completely outside of a municipality) that explicitly identifies the proposed Development as contributing to its concerted revitalization efforts (7 points); or

(II) the proposed Site does not have a letter. (5 points)

(B) For Developments located in a Rural Area, the Rehabilitation or demolition and Reconstruction of a Development

(i) that has been leased and occupied at 85% or greater for the six months preceding Application by low income households, and

(ii) which was initially constructed 25 or more years prior to Application submission as either public housing or as affordable housing using USDA and/or HUD program(s).

The occupancy percentage will not include Units that the SCR or CNA confirms cannot be occupied due to needed repairs. A locality must determine demolition and relocation of units to be necessary either to comply with the Affirmatively Furthering Fair Housing Rule or to create an acceptable distance from Undesirable Site Features or Neighborhood Risk Factors. (7 points)

(C) The Site is located entirely within a Federal Opportunity Zone as designed by the Governor no later than the Full Application Delivery Date. (7 points)

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

(1) Financial Feasibility. (§2306.6710(b)(1)(A)) All eligible Applications automatically receive twenty-six (26) points, conditioned upon the successful completion of underwriting in accordance with this chapter.

(2) Cost of Development per Square Foot. (§2306.6710(b)(1)(F) and (§2306.67022(b)-(c))) For the purposes of this scoring item, Eligible Building Costs are Building Costs voluntarily included in Eligible Basis for the purposes of determining a Housing Credit Allocation,(other than structured parking) including general contractor overhead, profit, and general requirements. The square footage used will be the NRA. The calculations will be based on the cost listed in the Development Cost Schedule and NRA shown in the Rent Schedule. For a Supportive Housing Development the NRA will include Common Area up to 75 square feet per Unit, of which at least 50 square feet will be conditioned. The Department will annually adjust the square foot cost targets in this item by the increase in the Consumer Price Indexes for All Urban Consumers between the two most recently available full years.

(A) Applications proposing New Construction or Reconstruction or Adaptive Reuse will receive twelve (12) points if:

(i) the voluntary Eligible Building Cost per square foot is less than or equal to $_____ per square foot; or

(ii) the voluntary Eligible Hard Cost per square foot is less than or equal to $_____ per square foot.

(B) Applications proposing New Construction or Reconstruction will receive eleven (11) points if:

(i) the voluntary Eligible Building Cost per square foot is less than or equal to $_____ per square foot; or

(ii) the voluntary Eligible Hard Cost per square foot is less than or equal to $_____ per square foot.

(C) Applications proposing Rehabilitation (excluding Reconstruction) will be eligible for points for including the less than or equal to following amounts of voluntary Eligible Hard Costs plus acquisition costs included in Eligible Basis:

(i) $207.21 per square foot; (12 points) or

(ii) $268.57 per square foot, located in an Urban Area, and qualify for 5 or more points under subsection (c)(5)(A) and (B) of this section; (12 points) or

(iii) $268.57 per square foot. (11 points)

(3) Pre-application Participation. (§2306.6704) An Application will receive six (6) points provided for submitting a pre-application by the Pre-Application Final Delivery Date and meeting the requirements described in subparagraphs (A) - (K) below.

(A) The total number of Units does not increase by more than 10% 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, or Rural).

(E) The Application final score (inclusive of only scoring items reflected on the self-score form) does not vary by more than four (4) points from the pre-application self-score.

(F) If the Application claims points related to Underserved Area and/or Proximity to Jobs, the point elections do not change from the pre-application self-score and the supporting documentation for these points is substantially similar to what was submitted with the Pre-Application.

(G) The Site at Application is at least in part the Site at pre-application, and the census tract number(s) listed at pre-application is the same at Application. The full Application does not require notification to any person or entity not required to have been notified at pre-application.

(H) The Tie Breaker standing established in 10 TAC §11.7(2) represented at pre-application cannot improve at full Application (including for the USDA Set-Aside).

(I) If the Applicant elects a high quality Pre-Kindergarten is to be provided under §11.6(3)(C)(v), it does not change at full Application.

(J) 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 5% of the total Units are restricted to serve households at or below 30% of AMGI (restrictions elected under other point items may count), no more than 50% of the Developer Fee is deferred, and the Housing Tax Credit funding request is less than one of the levels of Total Housing Development Cost in clauses (i) - (iv) below:

(i) 10%, and the Development leverages CDBG Disaster Recovery, HOPE VI, RAD, or Choice Neighborhoods funding (the Application must include a commitment); (3 points) or

(ii) 10% (3 points); or

(iii) 11% (2 points); or

(iv) 12% (1 point).

(B) The calculations in subparagraph (A) above will be based strictly on the figures listed in the Funding Request and Development Cost Schedule. Staff will perform the calculation again and adjust the score (if necessary) if an Administrative Deficiency requires a change in either form. Points may not increase based on changes to the Application.

(5) Extended Affordability. (§§2306.6725(a)(5) and (7); 2306.111(g)(3)(C); 2306.185(a)(1) and (c); 2306.6710(e)(2)) An Application may qualify to receive up to four (4) points for the Owner agreeing to extend the Affordability Period to:

(A) 45 years total; (4 points)

(B) 40 years total; (3 points) or

(C) 35 years total. (2 points)

(6) Historic Preservation. (§2306.6725(a)(6)).

(A) An Application may qualify to receive two (2) points if Development will receive historic tax credits before or by the issuance of Forms 8609 and has:

(i) under 100 total Units and at least 55% will be constructed fully or partially within the Certified Historic Structure, or

(ii) 100 total Units or more and at least 55 will be constructed fully or partially within the Certified Historic Structure.

(B) The Application must include documentation from the Texas Historical Commission that

(i) the Property is currently a Certified Historic Structure, or

(ii) it received the request for determination of preliminary eligibility and supporting information on or before February 1 of the current year and documentation determining preliminary eligibility for Certified Historic Structure.

(C) An Application may not receive these points if it involves a Development that was previously awarded Competitive HTCs through an Application that earned points based on eligibility of a Certified Historic Structure. (2 points)

(7) Right of First Refusal. (§2306.6725(b)(1)). An Application may receive one (1) point under subparagraphs (A) or (B) below.

(A) The Owner will agree to provide a right of first refusal upon or following the end of the Compliance Period in accordance with Tex. Gov't Code, §2306.6726 and §10.407 and §10.408 of this title.

(B) The Development at the time of LURA execution is single family detached homes on separate lots or is organized as condominiums under Chapter 81 or 82 of the Texas Property Code and commits to offer a right of first refusal to the tenants to purchase the dwelling at a selected term between the end of the Compliance Period and the Extended Use Period. Owners may attribute a de minimis amount of a participating tenant's rent to the purchase of a Unit, as reflected in the LURA. The Applicant must provide a description of how they will

(i) implement the 'rent-to-own' activity,

(ii) make tenants aware of the opportunity, and

(iii) implement the right at the end of the selected term.

If a Development has National Housing Trust Funds, HOME-ARP, or another MFDL source where homeownership is not an eligible activity, the right of first refusal may not be earlier than the end of the Federal Affordability Period.

(8) Readiness to Proceed. The Application includes a certification that site acquisition and building construction permit submission will occur on or before the last day of March of the following year or as otherwise permitted under subparagraph (B) below (not available in the At-Risk or USDA Set-Asides). (1 point)

(A) Failure to meet the March deadline will result in penalty under 10 TAC §11.9(f), as determined solely by the Board. The Board cannot and will not waive the deadline.

(B) Applications awarded from the waiting list will receive an extension of the March deadline equivalent to the period of time between the late July meeting and the date that the Commitment Notice for the Application is issued.

(f) Factors Affecting Scoring and Eligibility in current and future Application Rounds. (§2306.6710(b)(2)) Staff may recommend, and the Board may find, that an Applicant or Affiliate should be ineligible to compete in the following year's competitive Application Round, or assigned a penalty deduction in the following year's competitive Application Round of no more than two points for each submitted Application because it meets the conditions for any of the items listed in paragraphs (1) - (4) of this subsection. For items pertaining to non-statutory deadlines, the Board or Executive Director (as applicable) may make an exception to the penalty based on an affirmative finding setting that the need for a deadline extension was beyond the reasonable control of the Applicant and could not have been reasonably anticipated. The Department must notify the affected party of any matter to be presented for final determination by the Board not less than 14 days prior to the scheduled Board meeting. The Executive Director may determine the matter does not warrant point deduction only for paragraph (1) of this subsection, and if so may issue a formal notice after disclosure. Any deductions assessed by the Board for paragraph (1), (2), (3), or (4) of this subsection based on a HTC Commitment from a preceding Application round will be attributable to the Applicant or Affiliate of an Application submitted in the current Application.

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

(2) If the Applicant or Affiliate failed to meet benchmarks with the Department, including the federal commitment or expenditure requirements to enter into a Contract, or close a Direct Loan..

(3) If the Applicant or Affiliate, in the Competitive HTC round immediately preceding the current round, failed to meet the deadline to both close financing and provide evidence of an executed construction contract under subsection (c)(9) of this section.

(4) If the Developer or Principal of the Applicant has violated or violates the Adherence to Obligations.

§11.10.Third Party Request for Administrative Deficiency for Competitive HTC Applications.

(a) The Third Party Request for Administrative Deficiency (RFAD) allows an unrelated person or entity to bring new, material information about an Application to staff's attention.

(b) Staff will determine how to proceed.

(c) Staff will not act on a RFAD if it describes Application review process matters and contains only information present in the Application.

(d) The RFAD and any testimony regarding its result may not be used to appeal staff decisions regarding competing Applications (§2306.6715(b)). The Department will disregard any RFAD that questions a staff decision regarding scoring of an Application filed by another Applicant.

(e) Upon filing, requestors must provide all information that the requestor offers in support of the deficiency; copy of the request and supporting information directly to the Applicant; and sufficient credible evidence that, if confirmed, would substantiate the deficiency request. The Department will not consider assertions not accompanied by supporting documentation susceptible to confirmation or that express the requestor's opinion.

(f) Staff will provide to the Board a written report summarizing each RFAD and the way it was addressed. Interested persons may provide testimony on this report before the Board accepts the report. The Board may either change staff’s conclusion if necessary to bring the result into compliance with applicable laws and rules or remand it back to staff based on public testimony, which may result in a reaffirmation, reversal, or modification.

(g) The Board will consider testimony arguing staff's determination only if the requestor can show staff failed to follow the applicable rule. The requestor may not appeal the RFAD results.

(h) The Applicant may appeal a scoring notice or termination notice that results from a RFAD (as described in §11.902 of this chapter).

(i) The Board and staff will consider information received after the RFAD deadline only if it warrants a termination notice.

SUBCHAPTER B. SITE AND DEVELOPMENT REQUIREMENTS AND RESTRICTIONS

10 TAC §11.101

§11.101.Site and Development Requirements and Restrictions.

(a) Site Requirements and Restrictions.

(1) Floodplain.

(A) New Construction or Reconstruction Developments located within a 100 year floodplain as identified by the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps must fully comply with the National Flood Protection Act and all applicable federal, state, and local statutory and regulatory requirements. Even if not required by such provisions, all finished ground floor elevations must be at least one foot above the floodplain and parking and drive areas can be no lower than six inches below the floodplain.

(B) Applicants requesting NHTF, HOME, HOME-ARP, or NSP PI funds from the Department must meet the applicable federal environmental provisions in effect at the time of executing the Contract between the Department and Owner.

(C) If no FEMA Flood Insurance Rate Maps are available for the proposed Site, the Application must include flood zone documentation identifying the 100 year floodplain from the local government with jurisdiction. Rehabilitation (excluding Reconstruction) Developments with existing and ongoing federal funding assistance from HUD or USDA are exempt from this requirement if not requesting NHTF from the Department.

(D) All Developments located within a 100 year floodplain must state such status in the Tenant Rights and Resource Guide and encourage residents consider getting appropriate insurance or take necessary precautions.

(E) Where existing and ongoing federal assistance is not applicable, Rehabilitation (excluding Reconstruction) Developments are allowed in the 100 year floodplain if the Application includes documentation that either the local government can substantiate having taken sufficient mitigation efforts or a Third Party engineer certifies the existing structures meet the requirements applicable for New Construction or Reconstruction Developments.

(2) Undesirable Site Features.

(A) An Application will be ineligible due to an Undesirable Site Feature unless the Board or staff determine it is mitigated. A Competitive HTC Application will be ineligible if staff identifies it did not disclose an undesirable site feature reflected in clause (i) - (x) of subparagraph (E). Staff may issue an Administrative Deficiency for an undesirable site feature not listed in this paragraph or covered under clause (xi) of subparagraph (E) or defer to the Board to decide whether a feature is undesirable.

(B) Staff may grant an exemption (potentially including mitigation) for Rehabilitation (excluding Reconstruction) Developments with ongoing and existing federal assistance from HUD, USDA, or VA and Developments encumbered by a TDHCA LURA and Historic Developments that otherwise would qualify under §11.9(e)(6) of this chapter. An Application must request such an exemption at the time of or prior to filing.

(C) Pre-determinations of Site eligibility for a prior calendar year will not be binding in the current one. For Tax-Exempt Bond Developments where the Department is the Issuer, the Applicant may request a pre-determination at pre-application, or utilizing a local issuer, the Applicant may request a pre-determination prior to Application submission. Any determination by staff or the Board based on the documentation presented is preliminary. Additional or changed information changing while the Application is under review may result in an Administrative Deficiency or re-evaluation.

(D) The proposed Site and all construction thereon must comply with all applicable state and federal requirements regarding separation for safety purposes. The Department will defer to a state or federal cognizant agency's requirement for a minimum separation between housing and a new facility under its jurisdiction.

(E) For any Undesirable Site Feature that HUD's siting requirements at 24 CFR Part 51, Subpart C address, the Department will consider compliance with those requirements acceptable mitigation under this rule.

(E) The Undesirable Site Features include those described in clauses (i) - (xi) of this subparagraph. The distances are from the nearest boundary of the Site to the nearest boundary of the property or easement containing the undesirable feature, unless otherwise noted. Where a local ordinance specifies smaller distances between an undesirable feature and multifamily development, an Application may use such smaller distances (must include documentation). Pre-existing zoning is not a local ordinance.

(i) Sites within 300 feet of junkyards defined as stated in Texas Transportation Code §396.001.

(ii) Sites within 300 feet of an active solid waste facility, sanitary landfill facility, waste transfer station, or illegal dumping sites (as identified by the local municipality).

(iii) Sites within 300 feet of a sexually-oriented business defined in Local Government Code §243.002, or as zoned, licensed and regulated as such by the local municipality.

(iv) Sites located within 500 feet of active railroad tracks, measured from the closest rail to the Site boundary, unless:

(I) the Applicant provides evidence that the city/community has adopted a Railroad Quiet Zone covering the area within 500 feet of the Development Site;

(II) the Applicant has engaged a qualified Third Party to perform a noise assessment and commits to perform sound mitigation in accordance with HUD standards as if they applied; or

(III) the railroad is commuter or light rail.

(v) Sites within 500 feet of facilities consistent with the general characteristics of heavy industry, such as requiring extensive use of land and machinery, producing high levels of external noise (manufacturing plants), or maintain fuel storage facilities. Does not include gas stations and other similar facilities.

(vi) Sites within 10 miles of a nuclear plant.

(vii) Sites in which the buildings are located within the accident potential zones or the runway clear zones of any airport.

(viii) Sites that contain or are adjacent to an easement for one or more underground or aboveground pipelines carrying highly volatile liquids must include a plan for developing near the pipeline(s) and any mitigation in accordance with a report conforming to the Pipelines and Informed Planning Alliance.

(ix) Sites within two miles of refineries capable of refining more than 100,000 barrels of oil daily.

(x) Sites in a Clear Zone, any Accident Potential Zone, or within any Noise Contour of 65 decibels or greater, as reflected in a Joint Land Use Study for any military Installation. An Application will remain eligible if the Noise Contour is less than 70 decibels and the Applicant has engaged a qualified Third Party to perform a noise assessment and commits to perform sound mitigation in accordance with HUD standards as if they applied.

(xi) Any Site staff deems unacceptable, including (without limitation) those with exposure to an environmental factor that may adversely affect the health and safety of the residents or otherwise render the Site inappropriate for housing and which cannot be adequately mitigated. Staff will provide notice and an opportunity to respond to information not included in the Application resulting in a Site being unacceptable.

(3) Neighborhood Risk Factors.

(A) A Neighborhood Risk Factor will render an application ineligible absent a determination of acceptable mitigation by staff or the Board. Applicants must disclose the risk factor which will result in an assessment of the Site and neighborhood, and may include a site visit. Staff will terminate Competitive HTC Applications failing to disclose.

(B) Pre-determinations of Site eligibility prior to pre-application or Application submission will not be binding on full Applications. For Tax-Exempt Bond Developments

(i) where the Department is the Issuer, the Applicant may submit the documentation described under subparagraph (E) of this paragraph at pre-application, or

(ii) utilizing a local issuer may request a pre-determination prior to Application submission.

Any determination by staff or the Board based on the documentation presented is preliminary. Additional or changed information changing while the Application is under review may result in an Administrative Deficiency or re-evaluation.

(C) Crime. Site is New Construction or Reconstruction in Urban Area and either in or adjacent to a census tract where the rate of Part I violent crime is greater than 18 per 1,000 persons (annually) as reported on neighborhoodscout.com. Adjacent means a boundary less than 500 feet from the proposed Site and not separated by a natural barrier (river, lake) or an intervening restricted area (military installation). Rehabilitation developments with ongoing and existing federal assistance from HUD, USDA, or VA, and Developments encumbered by a TDHCA LURA are exempt.

(i) Mitigation must include documentation of efforts underway at the time of Application, and include the measures described in clauses (a) or (b) of this subparagraph or such other mitigation the Applicant determines appropriate to support eligibility. Preservation alone is inadequate to support a conclusion of eligibility. If staff determines a Site is ineligible, the Applicant may not present new information in an appeal to the Board.

(a) Evidence by the most qualified person (Police Chief, Sheriff, or individual responsible for the relevant beat or area) that the data and evidence establish a reasonable basis to conclude that Part I violent crime either

(I) is currently below 18 per 1,000 persons (neighborhoodScout.com is inaccurate), or

(II) is trending favorably and is expected within two years to be below 18 per 1,000 persons.

(b) Part I violent crime data from the applicable police or sheriff's department for the beat or area based on its population or Part I violent crime data within the beat or area that encompass the census tract, calculated based on the census tract population. The data must include incidents reported during the entire calendar year previous to the Application year. Staff may request violent crimes reported through the date of Application submission as part of the assessment. Such data does or it is reasonable to conclude, based on a demonstrated positive trend, would yield a crime rate below 18 per 1,000 persons by the time the Development places into service and the crime rate is not of a nature or severity to render the Site ineligible. An Application may additionally provide, or staff may require, a written statement from the most qualified person, that includes a description of efforts and results of addressing issues of crime, including whether there is a reasonable expectation that crime rates will trend down based on the efforts.

(4) A New Construction Development (or reconstruction requesting NHTF), as defined by the applicable federal fund source, requesting federal funds must meet the applicable Site and Neighborhood Standards.

(b) Development Requirements and Restrictions.

(1) Ineligible Developments. A Development will be ineligible if any of the criteria in subparagraphs (A) - (C) of this paragraph apply.

(A) General:

(i) Hospitals, nursing homes, trailer parks, dormitories (or other buildings that will be predominantly occupied by students) or other facilities that are usually classified as transient housing under Code §42(i)(3)(B)(iii) and (iv).

(ii) Any building(s) with four or more stories that does not include an elevator. Not applicable where topography or other Site characteristics require basement splits such tenants will not have to walk more than two stories to their Unit and all Development amenities.

(iii) Provides on-site continual or frequent nursing, medical, or psychiatric services. See IRS Revenue Ruling 98-47 for clarification of assisted living.

(iv) Proposes population limitations that violate §1.15 of this title.

(v) Will not meet the general public use requirement under Treasury Regulation, §1.42-9.

(vi) a Utilizing a Direct Loan subject to the Housing and Community Development Act, 104(d) requirements proposing Rehabilitation or Reconstruction and the Applicant is not proposing at least the one-for-one replacement of the existing Unit mix. Adding additional units would not violate this provision.

(vii) New Construction or Reconstruction proposing more than 35.00% efficiency and/or one-Bedroom Units (other than Elderly or Supportive Housing Developments). Units that are part of a Historic structure do not count when determining this requirement.

(viii) Competitive HTC Applications that involve any existing HTC Development that has any building that placed in service on or after January 1, 2007.

(ix) Applications with a Total Housing Development Cost of $500,000 or more per Unit.

(x) Competitive HTC that scores fewer than 120 total points, inclusive of any scoring reductions.

(xi) Site is in a census tract that has a poverty rate above 40% for individuals (or 55% in regions 11 and 13) unless a resolution from the Governing Body of the appropriate municipality or county acknowledging the high poverty rate and authorizing the Development to move forward (from the county if in the ETJ). Rehabilitation Developments with ongoing and existing federal assistance from HUD, USDA, or VA, and Developments encumbered by a TDHCA LURA are exempt.

(B) Ineligibility of Elderly Developments include:

(i) two stories or more that does not include elevator service for any Units or Common Areas above the ground floor;

(ii) any containing Units with more than two Bedrooms, excluding up to three specifically-designated employee Units; or

(iii) any New Construction, Reconstruction, or Adaptive Reuse Development proposing more than 70% two-Bedroom Units.

(C) Ineligibility of Developments within Areas of High Crime. Any Development involving New Construction or Adaptive Reuse is ineligible with no opportunity for mitigation if

(i) located in an area described in (a)(3)(D)(ii) of this subsection and

(ii) for which mitigation submitted under subparagraph (D)(ii) of this paragraph still yields a Part I violent crime rate greater than 18 per 1,000 persons (annually)

The Board will document the reason(s) for granting an Appeal of staff's determination.

(2) Development Size Limitations. The minimum Development size is 16 Units. The maximum is 80 units for Competitive HHTC or Direct Loan-only Developments involving New Construction or Adaptive Reuse in Rural Areas. Tax-Exempt Bond Developments involving New Construction or Adaptive Reuse in a Rural Area must meet the Development size limitation and corresponding capture rate requirements in §11.302(i)(1)(C) of this chapter. There is no maximum for Rehabilitation Developments.

(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 and meet the minimum Rehabilitation amounts of Building Costs and Site Work in subparagraphs (A) - (C) of this paragraph. Developments must maintain such amounts through the issuance of IRS Forms 8609 using the earliest building placed in service date.

(A) For Housing Tax Credit Developments with USDA financing the Rehabilitation will involve at least $25,000 per Unit in Building Costs and Site Work.

(B) For Tax-Exempt Bond Developments less than 20 years old (based on the placed in service date), the Rehabilitation will involve at least $25,000 per Unit or $35,000 if greater than or equal to 20 years old. For Tax-Exempt Bond Developments that include existing USDA funding that is continuing or new, staff may allow the cost standard under subparagraph (A) of this paragraph.

(C) For all other Developments, the Rehabilitation will involve at least $35,000 per Unit.

(4) Mandatory Development Amenities. (§2306.187) New Construction, Reconstruction or Adaptive Reuse Units must include all amenities in subparagraphs (A) - (O) of this paragraph. Rehabilitation (excluding Reconstruction) Developments must provide the amenities in subparagraphs (D) - (L), (N), and (O) of this paragraph unless stated otherwise. Supportive Housing Developments are not required to provide the amenities in subparagraph (B), (E), (F), (G), (H) or (N) of this paragraph but must provide access to a comparable amenity in a Common Area. All amenities listed below must be at no charge to the residents. Owners must provide Residents written notice of the Development’s applicable required amenities. The Board may waive one or more of the requirements of this paragraph for Developments that will include Historic Tax Credits based on evidence submitted with the request for amendment that the Texas Historical Commission or

National Park Service (as applicable) has not approved it. Certain amenities are not eligible for Direct Loan funding.

(A) All Units have connections available using current technology for data and phone.

(B) Laundry connections.

(C) Exhaust/vent fans (vented to the outside) in the bathrooms.

(D) Screens on all operable windows.

(E) Disposal (not required for USDA Rehabilitation).

(F) Energy-Star or equivalently rated dishwasher; Rehabilitation Developments exempt from dishwasher if one was not originally in the Unit.

(G) Energy-Star or equivalently rated refrigerator.

(H) Oven/Range.

(I) Blinds or window coverings for all windows.

(J) At least one Energy-Star or equivalently rated ceiling fan per Unit.

(K) Energy-Star or equivalently rated light bulbs in all Units.

(L) All areas of the Unit (excluding exterior storage space on an outdoor patio/balcony) have heating and air-conditioning provided by an electric heat pump system; however, Rehabilitation Developments (excluding Reconstruction) where the heating and air conditioning systems are not replaced are not required to provide heat pumps.

(M) Adequate parking spaces consistent with local code. If there is no local code the requirement is one and a half spaces per Unit for non-Elderly Developments and one space per Unit for Elderly Developments. The minimum number of required spaces must be available to tenants at no cost. If parking requirements under local code rely on car sharing or similar arrangements, the LURA will require the Owner to provide the service at no cost to the tenants throughout the Affordability Period. The Application must include evidence of any waiver or variance of local code parking requirements.

(N) Energy-Star or equivalently rated windows (for Rehabilitation Developments, only if windows are planned to be replaced as part of the scope of work).

(O) Adequate accessible parking spaces consistent with federal and state requirements“”.

(5) Common Amenities.

(A) All Developments must include sufficient common amenities described in subparagraph (C) of this paragraph to qualify for at least the minimum number of points in clauses (i) - (vi) below:

(i) 2 points for 16 to 40 Units;

(ii) 4 points for 41 to 76 Units;

(iii) 7 points for 77 to 99 Units;

(iv) 10 points for 100 to 149 Units;

(v) 14 points for 150 to 199 Units; or

(vi) 18 points for 200 or more Units.

(B) The points in this paragraph are not associated with any selection criteria. The amenities must be for the benefit of all residents and made available throughout normal business hours and maintained throughout the Affordability Period. Owners must provide Residents written notice of the elections made. An amenity does not qualify under this paragraph if the Owner charges fees or deposits for it. Amenities must meet all applicable accessibility standards, including the Department's. Where a space or size requirement is not specified it must be reasonably adequate based on the Development size. All amenities must be available to all Units via an accessible route. The Department will apply the requirement to non-contiguous scattered site housing (excluding non-contiguous single family sites) based on the number of Units per individual site and the amenities selected must be distributed proportionately across all sites. A Development of non-contiguous single family sites must provide a combination of unit and common amenities to equal the appropriate points under subparagraph (A) of this paragraph for the Development size. Amenities anticipated to be shared with a previous phase development cannot be claimed for purposes of meeting this requirement for a subsequent phase.

(C) The common amenities and respective point values are set out in clauses (i) - (v) of this subparagraph. There is no requirement to select a specific number of amenities from each section. An Applicant can only count an amenity once; combined functions (library is part of a community room) will only qualify under one category.

(i) Community Space for Resident Supportive Services includes:

(I) An Application will qualify for half of the points required under §11.101(b)(5)(A)(i) - (vi) by electing to provide a High Quality Pre-Kindergarten

(HQ Pre-K) program and committing to all of items (-a-) - (-c-) below (unless more than 10% of the Units will be Supportive Housing single room occupancy).

(-a-) Space and Design. The educational space must be onsite; appropriately designed for an independent school district or open-enrollment charter school to operate a HQ Pre-K program; include at a minimum a bathroom and large closet in the classroom space; have limited and secure ingress and egress to the classroom space; and satisfy the requirements of all applicable building codes for school facilities. The Application must include a copy of the applicable current school facility code requirements, certifications from the Owner and Architect that they understand those space and design requirements, and acknowledgement by all lenders, equity providers and partners that the Application includes election of these points.

(-b-) Educational Provider Agreement. The Applicant must enter into an agreement addressing all items described in subitems (-1-) - (-5-) below and submit it to the Department with or before the Cost Certification. Failure to meet the deadline will be cause for rescission of the Carryover Agreement.

(-1-) Be between the Owner and an Educational Provider.

(-2-) Reflect that the Educational Provider will provide a HQ Pre-K program at the Site in accordance with Texas Education Code Chapter 29, Subchapter E-1, at no cost to residents of the Development and that is available for general public use (students residing elsewhere may attend.

(-3-) Reflect that the Owner will give the school or provider the option to operate the HQ Pre-K program until it elects to withdraw. The Owner's will retain a right to terminate the agreement for good cause.

(-4-) Sets forth the responsibility of each party regarding payment of costs to use the space, utility charges, insurance costs, damage to the space or any other part of the Development, and any other costs arising as the result of operating the HQ Pre-K program.

(-5-) Includes a provision for annual renewal, unless terminated under the provisions of item (-c-) of this subclause.

(-c-) If an Educational Provider becomes defunct or elects to withdraw from the agreement (as provided for in subitem (-b-)(-3-) above), the Owner must notify the Texas Commissioner of Education at least 30 days prior to ending the agreement to seek out any other eligible parties. If the Commissioner or Owner identifies another interested open-enrollment charter school or school district, the Owner must enter into a subsequent agreement with it to offer HQ Pre-K services. If another interested provider cannot be identified the Owner must notify the Commissioner annually of the availability of the space. If the withdrawing provider certifies to the Department that their reason for ending the agreement is not due to actions of the Owner, the Owner will not be in violation of its commitment..

(II) Multifunctional learning and care center(s) or conference room(s) with the appropriate furnishings to deliver the Resident Supportive Services pertaining to classes or care for children. Such room(s) must equal the lesser of 15 square feet times the total number of Units or 2,000 square feet. This space must include storage space, such as closets or cabinetry and be separate from any other community space but may include a full kitchen. (4 points)

(III) Multifunctional learning and care center(s) or conference room(s) with the appropriate furnishings to deliver the Resident Supportive Services pertaining to classes or care for adults. Such room(s) must equal the lesser of 10 square feet times the total number of Units or 1,000 square feet. This space must include storage space, such as closets or cabinetry and be separate from any other community space but may include a full kitchen. (2 points)

(IV) Service provider office in addition to leasing offices. (1 point)

(ii) Safety amenities include:

(I) Controlled gate access for entrance and exit areas, intended to provide access limited to the Development's tenants. (1 point)

(II) Secured Entry (applicable only if all Unit entries are within the building's interior). (1 point)

(III) Twenty-four hour, seven days a week monitored (on-site or off-site) camera/security system in each building. (2 points)

(IV) Twenty-four hour, seven days a week recorded camera / security system in each building. (1 point)

(V) A courtesy patrol service that, at a minimum, answers after-hour resident phone calls regarding noise and crime concerns or apartment rules violations and dispatches a courtesy patrol officer in a timely manner. (3 points)

(iii) Health/Fitness/Play amenities include:

(I) Accessible walking/jogging path, equivalent to the perimeter of the Development or a length that reasonably achieves the same result, separate from a sidewalk and in addition to required accessible routes to Units or other amenities. (1 point)

(II) Fitness center indoors or in a designated room with climate control and allow for after-hours access. Equipped with a variety of commercial use grade or quality fitness equipment (at least one item for every 40 Units): stationary bicycle, elliptical trainer, treadmill, rowing machine, universal gym, multi-functional weight bench, stair-climber, dumbbell set, or other similar equipment. (1 point)

(III) Fitness center, same as above other than twice as many items. (2 points)

(IV) One Children's Playscape Equipped for five to 12 year olds, or one Tot Lot. Must be covered with enough shade canopy or awning to keep equipment cool and provide shade and ultraviolet protection. This item and subclause (V) below are mutually exclusive. (2 points)

(V) Two Children's Playscapes Equipped for five to 12 year olds, two Tot Lots, or one of each. Must be covered with enough shade canopy or awning to keep equipment cool and provide shade and ultraviolet protection. This item and subclause (IV) above are mutually exclusive. (4 points)

(VI) Horseshoe pit, putting green, shuffleboard court, pool table, ping pong table, or similar equipment in a dedicated location accessible to all residents. (1 point)

(VII) Swimming pool with after-hours access. (5 points)

(VIII) Splash pad/water feature play area. (3 points)

(IX) Sport Court or field (including, but not limited to, Tennis, Basketball, Volleyball, Pickleball, Soccer, or Baseball Field). (2 points)

(iv) Design / Landscaping amenities include:

(I) Full perimeter fencing that contains the parking areas and all amenities (excludes guest or general public parking areas). (2 points)

(II) Enclosed community sun porch or covered community porch/patio. (1 point)

(III) Fully enclosed dog Park area (the perimeter fencing may be used for part of the enclosure) which allows tenant owned dogs to run off leash (Development must allow dogs). (2 points)

(IV) Shaded rooftop or structural viewing deck of at least 500 square feet. (2 points)

(V) Porte-cochere. (1 point)

(VI) Lighted pathways along all accessible routes. (1 point)

(VII) Resident-run community garden with annual soil preparation and mulch provided by the Owner and access to water. (1 point)

(VIII) Each Unit above the first floor is accessible by at least two elevators. (1 point)

(v) Community Resources amenities include:

(I) Community laundry room with at least one washer and dryer for every 40 Units. (2 points)

(II) Permanently installed barbecue grill and picnic table, at least one of each for every 50 Units (1 point).

(III) Business center with workstations and seating internet access, one printer and one scanner (may be integrated with the printer), and either two desktop computers or laptops available to check-out upon request. (2 points)

(IV) Furnished Community room. (2 points)

(V) Library with an accessible sitting area (separate from the community room) (1 point).

(VI) Activity Room stocked with supplies (Arts and Crafts, board games, etc.). (2 points)

(VII) Community Dining Room with full or warming kitchen furnished with adequate tables and seating. (3 points)

(VIII) Community Theater Room equipped with a 52 inch or larger screen or projection with surround sound equipment, DVD player or a streaming service (no cost to residents), and seating. (3 points)

(IX) High-speed Wi-Fi with advanced telecommunications capacity as determined under 47 U.S.C. 1302 or more with coverage throughout the clubhouse or community building. (1 point)

(X) Same as (IX) above but with coverage throughout the Development. (2 points)

(XI) Bicycle parking within reasonable proximity to each residential building for at least one for every five Units that allows for bicycles to be locked (lock not required to be provided to tenant). (1 point).

(XII) Automated Package Lockers or secure package room that can be accessed by residents 24/7 and at no charge. To qualify there needs to be at least one locker for every eight residential units. (2 points)

(XIII) Recycling Service (includes a storage location and service for pick-up). (1 point)

(XIV) Community car vacuum station. (1 point)

(XV) Access to onsite bike sharing services, provided tenants have short-term, autonomous access to community-owned bicycles, with at least one bicycle per 25 Units. (1 point)

(XVI) A covered outdoor area with seating to be used as a waiting area for public transportation or a school bus. (1 point).

(6) Unit Requirements.

(A) Unit Sizes. All New Construction or Reconstruction Units must meet the minimum sizes in clauses (i) - (v) of this subparagraph (not associated with any selection criteria). Rehabilitation of Units (excluding Reconstruction) and Supportive Housing Developments are exempt.

(i) 450 square feet for an Efficiency Unit;

(ii) 550 square feet for a one Bedroom Unit;

(iii) 800 square feet for a two Bedroom Unit;

(iv) 1,000 square feet for a three Bedroom Unit; and

(v) 1,200 square feet for a four Bedroom Unit.

(B) Unit, Development Construction, and Energy and Water Efficiency Features. HTC Applicants must maintain the points associated with the selected amenities throughout the Affordability Period. The LURA will identify the list of amenities. Amenities must be for every Unit at no extra charge to the tenant. Applicants must select at least two (2) points from clause (iii) of this subparagraph.

Tax-Exempt Bond Developments must meet a minimum of nine (9) points. Direct Loan Applications not layered with HTCs must meet a minimum of five (5) points. Applications involving scattered site Developments must have a specific amenity located within each Unit to count for points. Rehabilitation Developments and Supportive Housing Developments will start with a base score of five (5) points. Rehabilitation Developments that also include New Construction will not start with a base score and must meet a minimum of nine (9) points.

(i) Unit Features include:

(I) covered entries; (0.5 point)

(II) nine foot ceilings in living room and all Bedrooms (at minimum); (1 point)

(III) microwave ovens; (0.5 point)

(IV) self-cleaning or continuous cleaning ovens; (0.5 point)

(V) storage room or closet of approximately 9 square feet or greater on the Property site, separate from and in addition to Bedroom, entryway or linen closets (does not need to be in the Unit); (0.5 point)

(VI) covered patios or covered balconies; (0.5 point)

(VII) high Speed Internet service to all Units (can be wired or wireless; must provide required equipment for either); (1 point)

(VIII) built-in (recessed into the wall) shelving unit; (0.5 point)

(IX) breakfast Bar (a space that includes an area for seating, seating itself not required); (0.5 point)

(X) walk-in closet in at least one Bedroom; (0.5 point)

(XI) 48-inch upper kitchen cabinets; (1 point)

(XII) kitchen island; (0.5 points)

(XIII) kitchen pantry with shelving (may include the washer/dryer unit for Rehabilitation Developments only); (0.5 point)

(XIV) natural stone or quartz countertops in kitchen and bath; (1 point)

(XV) double vanity in at least one bathroom; (0.5 point) and

(XVI) hard floor surfaces in over 50% of unit NRA. (0.5 point)

(ii) Development Construction Features include:

(I) covered parking (may be garages or carports, attached or freestanding) including at least one covered space per Unit; (1.5 points)

(II) thirty year roof ;(0.5 point)

(III) greater than 30% stucco or masonry (includes stone, cultured stone, and brick but excludes cementitious and metal siding) on all building exteriors (calculation may exclude exterior glass entirely); (2 points)

(IV) electric Vehicle Charging Station; (0.5 points)

(V) an Impact Isolation Class (IIC) rating of at least 55 and a Sound Transmission Class rating of 60 or higher in all Units, as certified by the architect or engineer of record; (3 points) and

(VI) green Building Features. Applicants may select from only one of the categories in items (-a-) - (-d-) of this subclause. If the Development involves scattered sites, each must incorporate green building features to qualify.
(4 points)

(-a-) Enterprise Green Communities. The Development incorporates, at a minimum, all items necessary to obtain Enterprise Green Communities certification applicable to the construction type as provided in the most recent version found at http://www.greencommunitiesonline.org.

(-b-) Leadership in Energy and Environmental Design (LEED). The Development incorporates, at a minimum, all applicable criteria necessary to obtain a LEED Certification for any rating level (i.e., Certified, Silver, Gold or Platinum).

(-c-) ICC/ASHRAE - 700 National Green Building Standard (NGBS). The Development incorporates, at a minimum, all applicable criteria necessary to obtain a NGBS Green Certification for any rating level (i.e., Bronze, Silver, Gold, or Emerald).

(-d-) 2018 International Green Construction Code.

(iii) Energy and Water Efficiency Features include:

(I) Energy-Star or equivalently rated refrigerator with icemaker; (0.5 point)

(II) Energy-Star or equivalently rated washers and dryers for each individual Unit (must be front loading in required accessible Units); (2 points)

(III) recessed LED lighting or LED lighting fixtures in kitchen and living areas; (1 point)

(IV) Energy-Star or equivalently rated ceiling fans in all Bedrooms; (0.5 point)

(V) EPA WaterSense or equivalent qualified toilets in all Bathrooms; (0.5 point)

(VI) EPA WaterSense or equivalent qualified showerheads and faucets in all Bathrooms; (0.5 point)

(VII) 15.2 SEER2 HVAC, an efficient evaporative cooling system in Region 13, or a radiant barrier in the attic for Rehabilitation (excluding Reconstruction) where such systems are not being replaced; (1 point)

(VIII) 16.0 SEER2 HVAC, for New Construction or Rehabilitation; (1.5 points)

(IX) a rainwater harvesting/collection system or locally approved greywater collection system; (0.5 points)

(X) Wi-Fi enabled, Energy-Star or equivalently rated “smart” thermostats installed in all units. (1 point)

(XI) solar panels installed, with a sufficient number of panels to reach a rated power output of at least 300 watts for each Low-Income Unit. (2 points)

(7) Resident Supportive Services. The resident supportive services include those listed in subparagraphs (A) - (E) of this paragraph. Applicants are not required to select a specific number of services from each section. Tax-Exempt Bond Developments must meet a minimum of eight (8) points. Direct Loan Applications not layered with HTCs must meet a minimum of four points. The LURA will include the points selected, complete list of supportive services, and a requirement to maintain them throughout the Affordability Period. The Owner may change the services offered if the overall points as selected at Application remain the same; however, a 45-day notice must be provided to tenants of the change. Staff may require an Owner to substantiate such service(s). Should the QAP in subsequent years provide different services than those listed in this paragraph, the Owner may request an Amendment under §10.405(a)(2) of this chapter. The services provided should directly benefit the Target Population. Owners must provide residents written notice

of the elections made, not charge fees to the residents for any of the services, provide adequate space, and make services accessible to all (e.g., exercises classes enable a person with a disability to participate). Unless otherwise specified, Owners must provide either services on-site or transportation off-site services. Applicants may not use the same service for more than one scoring item. An entity qualified and reputable in the specified industry with sufficient knowledge must provide the service. In general, on-site leasing or maintenance staff are not a qualified provider. Where applicable, the services must be documented by a written agreement with the provider.

(A) Transportation Supportive Services include:

(i) shuttle, at least three days a week, to a grocery store and pharmacy (may be inside a major, big-box retailer) or a daily shuttle, during the school year, to and from nearby schools not served by a bus system for children who live at the Development; (3.5 points) and

(ii) monthly transportation to community/social events such as mall trips, community theatre, bowling, organized tours, etc. (1 point)

(B) Children Supportive Services include:

(i) a High Quality Pre-Kindergarten (HQ Pre-K) program and associated educational space at the Site meeting the requirements of paragraph (5)(C)(i)(I) of this subsection; (half of the points required under this paragraph) and

(ii) 12 hours of weekly, organized, on-site services provided by a dedicated service coordinator or third-party entity to K-12 children, including after-school and summer care and tutoring, recreational activities, character building programs, mentee opportunities, test preparation, and similar activities that promote the betterment and growth of children and young adults. (3.5 points)

(C) Adult Supportive Services include:

(i) Four hours of weekly, organized, in-person, hybrid, or virtual classes to equip adult residents with new skills, accessible to participants from an onsite Common Area, including English as a second language, computer training, financial literacy, homebuyer counseling, health education, certification courses, GED preparation, resume and interview prep, and general presentations about community services and resources. (3.5 points)

(ii) Annual income tax preparation (offered by an income tax prep service) or IRS-certified Volunteer Income Tax Assistance program (offered by a qualified individual) that includes how to claim the Earned Income Tax Credit. (1 point)

(iii) Contracted career training and placement partnerships with local worksource offices, culinary programs, or vocational counseling services, including 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)

(iv) External partnerships for provision of weekly substance abuse meetings at the Site. (1 point)

(v) Reporting rent payments to credit bureaus for any resident who affirmatively elects to participate. (2 points)

(vi) Participating in a non-profit healthcare job training and placement service that includes case management support and other need-based wraparound services to reduce barriers to employment and support Texas healthcare institution workforce needs. (2 points)

(vii) An eviction prevention program operated by a case manager who may be an employee of the Owner or a third-party social service provider and responsible for no more than 50 cases at a time. On at least a monthly basis, the case manager will obtain contact information and past due balances for households at risk of eviction for nonpayment of rent. The case manager will offer households voluntarily choosing to participate an eviction holdoff agreement providing a minimum of six months to resolve the past due balance and forgiving any associated late fees regardless of whether they have been paid. During the eviction holdoff period, the case manager will offer to meet with the household at least once every other week. The case manager will identify resources that provide emergency rental assistance and other financial support and assist the household in applying. (5 points)

(D) Health Supportive Services include:

(i) Food pantry consisting of an assortment of non-perishable food items and common household items (i.e., laundry detergent, toiletries, etc.) accessible to residents at least monthly or upon request. Transportation provided to a local food bank meets this requirement if residents are not required to pay for items received. (2 points).

(ii) Annual health fair provided by a health care professional. (1 point)

(iii) Weekly exercise classes (offered at times when most residents would be likely to attend). (2 points)

(iv) Contracted onsite occupational or physical therapy services for Elderly Developments or Persons with Disabilities. (2 points)

(E) Community Supportive Services include:

(i) Partnership with local law enforcement or local first responders to provide quarterly on-site social and interactive activities intended to foster relationships with residents, including playing sports, having a cook-out, swimming, card games, etc. (2 points)

(ii) Notary Services during regular business hours. (§2306.6710(b)(3)) (1 point)

(iii) Twice monthly arts, crafts, and other recreational activities, including Book Clubs and creative writing classes. (1 point)

(iv) Twice monthly on-site social events, including potluck dinners, game night, sing-a-longs, movie nights, birthday parties, holiday celebrations, etc. (1 point)

(v) Specific service coordination services offered by a qualified provider for seniors, Persons with Disabilities, or Supportive Housing. (3 points)

(vi) Weekly home chore services (including valet trash removal, assistance with recycling, furniture movement, etc.) and quarterly preventative maintenance for Elderly Developments or for Persons with Disabilities. (2 points)

(vii) Any program described under Title IV-A of the Social Security Act (42 U.S.C. §§601, et seq.) which

(I) enables children to be cared for in their homes or the homes of relatives;

(II) ends the dependence of needy families on government benefits by promoting job preparation, work and marriage;

(III) prevents and reduces the incidence of unplanned pregnancies; and

(IV) encourages the formation and maintenance of two-parent families. (1 point)

(viii) A part-time resident services coordinator with a dedicated onsite office space or a contract with a third-party to provide the equivalent of 15 hours or more of weekly resident supportive services. (2 points).

(ix) Either the Owner or a community partner provides an education tuition- or savings-match program or scholarships to residents who may attend college. (2 points).

(8) Development Accessibility Requirements. All Developments must meet all specifications and requirements in subparagraphs (A) - (F) of this paragraph and any other applicable state or federal rules and requirements.

(A) The Development must comply with the accessibility requirements under Federal law. (§§2306.6722; 2306.6730).

(B) Regardless of building type, all Units accessed by the ground floor or by elevator must comply with the visitability requirements in clauses (i) - (iii) of this subparagraph and the Fair Housing Act Design Manual. (Buildings occupied for residential use on or before March 13, 1991 are exempt.) The Applicant will not be required to add a bathroom to meet the requirements of clause (iii) of this subparagraph to townhome Units of a Rehabilitation Development with no bathroom on the ground floor. Visitability requirements include:

(i) All common use facilities must comply with the Fair Housing Design Act Manual.

(ii) To the extent required by the Fair Housing Design Act Manual, there must be an accessible or exempt route from common use facilities to the affected units.

(iii) All Units accessed by the ground floor or by elevator must include the features in subclauses (I) - (V) below:

(I) At least one zero-step, accessible entrance.

(II) At least one Bathroom or half-bath with toilet and sink on the entry level with a layout that complies with one of the specifications set forth in the Fair Housing Act Design Manual.

(III) The Bathroom or half-bath must have the appropriate blocking relative to the toilet for the later installation of a grab bar.

(IV) There must be an accessible route from the entrance to the Bathroom or half-bath, and the entrance and bathroom must provide usable width.

(V) Light switches, electrical outlets, and thermostats on the entry level must be at accessible heights.

(C) The Owner is and will remain in compliance with applicable state and federal laws. (§2306.257; §2306.6705(7))

(D) All Applications proposing Rehabilitation (including Reconstruction) will count as substantial alteration in accordance with Chapter 1, Subchapter B of this title.

(E) For the purposes of determining the appropriate distribution of accessible Units across Unit Types, assuming all Units have similar features, only the number of Bedrooms and Full Bathrooms will define the Unit Type. Accessible Units must have an equal or greater square footage than the square footage offered in the smallest non-accessible Unit with the same number of Bedrooms and Full Bathrooms. For Direct Loan Developments, the definition of Unit Type will define the Unit Type, although a single story Unit may be substituted for a townhome Unit if it contains the same number of Bedrooms and Full Bathrooms/Half Bathrooms (as applicable) and has an equal or greater square footage.

(F) The Department must approve alternative methods of calculating the number of accessible Units required prior to award or allocation.

SUBCHAPTER C. APPLICATION SUBMISSION REQUIREMENTS, INELIGIBILITY CRITERIA, BOARD DECISIONS AND WAIVER OF RULES

10 TAC §§11.201 - 11.207

§11.201.Procedural Requirements for Application Submission.

A Site may be the subject of only one Application in an Application Round. While the Application Acceptance Period is open or prior to the Application deadline, an Applicant may withdraw and subsequently file a new Application using the original pre-application fee (as applicable) as long as the Department did not perform substantive evaluation and the re-submitted Application relates to the same Site, consistent with §11.9(e)(3) of this chapter. Otherwise, withdrawal of an Application is permanent.

(1) General Requirements.

(A) An Applicant must submit an Application to receive an award. An Application must be complete (including all required exhibits and supporting materials) and submitted by the required program deadline. An Applicant may cure an error in the calculation of applicable fees via an Administrative Deficiency until 5:00 p.m. on the third business day following the date of the deficiency notice (date may not be extended).

(B) Applicants are responsible for being within the Department's doors by the appointed deadline when making physical deliveries. All Applications and all related materials must be delivered electronically pursuant to the *Multifamily Programs Procedures Manual* and legible, properly organized and tabbed, and fully readable.

(C) The Applicant must timely upload matching .PDF and Excel copies of the complete Application to the Department's secure web transfer server. Staff may issue an Administrative Deficiency for the Applicant to identify which document to rely on if variations exist. Each copy must be in a single file and individually bookmarked as further described in the *Multifamily Programs Procedures Manual*. Applicants must upload additional files required for Application submission outside the Uniform Application to the secure web transfer server. Applicants are responsible for confirming the upload was successful and timely by viewing the uploaded files. Staff may confirm the upload but is not obligated to do so.

(D) Applications must include materials addressing all items enumerated in this chapter and other chapters, as applicable. For any required item not submitted, the Applicant must include a statement explaining why.

(2) Filing of Application for Tax-Exempt Bond Developments. Applications must be submitted as described in either subparagraph (A) or (B) of this paragraph and satisfy the requirements of this chapter and applicable Department rules coinciding with the year the Certificate of Reservation is issued. Applications receiving a Traditional Carryforward Designation will be subject to the QAP and applicable Department rules in place when the Department receives the Application, unless staff determines otherwise. Applicants must adhere to the requirements in this chapter regardless of the timing associated with notification by the TBRB that an application is next in line to receive a Certificate of Reservation and the corresponding deadline to submit pursuant to 34 TAC §190.3(b)(13).The Department may terminate an Application for not adhering to the requirements in this chapter. Depending on the timing of the online Multifamily Management System release, staff may allow an Applicant to submit an Intent to Apply for 4% Housing Tax Credits form (and the required Application Fee) to meet the requirement to have the Certificate of Reservation issued by the TBRB in lieu of submitting as described in this chapter for Priority 1 and 2 applications.

(A) Lottery Applications. At the option of the bond issuer, an Applicant may participate in the TBRB lottery for private activity bond volume cap. Applications must meet clauses (i) - (iii) of this subparagraph depending on the Priority designation of the application filed with TBRB. For those that participate in the Lottery but are not successful (a Certificate of Reservation will not be issued in January, but at some other time), the Application may not be submitted until a Certificate of Reservation has been issued (Priority 3 applications) or TBRB has sent an email stating the application is next in line (Priority 0, Priority 1 or Priority 2), but the Certificate of Reservation cannot be issued until the Application is submitted.

(i) Priority 0 applications for supplemental bond allocations: A complete Application is not required if an Applicant is seeking additional private activity bond volume cap pursuant to Tex. Gov't Code §1372.0321(a) upon notice from the TBRB that the Application is next in line to receive a Certificate of Reservation (staff will notify TBRB accordingly). If changes from what the Department originally approved would constitute an amendment under §10.405 of this title, the Applicant must request an Amendment. Staff will not re-issue the Determination Notice associated with supplemental bond allocations.

(ii) Priority 1 or 2 applications:

(I) If the Certificate of Reservation will be issued in January, the Applicant may submit the complete Application (including all required Third Party Reports) and Application Fee described in §11.901 of this chapter within the timeframe allowed under the TBRB notice.

(II) Alternatively, upon notification from TBRB that an Applicant is next in line to receive a Reservation, the Applicant may choose to submit only the complete Application (excluding all required Third Party Reports), for purposes of meeting TBRB requirements to have the Certificate of Reservation issued. The Application will not be scheduled for a Board meeting or target date for the issuance of the Determination Notice, as applicable, until such time the Third Party Reports have been submitted on the fifth of the month. The Application may be scheduled for a Board meeting at which the decision to have the Determination Notice issued would be made, or the target date for the issuance of the Determination Notice, as applicable, approximately 90 days after submission of the Third Party Reports. If the fifth day falls on a weekend or holiday, the submission deadline will be on the next business day. For Third Party Reports submitted after the fifth of the month, staff has the discretion as to which Board meeting the Application will be presented, or target date for the issuance of the Determination Notice, as applicable. The Application must be submitted using the Uniform Application released by the Department for the upcoming program year.

(iii) Priority 3 applications: The same Application submission requirements under clause (ii) of this subparagraph apply once the Certificate of Reservation has been issued. Specifically, an Applicant may submit the Application including or excluding the Third Party Reports. Staff will schedule the Application for a Board meeting or target date for the issuance of the Determination Notice only after the Application is complete (Application Fee and all Third Party Reports). The timing of when a Priority 3 Application is submitted to is up to the Applicant. If not submitted on the fifth of the month, staff has the discretion as to which Board meeting the Application will be presented, or target date for the administrative issuance of the Determination Notice, as applicable.

(B) Non-Lottery Applications or Applications Not Successful in Lottery.

(i) Applications designated as Priority 1 or 2 by the TBRB must submit the Application Fee described in §11.901 of this chapter and the complete Application, with the exception of Third Party Reports, before the TBRB can issue the Certificate of Reservation. If not submitted with the Application to meet the TBRB submission requirement, Third Party Reports must be submitted on the fifth day of the month and the Application may be scheduled for a Board meeting at which the decision to have the Determination Notice issued would be made, or the target date for the administrative issuance of the Determination Notice, as applicable, approximately 90 days following such submission deadline. If the fifth day falls on a weekend or holiday, the submission deadline will be on the next business day. If not submitted on the fifth of the month, staff has the discretion as to which Board meeting the Application will be presented, or what will be the target date for the administrative issuance of the Determination Notice, as applicable. Applicants may not submit the Application until staff receives notice from TBRB that the application is next in line to receive a Certificate of Reservation.

(ii) An Application designated as Priority 3 will not be accepted until after the TBRB has issued a Certificate of Reservation and may be submitted on the fifth day of the month. Priority 3 Application submissions must be complete, including all Third Party Reports and the required Application Fee described in §11.901 of this chapter, before the Department will consider them accepted and meeting the submission deadline for the applicable Board meeting date or administrative issuance of the Determination Notice, as applicable.

(C)The Department will require at least 90 days to review an Application, or 120 days if layered with other Department funds, regardless of whether the Board will need to approve issuance of the Determination Notice or staff do so administratively. Applications cannot include a request for over-subscribed funds. Staff is not obligated to ensure the Application meets the original target date for a Board Meeting or administrative issuance of a Determination Notice, as applicable. Application review priority is established in paragraph (5) of this section.

(D) Withdrawal of Certificate of Reservation. The Department will consider as withdrawn any Application under review by the Department that have the Certificate of Reservation withdrawn and for which a new Certificate of Reservation is not expected to be issued within a reasonable amount of time, as determined by staff. Staff will provide the Applicant notice to that effect. Once a new Certificate of Reservation is issued, the Department has the discretion to determine whether the existing Application can still be utilized or if a new Application (including payment of another Application Fee) must be submitted. The Department will not prioritize the processing of the new Application over others under review once a new Certificate of Reservation is issued, or that it maintain the originally selected Board meeting or targeted administrative issuance date for the Determination Notice, as applicable.

(E) Applicants must submit Direct Loan Applications in accordance with the requirements in this chapter, §13.5 and the applicable NOFA.

(F) The Staff may provide reasonable relief from non-statutory deadlines and other requirements of this chapter to facilitate testing of an online system. Applicants that participate in such testing will receive no advantage.

(3) Withdrawal of Application. An Applicant may withdraw an Application prior to or after award by submitting to the Department written notice. Return of a Direct Loan award after Board approval may result in penalties imposed on the Applicant and Affiliates in accordance with §13.11(a) of this title.

(4) Competitive Evaluation Process. The Department will conduct Application reviews based upon the likelihood of being competitive and may not review lower scoring Applications. This may be a high level assessment. The Department will underwrite Applications that received a full program review and remain competitive using §11.302 of this chapter and §13.6 of this title, as applicable. The Department may have an external party perform all or part of the underwriting evaluation, Prior to commencing the evaluation, Applicants will pay the expense of any external underwriting pursuant to §11.901(5) of this chapter. Applications will undergo a previous participation review in accordance with Chapter 1, Subchapter C of this title. The Department or its agents may evaluate a site and neighboring areas through a physical inspection or visit independent of or concurrent with a site visit performed in conjunction with §11.101(a)(3). The Department may provide the Applicant a scoring notice no later than 21 days prior to the final Board approval of awards, which will trigger appeal rights and deadlines under §11.902 of this chapter. (§2306.6715)

(5) Order of review of Applications under various Programs.

(A) De-concentration. The earlier date associated with an Application will establish priority, as follows:

(i) for Tax-Exempt Bond Developments, the date the TBRB issues the Certificate of Reservation, or for a Traditional Carryforward Designation, the date the Department receives the complete HTC Application associated with the Traditional Carryforward Designation;

(ii) for all other Developments, the date the Department receives the Application; and

(iii) notwithstanding the foregoing, after July 31 of the current program year, a Tax-Exempt Bond Development with a Certificate of Reservation from the TBRB will take precedence over any HTC Application from the current Application Round on the waiting list.

(B) General Review Priority. Staff will establish the order of reviews of Applications under various multifamily programs based on any applicable statutory timeframes in relation to the volume of Applications being processed.

(6) Deficiency Process. The Department may issue a deficiency notice during any review phase. Staff will email the deficiency notice to the Applicant and one other contact party if identified in the Application. The Applicant is responsible for ensuring e-mails are not electronically blocked or redirected. The period to respond commences on the first business day following the deficiency notice date. The Department may send deficiency notices to an Applicant prior to or after the end of the Application Acceptance Period and in response to post-award submission reviews. Responses must be one or more PDF files uploaded to the Application's ServU http file. The Department will not accept emailed responses. Staff may in good faith provide an Applicant confirmation of receiving an Administrative Deficiency response or that such response is satisfactory, which does not establish any entitlement to points, eligibility status, or to any presumption of having fulfilled any requirements. Staff may determine the issues identified are Material Deficiencies not subject to resolution (beyond the scope of an Administrative Deficiency). The Department will make final determinations regarding the sufficiency of documentation submitted to cure a Deficiency as well as the distinction between material and non-material missing information.

(A) A person who receives a deficiency is responsible for addressing the matter so staff is able to review the response by the close of business on the date by which resolution must be complete and the deficiency fully resolved. Merely submitting materials prior to that time places the responsibility on the responding party of adverse consequences if the materials do not fully resolve the matter (point deductions, suspension, or termination). A Deficiency response may not contain documentation that did not exist prior to submission of the pre-application or Full Application, as applicable, except as specifically allowed by 10 TAC §11.1(d)(2). Administrative Deficiency deadlines may be extended up to five days if the

(i) documentation needed is from a Third Party,

(ii) certifications in the Application lack Third Party signatures, or

(iii) extension request is for a reasonable accommodation.

(B) Deficiencies for Competitive HTC Applications. An Application will lose five (5) points from the selection criteria score for each day a deficiency remains unresolved after 5:00 p.m. on the fifth business day following the date of the deficiency notice (does not impact the Pre-Application score). The Department will terminate an Application if deficiencies are not resolved by 5:00 p.m. on the seventh business day following the date of the deficiency notice, subject to the Applicant's right to appeal. The Department may update its application log or issue a Scoring Notice to reflect point deductions. Other than in response to a Department request resulting from an Administrative Deficiency, 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 (including not adding any set-asides, increasing the requested HTC amount, revising the Unit mix, or adjusting the self-score). (§2306.6708(b); §2306.6708) The Deficiency Process may not increase a scoring item's points or to change any aspect of the proposed Development, financing structure, or other element unless specifically allowed by rule.

(C) Deficiencies for Tax-Exempt Bond Developments. Unless the Applicant has requested an extension prior to the deadline, deficiencies must be resolved to the Department’s satisfaction by 5:00 p.m. on the fifth business day following the date of the deficiency notice. Otherwise the Department will suspend the Application from further processing and notify the Applicant. The Department will terminate an Application if deficiencies are not resolved by 5:00 p.m. on the fifth business day following the date of the suspension notice. If an Applicant appeals a staff termination, the Board decision is final and an Applicant may not re-apply under the same Certificate of Reservation due to the limited timeframe allowed.

(D) Deficiencies for Direct Loan-only Applications. Deficiencies must be resolved to the Department’s satisfaction by 5:00 p.m. on the fifth business day following the date of the deficiency notice. Otherwise the Department will suspend the Application from further processing and notify the Applicant. The Department will terminate an Application if deficiencies are not resolved by 5:00 p.m. on the fifth business day following the date of the deficiency notice. For purposes of priority under the Direct Loan set-asides, if the outstanding item(s) are resolved during the suspension period, the date by which the final deficient item is submitted will be the new Application Acceptance Date pursuant to §13.5(c) of this title. After Termination an Applicant must submit a completely new Application (along with a new Application Fee, as applicable) to move forward with the Development. All deficiencies in the original deficiency notice must be incorporated into the re-submitted Application, which will have a new Application Acceptance Date.

(7) Limited Reviews. An Applicant may request a limited review of specific and limited issues in subparagraphs (A) or (B) of this paragraph (not related to the score). Staff will request any correction or clarification through the Deficiency process in paragraph (6) of this section if appropriate.

(A) Clarification of issues that staff would have difficulty identifying due to the omission of information available only through Applicant disclosure, such as a prior removal from a HTC transaction or participation in a Development not identified in the previous participation portion of the Application.

(B) Technical correction of non-material information that would cause an Application to be competitive and subject to a staff review. For example, failure to mark eligibility for the Nonprofit Set-Aside.

(8) Challenges to Opposition. An Applicant may challenge a written statement from a Neighborhood Organization expressing opposition if it is contrary to findings or determinations (including zoning) of a municipality, county, school district, or other local Governmental Entity with relevant jurisdiction or oversight. The challenger must declare the basis and submit by the Challenges to Neighborhood Organization Opposition Delivery Date in §11.2 of this chapter and no later than May 1 of the current year for Competitive HTC Applications. The Neighborhood Organization expressing opposition will have seven calendar days to provide information. Staff will provide all such materials and its analysis to a fact finder chosen by the Department for a determination of whether the statements are contrary to a local Governmental Entity's findings or determinations (not accuracy of the statements). The fact finder's determination will be final and may not be waived or appealed.

§11.202.Ineligible Applicants and Applications.

Anyone may identify situations in which an Application or Applicant may be ineligible for award. The items in this section are not an exhaustive list of ineligibility criteria. Staff may request documentation or verification of compliance with any requirements related to the eligibility of an Applicant, Application, Site, or Development. The matters in paragraph (1) of this section may also serve as a basis for debarment or assessment of administrative penalties. Nothing herein limits the Department's ability to pursue any such matter. Failure to provide disclosure may be cause for termination.

(1) Applicants. An Applicant may be ineligible if any of the criteria in subparagraphs (A) - (N) below apply to those identified on the organizational chart for the Applicant, Developer and Guarantor.

(A) Has been or is barred, suspended, or terminated from participation in a state or Federal program, including those in the U.S. government's System for Award Management. (§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 15 years preceding the received date of Application or Pre-Application submission (if applicable).

(C) At the time of Application is subject to

(i) an order in connection with an enforcement or disciplinary action under state or federal securities law or by FINRA;

(ii) a federal tax lien (other than a contested lien for which provision has been made); or

(iii) penalties, suspended funding, or adverse action taken by a Government Entity based on an allegation of financial misconduct or uncured violation of material laws, rules, or other legal requirements governing activities.

(D) Has materially breached a contract with a public agency, and, if such breach is permitted to be cured, has been given notice and a reasonable opportunity to cure yet failed to do so within the specified time.

(E) Has misrepresented to a subcontractor the extent to which the Developer has benefited from contracts or financial assistance 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 based on a previous participation review performed in accordance with Chapter 1 Subchapter C of this title.

(G) Is delinquent in any loan, fee, or escrow payments to the Department or is otherwise in default with any provisions of Department loans, and for which the Department has not approved a repayment plan.

(H) Has failed to cure any past due fees owed to the Department within the time frame provided and at least 10 days prior to the Board meeting at which the decision for an award is to be made.

(I) Would be prohibited by a state or federal revolving door or other standard of conduct or conflict of interest statute, including Tex. Gov't Code §2306.6733 or Chapter 572, from participating in the Application in the manner and capacity they are participating.

(J) Had previous Contracts or Commitments partially or fully Deobligated (without prior Department approval) during the 12 months prior to Application submission, and through the date of final allocation due to a failure to meet contractual obligations, and the Person is on notice that such Deobligation results in ineligibility under this chapter.

(K) Has provided false or misleading documentation or made other intentional or negligent material misrepresentations or omissions in or in connection with an Application (and certifications contained therein), Commitment or Determination Notice, or Direct Loan Contract.

(L) Was the Owner or Affiliate of the Owner of a Department assisted rental Development for which the federal affordability requirements were prematurely terminated and the affordability requirements have not been re-affirmed or Department funds repaid.

(M) Fails to disclose any Principal, entity, or Person in the Development ownership structure who was or is involved as a Principal in any other affordable housing transaction that has terminated voluntarily or involuntarily within the past 10 years, or plans to or is negotiating to terminate, their relationship with any other affordable housing development. The disclosure must identify the person(s) and development involved, each other development, 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. Staff may refer an Application to the Board for a determination of a person's fitness to be involved as a Principal with respect to an Application using the factors described in clauses (i) - (v) below as considerations:

(i) the amount of resources in and benefit received from the Development;

(ii) the legal and practical ability to address issues that may have precipitated the termination or proposed termination;

(iii) the role of the person in any problems with the success of the development;

(iv) the person's compliance history, including 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 role as described in the Application.

(N) Fails to disclose any voluntary compliance agreement or similar agreement with any governmental agency resulting from noncompliance of any affordable housing Development.

(O) Controls an existing HTC Development that has been approved by staff or the Board for return and reallocation under 10 TAC §11.6 two or more times and has not yet commenced construction. For Applications that are only requesting Competitive HTCs, an Applicant ineligible under this subparagraph may be eligible if the disqualifying Development has commenced construction as of the May meeting of the Board or May 31st, whichever is sooner. Any such Applicant assumes the risk of doing so. Staff will not recommend to the Board any waiver if the disqualifying Development does not commence construction in time.

(2) Applications. An Application will be ineligible if any of the criteria in subparagraphs (A) - (C) below. Failure to provide disclosure may be cause for termination.

(A) A violation of Tex. Gov't Code §2306.1113, exists relating to Ex Parte Communication, which occurs when an Applicant or Person representing an Applicant initiates substantive contact (other than permitted social contact, such as both attending an event) 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 Tex. Gov't Code §2306.1113(b). The prohibition remains in effect so long as the Application is eligible for award.

(B) The Application is submitted after the Application submission deadline (time or date), is missing multiple parts, or has a Material Deficiency.

(C) For any Development utilizing HTCs or Tax-Exempt Bonds:

(i) the Applicant or a Related Party is or has been a person covered by Tex. Gov't Code §2306.6703(a)(1) 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);

(ii) if the Application is represented or communicated about by a Person that would prompt the violations covered by Tex. Gov't Code §2306.6733.

(iii) The Applicant proposes to replace in less than 15 years any private activity bond financing described by the Application, unless the exceptions in Tex. Gov't Code §2306.6703(a)(2) are met.

§11.203.Public Notifications. (§2306.6705(9)).

An Application must include a certification that the Applicant met the requirements and deadlines identified in paragraphs (1) - (3) of this section not older than three months from the first day of the Application Acceptance Period for Competitive HTC applications. For Tax-Exempt Bond Developments and Direct Loan Applications, notifications generally must not be older than three months prior to the date the complete Application is submitted. No additional notifications are required to those made to satisfy pre-application submission requirements. If the jurisdiction of an official described in paragraph (2) of this section changes between the submission of a pre-application and Application such that the Development is in a new jurisdiction, the Applicant must notify the new entity no later than the Full Application Delivery Date.

(1) Neighborhood Organization Notifications. The Applicant must identify, list, and notify all Neighborhood Organizations described in §11.8(b)(2)(A) of this chapter.

(2) Notification Recipients. Applications must comply with the notification requirements in §11.8(b)(2)(B) of this chapter no later than the date the Application is submitted.

(3) Contents of Notification. Notifications must comply with the content requirements in §11.8(b)(2)(C) of this chapter.

§11.204.Required Documentation for Application Submission.

This section identifies the threshold documentation required at the time of Application submission. 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.

(1) Certification, Acknowledgement, and Consent of Owner. Applications must include an executed certification described in subparagraphs (A) - (I) below. The Person executing the certification is responsible for the compliance of all individuals referenced therein and that they have given it with all required authority and with actual knowledge of the matters certified.

(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 none 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 Tex. Gov't Code, Chapter 552. Any person signing the Certification acknowledges that they have the authority to release all materials for publication on the Department's website, that the Department may release them in response to a request for public information, and make other use of the information as authorized by law.

(C) All representations, undertakings and commitments made by Applicant in the Application process expressly constitute conditions to any Commitment, Determination Notice, Carryover Allocation, or Direct Loan Commitment for such Development and will be enforceable by the Department and residents in accordance with the LURA, including administrative penalties for failure to perform (consistent with Chapter 2, Subchapter C of this title). The violation of any such condition is sufficient cause for the cancellation and rescission by the Department. If any such representations, undertakings and commitments concern or relate to the ongoing features or operation of the Development, they will be enforceable even if not reflected in the LURA.

(D) The Owner has read and understands the fair housing educational materials posted on the Department's website as of the beginning of the Application Acceptance Period.

(E) The Applicant will attempt to ensure that at least 30% of the construction and management businesses with which the Applicant contracts in connection with the Development are Minority Owned Businesses as further described in Tex. Gov't Code §2306.6734.

(F) The Owner will specifically market to veterans through direct marketing or contracts with veteran's organizations and will specifically market to waitlist(s) of any public housing authority (PHA) within five miles. The Owner will identify how they will specifically market to veterans and the PHA waiting list(s) and report to the Department on the results of the marketing efforts in the annual report. The Department must approve exceptions to this requirement.

(G) The Owner will comply with all notices required by the Department.

(H) The Owner will comply with an existing LURA with the Department.

(I) The Owner acknowledges that all Applications are subject to a review for compliance with applicable accessibility standards, including Rehabilitation.

(2) Applicant Eligibility Certification. Any individual required to be listed on the organizational chart and meeting the definition of Control must execute a certification of the information in this subchapter as well as Subchapter B of this chapter identifying the eligibility requirements associated with multifamily funding, including the criteria identified under §11.202 of this chapter.

(3) Engineer/Architect Certification Form. The Development engineer or accredited architect must certify all of the accessibility requirements applicable to the Site, including Tex. Gov't Code §2306.6722 and §2306.6730.

(4) Notice, Hearing, and Resolution for Tax-Exempt Bond Developments. The following actions must take place with respect to filing an Application and any Department consideration for a Tax-Exempt Bond Development. (§2306.67071)

(A) An Applicant must provide notice of the intent to file the Application in accordance with §11.203 of this chapter prior to submitting to the Department.. (§2306.6705(9))

(B) The Governing Body of a

(i) municipality must hold a hearing if the Site is located within a municipality, or

(ii) county must hold a hearing if not.

For Sites located in an ETJ both must hold a hearing (may arrange for a joint one). The purpose of the hearing(s) is for the public to have an opportunity to provide input concerning the Application or Development . The public or local government officials may ask the Applicant to substantively address the concerns of.

(C) An Applicant must submit to the Department a resolution of no objection from the applicable Governing Body specifically identifying the Development by legal description, address, name, Application number or other verifiable method. For a Site:

(i) within a municipality, from its Governing Body;

(ii) within the ETJ of a municipality, from the Governing Body of both

(I) that municipality; and

(II) the county;

(iii) within a county and not within a municipality or the ETJ of a municipality, from the county.

(D) For purposes of the requirements of subparagraph (C) of this paragraph, the resolution(s) must be submitted no later than the Resolutions Delivery Date described in §11.2(b) of this chapter. Resolutions may not be older than four years.

The Multifamily Programs Procedures Manual contains an acceptable, but not required, form of resolution. Staff will invalidate resolutions without all appropriate references and certifications. The representations made to obtain the resolution(s) must remain accurate.

If material aspects of the Development change adoption of the resolution(s), the Applicant is responsible for obtaining new resolution(s) to satisfy this requirement. The resolution(s) must certify that:

(i) notice has been provided to the Governing Body in accordance with Tex. Gov't Code §2306.67071(a);

(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 Tex. Gov't Code §2306.67071(b); 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.

(A) Each Application must identify whether the Site is in an Urban or Rural Area. The Department will post a list of Places meeting the requirements of Tex. Gov't Code §2306.004(28-a)(A) and (B) for designation as a Rural Area and Urban Areas in the Site Demographics Characteristics Report. Sites located in the ETJ of a municipality and not in a Place have the designation of the ETJ's municipality. Sites not in the boundaries of a Place or the ETJ of a municipality have the applicable designation of the closest Place.

(B) A duly authorized official of a political subdivision or census designated place located in a metropolitan statistical area can submit a letter to the Department requesting a Rural designation, addressing the factors outlined in clauses (i) - (vi) below, no later than December 15 of the previous year. (§2306.6740) Staff will grant the request if able to confirm its findings. The Rural designation will remain in effect until the population as described in clause (i) below exceeds 25,000. If staff is unable to confirm, the official will have an opportunity to supplement the case. Staff will recommend denial to the Board if still unable to confirm. The factors include the political subdivision or census designated place:

(i) population does not exceed 25,000;

(ii) characteristics and how those differ from the characteristics of the area(s) with which it shares a contiguous boundary;

(iii) percentage of the total border is contiguous with urban areas (less than 50% contiguity is presumptively rural);

(iv) contains a significant number of unimproved roads or relies on unimproved roads to connect it to other places;

(v) lacks major amenities commonly associated with urban or suburban areas; and

(vi) boundaries contain, or are surrounded by, undeveloped or agricultural landmore than one-third of the total surface area, or a minimum of 1,000 acres immediately contiguous to the border.

(6) Financing Requirements.

(A) Non-Department Debt Financing. Applications must include interim and permanent financing sufficient to fund the proposed Total Housing Development Cost less any resources requested from the Department. If a Development is a part of a larger development on the same site, the Department may request information related to whether financial viability depends in whole or part on the other portions. The rent schedule must identify any local, state or federal financing that restricts household incomes lower than restrictions required or elected in accordance with this Chapter or Chapter 13 of this title. The local, state or federal income restrictions must include corresponding rent levels in accordance with Code §42(g) if the Development will receive HTCs. Financing amounts must be consistent throughout the Application. Acceptable documentation includes those in clauses (i) - (iv) below.

(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 Owner as grantor.

(ii) Term sheets for interim and permanent loans issued by a lending institution or mortgage company must be or include:

(I) current, non-expired, and have been signed or otherwise acknowledged by the lender;

(II) addressed to the Owner or Affiliate;

(III) for a permanent loan, include a minimum loan term of 15 years with at least a 30 year amortization or a term of not less than 30 years for non-amortizing loans;

(IV) either a committed and locked interest rate or lender estimated underwritten interest rate;

(V) the “up to” principal amount of the loan; and

(VI) any other material terms and conditions (may be conditioned on completing specified due diligence and HTC award).

(iii) For Developments proposing to refinance an existing USDA Section 514, 515, or 516 loan, a letter from the USDA confirming the outstanding loan balance on a specified date and the Applicant has submitted the Preliminary Assessment Tool. The loan amount reported on the Schedule of Sources (tab 31 in the MF Uniform Application) and used to determine the acquisition cost must be the Applicant's estimate of the projected outstanding loan balance at the time of closing, as calculated on the USDA Principal Balance Amortization exhibit.

(iv) For Direct Loan Applications or Tax-Exempt Bond Developments with TDHCA as the issuer that utilize FHA financing, the Application must include the applicable pages from the HUD Application for Multifamily Housing Project. A submitted Application must state if the HUD application has not been submitted and an estimated date for doing so. Staff's underwriting will not be final and presented to the Board without evaluating the HUD Application.

(B) Gap Financing. Applications must identify and describe any anticipated federal, state, local or private gap financing and provide evidence that an application has been made, including a letter from the funding entity confirming application receipt or a term sheet from the lending agency describing the financing amount and terms. Other Department funding requested with HTC Applications must be on a concurrent funding period. All soft or below market rate financing must be committed by 10% test for Competitive Applications; a 10% test extension will not be granted if these sources are not committed or the gap filled by other committed sources.

(C) Owner Contributions. If a capital contribution or debt by any partner or investor not providing the syndication equity, a Guarantor or a Principal in an amount that exceeds 5% of the Total Housing Development Cost, the Application must include a letter from

(i) a Third Party CPA verifying the capacity of the contributor to provide the capital from funds not otherwise committed or pledged,

(ii) the contributor's bank(s) or depository(ies) confirming sufficient funds are readily available, and

(iii) the contributor certifying the funds are and will remain readily until completing the required investment.

All capital contributions other than syndication equity will be Deferred Developer Fee for feasibility purposes under §11.302(i)(2) of this chapter or for scoring, unless the contribution is a seller note equal to or less than the acquisition price, a Supportive Housing Development, there are no HTCs, or the ownership structure includes a nonprofit organization with a documented history of fundraising sufficient to support affordable housing development.

(D) Equity Financing. (§2306.6705(2) and (3)) If applicable to the program, the Application must include a term sheet from a syndicator including, at a minimum:

(i) an estimate of the amount of equity dollars expected to be raised;

(ii) the amount of HTCs requested for allocation;

(iii) pay-in schedules; and

(iv) syndicator consulting fees and other syndication costs.

(E) Financing Narrative. (§2306.6705(1)) Applications must include a narrative describing any special, complex, or unique aspects of the financing plan, such as applicable any operating subsidies, project-based assistance, replacement reserves, or interest rate swaps, the status (dates and deadlines) for applications, approvals and closings, etc. associated with soft or other government sources, including the funding source; and any refinancing or loan assumptions for USDA loans, etc. Applicants requesting Direct Loan funds and 9% LIHTC must submit a letter from the anticipated Match provider indicating its willingness and ability to make a financial commitment if the Development receives a Direct Loan award.

(7) Operating and Development Cost Documentation. Applicants must include the content described in subparagraphs (A) – (G) below using forms and exhibits provided by the Department. Any item labeled “other” must include a description.

(A) Fifteen-year Pro forma. A 15-year pro forma estimate of operating expenses (or longer, if required by the NOFA).

(B) Utility Allowances. Exhibit indicating which utilities are included in the estimate (complying with §10.614 of this title), including deadlines for submission, and documentation from the utility allowance estimate source used in completing the Rent Schedule. If applicable, documentation indicating the Department has granted the requested method.

(C) Operating Expenses. Exhibit indicating the anticipated operating expenses. “”“Miscellaneous” or other nondescript designations are not acceptable.

(D) Rent Schedule. Exhibit meeting the requirements of clauses (i) - (vi) below. The LURA will reflect income and rent restrictions for the duration of the Affordability Period and for Tax-Exempt Bond Developments, in accordance with the Applicant's election under Tex. Gov't Code §1372.0321.

(i) indicate the type of Unit restriction based on the rent and income restrictions;

(ii) reflect the rent and utility limits available at the time of Application submission;

(iii) reflect gross rents consistent with project-based rental assistance documentation (if applicable);

(iv) have a Unit mix and net rentable square footages consistent with the site plan and architectural drawings;

(v) if applying for Direct Loan funds, such restricted Units will "float" (unless specifically disallowed under program rules or the NOFA) and the following percentages of them must be available to households with incomes at or below the area median incomes (AMI) indicated:

(I) if HOME, TCAP RF, and/or NSP PI are anticipated source(s), at least 90% at 60% AMI;

(II) if HOME or TCAP RF are anticipated source(s), at least 20% at 50% AMI;

(III) if NHTF is an anticipated source, 100% at 30% AMI or the poverty line;

(IV) if NSP PI is an anticipated source, at least 25% at 50% AMI;

(V) if HOME-ARP is an anticipated source, at least 20% at 60% AMI and 100% at 80% AMI during the State Affordability Period; and

(vi) if proposing to elect average income, Units restricted by any source other than HTCs must be specifically identified and included in the average calculation.

(E) Development Costs. Exhibit including the contact information for the person providing the cost estimate and meeting the requirements of clauses (i) and (ii) below. Applications with a combination of new construction and rehabilitation activities must include a separate development cost schedule exhibit for the rehabilitation.

(i) A detailed cost breakdown of any projected Site Work costs (excluding site amenities) prepared by a Third Party engineer.

(ii) If costs for Off-Site Construction are in the budget as a line item, embedded in the site acquisition contract, or referenced in the utility provider letters, then a Third Party engineer must provide an Off-Site Cost Breakdown describing the necessity of the off-site improvements, the relevant local jurisdiction requirements, and the source of their cost estimate. 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)) Any related contract or other agreement securing rental assistance, an operating subsidy, an annuity, or an interest rate reduction payment identifying the source and annual amount, the number of units covered, and its term and expiration date.

(G) Occupied Developments. Applications must include the items in clauses (i) - (vi) below if, at any time after the Application Acceptance Period begins, any structure on the Site is occupied or the Application proposes the demolition of any housing occupied.

If the Application includes a request for Direct Loan funds, Applicants must follow the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) and other HUD requirements (including Section 104(d) of the Housing and Community Development Act). Failure to do so will make the proposed Development ineligible for Direct Loan funds and may result in a penalty under §13.11(b) of this title. If one or more items in this subparagraph do(es) not apply based on the type of occupied structure, the Applicant must provide an explanation of why.

(i) The items identified in subclause (I) below. If (I) cannot be submitted, explain the reason and submit (II). Proceed in this manner through subclause (IV).

(I) Historical monthly operating statements of the Existing Residential Development for 12 consecutive months ending not more than three months from the first day of the Application Acceptance Period; or

(II) The two most recent consecutive annual operating statement summaries; or

(III) The most recent consecutive six months of operating statements and the most recent available annual operating summary; or

(IV) All monthly or annual operating summaries available.

(ii) A rent roll not more than six months old as of the first day the Application Acceptance Period that discloses the terms and rate of the lease, rental rates then offered, Unit mix, and any vacant units.

(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 applicable relocation laws or regulations.

(vi) If applicable evidence that the relocation plan has been submitted to all appropriate legal or governmental agencies. (§2306.6705(6))

(8) Architectural Drawings. Applications must include the items identified in subparagraphs (A) - (D) below, unless specifically stated otherwise, and must be consistent with the rest of the Application. The drawings must have a legible scale and show the dimensions of each perimeter wall and floor heights.

(A) A site plan including the items in clauses (i) - (xii) below:

(i) the size of the site on its face;

(ii) a Unit and building type table matrix;

(iii) a table matrix specifying the square footage of Common Area space on a building basis;

(iv) all residential and common buildings in place on the Site;

(v) the locations (by Unit and floor) of mobility and hearing/visual accessible Units (unless included in residential building floor plans);

(vi) the flood plain boundary lines or states there is no floodplain;

(vii) placement of detention/retention pond(s) or states there are no detention ponds;

(viii) description of how flood mitigation or other required mitigation will be accomplished (if applicable);

(ix) the location and number of parking spaces, garages, and carports;

(x) the location and number of accessible parking spaces, garages, and carports, including van accessible spaces;

(xi) information regarding local parking requirements; and

(xii) compliant accessible routes or, if a route is not accessible, a cite to the provision in the Fair Housing Design Manual providing for its exemption.

(B) Building floor plans for each building type, including the locations of the accessible Units and square footage calculations for balconies, breezeways, corridors and any other space not included in net rentable area.

(C) Unit floor plans for each Unit Type with square footages, including accessible Units. Adaptive Reuse Applications will include each distinct floor plan (one-Bedroom or two-Bedroom) and all that vary in Net Rentable Area by 10% from the typical floor plan.

(D) Elevations for each side of each building type (or a statement that all other sides are of similar composition as the front) and a percentage estimate of the exterior composition and proposed roof pitch. Rehabilitation Applications submit post-renovation drawings if proposing to alter Unit configurations, or photographs if not.

(9) Site Control.

(A) The Application must include evidence the Owner or an Affiliate (with the ability to assign) has Site Control and identify all sellers of the proposed Property for the 36-month period prior to the first day of the Application Acceptance Period and their relationship to members of the Development Team (if any). An Owner must promptly provide documentation of its ability to compel title of any Affiliated property acquisition(s) to the Department upon request. The Department will consider whether any encumbrance is reasonable within the Owner's legal and financial ability to address without delaying development. To meet the requirements of subparagraph (B) below, Tax-Exempt Bond Developments not requesting a Direct Loan or the Department as the bond issuer must certify that the Site Control submitted with the TBRB application for the Certificate of Reservation to be issued is still valid. Tax-Exempt Bond Developments involving Acquisition and Rehabilitation or identity of interest land acquisitions must submit Site Control documents to verify the acquisition cost as required in §11.302 of this chapter.

(B) Applicants must provide one of the items in clauses (i) - (iii) below. In the case of land donations, Applicants must demonstrate the donating entity has Site Control as through one of the items below or other documentation acceptable to the Department.

(i) A recorded warranty deed vesting indefeasible title in the Owner or an Affiliate if transferrable, with corresponding executed settlement statement (or functional equivalent for an existing lease with at least 45 years remaining).

(ii) A contract or option for lease with a minimum term of 45 years that includes a price, address or legal description, proof of consideration in the form specified in the contract, and expiration date.

(iii) A contract for sale or an option to purchase that includes a price, address or legal description, proof of consideration in the form specified in the contract, and expiration date.

(C) If the acquisition is an identity of interest transaction, as described in §11.302 of this chapter, then the Application must include additional documentation required therein.

(D) If ingress and egress to a public right of way are not part of the Property described in the site control documentation, the Applicant must provide evidence of an easement, leasehold, or similar documented access, and the fee title owner of the property agreeing that the LURA may extend to the access.

(E) If control of the entire proposed Site requires vacating a plat, right of way, or similar dedication, the Application must include evidence that the process has started. Owner must provide evidence of control of the entire Site by the time of Commitment or Contract (as applicable).

(10) Zoning. (§2306.6705(5)) Applications must include one of subparagraphs (A) - (D) below. If a Site is annexed while the Application is under review, the Applicant must submit evidence of appropriate zoning with the Commitment or Determination Notice. Letters must be from a local government official with appropriate jurisdiction and no more than six months old at Application submission, or updated annually for an area where there is no zoning.

(A) No Zoning Ordinance in Effect. A letter stating the Development is located within the boundaries of a political subdivision that has no zoning. This requirement does not apply to a Site located entirely in the unincorporated area of a county, and not in an ETJ.

(B) Zoning Ordinance in Effect. A letter stating the Development is permitted under the provisions of the applicable zoning ordinance.

(C) Requesting a Zoning Change, or a Specific or Special Use Permit. A letter stating the Applicant or Affiliate has formally applied for a required zoning change and the jurisdiction has received a release whereby the Applicant has agreed to hold the political subdivision and all other parties harmless in the event of not receiving the appropriate zoning. Owners must submit documentation of final approval of appropriate zoning, including any necessary specific or special use permits, with the Commitment or Determination Notice.

(D) Rehabilitation Developments. Applications must include documentation of current zoning (if applicable). If the Property is currently conforming but with an overlay that would make it non-conforming as presently zoned, the Application must include a letter addressing items in clauses (i) - (v) below.

(i) a detailed narrative of the nature of non-conformance;

(ii) the applicable destruction threshold;

(iii) that it will allow the non-conformance;

(iv) Owner's rights to reconstruct in the event of damage; and

(v) penalties for noncompliance.

(11) Title Commitment/Policy. Applications must include a title commitment or title policy that includes a legal description consistent with the Site Control. If the title commitment or policy is dated more than six months prior to the date of Application submission or the first day of the Application Acceptance Period for Competitive HTC Applications, then the Application must include a letter from the title company indicating that nothing further has transpired during the six-month period on the commitment or policy. Tax-Exempt Bond Developments not requesting a Direct Loan or the Department as the bond issuer are exempt from this requirement.

(A) The title commitment must list the name of the Owner as the proposed insured and list the seller or lessor as the current owner of the Site.

(B) The title policy must show that the ownership (or leasehold) of the Site is vested in the name of the Owner.

(12) Ownership Structure and Previous Participation.

(A) The formation of the ownership entity, qualification to do business (if needed), and transfer of any such rights, powers, and privileges must be accomplished as required in this chapter and Chapters 12 and 13, as applicable.

(B) Organizational Charts. Applicants must submit charts for the proposed Owner, Developer, and Guarantor (if applicable)

(i) illustrating the organizational structures,

(ii) identifying all Principals, and

(iii) providing the names and ownership percentages of all Persons having an ownership interest, whether directly or through one or more subsidiaries, regardless of having Control.

The charts must include individual board members and executive directors of nonprofit entities, governmental bodies, and corporations, as applicable, 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.

Notwithstanding the foregoing, in the case of HTC Applications only, if the entity is owned by a fund regulated by the U.S. Securities and Exchange Commission, no Natural Person is required to be listed or sign any applications. The List of Organizations form must include all Persons identified on the organizational charts and identify which Person(s) exercise Control of the Development.

(C) Previous Participation. Each of the following must submit completed previous participation information:

(i) each entity shown on the organizational charts described in subparagraph (B) of this paragraph,

(ii) each individual who exercises Control over the Development,

(iii) individual Principals of entities identified on the organizational charts and on the List of Organizations form, unless excluded from such requirement pursuant to Chapter 1 Subchapter C of this title.

The information must include all Developments that are, or were, previously under ownership or Control of the Applicant or each Principal, including any Person providing the required experience and disclose all participation in any Department funded or monitored activity (including non-housing), and HTC developments or other programs administered by other states using state or federal programs. The individuals must authorize the parties overseeing such programs to release compliance histories to the Department.

(D) Direct Loan and 811 PRA. If the Applicant is applying for Direct Loan funds or claiming points for participation in 811 PRA, then the Applicant must also include the definitions of Person, Affiliate, Principal, and Control found in 2 CFR Part 180 and 2424 in the organizational charts and the Previous Participation information. In addition, if requesting 811 PRA and claiming points for an Existing Development(s), include the organizational chart for each.

(13) Nonprofit Ownership. Applications involving a §501(c)(3) or (4) nonprofit, housing finance corporation or public facility corporation as the General Partner or Owner must submit the documentation identified in subparagraph (A) or (B) below, as applicable, and a resolution approved by the majority of the board of directors indicating their awareness of the organization's participation in each specific Application and naming all board members and employees who may act on its behalf (if the bond issuer is the sole member of the General Partner, a copy of the executed inducement resolution meets this requirement).

(A) Competitive HTC Applications for the Nonprofit Set-Aside. Applications for Competitive HTCs involving a §501(c)(3) or (4) nonprofit General Partner and which meet the Nonprofit Set-Aside requirements must submit the documents described in clauses (i) to (v) below and indicate the nonprofit status on the carryover documentation and IRS Forms 8609. (§2306.6706) Applications that include an affirmative election to not be under the Nonprofit Set-Aside and a certification of not expecting a benefit in HTC allocation 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 stating the nonprofit organization is tax-exempt under §501(c)(3) or (4) of the Code.

(ii) The Nonprofit Participation exhibit 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 that:

(I) the nonprofit organization is not Affiliated with or Controlled by a for-profit organization and the basis for that opinion;

(II) the nonprofit organization is eligible, as further described, for a HTC Allocation from the Nonprofit Set-Aside pursuant to Code §42(h)(5) and the basis for that opinion;

(III) one of the exempt purposes of the nonprofit organization is to provide low-income housing;

(IV) 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 (if the Application includes a request for Community Housing Development Corporation (CHDO) funds, no member of the board may receive compensation, including the chief staff member);

(V) 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; and

(VI) the nonprofit organization is able to do business as a nonprofit in Texas.

(iv) A copy of the nonprofit organization's most recent financial statement as prepared by a certified public accountant.

(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 Texas, if the Development is in a Rural Area; or

(II) within ninety (90) miles of the Development if not.

(B) All Other Applications. Applications that involve a §501(c)(3) or (4) nonprofit, housing finance corporation or public facility corporation as the General Partner or Owner must submit

(i) an IRS determination letter stating the nonprofit organization is tax-exempt under §501(c)(3) or (4) of the Code; and

(ii) the Nonprofit Participation exhibit as provided in the Application.

If the Application involves a nonprofit not exempt from taxation under §501(c)(3) or (4) of the Code, then it must disclose the basis of their nonprofit status. Housing finance corporations or public facility corporations that do not have an IRS determination letter will submit documentation evidencing creation under their respective chapters of the Texas Local Government Code and corresponding citation for an exemption from taxation.

(14) Feasibility Report. Applications must include a Feasibility Report meeting the criteria provided in subparagraphs (A) to (F) below; Rehabilitation Applications only requesting 9% HTCs and Tax-Exempt Bond Developments for which the Department is not the bond issuer will meet only subparagraph (D).

(A) Reports must address any atypical items materially impacting costs or the successful and timely execution and include the following statement: “Any person signing this Report acknowledges that the Department may publish the full report on the Department's website, release the report in response to a request for public information and make other use of the report as authorized by law.”

(B) An Executive Summary.

(C) A general statement regarding the level of site development due diligence done (including discussions with local governments), providing website links to ordinances, and:

(i) a summary of zoning requirements;

(ii) subdivision requirements;

(iii) property identification number(s) and millage rates for all taxing jurisdictions;

(iv) development ordinances;

(v) fire department requirements;

(vi) site ingress and egress requirements; and

(vii) building codes and local design requirements.

(D) Survey as defined the Manual of Practice for Land Surveying in Texas (Category 1A - Land Title Survey or Category 1B - Standard Land Boundary Survey). Surveys (other than for Rehabilitation) may not be older than 24 months from the beginning of the Application Acceptance Period.

(E) Preliminary site plan for New Construction or Adaptive Reuse Developments 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 and driveways, topography (using either existing seller topographic survey or database topography), site drainage and detention, water and waste water utility tie-ins, general placement of retaining walls, set- back requirements, off-site improvements, and any other typical or locally required items.

(F) 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.

§11.205.Required Third Party Reports.

The Department may terminate an Application for failure to submit Third Party Reports as an electronic copy in a single file containing all information (exhibits clearly labeled) with the report type, Development name and location prepared in accordance with Subchapter D of this chapter by the applicable deadline. The Department may request additional information or revisions from the report provider. In the absence of a response, the Department may substitute in-house analysis. The Department is not bound by any opinions expressed in the report.

(1) Environmental Site Assessment. Applications must include an ESA prepared in accordance with the requirements of §11.305 of this chapter.

(A) All ESAs must meet one of the following:

(i) dated not more than 12 months prior to either the Application Acceptance Period for Competitive HTC Applications or Application submission for others; or

(ii) a letter or updated report dated not more than six months prior to the dates above from the initial assessment author confirming the site has been re-inspected and either reaffirming its conclusions or identifying changes.

(B) Existing Developments funded by USDA are exempt.

(C) If the report recommends an additional assessment, then the Applicant must submit a statement with the Application indicating it will perform such additional assessments and recommendations prior to closing. If the assessments require further mitigating recommendations, then the Owner must submit evidence with the cost certification indicating they have been carried out.

(2) Market Analysis. Applications must include a Market Analysis prepared in accordance with the requirements of §11.303 of this chapter dated not more than six months prior to the date of the first day of the Application Acceptance Period for Competitive HTC Applications or Application submission for others. If the report is older, but not more than 12 months prior to the forgoing dates, the Qualified Market Analyst author may provide a statement dated not more than six months prior to the foregoing dates reaffirming the findings.

(A) For Rehabilitation or Reconstruction projects meeting the following criteria Market Analysis means a location map and a written statement by a disinterested Qualified Market Analyst certifying:

(i) all Units contain existing project based rental assistance that will continue for at least the Compliance Period, an existing Department LURA, or the subject rents are at or below 50% AMGI rents;

(ii) at least 80% of Units are occupied at time of Application; and

(iii) existing tenants have a leasing preference or right to return under a relocation plan.

(B) The report must be prepared by a disinterested Qualified Market Analyst approved by the Department in accordance with §11.303 of this chapter.

(C) For Applications with USDA financing proposing Rehabilitation with residential structures at or above 80% occupancy at the time of Application submission, the appraisal satisfies the requirement for a Market Analysis (the Department may request additional information).

(3) Scope and Cost Review (SCR). Applications for Rehabilitation (excluding Reconstruction) and Adaptive Reuse must include an SCR prepared in accordance with the requirements of §11.306 of this chapter dated not more than six months prior to the Application Acceptance Period for Competitive HTC Applications or Application submission for others. If the report is older, but not more than 12 months prior to the forgoing dates, the author may provide a statement dated not more than six months prior to the foregoing dates reaffirming the findings. A capital needs assessment required by USDA qualifies as the SCR and may be more than six months old if USDA confirms in writing the assessment is still acceptable and it meets the requirements of §11.306 of this chapter.Rehabilitation Developments financed with Direct Loans must also submit a capital needs assessment estimating the useful life of each major system including a comparison between the local building code and the International Existing Building Code, and the Department's SCR Supplement. An SCR is not required for Rehabilitation (excluding Reconstruction) and Adaptive Reuse Tax-Exempt Bond Developments not including a request for Direct Loan or where the Department is not the bond issuer (must include a Scope of Work Narrative as described in §11.306(j) of this chapter).

(4) Appraisal. An Appraisal prepared in accordance with the requirements of §11.304 of this chapter is required for Applications which an appraisal is required under §11.302(e)(1) of this chapter (relating to Acquisition Rules). The Appraisal must not be dated more than six months prior to Application submission, the Application Acceptance Date for Direct Loan Applications, or the first day of the Application Acceptance Period for Competitive HTC Applications. An appraisal required by USDA may be more than six months old if USDA confirms in writing that it is still acceptable. Notwithstanding the foregoing, an Appraisal is not required if no acquisition costs are entered in the development cost schedule.

§11.206.Board Decisions (§§2306.6725(c);2306.6731; and 42(m)(1)(A)(iv)).

The Board will base decisions regarding awards or the issuance of Determination Notices, if applicable, on the staff and the Board's evaluation of the proposed Developments' consistency with, and fulfillment of, the criteria and requirements set forth in this chapter, Chapter 13 of this title and other applicable Department rules and other applicable state, federal and local legal requirements, whether established in statute, rule, ordinance, NOFA, official finding, or court order. The Board will 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 staff. Good cause includes the Board's decision to apply discretionary factors where authorized. The Department may reduce the amount of funds requested in an Application, condition the HTC or Direct Loan recommendation, or terminate the Application based on the Applicant's inability to demonstrate compliance with program requirements.

§11.207.Waiver of Rules.

An Applicant may request a waiver from the Board in writing at or prior to the submission of the pre-application (if applicable) or the Application or after an award. The Department will not accept waiver requests on Competitive HTC Applications between submission of the Application and award. Any request for waiver must be specific to an actual proposed Development, be submitted in the format required in the Multifamily Programs Procedures Manual, include plans for mitigation or alternative solutions, and meet the requirements of paragraphs (1) and (2) of this section. Any granted waiver applies solely to the Application and does not constitute a general modification or waiver of the rule involved. Staff may initiate a waiver request to remedy an error in the QAP or other Multifamily rules, provide necessary relief in response to a natural disaster, or address facets of an Application or Development that have not been contemplated.

(1) A request made at or prior to pre-application or Application must establish that the need for the waiver is not within the Applicant’s control or is due to an overwhelming need. Staff recommendation for a waiver may be subject to the Applicant's provision of alternative design elements or amenities. The Department will not consider waiver requests for items elected to meet scoring criteria or where the Applicant chose a menu of options unless the Applicant demonstrates that all potential options have been exhausted.

(2) The waiver request must establish how the waiver better serves the policies and purposes articulated in Tex. Gov't Code §§2306.001, 2306.002, 2306.359, and 2306.6701 than not.

(3) The Board may not grant a waiver to provide, directly or implicitly. any Forward Commitments unless it determines extenuating and unforeseen circumstances. The Board may not waive any requirement contained in statute. The Board may grant a waiver in response to a natural, federally declared disaster that occurs after the adoption of the QAP to the extent authorized by a governor declared disaster proclamation suspending statutory or regulatory requirements.

SUBCHAPTER D. UNDERWRITING AND LOAN POLICY

10 TAC §§11.301 - 11.306

§11.301.General Provisions.

This subchapter applies to the underwriting, Market Analysis, appraisal, Environmental Site Assessment, Direct Loan, and Scope and Cost Review standards. (§2306.081(c), §2306.185, and §2306.6710(d)). The interpretation of the rules and guidelines described in this subchapter is subject to the discretion of the Department and final determination by the Board.

§11.302.Underwriting Rules and Guidelines.

(a) General Provisions.

(1) The Board is authorized to adopt underwriting standards as set forth in this section. (§2306.148 and §2306.185(b)) The Underwriting Report (Report) in no way guarantees or purports to warrant the Development's actual performance, feasibility, or viability.

(2) The total amount of Department-allocated resources combined with any additional grants or below commercial-rate financing specifically provided for affordable housing from other units of government may not exceed the total cost of all non-market Units, calculated on a per-unit basis. If the Department determines a Development is oversourced, the Applicant must reduce the soft funds provided by other units of government.

(b) Report Contents. The Report provides a synopsis and reconciliation of the Application information submitted by the Applicant, including additional documentation submitted after the initial award relevant to any subsequent reevaluation. The Report contents will be based on information provided in accordance with and within the timeframes set forth in this chapter, Chapters 11, 12, or 13, or in a NOFA, as applicable.

(c) Recommendations in the Report. The award amount in a Report is the lesser of the methods in paragraphs (1) - (3) below:

(1) Program Limit Method. For HTC, this method is based on calculation of Eligible Basis after applying applicable cost verification measures and program limits. For other programs, this method is the program or NOFA funding limit.

(2) Gap Method. This method evaluates the amount of funds needed to fill the gap between Total Housing Development Cost and total non-Department resources. In making this determination, the Underwriter:

(i) Resizes any anticipated Deferred Developer Fee downward (but not less than zero) before reducing Department resources.

(ii) Divides the gap by the syndication rate to determine the HTC amount.

(iii) May assume adjustments to the financing structure (including treatment of a Cash Flow loan as if fully amortizing over its term) or adjust any Department financing, such that the cumulative DCR conforms to the standards described in this section.

(iv) At cost certification, consider timing adjusters as a reduction to equity proceeds if consistent with the partnership agreement originally admitting the equity partner and relating to causes outside of the Developer's or Owner's control. The equity partner must provide a calculation of the adjuster amount.

(3) The Amount Requested. The amount requested in the original Application documentation.

(d) Operating Feasibility. The Underwriter tests a Development's operating feasibility by analyzing its NOI to determine ability to pay debt service and other financial obligations throughout the Affordability Period. The Department will use the Underwriter's estimates unless the Applicant's EGI, Total Operating Expenses, and first year NOI are within 5% of the Underwriter's. The Underwriter will not develop independent estimates of EGI, Total Operating Expenses, or NOI for Tax-Exempt Bond Developments that do not include a request for Direct Loan or where the Department is not the bond issuer.

(1) Income. The Underwriter evaluates the reasonableness of the Applicant's income pro forma by determining the appropriate rental rate per unit based on subsidy contracts, program limitations including but not limited to Utility Allowances, actual rents supported by rent rolls, Achievable Affordable Rents, and Market Rents and other market conditions, and miscellaneous income, vacancy and collection loss limits based on subparagraphs (B) and (C) of this paragraph (respectively) unless the Underwriter verifies otherwise.

(A) Rental Income. The Underwriter will determine if the Applicant's proposed rent schedule is consistent with representations made in the Application and independently calculate a Pro Forma Rent for comparison to the Application. The Underwriter will not consider projected income from tenant-based rental assistance.

(i) Market Rents. The Underwriter will use the Market Analyst's conclusion of Market Rent if reasonably supported by the attribute adjustment matrix of Comparable Units as described in §11.303 of this chapter. The Underwriter may use independently determined Market Rents based on information gained from direct contact with comparable properties even if not used by the Market Analyst and other market data sources. If the Development contains less than 15% unrestricted units, the Underwriter will limit the Pro Forma Rents to the lesser of Market Rent or the Gross Program Rent at 80% AMI.

(ii) Gross Program Rent. The Underwriter will use the Gross Program Rents (GPR) for the year that is most current when the underwriting begins. The same GPR will apply to all Applications when underwriting for a simultaneously funded competitive round. If the Department adjusts GPR between the close of the Application Acceptance Period and Report publication, the Underwriter may adjust the EGI to account for an increase or decrease.

(iii) Achievable Affordable Rents. The Underwriter will assume a 10% increase over the Market Analyst's conclusion of Achievable Affordable Rents if less than GPR. The rents should be supported by an attribute adjustment matrix of Comparable Units as described in §11.303 of this chapter.

(iv) Contract Rents. The Underwriter will determine the Contract Rents currently applicable and likelihood of continued assistance, taking into consideration the Applicant's intent to request an increase. The Underwriter may use the Applicant's proposed rents as the Pro Forma Rent, with the Report recommendations conditioned on receipt of final approval of the increase. Tenant-based vouchers or rental assistance do not count as Income.

(v) Utility Allowances. The Utility Allowances must comply with all applicable federal guidance and §10.614 of this title, including being calculated for individually metered tenant paid utilities.

(vi) Net Program Rents. Gross Program Rent less Utility Allowance.

(vii) The Underwriter will review actualrents for existing Developments as supported by a current rent roll, and for Unstabilized Developments use actual rents based on the most recent units leased with occupancy and leasing velocity. The Underwriter may adjust actual rents to reflect lease-up concessions and other market considerations.

(viii) Pro Forma Rent is the monthly rent amount collected for each Unit Type: Contract Rent for rent- assisted units and the lesser of the Net Program Rent, Achievable Affordable Rent, Market Rent or actual rent for others.

(B) Miscellaneous Income. The Underwriter will use $5 to $30 per Unit per month for all ancillary fees and miscellaneous secondary income, including but not limited to, late fees, storage fees, laundry income, interest on deposits, carport and garage rent, washer and dryer rent, telecommunications fees, and other miscellaneous income. The Underwriter may make exceptions if supported by either the Development's normalized operating history or other existing comparable properties within the same market area.

(i) The Applicant must show tenants will not be required to pay the additional fee or charge as a condition of renting a Unit and tenants have a reasonable alternative.

(ii) The Applicant's operating expense schedule should reflect an itemized offsetting line-item associated with miscellaneous income derived from pass-through utility payments, pass-through water, sewer and trash payments, and cable fees.

(iii) The Underwriter will heavily discount collection rates of exceptional fee items.

(iv) If the Owner will charge an additional fee for the optional use of an amenity, Eligible Basis must not include any cost associated with the construction, acquisition, or development of the hard assets needed to produce it.

(C) Vacancy and Collection Loss. The Underwriter uses a normalized vacancy rate of 7.5% (5% vacancy plus 2.5% for collection loss) or 5% combined for 100% project-based rental subsidy developments (not including employee-occupied units).

(2) Expenses.

(A) General and Administrative Expense. Accounting fees, legal fees, advertising and marketing expenses, office operation, supplies, and equipment expenses; does not include partnership related expenses (asset management, accounting or audit fees) or tenant services.

(B) Management Fee. The Underwriter will use the Applicant's proposed Management Fee if within 4% to 6% of EGI. An Applicant must document a proposed fee outside of this range.

(C) Payroll Expense. Payroll does not include Third-Party security, tenant services contracts or other staffing not related to customary property operations, which must be itemized and included in other expenses.

(D) Repairs and Maintenance Expense. Does not include costs customarily capitalized resulting from major replacements or renovations.

(E) Utilities Expense. An unrelated contractor or component vendor must document Estimates of utility savings from green building components, including on-site renewable energy.

(F) Water, Sewer, and Trash Expense.

(G) Insurance Expense. Does not include health or workman's compensation insurance.

(H) Property Tax. Includes real property and personal property taxes but not payroll taxes.

(i) The Underwriter will calculate an assessed value calculated based on the capitalization rate if published by the county taxing authority, or either 10% or a comparable assessed value if not.

(ii) The Underwriter may use other assessed values or property tax estimates based on development specific factors.

(iii) The Applicant must provide documentation in accordance with §10.402(d) of this title if proposing a property tax exemption or Payment in Lieu of Taxes (PILOT) agreement, The Underwriter may require such documentation prior to Commitment or Determination Notice.

(I) Replacement Reserves. The Underwriter will use a minimum reserve of $250 per Unit for New Construction and Reconstruction Developments and $300 per Unit for all others, or more if documented by a primary lender or syndicator. The Underwriter may require an amount above $300 for the Development based on information provided in the SCR or an amount approved by USDA. The Underwriter may adjust the Applicant's assumption for reserves if the amount is insufficient to fund capital needs as documented by the SCR during the first fifteen (15) years.

(J) Other Operating Expenses. The Underwriter will include other reasonable, customary and documented property-level operating expenses such as audit fees, security expense, telecommunication expenses (EGI must reflect tenant reimbursements) and TDHCA's compliance fees, not depreciation, interest expense, lender or syndicator's asset management fees, or other ongoing partnership fees. The Underwriter may include a Return to Owner approved by USDA or an amount it determines. This category does.

(K) Resident Services. The Underwriter will not include resident services as an operating expense or in the DCR calculation unless:

(i) the Application documents a financial obligation on behalf of the Owner with a unit of state or local government to provide resident supportive services at a specified dollar amount included in the DCR calculation; or

(ii) the Applicant demonstrates a history of providing comparable supportive services and expenses at existing affiliated properties in the local area; and

(iii) on-site staffing or pro ration of staffing for coordination of services only (not the provision of services) can be included.

(L) Pro-Forma. In determining the operating expense pro forma, the Underwriter evaluates the reasonableness of the Applicant's expense estimate based on

(i) the characteristics of each Development, including the location, utility structure, type, the size and number of Units

(ii) the Applicant's management plan

(iii) historical, stabilized and certified financial statements of an existing Development or Third Party quotes specific to a Development

(iv) actual operations on the Applicant's other properties monitored by the Department, if any

(v) the proposed management company's comparable properties

(vi) the Department's database of properties located in the same market area or region as the proposed Development

(vii) expense data from the Department's database on the Department's website

(viii) the Institute of Real Estate Management's (IREM) most recent Conventional Apartments-Income/Expense Analysis book for the proposed Development's property type and specific location or region

(ix) local or project-specific data such as PHA Utility Allowances and property tax rates are also given significant weight in determining the appropriate line item expense estimate, and

(x) estimates of utility savings from green building components, including on-site renewable energy.

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(3) Debt Coverage Ratio. The Underwriter will calculate loan terms (including principal and interest payments) based on the terms in the loan documents if executed, or the most current term sheet(s) if not. The Underwriter may consider unusual or non-traditional financing structures.

(A) Interest Rate. The Underwriter will use the rate documented in the term sheet(s) or loan document(s for debt service calculations. Term sheets indicating a variable interest rate must provide the base rate index or methodology and any component rates comprising an all-in interest rate. The term sheet(s) must state the lender's underwriting interest rate assumption, or the Applicant must submit a separate statement from the lender with an estimate. At initial underwriting, the Underwriter may adjust the interest rate assumption based on market data of similarly structured transactions or rate index history. Private Mortgage Insurance premiums and similar fees are not included in the interest rate but calculated on outstanding principal balance and added to the total debt service payment.

(B) Amortization Period. For purposes of calculating DCR, the minimum amortization period is 30 years and maximum is 40 years (50 for federally sourced or insured loans). The Underwriter will use the permanent lender's amortization period within that range. Non-HTC transactions may use a lesser amortization period if the Direct Loans will be fully amortized over the same period.

(C) Repayment Period. For permanent financing structures with balloon payments in less than 30 years, the Underwriter will project the DCR over a 30 year period by carrying forward debt service based on a full amortization at the interest rate stated in the term sheet(s).

(D) Acceptable Debt Coverage Ratio Range. Except in clauses (i) or (ii) of this subparagraph, the first year stabilized pro forma DCR must be between a minimum of 1.15 and a maximum of 1.35 (maximum of 1.50 for HTC Developments at cost certification).

(i) If the DCR is less than the minimum, the Report recommendations may be based on a reduction to debt service and the Underwriter will adjust the financing structure in the priority order in subclauses (I) - (IV) below (subject to Direct Loan NOFA requirements and program rules):

(I) a reduction to the interest rate of a Direct Loan;

(II) an increase in the amortization period of a Direct Loan; and

(III) a reduction in the principal amount of a Direct Loan; or an assumed reduction in the permanent loan amount for non-Department funded loans based on the rates and terms in the permanent loan term sheet(s), as long as they are within the ranges in subparagraphs (A) and (B) of this paragraph.

(ii) If the DCR is greater than the maximum, the Report recommendations may be based on an increase to debt service and the Underwriter will adjust to assumed financing structure in the priority order in subclauses (I) - (III) below (subject to Direct Loan NOFA requirements and program rules):

(I) an increase to the Direct Loan interest rate up to the lesser of the maximum pursuant to a NOFA or on any senior permanent debt (if none, as determined by the Underwriter based on current market interest rates); or a decrease in the Direct Loan amortization (not less than 30 years); and

(II) an assumed increase in non-Department permanent loan amount(s) based on the rates and terms in the term sheet if within the ranges in subparagraphs (A) and (B) of this paragraph.

(iii) The Department may reduce the recommended HTC Allocation Amount based on the Gap Method described in subsection (c)(2) of this section as a result of an increased debt assumption.

(iv) Developments financed with a Direct Loan subordinate to FHA financing must meet a combined DCR of 1.0 using 75% of surplus cash after deducting the senior debt service from NOI. To calculate the combined DCR:

(FHA senior debt service + ((1st year NOI - FHA senior debt service)*75%))) / (FHA senior debt service + amortized MDL debt service)

(v) The Underwriter may limit total debt service that is senior to a Direct Loan to produce an acceptable DCR on the Direct Loan and if the Direct Loan is the senior primary debt.

(4) Long Term Pro forma. The Underwriter will create a 30-year operating pro forma using the criteria in subparagraphs (A) to (C) of this paragraph:

(A) The Underwriter's or Applicant's first year stabilized pro forma as determined by paragraph (3) of this subsection.

(B) A 2% annual growth factor for income and a 3% for operating expenses, except for management fees calculated based on a percent of EGI.

(C) Adjustments based on satisfactory support documentation provided by the Applicant or as independently determined by the Underwriter.

(e) Total Housing Development Costs. The Department will base the estimate of Total Housing Development Cost on the Applicant's Development cost schedule to the extent the Underwriter can verify it to a reasonable degree of certainty using available tools and with documentation from the Applicant. For New Construction Developments, the Department will use Underwriter's total cost estimate unless the Applicant's is within 5% of it. The Department will base the estimate for Rehabilitation Developments or Adaptive Reuse Developments on the estimated cost in the SCR (the Underwriter may make adjustments).

If the Applicant's line item costs are inconsistent with the Application or program rules, the Underwriter may adjust. For Competitive HTC Applications, the Underwriter will adjust an

Applicant's cost schedule line item to meet program rules but not make subsequent adjustments to meet feasibility requirements.

(1) Acquisition Costs. All appraised values must be based on as-is values at the time of Application as further stated in §11.304 of this chapter.

(A) Land, Acquisition and Rehabilitation, Reconstruction, and Adaptive Reuse Acquisition.

(i) For a non-identity of interest acquisition with no building acquisition cost in basis or when the acquisition is not part of the Direct Loan eligible cost and not subject to URA appraisal requirements, the underwritten acquisition cost will be the amount(s) in the Site Control document(s). At Cost Certification, the acquisition cost used will be the actual amount paid as verified by the settlement statement.

(ii) For an identity of interest acquisition or when required by URA, the underwritten acquisition cost will be the lesser of the amount(s) in the Site Control documents or the value determined by an appraisal meeting the requirements of §11.304 of this chapter. An appraisal is not required for donated land or buildings if no costs of acquisition appear on the Development Cost Schedule. Site Control documents must include the settlement statement for the most recent third-party acquisition where the most recent arms-length transaction occurred within five years of the application submission date.

An acquisition is an identity of interest transaction when an Affiliate of the seller is an Affiliate of, or a Related Party to, any Owner at any level of the Development Team or a Related Party lender; and

(I) is the current owner in whole or in part of the Property as of the first date of the Application Acceptance Period (or the Application Acceptance Date for Direct Loans); or

(II) has or had within the prior 36 months the legal or beneficial ownership of the property or any portion thereof or interest therein regardless of ownership percentage, control or profit participation prior to the first day of the Application Acceptance Period (or the Application Date for a tax-exempt bond application).

(iii) TDHCA prohibits cash-out to a related-party seller in an identity of interest transaction for Competitive HTC Applications (does not apply to Existing Developments funded by USDA, or those that include a Non-Profit, a Housing Authority, or an instrumentality of a Housing Authority in the ownership structure). For purposes of this paragraph, cash-out is the lesser of the amount reflected in the Site Control documents or the as-is restricted appraised value as determined by an appraisal that meets the requirements of §11.304 of this chapter, minus the payoff of any third-party debt unrelated to the seller, related-party notes in place specifically for substantiated capital expenditures or acquisition costs, and the principal balance of any seller note to remain in place post-acquisition. Holding costs and operating expenses, such as broker fees, property taxes, deferred maintenance, or deferred management fees, do not count when calculating or justifying seller cash-out.

At Application, Department underwriting requires amortization schedules and projected loan balances at closing for all existing unrelated third-party debt to substantiate the calculation of cash-out. The term sheet and seller notes in identity of interest transactions must comply with the following requirements:

(I) be cash-flow contingent, with no required payments unless surplus cash is available;

(II) have no DCR requirements for payment eligibility;

(III) state that the seller note is paid after deferred developer fee.

(iv) For all identity of interest acquisitions, the amount allowed at cost certification will be limited to the acquisition cost underwritten in the initial Application Underwriting.

(v) If the Applicant or a Related Party will acquire more land than the Development will use, and the remainder acreage is not accessible for use by tenants or dedicated as permanent and maintained green space, the Underwriter will prorate the Site value based on acreage from the total cost in the Site Control document(s) or the appraisal (if required). In making a proration, the Underwriter may use an appraisal containing segregated values for the total acreage to be acquired, the acreage for the Site and the remainder acreage. The Underwriter will not use a prorated value greater than the total amount in the Site Control document(s).

(B) USDA Rehabilitation Developments. The underwritten acquisition cost for developments financed by USDA will be the USDA approved transfer value.

(C) Eligible Basis on Acquisition of Buildings. Building acquisition cost included in Eligible Basis is limited to the appraised value of the buildings, exclusive of land value, as determined by an appraisal meeting the requirements of §11.304 of this chapter. If the acquisition cost in the Site Control documents is less than the appraised value, Underwriter will use the appraisal land value and adjust the building acquisition cost accordingly.

(2) Off-Site Costs. The Underwriter will only consider Off-Site Construction costs that are well documented and certified to by a Third Party engineer on the required Application forms with supporting documentation.

(3) Site Work Costs. The Underwriter will only consider Site Work costs (including site amenities) that are well documented and certified to by a Third Party engineer on the required Application forms with supporting documentation.

(4) Building Costs.

(A) New Construction and Reconstruction. The Underwriter will estimate building costs using

(i) the Marshall and Swift Residential Cost Handbook (M&S) or other comparable published Third-Party cost estimating data sources,

(ii) historical final cost certifications of previous HTC developments, and

(iii) other acceptable cost data available.

“”Applications must support costs for multi- level parking structures by a cost estimate from a Third Party contractor with demonstrated experience in structured parking construction. The Underwriter will consider a sales tax exemption for nonprofit General Contractors and any amenities, specifications and development types not included in the M&S base costs.

(B) Rehabilitation and Adaptive Reuse.

(i) The Applicant must provide a scope of work and narrative description of the work to be completed speaking to all Off-Site Construction, Site Work, and building components including finishes and equipment, and development amenities. The narrative should be in sufficient detail so the reader can understand the work, arranged consistent with the line- items on the SCR Supplement, and consistent with the Development Cost Schedule of the Application.

(ii) The Underwriter will use cost data provided on the SCR Supplement to estimate Total Housing Development Costs if adequately described and substantiated in the SCR report.

(5) Contingency. The maximum total contingency, including for soft costs, is a maximum of 7% of Building Cost plus Site Work and Off-Site Construction for New Construction and Reconstruction Developments and 10% for Rehabilitation and Adaptive Reuse Developments. For HTC Developments, the percentage is applied to the sum of the eligible Building Cost, eligible Site Work costs and eligible Off-Site Construction costs.

(6) General Contractor Fee. General Contractor fees include general requirements, contractor overhead, and contractor profit.

(A) The maximum General Contractor fees, including to achieve a sales tax exemption or any contractor fees to Affiliates or Related Party subcontractors, is a total of

(i) 14% on Developments with Hard Costs of $3 million or greater,

(ii) the lesser of $420,000 or 16% on Developments with Hard Costs less than $3 million and greater than $2 million, and

(iii) the lesser of $320,000 or 18% on Developments with Hard Costs at $2 million or less.

Total Housing Development Costs will not include any amounts in excess of the limits above.

(B) For HTC Developments, the percentages are applied to the sum of the Eligible Hard Costs. For Developments also receiving USDA financing, the combination of builder's general requirements, builder's overhead, and builder's profit cannot exceed the lower of TDHCA or USDA requirements. Additional fees for ineligible costs will be limited to the same percentage of ineligible Hard Costs but will not count as Eligible Basis.

(C) General requirements include, but are not limited to, on-site supervision or construction management, off-site supervision and overhead, jobsite security, equipment rental, storage, temporary utilities, and other indirect costs.

(7) Developer Fee.

(A) For HTC Developments, the Developer Fee included in Eligible Basis cannot exceed the following percents of the eligible costs, less Developer Fee, for Developments proposing 50 Units or more or an additional phase, 15%, and49 Units or less, 20%. The Department

(i) will exclude any Developer Fee above this limit from Total Housing Development Costs, and

(ii) may determine any of the following costs count as Developer Fee: site selection and contracting; identifying and negotiating funding sources; filing applications; securing permits and approvals; selecting and contracting with service providers, including the General Contractor; construction oversight; consultative services; guaranties, financial, or credit support if a Related Party or Affiliate; and any other customary or similar activities determined by the Department..

(B) For HTC Developments, any additional Developer Fee claimed for ineligible costs will be limited to the same percentage but applied only to ineligible Hard Costs. All fees to Affiliates or Related Parties for work or guarantees determined by the Underwriter to be typically completed or provided by the Developer or its Principal(s) and the Developer's costs for general and administrative expenses (including, but not limited to, travel, dining, and courier fees) are part of the Developer Fee.

(C) For HTC Developments, Eligible Developer Fee is multiplied by the appropriate Applicable Percentage depending on whether it is attributable to acquisition or rehabilitation basis.

(D) For non-HTC Developments, the percentage can be up to 7.5% of Total Housing Development Cost less the sum of the fee itself, land costs, the costs of permanent financing, excessive construction period financing described in paragraph (8) of this subsection, reserves, and any identity of interest acquisition cost.

(8) Financing Costs. Term sheets must include all fees required by the construction lender, permanent lender and equity partner. Eligible construction period interest is limited to the lesser of the actual amount or the interest on one year's fully drawn construction period loan funds at the construction period interest rate indicated in the term sheet(s) (Tax-Exempt Bond transactions may include up to 24 months of interest). Any excess over this amount will not count as Eligible Basis. Construction period interest on Related Party or Affiliate construction loans counts as Eligible Basis only with documentation satisfactory to the Underwriter that the loan will be at a market interest rate, fees and loan terms, and the Related Party lender routinely engages in construction financing to unrelated parties.

(9) Reserves. The Underwriter will use the amount presented in the Applicant's Development Cost Schedule up to 12 months of stabilized operating expenses plus debt service (24 months for USDA or HUD-financed rehabilitation transactions), and exclude amounts exceeding these limits from Total Housing Development Costs.

(10) Soft Costs. The Underwriter will use the Applicant's costs, comparative data, and Third Party CPA certification as to the capitalization of the costs to determine the reasonableness of all soft costs, including any one-time fees or payments. Any upfront ground lease payments to a Housing Finance Corporation, Public Finance Corporation, Housing Authority, or Non-Profit that is part of the project ownership structure or is otherwise involved in the project to qualify for a property tax exemption are excluded. The Underwriter will not develop independent estimates of Soft Costs for Tax-Exempt Bond Developments that do not include a request for Direct Loan or where the Department is not the bond issuer.

(f) The Underwriter may determine an Application is infeasible despite all components of the Development plan technically meeting the other individual requirements of this section due to serious concerns and unmitigated risks identified during the underwriting process. Any such recommendation is subject to Appeal as further provided for in §11.902 of this chapter.

(g) Other Underwriting Considerations. The Underwriter will evaluate additional feasibility elements in paragraphs (1) - (4) below.

(1) Interim Operating Income. Interim operating income listed as a source of funds must be supported by a detailed lease-up schedule and analysis.

(2) Floodplains. If the Underwriter determines any of the buildings, drives, or parking areas reside within the 100-year floodplain, the Report will include a condition that:

(A) the Applicant must pursue and receive a Letter of Map Amendment or Letter of Map Revision; or

(B) the Applicant must identify the cost of flood insurance for the buildings in the 100-year floodplain and certify obtaining it; and

(C) the Development will comply with the QAP, Program Rules and NOFA, and applicable Federal or state requirements.

(3) Direct Loans. The Underwriter will not recommend a Direct Loan for approval if the DCR exceeds 1.50 any year during the longer of the term of the Direct Loan or the Federal Affordability Period. The foregoing will not apply if the Applicant to either clause (i) or (ii) below. This standard will also apply when the Owner seeks approval for a request for a subordination agreement or a refinance, except the total special reserve amount will be based on the Cash Flow reflected in the underwriting at that time.

(i) Elects to commit 25% of annual Cash Flow to a special reserve account in accordance with §10.404(d) of this title) for any year the DCR is over 1.50. The Department will calculate

(I) Annual Cash Flow after deducting any payment due to the Developer on a deferred developer fee loan and any scheduled payments on cash flow loans, and

(II) the total special reserve amount based on the Cash Flow at Direct Loan Closing underwriting.

The Owner will make deposits into the special reserve account annually from 25% of remaining annual cash flow until reaching the total special reserve amount. A special reserve account is not eligible for Developments layered with FHA financing subject to HUD's Multifamily Accelerated Processing Guide.

(ii) Applicant requests an increase in the Direct Loan interest rate at Direct Loan Closing underwriting if financially feasibility is still met.

If the Underwriter does not recommend a Direct Loan for approval, the Underwriter will base remaining feasibility considerations under this section on a sources schedule without it.

(h) Work Out Development. See the Department rules pertaining to asset management. “”“”

(i) Feasibility Conclusion. The Report will characterize a Development as infeasible if either paragraph (1) or (2) of this subsection applies or one or more of paragraphs (3) or (4) of this subsection applies, unless paragraph (5)(B) of this subsection also applies.

(1) Gross Capture Rate, AMGI Band Capture Rates, and Individual Unit Capture Rate. The Underwriter will use either the Market Analysis capture rates or independently acquired demographic data to calculate demand and may determine the capture rates based on an analysis of the Sub-market. Any capture rates exceed the following:

Maximum Capture Rates			
Population/Size	**Area**	**Gross and AMGI Band**	**Unit**
Elderly	Any	10%	65%
General	Urban	10%	65%
General (120 HTC units or less)	Rural	30%	65%
General (121 HTC units or more)	Rural	10%	65%
Supportive Housing	Any	30%	65%

(F) Developments meeting the requirements of subparagraph (A), (B), (C), (D) or (E) above may avoid being infeasible if clause (i) or (ii) below apply:

(i) Replacement Housing. The proposed Development is comprised of affordable housing which replaces previously existing affordable housing within the Primary Market Area on a Unit for Unit basis and gives the displaced tenants a leasing preference.

(ii) Existing Housing. The proposed Development is comprised of existing affordable housing (an existing land use restriction agreement or rents are at or below 50% AMGI) which is at least 50% occupied and gives displaced existing tenants a leasing preference as stated in a relocation plan.

(2) Deferred Developer Fee. For Applicants requesting a HTC allocation, the estimated Deferred Developer Fee is not repayable from Cash Flow within the first 15 years of the long term pro forma as described in subsection (d)(5) of this section.

(3) Initial Feasibility.

(A) The first year stabilized pro forma operating expense divided by the first year stabilized pro forma EGI is greater than 68% for Rural Developments 36 Units or less, and 65% for all others (does not apply at cost certification).

(B) The first year DCR is below 1.15 (1.00 for USDA Developments).

(4) Long Term Feasibility. The Long Term Pro forma reflects:

(A) a Debt Coverage Ratio below 1.15 at any time during years two through fifteen; or

(B) negative Cash Flow at any time either throughout the term of a Direct Loan or during years two through fifteen for applications not requesting a Direct Loan.

(5) Exceptions. The infeasibility conclusions will not apply if:

(A) The Executive Director of the Department finds that documentation submitted by the Applicant at the request of the Underwriter will support unique circumstances that will provide mitigation.

(B) Developments infeasible under one or more of paragraphs (3)(A) or (4) of this subsection will be feasible if one or more of clauses (i) - (v) below apply (not available for paragraph (4)(B) of this subsection if the Development has a Direct Loan). The Development:

(i) will receive Project-based Section 8 Rental Assistance, Section 18 disposition, or RAD Program for at least 50% of the Units and the Application includes a firm commitment (including Contract Rent and number of Units);

(ii) will receive USDA rental assistance for at least 50% of the Units;

(iii) will be characterized as public housing for at least 50% of the Units;

(iv) meets the requirements under §11.1(d)(124)(E)(i) of this chapter; or

(v) has other long term project based support for at least 50% of the Units that allows rents to increase based on expenses and the Applicant's proposed rents are at least 10% lower than both the Net Program Rent and Market Rent.

§11.303.Market Analysis Rules and Guidelines.

(a) General Provision. A Market Analysis prepared for the Department must evaluate the need for decent, safe, and sanitary housing at rental rates or sales prices that eligible tenants can afford and include the following statements:

(1) The author is a disinterested party and will not materially benefit from the Development in any other way than receiving a fee for performing the Market Analysis.

(2) The fee is in no way contingent upon the outcome of the Market Analysis.

(3) The Market Study conforms to applicable Department rules.

(4) “Any person signing this Report acknowledges that the Department may publish the full report on the Department's website, release the report in response to a request for public information and make other use of the report as authorized by law.”

(b) Self-Contained. A Market Analysis must allow the reader to understand the data, analysis, and conclusions. All data must reflect the most current information available and include a parenthetical (in-text) citation or footnote describing the source. The analysis must clearly lead the reader to the same or similar conclusions reached by the Market Analyst. The report must present all steps leading to a calculated figure.

(c) Market Analyst Qualifications. A Market Analysis must be prepared and certified by an approved Qualified Market Analyst. (§2306.67055) The Department will maintain an approved Market Analyst list based on the guidelines set forth in paragraphs (1) - (2) below.

(1) The Department will update and publish an approved Qualified Market Analyst list annually on or about November 1st. A Market Analyst may request approval by submitting items in subparagraphs (A) - (F) below at least 30 calendar days prior to the first day of the applicable Application Acceptance Period. An already approved Qualified Market Analyst will remain on the list so long as it is the author of at least one (1) Market Analysis submitted to the Department in the previous 24 months or it submits items (A), (B), (C) and (E) prior to October 1st of the second year following the analyst's most recent submission.

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(A) Franchise Tax Account Status from the Texas Comptroller of Public Accounts (not applicable for sole proprietorships).

(B) A current organization chart or list reflecting all members of the firm who may author or sign the Market Analysis. A firm with multiple offices or locations must indicate all expected providers.

(C) Resumes for all members of the firm or subcontractors who may author or sign the Market Analysis.

(D) General information regarding the firm's experience including references, the number of previous similar assignments and timeframes in which previous assignments were completed.

(E) Certification from an authorized representative of the firm that the services to be provided will conform to the Department's Market Analysis Rules and Guidelines, as described in this section, in effect for the Application Round in which each Market Analysis is submitted.

(F) A sample Market Analysis that conforms to this section in effect for the current year.

(2) Any discrepancies with this section may require timely correction. The Department may remove an analyst from the approved list for not conforming to the Market Analysis Rules and Guidelines.

(A) Removal from the approved list alone will not invalidate a Market Analysis commissioned prior to the removal date and at least 90 days prior to the first day of the applicable Application Acceptance Period.

(B) To be reinstated, the Market Analyst must amend the previous report to remove all discrepancies or submit a new sample Market Analysis that conforms to the Market Analysis Rules and Guidelines.

(d) Market Analysis Contents. A Market Analysis must include, at minimum, items addressed in paragraphs (1) - (13) below.

(1) Title Page. Development address or location, effective date of analysis, date report completed, name and address of person authorizing report, and name and address of Market Analyst.

(2) Letter of Transmittal. The date of the letter must be the date the report was completed. Include Development's address or location and description, statement as to purpose and scope of analysis, reference to accompanying Market Analysis report with effective date of analysis and summary of conclusions, date of Property inspection, name of persons inspecting subject Property, signatures of all Market Analysts authorized to work on the assignment, and a statement that the report preparer has read and understood the requirements of this section.

(3) Table of Contents. Number the exhibits included with the report.

(4) The Department’s Market Analysis Summary exhibit.

(5) Assumptions and Limiting Conditions. Description of all assumptions, both general and specific, made concerning the Property.

(6) Identification of the Real Estate. A statement to acquaint the reader with the Development, including street address, tax assessor's parcel number(s), and characteristics.

(7) Statement of Ownership. The current owners of record and a three year history of ownership.

(8) Primary Market Area (PMA)). A limited geographic area from which the Development is expected to draw most of its demand. The Market Analyst must base all conclusions specific to the subject Development on only one PMA definition. The Market Analyst must adhere to the methodology described in this paragraph. (§2306.67055)

(A) The Market Analyst will define the PMA as:

(i) geographic size based on a base year population no larger than necessary to provide sufficient demand but no more than 100,000 people;

(ii) boundaries based on U.S. census tracts; and

(iii) the PMA population may exceed 100,000 if the amount over is in a single census tract.

A rural PMA should not include significantly larger more populous areas unless the analyst can provide substantiation and rationale that tenants would migrate from larger cities.

(B) The Market Analyst's definition must include the following:

(i) A detailed narrative specific to the PMA explaining:

(I) how the PMA boundaries were determined with respect to census tracts chosen and factors for including or excluding tracts in proximity to the Development;

(II) whether a more logical market area within the PMA exists but is not definable by census tracts and how this subsection of the PMA supports the rationale for the defined PMA;

(III) what are the specific attributes of the Development's location within the PMA that would draw prospective tenants from other areas;

(IV) what specific attributes of the Development itself (if known) would draw prospective tenants currently residing in other areas;

(V) if the PMA crosses county lines, discussion of the different income and rent limits in each county and how differing amounts would affect demand;

(VI) for rural Developments, discussion of the relative draw (services, jobs, medical facilities, recreation, schools, etc.) of the immediate local area (city or populous area if no city) in comparison to its neighboring local areas (cities, or populous areas if no cities) in and around the PMA;

(VII) discuss and quantify current and planned single-family and non-residential construction (include permit data if available); and

(VIII) Other housing issues in general, if pertinent.

(ii) A complete demographic report.

(iii) A scaled distance map indicating the PMA boundaries showing relevant census tracts with complete 11-digit identification numbers in numerical order with labels, the location of the subject Development and all comparable Developments, and the PMA's total square miles.

(iv) A proximity table indicating distances and drive time estimates to employment centers, medical facilities, schools, entertainment, and any other amenities relevant to the potential residents.

(C) Comparable Units. Identify developments in the PMA with Comparable Units and provide a data sheet for each consisting of the items below. In PMAs lacking sufficient rent comparables, the Market Analyst may need to collect data from markets with similar characteristics and make quantifiable and qualitative location adjustments.

(i) development name;

(ii) address;

(iii) year of construction and year of Rehabilitation, if applicable;

(iv) property condition;

(v) Target Population;

(vi) unit mix specifying number of Bedrooms, number of baths, Net Rentable Area and monthly rent and Utility Allowance or sales price with terms, marketing period and date of sale;

(vii) description of concessions;

(viii) list of unit amenities;

(ix) utility structure;

(x) list of common amenities;

(xi) narrative comparison of its proximity to employment centers and services relative to subject's targeted tenant population; and

(xii) for rental developments, the occupancy and turnover.

(9) Market Information.

(A) Identify the number of units for each of the categories in clauses (i) - (vi) below, if applicable:

(i) total housing;

(ii) all multi-family rental developments, including unrestricted and market-rate developments, whether existing, under construction or proposed;

(iii) Affordable housing;

(iv) Comparable Units;

(v) Unstabilized Comparable Units; and

(vi) proposed Comparable Units.

(B) Occupancy. State the overall physical occupancy rate for the proposed housing tenure (renter or owner) within the defined market areas by:

(i) number of Bedrooms;

(ii) quality of construction (class);

(iii) Target Population; and

(iv) Comparable Units.

(C) Absorption. State the absorption trends by quality of construction (class) and absorption rates for Comparable Units.

(D) Demographic Reports must include:

(i) population and household data for a five year period using Application submission as the base year;

(ii) sufficient data to enable calculation of income-eligible, age-, size-, and tenure-appropriate household populations;

(iii) for Elderly Developments, a detailed breakdown of households by age and by income; and

(iv) a complete copy of all demographic reports relied on for the demand analysis, including the reference index that indicates the census tracts on which the report is based.

(E) Demand. Provide a comprehensive evaluation of the need for the Development as a whole and each Unit Type by number of Bedrooms and rent restriction category using the most current census and demographic data available. Where appropriate, the appropriate household size is based on two persons per Bedroom (round up), or one for Efficiency Units.

(i) Demographics. The Market Analyst should use demographic data specific to the characteristics of the households who will live in the proposed Development (e.g., elderly populations and other qualifying residents for an Elderly Development), if available, and avoid making adjustments from more general demographic data. Identify and document the source of adjustment rates used based on more general data for any of the criteria described in subclauses (I) - (V) below.

(I) Population and household figures, supported by actual demographics, for a five year period with the year of Application submission as the base year.

(II) If applicable, adjust the household projections for the qualifying demographic characteristics such as the minimum age of the population to be served.

(III) Adjust the household projections or target household projections, as applicable, for the appropriate household size for the proposed Unit Type by number of Bedrooms proposed and rent restriction category.

(IV) Adjust the household size appropriate projections for income eligibility based on the income bands for the proposed Unit Type by number of Bedrooms proposed and rent restriction category with:

(-a-) the lower end of each income band calculated based on the lowest gross rent proposed, divided by 40% for the general population and 50% for elderly households; and

(-b-) the upper end of each income band equal to the applicable gross median income limit for the largest appropriate household size.

(V) Adjust the income-eligible household projections for tenure (renter or owner) unless tenure appropriate income eligible target household data is available.

(ii) Gross Demand. The sum of Potential Demand from the PMA, Demand from Other Sources, and External Demand.

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

(I) Maximum eligible income is equal to the applicable gross median income limit for the largest appropriate household size.

(II) For Developments targeting the general population, minimum eligible income is based on a 40% rent to income ratio and the tenure-appropriate population for a rental Development is limited to the population of renter households.

(III) For Developments consisting solely of single family residences on separate lots with all Units having three or more Bedrooms, minimum eligible income is based on a 40% rent to income ratio and Gross Demand includes both renter and owner households.

(IV) For Elderly Developments, minimum eligible income is based on a 50% rent to income ratio and Gross Demand includes all household sizes and both renter and owner households within the age range (and any other qualifying characteristics) to be served by the Elderly Development.

(V) For Supportive Housing minimum eligible income is $1 and households meeting the occupancy qualifications of the Development. Data to quantify this demand may be based on statistics beyond the defined PMA but not outside the Applicant’s historical service area.

(VI) For Units with rent assisted units (Project Based Vouchers or Rental Assistance, Public Housing Units) minimum eligible income is $1 and maximum eligible income is the minimum eligible income of the corresponding affordable unit.

(iv) Assume an additional 10% of Potential Demand coming from outside the PMA as External Demand.

(v) For Demand from Other Sources:

(I) state the source of additional demand and the methodology used to calculate the additional demand;

(II) consideration of Demand from Other Sources is at the Underwriter's discretion;

(III) Demand from Other Sources must be limited to households not included in Potential Demand; and

(IV) if the Market Analysis identifies households with Section 8 vouchers as a source of demand, it must include documentation of the number of vouchers administered by the local Housing Authority and a complete demographic report for the area in which the vouchers are distributed.

(F) Employment. Provide a comprehensive analysis of employment trends and forecasts in the PMA, including existing or planned employment opportunities with qualifying income ranges.

(10) Conclusions. Include a comprehensive evaluation of the subject Property, separately addressing each housing type and specific population to be served in terms of items in subparagraphs (A) - (J) below. All conclusions must be consistent with the data and analysis presented throughout the Market Analysis.

(A) Unit Mix. Provide a best possible unit mix conclusion based on the occupancy rates by Bedroom type within the PMA and target, income-eligible, size-appropriate and tenure-appropriate household demand by Unit Type and income type in the PMA.

(B) Rents. Provide separate Market Rent and Achievable Affordable Rent conclusions for each proposed Unit Type by number of Bedrooms and rent restriction category and a separate attribute adjustment matrix. Document Market Rent and Achievable Affordable Rent below the maximum Net Program Rent limit.

(i) HUD Form 92273.

(ii) Each attribute adjustment matrix must have a minimum of three developments must be represented.

(iii) Include adjustments for concessions, if applicable.

(iv) Include adjustments for proximity and drive times to employment centers and services narrated in the Comparable Unit description and the rationale for the amount(s).

(v) Support total adjustments in excess of 15% with additional narrative.

(vi) Total adjustments in excess of 25% indicate the Units are not comparable for the purposes of determining Market Rent and Achievable Affordable Rent conclusions.

(C) Effective Gross Income. Provide rental income, secondary income, and vacancy and collection loss projections for the subject derived independent of the Applicant's estimates.

(D) State the Gross Demand:

(i) for each Unit Type by number of Bedrooms proposed and rent restriction category (e.g., one-Bedroom Units restricted at 50% of AMGI; two-Bedroom Units restricted at 60% of AMGI);

(ii) for the proposed Development as a whole (If some households are eligible for more than one Unit Type, adjust Gross Demand to avoid including households more than once); and

(iii) generated from each AMGI band (If some household incomes are included in more than one AMGI band, adjust Gross Demand to avoid including households more than once).

(E) The Relevant Supply of proposed and Unstabilized Comparable Units includes:

(i) The proposed subject Units to be absorbed.

(ii) Comparable Units in previously approved Developments in the PMA that have not achieved 90% occupancy for a minimum of 90 days, including:

(I) the HTC Development Inventory published on the Department's website as of December 31st of the year preceding the Application Acceptance Period for Competitive HTC Applications;

(II) the most recent HTC Development Inventory published on the Department's website one month prior to the Application date of non-competitive HTC and Direct Loan Applications.

(iii) Unstabilized Comparable Units that are close to the subject PMA either likely to share eligible demand or if the PMAs have overlapping census tracts. Underwriter may require Market Analyst to run a combined PMA including eligible demand and Relevant Supply from the combined census tracts. The Gross Capture Rate generated from the combined PMA must meet the feasibility criteria as defined in §11.302(i).

(F) The Gross Capture Rate is the Relevant Supply divided by the Gross Demand (see §11.302(i) of this chapter).

(G) Individual Unit Capture Rate for each Unit Type by number of Bedrooms and rent restriction categories is the Relevant Supply of proposed and Unstabilized Comparable Units divided by the eligible demand for that Unit. Some households are eligible for multiple Unit Types; include each in the capture rate for only one Unit Type.

(H) Capture Rate by AMGI Band (20%, 30%, 40%, 50%, 60%, 70%, and 80%), is the Relevant Supply of proposed and Unstabilized Comparable Units divided by the eligible demand from that AMGI band. Some households are qualified for multiple income bands; include each in the capture rate for only one AMGI band.

(I) Absorption. Project an absorption period for the subject Development to achieve the occupancy level at which income equals all operating expenses and mandatory debt service requirements.

(J) Market Impact. Provide an assessment of subject Development's impact on existing HTC Developments in the PMA. (§2306.67055)

(11) Provide labeled color photographs of the subject Property, the neighborhood, street scenes, and comparables.

(12) Provide in appendix form any Third Party reports used (including demographics) and a list of works cited (including personal communications).

(13)Current Franchise Tax Account Status from the Texas Comptroller of Public Accounts (not applicable for sole proprietorships) and any changes to items listed in subsection (c)(1)(B) and (C) of this section.

(e) The Department may require the Market Analyst to address other issues relevant to evaluation of the need for the subject Development and particular program guidelines.

(f) If the PMA for a subject Development overlaps the PMA's of other proposed or Unstabilized comparable Developments, the Underwriter may perform an extended Sub-Market Analysis considering the combined PMAs and all proposed and Unstabilized Units. The Underwriter may use the Gross Capture Rate from such an extended Sub-Market Area analysis as the basis for a feasibility conclusion.

(g) All Applicants will acknowledge, by virtue of filing an Application, that the Department is not bound by the Market Analysis and may substitute its own analysis and underwriting conclusions.

§11.304.Appraisal Rules and Guidelines.

(a) General Provision.

(1) An appraisal prepared for the Department must

(A) conform to the Uniform Standards of Professional Appraisal Practice;

(B) be prepared by a general certified appraiser by the Texas Appraisal Licensing and Certification Board;

(C) include a statement that the report preparer has read and understood the requirements of this section;

(D) include a statement that the person or company preparing the appraisal, or reviewing the appraisal, is a disinterested party and will not materially benefit from the Development in any other way than receiving a fee for performing the appraisal, and that the fee is in no way contingent upon the outcome of the appraisal, and

(v) describe sufficient and adequate data and analyses to support the final opinion of value.

(2) If an appraisal is required by the URA it must also meet the requirements of 49 CFR Part 24 and HUD Handbook 1378.

(3) The final value(s) must be reasonable based on the information included. The appraiser must verify any Third Party reports relied on.

(b) Appraiser Qualifications. The appraiser must be appropriately certified or licensed by the Texas Appraiser Licensing and Certification Board.

(c) Appraisal Contents. An appraisal must be organized in a format that follows a logical progression and include items addressed in paragraphs (1) - (12) below.

(1) Title Page. Include a statement with the following:

(A) identifying the Department as the client,

(B) acknowledging the Department has full authority to rely on the findings of the report, and name and address of person authorizing report, and

(C) "any person signing this Report acknowledges that the Department may publish the full report on the Department's website, release the report in response to a request for public information and make other use of the report as authorized by law."

(2) Letter of Transmittal. Include reference to accompanying appraisal report, reference to all person(s) that provided significant assistance in the preparation of the report, date of report, the effective date, date of property inspection, name of person(s) inspecting the property, tax assessor's parcel number(s) of the site, estimate of marketing period, signatures of all appraisers authorized to work on the assignment (including the inspector), and a statement indicating the report preparer has read and understood the requirements of this section.

(3) Table of Contents. Number the exhibits included.

(4) Disclosure of Competency. Include appraiser's qualifications, detailing education and experience.

(5) Statement of Ownership of the Subject Property. Discuss all prior sales of the subject Property within the past three years and disclose any pending agreements of sale, options to buy, or listing of the subject Property.

(6) Property Rights Appraised. Include a statement as to the property rights (e.g., fee simple interest, leased fee interest, leasehold, etc.) being considered defined in terms of current appraisal terminology with the source cited.

(7) Site/Improvement Description. Discuss the site characteristics including subparagraphs (A) - (E) below.

(A) Physical Site Characteristics. Describe dimensions, size (square footage, acreage, etc.), shape, topography, corner influence, frontage, access, ingress-egress, etc. associated with the Site. Include a plat map or survey.

(B) Floodplain. Discuss floodplain (including flood map panel number) and include a floodplain map identifying the subject Property identified.

(C) Zoning. Reports must include:

(i) the current zoning and description of the zoning restrictions;

(ii) probability of change in zoning;

(iii) any deed restrictions, where applicable;

(iv) the type of Development permitted;

(v) whether the improvements conform to the current zoning and could be rebuilt if damaged or destroyed;

(vi) time and expense associated with the proposed zoning change if the zoning is inconsistent with the highest and best use and changes are reasonable to expect; and

(vi) a zoning map.

(D) Description of Improvements. Provide a thorough description and analysis of the improvements including size (Net Rentable Area, gross building area, etc.), use (whether vacant, occupied by owner or being rented), number of residents, number of stories, number of buildings, type/quality of construction, condition, actual age, effective age, exterior and interior amenities, items of deferred maintenance, energy efficiency measures, etc., and all applicable forms of depreciation along with the remaining economic life.

(E) Environmental Hazards. The report must disclose any potential environmental hazards (discolored vegetation, oil residue, asbestos-containing materials, lead- based paint, etc.) noted during the inspection.

(8) Highest and Best Use. Market Analysis and feasibility study is required as part of the highest and best use, including consideration of paragraph (7)(A) - (E) of this subsection as well as a supply and demand analysis.

(A) The appraisal must state any positive or negative market trends influencing the Property value, including detailed data to support the appraiser's estimate of stabilized income, absorption, and occupancy.

(B) The highest and best use section must contain a separate analysis “as if vacant” and “as improved” (or “as proposed to be improved/renovated”) considering all four elements (legally permissible, physically possible, feasible, and maximally productive).

(9) Appraisal Process. The Appraisal must consider all three approaches, Cost, Sales Comparison, and Income in valuing the Property. If an approach is not applicable, provide an adequate explanation why.

(A) Cost Approach. An estimate of the cost to construct the subject improvements. The source(s) of the cost data should be reported. Provide a land value estimate if the Cost Approach is not applicable.

(i) Obtain cost comparables or alternative cost information from Marshall & Swift Valuation Service or similar publications) (reference the section, class, page, etc.). Address and document all soft costs and entrepreneurial profit.

(ii) Discuss and analyze all applicable forms of depreciation consistent with the description of the improvements.

(iii) The land value estimate should include sufficient current and comparable sales similar to the subject in terms of highest and best use. Comparable sales information must include address, legal description, tax assessor's parcel number(s), sales price, date of sale, grantor, grantee, three year sales history, and adequate description of property transferred. The final value estimate must fall within the adjusted and unadjusted value ranges. When applicable, make consideration and appropriate cash equivalent adjustments to the comparable sales price for subclauses (I) - (VII) below.

(I) property rights conveyed;

(II) financing terms;

(III) conditions of sale;

(IV) location;

(V) highest and best use;

(VI) physical characteristics (e.g., topography, size, shape, etc.); and

(VII) other characteristics (e.g., existing/proposed entitlements, special assessments, etc.).

(B) Sales Comparison Approach. Include an adequate number of sales to provide the Underwriter with a description of the current market conditions concerning this property type. Sales data should be recent and specific for the property type being appraised. Confirm the sales with the buyer, seller, or an individual knowledgeable of the transaction.

(i) Sales information must include address, legal description, tax assessor's parcel number(s), sales price, financing considerations and adjustment for cash equivalency, date of sale, recordation of the instrument, parties to the transaction, three year sale history, complete description of the Property and property rights conveyed, and discussion of marketing time. Include a scaled distance map clearly identifying the subject and the comparable sales.

(ii) The method(s) used in the Sales Comparison Approach must reflect actual market activity and market participants.

(I) Sale Price/Unit of Comparison. The analysis of the sale comparables must identify, relate, and evaluate the individual adjustments applicable for property rights, terms of sale, conditions of sale, market conditions, and physical features. Include sufficient narrative to permit the reader to understand the direction and magnitude of the individual adjustments and a unit of comparison value indicator for each comparable.

(II) Net Operating Income/Unit of Comparison. Calculate the Net Operating Income statistics for the comparables in the same manner. Disclose if reserves for replacement have been included. At least one other method must accompany this method of analysis.

(C) Income Approach. This section must contain an analysis of both the actual historical and projected income and expense aspects.

(i) Market Rent Estimate/Comparable Rental Analysis. Include an adequate number of actual market transactions to inform the reader of current market conditions concerning rental Units. The comparables must indicate current research for this specific property type and be confirmed with the landlord, tenant or agent. Include individual data sheets with property address, lease terms, description (e.g., Unit Type, unit size, unit mix, interior amenities, exterior amenities, etc.), physical characteristics, and location of the comparables. Analysis of the Market Rents must be sufficiently detailed to permit the reader to understand the appraiser's logic and rationale. Consider adjustment for lease rights, condition of the lease, location, physical characteristics of the property, etc.

(ii) Comparison of Market Rent to Contract Rent. Report, summarize, and analyze actual income for the subject along with the owner's current budget projections. If such data is unavailable, make a statement to this effect is required and appropriate assumptions and limiting conditions. The Contract Rents must be compared to the market-derived rents. Make a determination as to whether the Contract Rents are below, equal to, or in excess of market rates. If there is a difference, qualify its impact on value.

(iii) Vacancy/Collection Loss. Report historical occupancy data and current occupancy level for the subject and compare it to occupancy data from the rental comparables and overall occupancy data for the PMA.

(iv) Expense Analysis. Report, summarize, and analyze actual expenses for the subject, along with the owner's projected budget. If such data is unavailable, include a statement to this effect is required and make appropriate assumptions and limiting conditions. Compare historical expenses to comparables expenses of similar property types or published survey data (such as IREM, BOMA, etc.). Reconcile any expense differences. Include historical data regarding the subject's assessment and tax rates and a statement as to whether any delinquent taxes exist.

(v) Capitalization. Present the capitalization method(s) reflecting of the subject market and explain the omission of any method not considered in the report.

(I) Direct Capitalization. The primary method of deriving an overall rate is through market extraction. If using a band of investment or mortgage equity technique, fully disclose and discuss the assumptions.

(II) Yield Capitalization (Discounted Cash Flow Analysis). This method of analysis must include a detailed and supportive discussion of the projected holding/investment period, income and income growth projections, occupancy projections, expense and expense growth projections, reversionary value, and support for the discount rate.

(10) Value Estimates. All appraised values must be based on as-is values at the time of Application. Reconciliation of final value estimates is required. The Underwriter may request additional valuation information based on unique existing circumstances relevant for deriving market value.

(A) All appraisals must contain a separate estimate of the “as vacant” market value of the underlying land, based on current sales comparables“” assuming no improvements on the property (not considering demolition costs). The appraiser must consider the fee simple or leased fee interest as appropriate.

(B) For existing Developments with any project-based rental assistance remaining with the property after acquisition, the appraisal must include an “as-is as-currently-restricted value at current contract rents.” For public housing converting to project-based rental assistance, the appraiser must provide a value based on the future restricted rents. The value used in the analysis may be based on the unrestricted market rents if supported by the appraisal. Regardless of the rents used in the valuation, the appraiser must consider any other on-going restrictions that will remain in place even if not affecting rents. The appraiser must fully explain and support, to the Underwriter’s satisfaction, if the rental assistance has an impact on the value, such as use of a lower capitalization rate due to the lower risk associated with rents or occupancy on project-based developments.

(C) For existing Developments with rent restrictions, the appraisal must include the "as-is as-restricted" value based on the current restricted rents when deriving the value based on the income approach.

(D) For all other existing Developments, the appraisal must include the "as-is" value.

(E) For any Development with favorable financing from a government entity that will remain in place and transfer to the new owner, the appraisal must include a separate value for it with supporting information. The appraiser will allocate 25% of the appraised favorable financing value to land value and 75% to building value, unless the use was only for rehabilitation, in which case 100% will be attributed to the building. Applicant's allocation of favorable financing should be clearly explained.

(F) The appraiser must include either a separate assessment of personal property, furniture, fixtures, and equipment (FF&E) or intangible items or a statement such items are not part of the transaction.

(11) Marketing Time. The appraiser(s) must employ a reasonable marketing period and detail existing market conditions and relevant assumptions.

(12) Photographs. Provide good quality labeled color photographs of the subject Property (front, rear, and side elevations, on-site amenities, interior of typical Units if available) the neighborhood, street scenes, and comparables.

(d) Additional Appraisal Concerns. The appraisal must include an analysis of any impact to the subject's value of the Department program rules and guidelines.

§11.305.Environmental Site Assessment Rules and Guidelines.

(a) General Provisions. The ESA prepared for the Department must be conducted and reported in conformity with the standards of the American Society for Testing and Materials (ASTM) including the Standard Practice for Environmental Site Assessments: Phase I Assessment Process (ASTM Standard Designation: E1527-13 or any subsequent standards as published) for the initial report. The ESA must

(1) be conducted by a Third Party environmental professional at the Applicant's expense;

(2) be addressed to the Department as a User of the report, as defined by ASTM standards (copies ESAs commissioned by other institutions must either address TDHCA as a co-

recipient or be accompanied by letters from both the provider and the recipient extending reliance on the report to the Department);

(3) include a statement that the person or company preparing the ESA report will not materially benefit from the Development in any other way than receiving a fee for performing the ESA, and that the fee is in no way contingent upon the outcome of the assessment;

(4) include the following statement, “Any person signing this Report acknowledges that the Department may publish the full report on the Department's website, release the report in response to a request for public information and make other use of the report as authorized by law.”; and

(5) contain a statement indicating the report preparer has read and understood the requirements of this section.

(b) In addition to ASTM requirements, the report must:

(1) State if it recommends a noise study for a property in accordance with current HUD guidelines and identify its proximity to industrial zones, major highways, active rail lines, civil and military airfields, or other potential sources of excessive noise.

(2) Provide a copy of a current survey, if available, or other drawing of the site reflecting the boundaries and adjacent streets, all improvements on the site, and any items of concern described in the body of the ESA or identified during the physical inspection.

(3) Provide a copy of the current FEMA Flood Insurance Rate Map showing the panel number and encompassing the site with the site boundaries precisely identified and superimposed on the map.

(4) If the subject Site includes any improvements or debris from pre-existing improvements, state if testing for Lead Based Paint or asbestos containing materials would be required pursuant to local, state, and federal laws, or recommended due to any other consideration.

(5) State if testing for lead in the drinking water would be required pursuant to local, state, and federal laws, or recommended due to any other consideration such as the age of pipes and solder in existing improvements. For all Rehabilitation Developments, the ESA provider must state whether the on-site plumbing is a potential source of lead in drinking water.

(6) Assess the potential for the presence of Radon and recommend specific testing if necessary.

(7) Identify and assess the presence of oil, gas or chemical pipelines, processing facilities, storage facilities or other potentially hazardous explosive activities (does not include liquified petroleum gas containers with a capacity of less than 125 gallons) that could potentially adversely impact the Development. A drawing or map must show the location of these items in relation to the Site and all existing or future improvements and depict any blast zones (in accordance with HUD guidelines) and include HUD blast zone calculations.

(8) Include a vapor encroachment screening in accordance with the ASTM "Standard Guide for Vapor Encroachment Screening on Property Involved in Real Estate Transactions" (E2600-10 or any subsequent standards as published).

(c) If the report recommends further studies or establishes that on- or off-site environmental hazards affect the Property, the Owner must act on such a recommendation or provide a plan for either the abatement or elimination of the hazard. The Application must include evidence of the action or a plan.

(d) For Developments in programs that allow a waiver of the Phase I ESA, the Owners are responsible to ensure the Development is maintained in compliance with all state and federal environmental hazard requirements.

(e) Those Developments which have or will receive first lien financing from HUD may submit HUD's environmental assessment report if it conforms to the requirements of this section.

§11.306.Scope and Cost Review Guidelines.

(a) General Provisions. The SCR required for Rehabilitation Developments (excluding Reconstruction) and Adaptive Reuse Developments must

(1) evaluate the sufficiency of the Applicant's scope of work and provide an independent review of the Applicant's proposed costs;

(2) be in sufficient detail for the Underwriter to fully understand all current conditions, scope of work and cost estimates;

(3) include a copy of the Development Cost Schedule submitted in the Application; and

(4) include the following statement: "Any person signing this Report acknowledges that the Department may publish the full report on the Department's website, release the report in response to a request for public information and make other use of the report as authorized by law."

(b) For Rehabilitation Developments, the SCR must include analysis conforming with the ASTM "Standard Guide for Property Condition Assessments. Baseline Property Condition Assessment Process (ASTM Standard Designation: E 2018, or any subsequent standards as published)" except as provided for in subsections (f) and (g) of this section.

(c) The SCR must include labeled photographs of the subject Real Estate (front, rear, and side elevations, on-site amenities, interior of the structure).

(d) The SCR must also include discussion and analysis of:

(1) Description of Current Conditions. For both Rehabilitation and Adaptive Reuse, the SCR must contain a detailed description (with photographs) of the current conditions of all major systems and components regardless of what will be removed, repaired or replaced. For historic structures, the SCR must contain a description (with photographs) of each aspect qualifying as historic and must include a narrative explaining how the scope of work relates to maintaining the historic designation. Describe replacement or relocation of systems and components.

(2) Description of Scope of Work. The SCR must provide a narrative of the consolidated scope of work a description of any new construction, either as a stand-alone section of the report or included with the description of the current conditions for each major system and components. Include any plans or drawings, in addition to those required, relating to the scope of work.

(3) Useful Life Estimates. Estimate the remaining useful life of each system and component, citing the basis or the source.

(4) Code Compliance. The SCR must document any known violations of any applicable federal, state, or local codes. The Applicant is responsible for ensuring the SCR adequately considers applicable laws and regulations when developing cost estimates. For Applications requesting a Direct Loan, the SCR must include a comparison between the local building code and the International Existing Building Code.

(5) Program Rules. The SCR must assess the extent to which any systems or components must be modified, repaired, or replaced to comply with any specific requirements of a housing program or scoring criteria. The Applicant is responsible for informing the report author of those requirements.

(6) Accessibility Requirements. The SCR report must include an analysis of compliance with the Department's accessibility requirements pursuant to Chapter 1, Subchapter B and §11.101(b)(8) of this title and identify the specific items in the scope of work and costs needed to ensure the Development will meet these requirements upon completion.

(7) Reconciliation of Scope of Work and Costs. The SCR must include the SCR Supplement (with the SCR author's signature). The costs presented on the SCR Supplement must be consistent with both the scope of work and immediate costs identified in the SCR report body and the Applicant's scope of work and costs in the Application. The SCR author must reconcile any variations between the costs. The Underwriter will use the consolidated scope of work and costs shown on the SCR Supplement in the analysis to the extent adequately supported in the report.

(8) Cost Estimates. The Development Cost Schedule and SCR Supplement must include all costs identified below:

(A) Immediately Necessary Repairs and Replacement. For all Rehabilitation and Adaptive Reuse Developments, if applicable, identify immediately necessary repair and replacement for systems or components which

(i) are expected to have a remaining useful life of less than one year,

(ii) are in violation of any applicable codes,

(iii) must be modified, repaired or replaced to satisfy program rules, or

(iv) are otherwise in a state of deferred maintenance or pose health and safety hazards.

The SCR must provide a separate estimate of the costs associated with the repair, replacement, or maintenance of each system or component above, citing the basis or the source.

(B) Proposed Repair, Replacement, or New Construction. If the development plan calls for additional scope of work beyond the immediate repair and replacement items described in subparagraph (A) above, the SCR must evaluate either the nature or source of obsolescence to be cured or improvement to operations. The SCR must provide a separate estimate of the costs associated with the additional scope of work, citing the basis or the source.

(C) Reconciliation of Costs. The combined costs described in subparagraphs (A) and (B) of this paragraph must be consistent with the costs in the Applicant's Development Cost Schedule and the SCR Supplement.

(D) Expected Repair and Replacement Over Time. The term during which the SCR should estimate the cost of expected repair and replacement over time must equal the lesser of 30 years or the longest term of any land use or regulatory restrictions which are or will be associated with the Property. The SCR must estimate the periodic costs for repairing or replacing each system or component or the property based on the estimated remaining useful life adjusted for repair and replacement. The SCR must include a separate table of the estimated long term costs identifying in each line the individual component of the property being examined, and in each column the year during the term in which the costs are estimated to be incurred for a period and no less than 30 years. Give the estimates in both present dollar values and anticipated future dollar values assuming a reasonable inflation factor of not less than 2.5% per annum.

(e) The underwritten Report will not include any costs not identified and discussed in sufficient detail in the SCR as part of subsection (d)(6), and (8)(A) and (B) of this section.

(f) The Department also will accept the following reports commissioned or required by the primary lender if such standards meet the criteria in subsection (g) below:

(1) Fannie Mae's criteria for Physical Needs Assessments;

(2) Federal Housing Administration's criteria for Project Capital Needs Assessments;

(3) Freddie Mac's guidelines for Engineering and Property Condition Reports; and

(4) USDA guidelines for Capital Needs Assessment.

(g) The Department may accept reports prepared according to other standards not specifically named in this section if

(1) a copy of such standards or a sample report have been provided for the Department's review,

(2) such standards are widely used, and

(3) all other criteria and requirements described in this section are satisfied.

(h) A Third Party will conduct the SCR at the Applicant's expense and address TDHCA as either the client or a co-recipient accompanied by letters from both the provider and the recipient extending reliance.

(i) The SCR report must include a statement that the author has read and understood the requirements of this section and will not materially benefit from the Development in any other way than receiving a fee for performing it. The provider must not be a Related Party to or an Affiliate of any other Development Team member.

(j) Scope of Work Narrative. An SCR is not required for Tax-Exempt Bond Developments that do not include a request for Direct Loan or where the Department is not the bond issuer. The application must provide a Scope of Work Narrative consisting of:

(1) a detailed description of the current conditions of all major systems and components of the Development, regardless of what will be removed, repaired or replaced;

(2) for historic structures, a description of each aspect that qualifies as historic, including a narrative explaining how the scope of work relates to maintaining the historic designation; and

(3) a narrative of the consolidated scope of work for the proposed rehabilitation for each major system and components.

SUBCHAPTER E. FEE SCHEDULE, APPEALS, AND OTHER PROVISIONS

10 TAC §§11.901 - 11.907

§11.901.Fee Schedule.

Applicants must submit any payment due under this chapter and assume the deadline for such payment is final. An Applicant with an outstanding balance of unpaid fees under this section will be ineligible to

(i) apply for Department resources,

(ii) receive additional Department funding associated with a Commitment, Determination Notice or Contract, and

(iii) submit extension requests, ownership transfers, and Application amendments.

Payments of the fees must be in the form of a check unless the Department approves another form. Insufficient funds being available may cause the Application, Commitment, Determination Notice or Contract to be terminated or Allocation rescinded. Applicants must pay any insufficient payment fees charged to the Department by the State Comptroller. Unless prohibited by other parts of this chapter, the Executive Director may extend the fee deadline for specific extenuating and extraordinary circumstances if the Applicant submits a written request for an extension no later than five business days in advance. Staff may grant relief for a deadline for unusual or unpredictable circumstances outside of the Applicant's control, such as inclement weather or failed deliveries.

(1) Competitive HTC Pre-Application Fee. Applicants must submit with the pre-application a fee of $10 per Unit reflected therein. Documentation of a CHDO or a private Qualified Nonprofit Organization serving as the Managing General Partner (or having Control over such entity) will result in a 10% discount. (§2306.6716(d))

(2) Refunds of Competitive HTC Pre-application Fees. (§2306.6716(c)) Upon written request, the Department will refund the fee for a Competitive HTC pre-application withdrawn not fully processed. The amount of refund will be commensurate with the level of review completed:

(1) 50% for initial processing,

(2) 30% for threshold review prior to a deficiency being issued, and

(3) 20% after deficiencies are submitted and reviewed.

In no instance will the Department refund of a pre-application fee after February 1.

(3) Application Fee. Each Application must be accompanied by an Application fee.

(A) Housing Tax Credit Applications. Applicants having submitted a Competitive HTC pre-application which met the threshold requirements and paid the fee must submit with an Application a fee of $20 per Unit reflected therein. Otherwise, the fee will be $30 per Unit. Documentation of a CHDO or a private Qualified Nonprofit Organization serving as the Managing General Partner (or having Control over such entity) will result in a 10% discount. (§2306.6716(d))

(B) Direct Loan Applications. The fee is $1,000 per Application if not requesting HTCs. The Application fee is not a reimbursable cost. The Department will waive Application fees for private nonprofit organizations receiving a Direct Loan that offer expanded services such as child care, nutrition programs, job training assistance, health services, or human services. (§2306.147(b)) Such organizations must include proof of their exempt status and a description of their supportive services as part of the Application.

(4) Refunds of Application Fees. Upon written request, the Department will refund the fee for an Application withdrawn and not fully processed. The withdrawal must occur prior to any Board action regarding eligibility or appeal. The amount of refund will be commensurate with the level of review completed:

(A) 10% for initial processing,

(B) 10% for the site visit,

(C) 40% for program evaluation review, and

(D) 40% for the underwriting review.

In no instance will the Department refund an Application fee after final awards in July.

(5) Third Party Underwriting Fee. The Department will notify Applicants in writing prior to the evaluation by an independent external underwriter. The Department must receive the fee prior to engaging and the Department will credit such fees paid against the Commitment or Determination Notice Fee, as applicable, in paragraphs (6) and (7) of this section.

(6) Housing Tax Credit Commitment Fee. Owners must pay a fee equal to 4% of the annual HTC Allocation amount no later than the expiration date in the Commitment. The Department may refund 50% of the fee if the Owner returns the allocation by November 1 of the current Application Round.

(7) Tax Exempt Bond Development Determination Notice Fee. Owners must pay a fee equal to 4% of the annual HTC Allocation amount no later than the expiration date in the Determination Notice, unless the Owner requested an extension. If the Owner has paid the fee and is unable close on the bonds, the Department may refund 50% of the fee if generally within 90 days of the Certificate of Reservation deadline.

(8) Tax-Exempt Bond Credit Increase Request Fee. Owners requesting the Department increase the annual HTC Allocation amounts on IRS Form(s) 8609 above the amount in the Determination Notice for Tax-Exempt Bond Developments must pay a fee equal to 4% of such increase.

(9) Extension Fees.

(A) All requests to extend deadlines relating to the Carryover, 10% Test (submission and expenditure), Construction Status Reports, or Cost Certification requirements submitted fewer than 30 calendar days in advance of the applicable original deadline must include an extension fee of $2,500. The fees for each subsequent extension request for the same activity will increase by increments of $500, regardless of first request submission date.

(B) An extension fee will not be required for Rehabilitation Developments if USDA or the Department, as the primary lender, is responsible for not meeting the deadline. An extension fee for the deadline to submit the Determination Notice and associated documents will not be required if the Owner submits a written request.

(C) An extension fee is due for each Construction Status Report received after the applicable deadline (regardless of whether the Owner requests an extension). For this purpose each report is a separate activity. Unpaid fees related to Construction Status Reports will be accrued and must be paid prior to issuance of IRS Forms 8609.

(10) Amendment Fees. Owners must pay a fee of $2,500 for material amendment requests (regardless of whether implemented) or non-material amendment requests that have already been implemented. The fees for each subsequent amendment request for the same Application will increase by increments of $500. A subsequent request related to the same Application must include a fee of $3,000 regardless of whether the first request was non-material. Amendment fees and fee increases are not required for the Direct Loan programs during the Federal Affordability Period.

(11) Right of First Refusal Fee. Requests for approval of the satisfaction of the ROFR provision of the LURA must be accompanied by a non-refundable fee of $2,500.

(12) Qualified Contract Pre-Request Fee. An Owner filing a preliminary Qualified Contract Request to confirm eligibility must pay a non-refundable processing fee of $250.

(13) Qualified Contract Fee. An Owner filing a Qualified Contract Request must pay a non-refundable processing fee of $3,000.

(14) Ownership Transfer Fee. Requests to approve an ownership transfer must be accompanied by a non-refundable processing fee of $1,000 unless for Direct Loan only Developments during the Federal Affordability Period. For Developments previously issued bonds by the Department and for which an Assignment, Assumption, and Consent Agreement will need to be executed, the ownership transfer must be accompanied by a written acknowledgement that the requestor will be responsible for the Department's costs incurred for preparation of documents by outside bond counsel.

(15) Unused Credit or Penalty Fee for Competitive HTC Applications. Owners must return any HTCs they cannot substantiate through Cost Certification. Failure to do so will result in a penalty fee equal to the one-year amount of lost HTCs (10% of the total unused amount). The Department may waive this penalty fee without Board action if able to allocate the returned HTCs.

If an Applicant returns a full credit allocation after the Carryover Allocation deadline, the Executive Director may recommend the Board impose a scoring penalty for any Competitive HTC Applications submitted by that Applicant or any Affiliate in either a concurrent Application Round (as further provided for in §11.9(f) of this chapter) or, if no Application Round is pending, the Application Round immediately following. The Department must notify the affected party not less than 14 calendar days prior to the scheduled Board meeting. The Executive Director may issue a formal notice after disclosure upon a determination that the matter does not warrant point penalties.

(16) Compliance Monitoring Fee. The Department will invoice Owners compliance monitoring fees of

(A) $40 per low-income unit, beginning with the first year of the credit period (collected retroactively if applicable), or

(B) $34 per Direct Loan Unit (including HOME Match Eligible) for Developments with no HTCs, beginning with the first year of after Project Completion.

HTC Developments with an existing LURA will owe only the forgoing fee. Owners must pay the invoice prior to either the issuance of IRS Form 8609 or release of final retainage for Developments with no HTCs. Subsequent anniversary due dates are determined by the month the first building places in service.

(17) Public Information Request Fee. The Department uses the guidelines promulgated by the Office of the Attorney General to determine the cost of copying and other costs of producing public information requests.

(18) Adjustment of Fees by the Department and Notification of Fees. (§2306.6716(b)) The Department may revise any fees charged in the administration of the HTC and Direct Loan programs (including for compliance) as necessary to ensure that such fees cover its costs and expenses. Unless the Department determines otherwise, all revised fees apply to all Applications in process and all Developments in operation at the time of such revisions.

§11.902.Appeals Process.

(a) For Competitive HTC Applications, an Applicant or Owner may appeal Department decision pursuant to Tex. Gov't Code §2306.0321 and §2306.6715 using 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 and Subchapter C of this chapter, pre-application threshold criteria, and underwriting criteria;

(2) Application scoring;

(3) a recommendation of the amount of Department funding to be awarded;

(4) misplacement of all or part of an Application, mathematical errors in scoring, or procedural errors resulting in unequal consideration;

(5) denial of a requested change to a Commitment or Determination Notice;

(6) denial of a requested change to a loan agreement;

(7) denial of a requested change to a LURA;

(8) any Department decision that results in the termination or change in set-aside of an Application; and

(9) any other matter for which an appeal is permitted under this chapter.

(b) An Applicant or Owner may not appeal a decision made regarding an Application filed by or an issue related to another Applicant or Owner.

(c) An Applicant or Owner must file its appeal in writing with the Department not later than the seventh calendar day after the date the Department publishes the results of any stage of the Application evaluation or otherwise notifies the Applicant or Owner of a decision subject to appeal. The appeal must be made by a Person designated to act on behalf of the Applicant or an attorney representing the Applicant. For Application related appeals, the Applicant must specifically identify the grounds for appeal, based on the original Application and additional documentation filed with it, as supplemented in accordance with the limitations and requirements of this chapter.

(d) The Executive Director may respond in writing not later than 14 calendar days after the date of actual receipt of the appeal by the Department. If the Applicant is not satisfied with the response or the Executive Director does not respond, the Applicant may appeal directly in writing to the Board. While information can be provided in accordance with any rules related to public comment before the Board, documentation filed with the Executive Director must disclose full and complete explanation of the grounds for appeal and circumstances warranting the granting of an appeal.

(e) An appeal filed with the Board must be received in accordance with Tex. Gov't Code §2306.6715(d).

(f) If there is insufficient time for the Executive Director to respond to a Competitive HTC Application appeal prior to posting the agenda for the July Board meeting at which awards from the Application Round will be made, the appeal may be posted to the Board agenda before the Executive Director responds.

(g) Board review of an Application related appeal will be based on the original Application. A witness in an appeal may not present or refer to any document, instrument, or writing not already in the Application as reflected in the Department's records.

(h) The decision of the Board regarding an appeal is the final decision of the Department.

(i) The Department will post to its website an appeal filed any other document relating to the processing of an Application related appeal. (§2306.6717(a)(5))

§11.903.Adherence to Obligations. (§2306.6720).

Any Applicant, Owner, or other Person that fails to adhere to its obligations with regard to Department programs (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 Tex. Gov't Code, Chapter 2306 or a rule adopted under that chapter, may be subject to the following:

(1) Assessment of administrative penalties in accordance with Chapter 2, Subchapter C of this title 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.

(2) In the case of the competitive HTC Program, a point reduction for any Application involving that Applicant over the next two Application Rounds succeeding the date on which the Department first gives written notice (subject to appeal to the Board).

§11.904.Alternative Dispute Resolution (ADR) Policy.

The Department encourages the use of appropriate ADR procedures under the Governmental Dispute Resolution Act, Tex. Gov't Code, Chapter 2010, to assist in resolving disputes under the Department's jurisdiction, as provided for in §1.17 of this title. (§2306.082)

§11.905.General Information for Commitments or Determination Notices.

(a) The Department will not issue a Commitment or Determination Notice with respect to any Development for an unnecessary amount in accordance with Code §42(m)(2)(A) or where costs exceed the established limits.

(b) All Commitments and Determination Notices remain subject to applicable law and Department rules, their governing documents, and satisfactory completion of underwriting and all related conditions, including administrative deficiencies.

(c) The Department will notify the appropriate official of the jurisdiction where the Development is located of the Board's issuance of a Commitment Notice.

(d) The Department may cancel a Commitment, Determination Notice or Carryover Allocation prior to the issuance of IRS Form(s) 8609 or completion of construction and/or apply administrative penalties if:

(1) The Applicant, Owner, or the Development (as applicable) fails, after written notice and a reasonable opportunity to cure, to meet any condition of a Commitment, Determination Notice or Carryover Allocation or any of the undertakings and commitments made by the Owner in the Application.

(2) Any material statement or representation made by the Owner or made with respect to the Owner or the Development is untrue or misleading.

(3) An event occurs with respect to the Applicant or the Owner which would have made the Application ineligible for funding pursuant to Subchapter C of Chapter 11 of this title if such event had occurred prior to issuance.

(4) The Applicant, Owner, or the Development (as applicable) fails, after written notice and a reasonable opportunity to cure, to comply with this chapter or other applicable Department rules, procedures, or requirements.

§11.906.Commitment and Determination Notice General Requirements and Required Documentation.

(a) Commitment. For Competitive HTC Developments, the Department will issue a Commitment to the Owner which confirming that the Board has approved the Application and state the Department's commitment to make a HTC Allocation in a specified amount, subject to the determining feasibility under Chapter 11, Subchapter D of this title and that the Development satisfies the requirements of this chapter and other applicable Department rules. The Commitment expires on the date specified, which will be 30 calendar days from the effective date, unless the Owner indicates acceptance by executing the Commitment, pays the required fee specified in §11.901 of this chapter, and satisfies any conditions set forth therein. The Commitment expiration date may not be extended.

(b) Determination Notices. For Tax-Exempt Bond Developments, the Department will issue a Determination Notice confirming that the Development satisfies the requirements of this chapter and other applicable Department rules in accordance with Code §42(m)(1)(D). The Determination Notice will state the Department's determination of a specific amount of HTCs for which the Development may be eligible. The Determination Notice expires on the date specified, which will be 30 calendar days from the effective date, unless the Owner indicates acceptance by executing the Determination Notice, pays the required fee specified in Chapter 11, Subchapter E of this title, and satisfies any conditions set forth therein. For Tax-Exempt Bond Developments utilizing

(1) a local issuer, the Determination Notice expiration date may be extended for up to five calendar days;

(2) TDHCA as the bond issuer, the expiration date may be extended to coincide with the closing date.

The Determination Notice will be valid for a period of one year from its effective date , without distinction between a Certificate of Reservation or Traditional Carryforward Reservation. The one-year period may be extended for up to six months. The Department will not issue a new Determination Notice reflecting a different HTC amount without a new Application submitted.

(c) Documentation Submission Requirements at Commitment of Funds. Owners must provide the documentation in paragraphs (1) - (7) below no later than the Commitment expiration date (or no December 31 for Competitive HTC Applications, whichever is earlier) or Determination Notice. Failure to do so may cause the Commitment or Determination Notice to be rescinded.

(1) For entities formed outside the state of Texas, evidence that it filed a Certificate of Application for foreign qualification in Texas, a Franchise Tax Account Status from the Texas Comptroller of Public Accounts, and a Certificate of Fact from the Office of the Secretary of

State. If the entity is newly registered in Texas and the Franchise Tax Account Status or Certificate of Fact are not available, provide a statement to that effect.

(2) For Texas entities, a copy of the Certificate of Filing for the Certificate of Formation from the Office of the Secretary of State, a Certificate of Fact from the Secretary of State, and a Franchise Tax Account Status from the Texas Comptroller of Public Accounts. If the entity is newly registered and the Certificate of Fact and the Franchise Tax Account Status are not available, provide a statement to that effect.

(3) A corporate resolution indicating that the signer(s) of the Commitment or Determination Notice have sufficient authority to sign on behalf of the Applicant.

(4) Evidence of final zoning that was proposed or needed to be changed pursuant to the Development plan.

(5) Evidence of satisfaction of any conditions identified in the Credit Underwriting Analysis Report, any conditions provided for in Chapter 1, Subchapter C of this title, or any other conditions of the award required to be met at Commitment or Determination Notice.

(6) Documentation of any changes to representations made in the Application subject to §10.405 of this title.

(7) For Applications underwritten with a property tax exemption, submit documentation in the form of a letter from an attorney identifying the statutory basis for the exemption and indicating the exemption is reasonably achievable, subject to appraisal district review. Additionally, any Development with a proposed PILOT agreement must provide evidence regarding its statutory basis and terms.

(8) For Competitive HTC Applications, staff may grant relief of the deadline for any documentation that must be submitted under this section for unusual or unpredictable circumstances outside of the Applicant's control (inclement weather or failed deliveries).

(d) Post Bond Closing Documentation Requirements. Regardless of the bond issuer, the Owner must submit the documentation in paragraphs (1) - (6) below no later than 60 calendar days following closing.

(1) Certificate(s) from a Department approved “property owner and manager Fair Housing trainer” showing the Owner and on-site or regional property manager attended and passed at least five hours of Fair Housing training. The certificate(s) must not be older than three years from the date of submission and must verify completing all parts or phases of the offered training. Two certificates supplied for the same part or phase of an offered training will not count towards the five hour required minimum. The individual reflected on the certificate must be identified on the organizational chart as having Control.

(2) Certificate from a Department approved “architect and engineer Fair Housing trainer” showing that the lead architect or engineer responsible for certifying compliance with the Department's accessibility and construction standards has attended and passed at least five hours of Fair Housing training. The certificate must not be older than three years from the date of submission and must verify completing all parts or phases of the offered training. Two certificates supplied for the same part or phase of an offered training will not count towards the five hour required minimum.

(3) Evidence that the financing has closed, such as an executed settlement statement.

(4) A confirmation from the Compliance Division evidencing receipt of the CMTS Filing Agreement form pursuant to §10.607(a) of this title.

(5) An initial construction status report consisting of items from §10.401(b)(1)-(6) of this title.

(6) A current survey or plat of the Site prepared and certified by a duly licensed Texas Registered Professional Land Surveyor delineating the floodplain areas and showing all easements recorded against the Property and encroachments.

§11.907.Carryover Agreement General Requirements and Required Documentation.

All Developments that received a Commitment, and will not place in service and receive IRS Form(s) 8609 in that year, must submit the Department’s Carryover documentation no later than the Carryover Documentation Delivery Date in §11.2 of this title of the year in which the Commitment is issued.

(1) The Department will terminate Commitments if it does not receive the Carryover documentation by this deadline, unless an extension has been approved. This termination is subject to appeal directly to the Board.

(2) If the interim or permanent financing structure, syndication rate, amount of debt or syndication proceeds are different at the time of Carryover from the original Application, the Owner must provide applicable documentation. The Department may reduce the HTC allocation or change conditions.

(3) All Carryover Allocations will be contingent upon the Owner providing evidence of maintaining Site Control through the 10% Test or anticipated closing date, whichever is earlier. Owners must address any changes to the Site acreage between Application and Carryover in accordance with §10.405 of this title.

(4) Owners must submit confirmation of the right to transact business in Texas, as evidenced by the Franchise Tax Account Status (the equivalent of the prior Certificate of Account Status) from the Texas Comptroller of Public Accounts and a Certificate of Fact from the Office of the Secretary of State.

SUBCHAPTER F. STATE HOUSING TAX CREDITS

10 TAC §11.1001 - 11.1009

§11.1001 General.

(a) This subchapter applies only to 2027 State Housing Tax Credits to supplement HTC awards.

(b) Submissions required to request State Housing Tax Credits are a supplement to an original Competitive HTC Application. Requests for State Housing Tax Credits are not considered Applications under the 2027 HTC Competitive Cycle nor are they part of the 2027 Application Round.

(c) An allocation of State Housing Tax Credits will be processed as a Material Amendment to a Competitive HTC Application under §10.405 of this title. The Department will not charge a fee for this Material Amendment.

(d) For Competitive HTC Applications, revisions to costs included in a request for State Housing Tax Credits will not impact points originally awarded under §11.9(e)(2) and (4) of this title.

(e) Tax-Exempt Bond Developments must meet the requirements of §11.1009 of this chapter.

(f) Developments with HOME funds will enter into a Contract and a LURA for HOME Match Eligible Units.

§11.1002 Program Calendar for State Housing Tax Credits Associated with Competitive HTC Applications.

(a) Competitive HTC Deadlines. The Department may extend non-statutory deadlines specifically listed in the Program Calendar for a period of not more than five business days if the Applicant has requested an extension in writing prior to the original deadline and has established good cause.

Deadline	Documentation Required
2/__/2027	Full Application Delivery Deadline, must include completed Intent to Request a State Housing Tax Credit Allocation
9/__/2027	State Housing Tax Credit Request Form due

December 2027	Allocation Certificates issued

§11.1003 State Housing Tax Credit Allocation Process Associated with Competitive HTC Applications.

(a) Only those Applicants electing to request a State Housing Tax Credit allocation by the Full Application Delivery Date specified in §11.2(a) or (b) of this chapter are eligible to request State Housing Tax Credits.

(b) The Department must receive Requests for State Housing Tax Credits by the deadline specified in §11.1002 of this subchapter in the format required.

(c) The minimum request amount is $3,000,000.

(d) Third Party Requests for Administrative Deficiency. The Department will not use the Third Party Request for Administrative Deficiency process during the State Housing Tax Credit process under this subchapter.

§11.1004 Procedural Requirements for Requests for State Housing Tax Credits Associated with Competitive HTC Applications.

(a) The procedures and requirements of §11.201 of this chapter will apply to Requests for State Housing Tax Credits, unless otherwise specified in this Subchapter.

(b) The Department will rely on the Original Application. The request for State Housing Tax Credits must only include the items authorized in this subchapter. Applicants may not submit architectural drawings or other documents relating to changes to the Application other than revisions to the financing structure. The Applicant must submit the required documents as a single PDF document and all spreadsheet exhibits as specified in the Department's released materials., Staff will incorporate these into the Original Application and will become the full Request for State Housing Tax Credits.

§11.1005 Required Documentation for State Housing Tax Credit Request Submission Associated with Competitive HTC Applications.

(a) Only documents listed herein may be submitted.

(b) Certification, Acknowledgement, and Consent of Development Owner. The Owner must execute a certification of the information in this subchapter as well as Subchapter B of this chapter addressing the specific requirements associated with the Development. The Person executing the certification is responsible for ensuring all individuals referenced therein comply with the certification and have given it with all required authority and with actual knowledge of the matters certified. Applicants must certify that there has been no change to the Applicant Eligibility or Original Owner Certification since the Original Application was submitted.

(c) Site Requirements and Restrictions. The Applicant must certify that there have been no changes from the Original Application that would require additional disclosure or mitigation or render the proposed Site ineligible. Any change must be addressed under the requirements of §10.405 of this title.

(d) Site Control. Applicants must certify that there has been no change to Site Control, other than extensions or purchase by the Applicant, since the Original Application was submitted. If the nature of Site Control has changed, State Housing Tax Credit Request must submit the appropriate documentation as described in §11.204(9) of this chapter.

(e) Zoning. (§2306.6705(5)) If the zoning status of the Development has changed since the Original Application, the Request for State Housing Tax Credits must include all requirements of §11.204(10) of this chapter.

(f) Applicants who elect to request an allocation of State Housing Tax Credits must include a term sheet from a syndicator that, at a minimum, includes:

(1) an estimate of the amount of equity dollars expected to be raised;

(2) the amount of State Housing Tax Credits requested;

(3) pay-in schedules;

(4) syndicator consulting fees and other syndication costs; and

(5) an acknowledgement of the amounts and terms of all other anticipated sources of funds and an intent to elect average income (if applicable).

§11.1006 State Housing Tax Credits Underwriting and Loan Policy Associated with Competitive HTC.

The Department will review Requests for State Housing Tax Credits only for items addressed in this subchapter. The Total Developer Fee and Developer Fee included in Eligible Basis cannot exceed the amounts in the Application's most recently published Real Estate Analysis report. The Department will publish a memo for the State Housing Tax Credit allocation serving as a supplement to the report for the Original Application.

§11.1007 State Housing Tax Credits Selection Criteria Associated with Competitive HTC Applications.

For Qualified Developments not financed through tax exempt bonds, in years when requests for State Housing Tax Credits exceed the amount available, the Department will prioritize applications proposing the most additional low income Units for households at or below 30% of AMGI relative to the State Housing Tax Credit Request (does not include Units proposed in the original application) until the Department can no longer fund a full credit request. In the case of a tie, preference will be based on the Original Application scores under §11.9 of this chapter and, if applicable, the tie breaker factors established under §11.7 of this chapter.

§11.1008 State Housing Tax Credits for Tax-Exempt Bond Developments.

(a) The Uniform Multifamily Application, as prescribed by the Department and further explained in the Multifamily Programs Procedures Manual, will reflect the request for State Housing Tax Credits and include a term sheet from a syndicator including the State Housing Tax Credits request amount and pricing information.

(b) For Applications that will receive a Certificate of Reservation from the TBRB in January, an Applicant may submit the complete Application (with or without Third Party Reports, as described under §11.201(2) of this chapter) from January 2 through January 31. The Department will use a first-come, first-served system for the priority of requests.

(c) Once the number of Applications submitted exceed the amount of State Housing Tax Credits for Tax-Exempt Bond Developments available, other Applicants will receive notice and the opportunity to modify their Application through the Administrative Deficiency process to exclude the State Housing Tax Credit.

(d) The Department will notify the next Application in line should there be an amount of State Housing Tax Credits allocated to an Application which is withdrawn or terminated, or the Certificate of Reservation is withdrawn from the TBRB that their Application will be underwritten with the State Housing Tax Credit. Alternatively, staff can make adjustments to other line items to account for the lack of State HTC and notify the Applicant accordingly.

(e) Applications submitted after January 31 and for which a Certificate of Reservation has been issued may include a request for State Housing Tax Credits only if the Department has not reached the maximum amount to allocate for Tax-Exempt Bond Developments.

(f) The Department will issue Qualified Developments an Allocation Certificate, pursuant to Texas Insurance Code Chapters 171 and 233 that will reflect the State Housing Tax Credit Amount.