

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
**TDHCA Governing Board Approved Draft of
10 TAC Chapter 11 concerning the Qualified Allocation Plan**

Disclaimer

Attached is a draft of proposed 10 TAC Chapter 11, the Qualified Allocation Plan that was approved by the TDHCA Governing Board on September 3, 2026. This action included repeal of the current rule, and adoption of a new rule in its place. However, the document attached reflects all changes proposed in tracked changes to facilitate review. This document, including its preamble, is scheduled to be published in the September 18, 2026 edition of the *Texas Register* and that published version will constitute the official version for purposes of public comment. The version herein is informational only and should not be relied upon as the basis for public comment.

In compliance with §2001.023, Texas Government Code, a summary of the proposed rule follows:

The Texas Department of Housing and Community Affairs proposes new 10 TAC Chapter 11, Qualified Allocation Plan (QAP). The purpose of the proposed new subchapters is to provide compliance with Tex. Gov't Code §2306.67022 and to update the rule to: clarify multiple definitions; update the Program Calendar; modify seafood requirements for grocery store tiebreaker eligibility; add Pharmacies as a new tiebreaker so Development Sites have more options; update Mandatory Amenity Requirements; require Development Staff to provide a 45-day notice to tenants for changes in supportive services; and to significantly reduce the wordcount for readability.

Public Comment

Public Comment Period: **Starts: 8:00 a.m. Austin local time on September 18, 2026**
 Ends: 5:00 pm. Austin local time on October 9, 2026

Comments received after 5:00 p.m. Austin local time on October 9, 2026 will not be accepted. Written comments may be submitted electronically within the designated public comment period to: dominic.deniro@tdhca.texas.gov.

Those making public comment are encouraged to reference the specific draft rule, policy, or plan related to their comment as well as a specific reference or cite associated with each comment.

Please be aware that all comments submitted to the TDHCA will be considered public information.

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DEPARTAMENTO DE VIVIENDA Y ASUNTOS COMUNITARIOS DE TEXAS ("TDHCA")

Borrador aprobado por la Junta Directiva del TDHCA del

10 TAC Capítulo 11 relativo el Plan de Asignación Calificada**Descargo de responsabilidad**

Se adjunta un borrador del Capítulo 11 propuesto de 10 TAC, 10 TAC Chapter 11, **el Plan de Asignación Calificada**, que fue aprobado por la Junta de Gobierno de TDHCA el 3 de septiembre de 2026. Esta acción incluyó la derogación de la regla actual y la adopción de una nueva regla en su lugar. Sin embargo, el documento adjunto refleja todos los cambios propuestos en los cambios rastreados para facilitar la revisión. Este documento, incluyendo su preámbulo, está programado para ser publicado en la edición del 18 de septiembre de 2026 del Texas Register y esa versión publicada constituirá la versión oficial para fines de comentarios públicos. La versión en este documento es solo informativa y no debe considerarse como base para comentarios públicos.

En cumplimiento con §2001.023, Código de Gobierno de Texas, a continuación se presenta un resumen de la regla propuesta:

El Departamento de Vivienda y Asuntos Comunitarios de Texas propone un nuevo 10 TAC Capítulo 11, Plan de Asignación Calificada (QAP). El propósito de los nuevos subcapítulos propuestos es proporcionar cumplimiento con el Código del Gobierno de Texas §2306.67022 y actualizar la regla para: aclarar múltiples definiciones; actualizar el calendario del programa; modificar los requisitos de mariscos para la elegibilidad para desempates en supermercados; añadir farmacias como nuevo criterio de desempate para que los Sitios de Desarrollo tengan más opciones; actualizar los requisitos obligatorios de amenidades; exigir al personal de desarrollo que proporcione un aviso de 45 días a los inquilinos por cambios en los servicios de apoyo; y reducir significativamente el menor número de palabras para facilitar la legibilidad.

Comentarios del público**Periodo de comentarios del público:****Inicio: 8:00 a. m., hora local de Austin, del 18 de septiembre de 2026****Finalización: 5:00 p. m., hora local de Austin, del 9 de octubre de 2026**

Comentarios recibidos después de las 5:00 p.m., hora local de Austin, del 9 de octubre de 2026 no se aceptarán. Los comentarios escritos pueden enviarse electrónicamente dentro del período designado para comentarios públicos a dominic.deniro@tdhca.texas.gov.

Se alienta a aquellos que hacen comentarios públicos a hacer referencia al borrador específico de la regla, política o plan relacionado con su comentario, así como a una referencia o cita específica asociada con cada comentario.

Tenga en cuenta que todos los comentarios enviados a la TDHCA se considerarán información pública.

DEPARTAMENTO DE VIVIENDA Y ASUNTOS COMUNITARIOS DE TEXAS

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The Texas Department of Housing and Community Affairs (the “Department”) proposes new 10 TAC Chapter 11, Qualified Allocation Plan (QAP). The purpose of the proposed new section is to provide compliance with Tex. Gov’t Code §2306.67022 and to update the rule to: add new definitions; clarify multiple definitions; update the Program Calendar; modify seafood requirements for grocery store tiebreaker eligibility; add Pharmacies as a new tiebreaker so Development Sites have more options; update Mandatory Amenity Requirements; require Development Staff to provide a 45-day notice to tenants for changes in supportive services; and to significantly reduce the reduce wordcount for readability.

Tex. Gov’t Code §2001.0045(b) does not apply to the rule proposed for action for two reasons: 1) the state’s adoption of the QAP is necessary to comply with IRC §42; and 2) the state’s adoption of the QAP is necessary to comply with Tex. Gov’t Code §2306.67022. The Department has analyzed this proposed rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX GOV’T CODE §2001.0221.

Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the proposed new rule would be in effect:

1. The proposed rule does not create or eliminate a government program, but relates to the readoption of this rule, which makes changes to an existing activity, concerning the allocation of Low Income Housing Tax Credits (LIHTC).
2. The proposed new rule does not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.
3. The proposed rule changes do not require additional future legislative appropriations.
4. The rule changes will not result in any increases or decreases in fees.
5. The proposed rule is not creating a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions.
6. The proposed rule will not limit or repeal an existing regulation, but can be considered to “expand” the existing regulations on this activity because the proposed rule has sought to clarify Application requirements. Some “expansions” are offset by corresponding “contractions” in the rules, compared to the 2026 QAP. Notably, the Department has sought to remove superfluous language wherever possible and to consolidate rules to reflect current process. These additions, removals, and revisions to the QAP are necessary to ensure compliance with IRC §42 and Tex. Gov’t Code §2306.67022.

7. The proposed rule will not increase or decrease the number of individuals subject to the rule's applicability; and

8. The proposed rule will not negatively affect the state's economy, and may be considered to have a positive effect on the state's economy because changes at 10 TAC §11.9(c)(7), Proximity to Job Areas, may help to encourage the Development of affordable multifamily housing in robust markets with strong and growing economies.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX GOV'T CODE §2006.002. The Department, in drafting this proposed rule, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code §2306.67022. Some stakeholders have reported that their average cost of filing an Application is between \$50,000 and \$60,000, which may vary depending on the specific type of Application, location of the Development Site, and other non-state of Texas funding sources utilized. The proposed rules do not, on average, result in an increased cost of filing an application as compared to the existing program rules.

1. The Department has evaluated this rule and determined that none of the adverse effect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

2. There are approximately 100 to 150 small or micro-businesses subject to the proposed rule for which the economic impact of the rule may range from \$480 to many thousands of dollars, just to submit an Application for Competitive or non-Competitive HTCs. The Department bases this estimate on the potential number of Applicants and their related parties who may submit applications to TDHCA for LIHTC. The fee for submitting an Application for LIHTC is \$30 per unit, and all Applicants are required to propose constructing, at a minimum, 16 Units. While, in theory, there is no limit to the number of Units that could be proposed in a single Application, practically speaking, the Department sees few proposed Developments larger than 350 Units, which, by way of example, would carry a fee schedule of \$10,500. These Application Fee costs are not inclusive of external costs required by the basic business necessities underlying any real estate transaction, from placing earnest money on land, conducting an Environmental Site Assessment, conducting a market study, potentially retaining counsel, hiring an architect and an engineer to construct basic site designs and elevations, and paying any other related, third-party fees for securing the necessary financing to construct multifamily housing. Nor does this estimate include fees from the Department for Applications that successfully attain an award.

There are approximately 1,376 rural communities potentially subject to the proposed rule for which the economic impact of the rule is projected to be \$0. The proposed rule places no financial burdens on rural communities, as the costs associated with submitting an Application are born entirely by private parties. If anything, a rural community securing a LIHTC Development will experience an economic benefit, not least among which is the potential increased property tax revenue from a large multifamily Development.

3. The Department has determined that because there are rural tax credit awardees, this program helps promote construction activities and long term tax base in rural areas of Texas. Aside from the fees and costs associated with submitting an Application, there is a probable positive economic effect on small or micro-businesses or rural communities that receive LIHTC awards and successfully use those awards to construct multifamily housing, although the specific impact is not able to be quantified in advance.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX GOV'T CODE §2007.043. The proposed rule does not contemplate or authorize a takings by the Department. Therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX GOV'T CODE §2001.024(a)(6). The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the proposed rule may provide a possible positive economic effect on local employment in association with this rule since LIHTC Developments often involve a total input of, typically at a minimum, \$5 million in capital, but often an input of \$10 million - \$30 million. Such a capital investment has concrete direct, indirect, and induced effects on the local and regional economies. However, because the exact location of where program funds and development are directed is not determined in rule, there is no way to determine during rulemaking where the positive effects may occur. Furthermore, while the Department knows that any and all impacts are positive, that impact is not able to be quantified for any given community until a proposed Development is actually awarded LIHTC, given the unique characteristics of each proposed multifamily Development and region in which it is being developed.

Texas Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." Considering that significant construction activity is associated with any LIHTC Development and that each apartment community significantly increases the property value of the land being developed, there are no probable negative effects of the new rule on particular geographic regions. If anything, positive effects will ensue in those communities where developers receive LIHTC awards.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the new section will be an updated and more germane rule for administering the allocation of LIHTC with considerations made for applicants as it relates to the impact of the COVID-19 pandemic on the application process. Other than the fees mentioned in section a4 above, there is no change to the economic cost to any individuals required to comply with the new section because the same processes described by the rule have already been in place through the rule found at this section being repealed. The average cost of filing an application remains between \$50,000 and \$60,000, which may vary depending on the specific type of application, location of the development site, and other non-state of Texas funding sources utilized. The proposed rules do not, on average, result in an increased cost of filing an application as compared to the existing program rules.

f. FISCAL NOTE REQUIRED BY TEX GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the new section is in effect, enforcing or administering the new section does not have any foreseeable implications related to costs or revenues of the state or local governments because the same processes described by the rule have already been in place through the rule found at this section being repealed. If anything, Departmental revenues may increase due to a comparatively higher volume of Applications, which slightly increases the amount of fees TDHCA receives.

REQUEST FOR PUBLIC COMMENT AND INFORMATION RELATED TO COST, BENEFIT OR EFFECT. The Department requests comments on the rule and also requests information related to the cost, benefit, or effect of the proposed rule, including any applicable data, research, or analysis from any person required to comply with the proposed rule or any other interested person. The public comment period will be held September 18, 2026, and October 9, 2026 to receive stakeholder comment on the new proposed section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Dominic DeNiro, QAP Public Comment, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 475-1895, attn: Dominic DeNiro, QAP Public Comments, or by email to dominic.deniro@tdhca.texas.gov. ALL COMMENTS AND INFORMATION MUST BE RECEIVED BY 5:00 P.M. Austin local (Central) time October 9, 2026.

STATUTORY AUTHORITY. The new sections are proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

Except as described herein the proposed new sections affect no other code, article, or statute.



Texas Department of Housing and Community Affairs
Proposed 2027 Qualified Allocation Plan
Comparison to 2026 QAP
10 TAC Chapter 11

This proposed 2027 Qualified Allocation Plan (QAP) incorporates a significant number of copy-edits along with recommendations from the Texas Regulatory Efficiency Office (TREGO), 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.

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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~~State Housing Tax Credit, and the issuance of Determination Notices for non-Competitive Housing Tax Credits. ~~The federal laws providing for the awarding and allocation of Competitive Housing Tax Credits and issuance of Determination Notices for non-Competitive Housing Tax Credits require states to adopt a qualified allocation plan.~~ Pursuant to Tex. Gov't Code, Chapter 2306, Subchapter DD, the Department is ~~assigned responsibility~~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) ~~and it has been duly approved to establish the procedures and requirements relating to an award and allocation of Competitive Housing Tax Credits and issuance of Determination Notices for non-Competitive Housing Tax Credits.~~ All requirements herein and all those applicable to a Housing Tax Credit Development or an Application under Chapter 10 of this title ~~(relating to Post Award and Asset Management Requirements, Compliance Monitoring, and Incomes and Rents rules)~~ collectively constitute the QAP ~~required by Tex. Gov't Code §2306.67022 and §42(m)(1)(B) of the Code.~~ Unless otherwise specified, ~~certain provisions in this section and §§ 11.2 - 11.4 of this title also apply to non-Competitive Housing Tax Credits and Multifamily Direct Loans.~~ and Subchapters B - E of this chapter also apply to non-Competitive ~~Housing Tax Credits~~HTCs and ~~Multifamily~~ Direct Loans. Applicants ~~are required to~~must certify, ~~among other things,~~ that they have familiarized themselves with the rules that govern that specific program including, but not limited to, Chapter 1 of this title ~~(relating to Administration), Chapter 2 of this title (relating to Enforcement), Chapter 10 of this title (relating to Uniform Multifamily Rules), Chapter 12 of this title (relating to Multifamily Housing Revenue Bond Rules), Chapter 13 of this title (relating to Multifamily Direct Loan Rule), and other Department~~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, ~~from time to time, make available for use by Applicants information and informal guidance in the form of reports and responses to specific questions. The Department encourages communication with staff in order to clarify any~~

issues that may not be fully addressed in the QAP, or may be unclear when applied to specific facts. However, while these resources are offered to help Applicants prepare and submit accurate information, Applicants should also appreciate that this type of guidance is limited by its nature, and that 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 ~~and is provided as good faith guidance and assistance, but in~~. In all respects the statutes and rules governing the Low Income Housing Tax Credit program supersede these guidelines and are controlling. ~~Moreover, after the time that an issue is initially presented and~~ After staff provides guidance ~~is provided~~, additional information may ~~be identified and~~ mean the issue itself ~~may continue~~ continues to develop ~~based upon additional research and guidance. Thus, until~~. Until confirmed through final action of the Board, staff guidance ~~must be considered~~ is merely ~~as~~ an aid and an Applicant continues to assume full responsibility for ~~any~~ its actions Applicant takes regarding an Application. In addition, although the Department may compile data from outside sources in order to assist Applicants in the Application process, it remains the sole responsibility of the Applicant to perform independently the necessary, including any due diligence to research, confirm, and verify any data, opinions, interpretations, or other information ~~upon which an Applicant bases an Application or includes in any submittal in connection with an Application.~~

(2) Developments with Existing LURAs. Applicants ~~proposing to submit~~ submitting an Application ~~requesting an award of Housing Tax Credits or a Direct Loan~~ for a Development that already has a LURA in place should review the with existing LURA(s) ~~on the Property to ensure there are no conflicts with the proposed Application. Where an Applicant has identified a~~ must include copies, identify potential conflict, ~~it is incumbent upon the Applicant to~~ (s), and, if applicable, consult with staff regarding ~~the steps that may be necessary~~ how to resolve ~~the conflict(s). This may include, but is not limited to, an Application amendment or LURA amendment, a waiver, or other action that may necessitate additional staff time for review or a Board determination. Depending on the timing constraints associated with the proposed Application, Applicants should be mindful that resolving conflicts with the new LURA if awarded. Resolving such~~ issues relating to the existing LURA (s) and for Direct Loans the existing Contract may not coincide with the timing needed for a new award ~~if such requests are not submitted early in the process. A copy of the existing LURA must be included in the Application.~~

~~(c) Competitive Nature of Program.~~ Applying for Competitive Housing Tax Credits is a technical process that must be followed completely and correctly. Any person who desires to request any reasonable accommodation for any aspect of this process is directed to §1.1 of this title (relating to Reasonable Accommodation Requests to the Department). As a result of the highly competitive nature of applying for Competitive Housing Tax Credits, an Applicant should proceed on the assumption that deadlines are fixed and firm as further provided for in subsection (f) of this section.

(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 ~~terms not specifically mentioned in this section or any section referenced in or defined in~~ this document ~~shall~~ have the meaning as defined in Tex. Gov't Code Chapter 2306, ~~Internal Revenue~~-Code ~~(the Code)~~ §42, the HOME ~~Final~~ NHTF 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)~~ **(1) Achievable Affordable Rent**--The rent that a Unit subject to rent and income restrictions can reasonably be expected to achieve at the subject Property, which may be less than the applicable maximum program rent. The Market Analyst or Underwriter will determine the Achievable Affordable Rent based on actual rents achieved by Comparable Units at LURA restricted Developments in the PMA that achieved Stabilized Occupancy at any time during the five years preceding the date of the Market Study. 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. ~~Adaptive Reuse requires that at~~At least 75% of the original building ~~remains~~must remain at completion of the proposed Development. Ancillary non-residential buildings, ~~such as a~~ (clubhouse, leasing office, ~~or~~ amenity center) may be newly constructed outside the walls of the existing building or as detached buildings on the ~~Development~~ Site. Adaptive Reuse Developments will be considered as New Construction.

~~(23)~~ **(23) 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 ~~to~~ 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 ~~may be issued~~ 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 ~~be determined to have constituted a Material Deficiency. Applicants must intend that the pre-Application or Application is the final~~

~~version to be reviewed by staff, and should not rely on the Administrative Deficiency process when applying for funding.~~become a Material Deficiency.

(A) ~~The Staff will treat the~~ following ~~issues will be treated by Department staff as~~ Administrative Deficiencies ~~that are~~ curable through the Deficiency process only if the issues, when taken as a whole, do not constitute a Material Deficiency ~~as defined in §11.1(d) of this chapter:~~

(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 ~~is required to~~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~~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~~for scoring items ~~that are~~ predicated solely on third-party data, characteristics inherent to the proposed ~~Development Site~~, or are otherwise not influenced by the ~~actions of the~~ Applicant, the ~~Application's eligibility for these points~~Application can ~~be~~ clearly ~~established to have~~establish eligibility existed prior to the Full Application Delivery Date (Competitive HTC) or the Application Acceptance Date (Direct Loan), and ~~the submission of~~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. ~~A~~The Department will not treat a discrepancy between the requested points and the points supported by the Application ~~will not be treated~~ 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 ~~will~~are not ~~be treated by Department staff as~~ Administrative Deficiencies ~~that are~~ 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) ~~(relating to the definition of~~

~~Administrative Deficiency)~~, 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 ~~what was initially requested~~ the initial submission.

(ii) Changes to the Application ~~that are~~ 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 ~~are reserved for the Department Staff and Board~~.

~~(34)~~ 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.

~~(45)~~ 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, ~~or commences on the first day of the Compliance Period as defined by the Code §42(i)(1),~~ and continues through the appropriate program's affordability requirements or termination of the LURA, whichever is earlier. The term of the Affordability Period ~~shall be imposed by~~ is in the LURA or other deed restriction, ~~and in some circumstances may be terminated upon foreclosure or deed in lieu of foreclosure.~~ The Department ~~reserves~~ has the ~~right~~ authority to extend the Affordability Period for Developments that fail to meet program requirements. ~~During the Affordability Period, the Department shall monitor to ensure compliance with programmatic rules, as applicable, regulations, and Application representations.~~

~~(56)~~ Applicable Percentage--The percentage used to determine the amount of the Housing Tax Credit for any Development, as defined ~~more fully~~ in Code, §42(b). ~~For purposes of the Application, the Applicable Percentage will be:~~

~~(A) nine percent for 70% present value credits; or~~

~~(B) four percent for 30% present value credits.~~

~~(67)~~ 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 ~~subject~~

~~to the requirements of this chapter or Chapters 12 or 13 of this title and who have undertaken or may contemplate the later formation of one or more business entities, such as a limited partnership, that is to be engaged in the ownership of a Development.~~

(~~78~~) Application Acceptance Period--That period ~~of time~~ during which Applications may be submitted to the Department. For Tax-Exempt Bond Developments it is the date ~~the of~~ Application ~~is submitted to the Department's~~submission.

(~~89~~) Award Letter--A document that may be issued to an awardee of a Direct Loan before the issuance of a Contract ~~which preliminarily sets forth the terms and conditions under which the Direct Loan will be made available. An Award Letter will typically be contingent on the awardee satisfying certain requirements prior to executing a Contract.~~

(~~910~~) Bank Trustee--A federally insured bank with the ability to exercise trust powers in ~~the State of~~ Texas.

(~~4011~~) Bathroom--either:

(A) Full Bathroom--A portion of a Unit that is self-contained and includes all ~~of the~~ 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, ~~will be~~ are exempt ~~from the requirements~~, 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, ~~will be~~ are exempt ~~from the requirements~~, except as needed to comply with accessibility requirements.

(~~4112~~) 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 ~~for 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. ~~A den, study, or other similar space that could reasonably function as a Bedroom and meets this definition is considered a Bedroom.~~ Rehabilitation (excluding Reconstruction) Developments in which Unit configurations are not being altered ~~will be exempt from the bedroom and closet width, length, and square footage requirements.~~ Supportive Housing Developments ~~will be~~ are exempt from the bedroom and closet width, length, and square footage requirements.

~~(12) Breakeven Occupancy--The occupancy level at which rental income plus secondary income is equal to all operating expenses, including replacement reserves and taxes, and mandatory debt service requirements for a Development.~~

(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 ~~the provisions of the~~ 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 ~~Development~~ Owner, pursuant to §11.907 of this title ~~(relating to Carryover Agreement General Requirements and Required Documentation).~~

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

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

(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 ~~(relating to General Information for Commitments or Determination Notices)~~, setting forth the Department's terms and conditions ~~under which for~~ Competitive ~~Housing Tax Credits from the Department will be made available. A Commitment or Commitment Notice does not mean commitment of federal funds under the Direct Loan Program.~~

(21) Commitment of Funds--Occurs after ~~the Development is approved by the Board approval~~ and ~~once a Contract is executed between the Department and Development Owner. The Department's Commitment of Funds may not align with commitments made by other financing parties~~ execution.

(22) Common Area--All enclosed or covered space not included in Net Rentable 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, ~~location (with respect to the subject Property based on proximity to employment centers, amenities, services, and travel patterns),~~geographic location, age, Unit amenities, utility structure, and common amenities.

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

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

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

~~(27)~~(26) Contract--A legally binding agreement between the ~~Development~~ Owner and the Department,~~setting forth the terms and conditions under which Multifamily for~~ Direct Loan Program funds ~~will be made available.~~

~~(28)~~(27) Contract Rent--Net rent based upon current and executed rental assistance contract(s), typically with a federal, state, or local governmental agency.

~~(29)~~(28) Contractor--See General Contractor.

~~(30)~~(29) 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) ~~of this paragraph.~~below. Multiple Persons may ~~be deemed to~~ have Control simultaneously.

(A) For for-profit corporations, any officer authorized by the board of directors, regardless of title, to act on behalf of the corporation, including, but not limited to, the president, vice president, secretary, treasurer, and all other executive officers, and each ~~stock holder~~stockholder 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~~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.

~~(3130)~~ 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 ~~(relating to Operating Feasibility).~~

~~(3231)~~ 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 ~~(relating to Feasibility Conclusion).~~

~~(33) Deobligated Funds--The funds released by the Development Owner or recovered by the Department canceling a Contract or award involving some or all of a contractual financial obligation between the Department and a Development Owner or Applicant.~~

~~(3432)~~ Determination Notice--A notice issued by the Department to the ~~Development~~ Owner of a Tax-Exempt Bond Development which specifies the Department's preliminary determination as to the amount of tax credits ~~that the Development may be eligible to claim~~ pursuant to the Code, §42(m)(1)(D).

~~(3533)~~ 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.

~~(3634)~~ Developer Fee--Compensation in amounts defined in §11.302(e)(7) of this chapter ~~(relating to Total Housing Development Costs)~~ paid by the Owner to the Developer for Developer Services inclusive of compensation to a Development Consultant(s),

Development Team member, or any subcontractor that performs Developer Services or provides guaranties ~~on behalf of the Owner will be characterized as Developer Fee. A person who is entitled to a Developer Fee assumes the risk that it may not be paid if the anticipated sources of repayment prove insufficient.~~

(~~37~~35) Developer Services--A scope of work relating to the duties, activities, and responsibilities for pre-development, development, design coordination, and construction oversight ~~of the Property generally including, but not limited to:~~including, but not limited to: 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.

~~(A) Site selection and purchase or lease contract negotiation;~~

~~(B) Identifying and negotiating sources of construction and permanent financing, including financing provided by the Department;~~

~~(C) Coordination and administration of activities, including the filing of applications to secure such financing;~~

~~(D) Coordination and administration of governmental permits, and approvals required for construction and operation;~~

~~(E) Selection and coordination of development consultants including architect(s), engineer(s), third party report providers, attorneys, and other design or feasibility consultants;~~

~~(F) Selection and coordination of the General Contractor and construction contract(s);~~

~~(G) Construction oversight;~~

~~(H) Other consultative services to and for the Owner;~~

~~(I) Guaranties, financial, or credit support if a Related Party or Affiliate; and~~

~~(J) Any other customary and similar activities determined by the Department to be Developer Services.~~

(~~38~~36) 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), ~~that consists of one or more buildings containing multiple Units~~

~~that is~~ financed under a common plan, ~~and that is owned by the same Person for federal tax purposes, and may consist. If consisting~~ of multiple buildings ~~that are~~ located on scattered sites ~~and, it may~~ contain only ~~rent restricted~~ Low-Income Units. (§2306.6702(a)(6)).

(A) A Development ~~will be considered to be a~~ 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 ~~will~~ not ~~meet the requirement for~~ an accessible route).

(B) A Development for which several parcels comprise the Development Site ~~and are~~ contiguous if separated only by a private road controlled by the ~~Development~~ Owner, or a public road or similar barrier where the ~~Development~~ 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, ~~is considered contiguous.~~ 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 ~~Multifamily~~ Direct Loan Contract, as applicable.

~~(3937)~~ Development Consultant or Consultant--Any Person who provides professional or consulting services relating to the filing of an Application, or post award documents, ~~as required by the program.~~

~~(40) Development Owner (also referred to as "Owner")--Any Person, General Partner, or Affiliate of a Person who owns or proposes a Development or expects to acquire Control of a Development under a purchase contract or ground lease approved by the Department and is responsible for performing under the allocation or Commitment with the Department.~~ (38) Development Owner (see "Owner")

(39) Development Site--(see "Site")

~~(40) (§2306.6702(a)(7))~~

~~(41) Development Site--The area or, if more than one tract (which may be deemed by the Internal Revenue Service or the Department to be a scattered site), areas on which the Development is proposed and to be encumbered by a LURA, including access to that area or areas through ingress and egress easements.~~

~~(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.

(~~4341~~) Direct Loan--Funds provided through ~~the HOME Program, Neighborhood Stabilization Program (NSP), National Housing Trust Fund (NHTF), HOME American Rescue Plan (HOME-ARP), Tax Credit Assistance Program Repayment Funds (TCAP RF), Texas Housing Trust Fund (THTF), or other~~lending programs available through the Department for multifamily development. ~~The terms and conditions for Direct Loans will be determined by provisions in Chapter 13 of this title (relating to Multifamily Direct Loan Rule), the NOFA under which they are awarded, the Contract, and the loan documents. The~~ (excluding the tax-exempt bond program is specifically excluded.).

(~~4442~~) 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.

(~~4543~~) 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 ~~and in or, if not~~ a municipality ~~or, if not within a municipality, in,~~ a county that has been awarded funds under the Economically Distressed Areas Program administered by the Texas Water Development Board. Notwithstanding all other requirements, for funds awarded to another type of political subdivision (e.g., a water district), the ~~Development~~ Site must be within the jurisdiction of the political subdivision.

(~~4644~~) Effective Gross Income (EGI)--As provided for in §11.302(d)(1)(D) of this chapter (relating to Operating Feasibility). ~~The EGI is the~~ sum total of ~~all sources of anticipated or actual income~~Pro Forma Rent for a rental Development, all Units plus Miscellaneous Income less ~~vacancy~~Vacancy and ~~collection loss~~Collection Loss, leasing concessions, and rental income from employee-occupied units that is not anticipated to be charged or collected.

(~~4745~~) Efficiency Unit--A Unit without a separately enclosed Bedroom.

(~~4846~~) Elderly Development--A Development that either meets the requirements of the Housing for Older Persons Act (HOPA) under the Fair Housing Act, or a Development that receives federal funding that has a requirement for a preference or limitation for elderly persons or households, but must accept qualified households with children.

(~~4947~~) Eligible Hard Costs--Hard Costs includable in Eligible Basis for the purposes of determining a Housing Credit Allocation.

(~~5048~~) 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

~~(relating to Environmental Site Assessment Rules and Guidelines) as it relates to a specific Development.~~

(5149) Existing Residential Development--Any ~~Development~~ Site which contains any type of existing residential dwelling at any time as of the beginning of the Application Acceptance Period.

(5250) 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.

(5351) First Lien Lender--A lender whose lien has first priority ~~as a matter of law or by operation of a subordination agreement or other intercreditor agreement.~~

(5452) 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, ~~made subject to the availability of State Housing Credit Ceiling in the calendar year for which the Commitment has been made.~~

(5553) 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, ~~such as plumbing contractors, electrical contractors, etc.,~~ coordinates all work, and is responsible for payment to the subcontractors. A prime subcontractor ~~will also be treated~~ counts as a General Contractor, ~~(and any fees payable to the prime subcontractor will be treated~~ it counts as fees to the General Contractor, ~~)~~ in the scenarios described in subparagraphs (A) or (B) ~~of this paragraph below:~~

(A) Any subcontractor, material supplier, or equipment lessor receiving more than 50% of the contract sum in the construction contract ~~will be deemed a prime subcontractor;~~ 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, ~~such parties will be deemed prime subcontractors.~~

(5654) 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 ~~Development~~ Owner and that Controls the partnership. ~~Where The manager or managing member of~~ a limited liability corporation is ~~the legal structure employed rather than a limited partnership, the manager or managing member of that~~

~~limited liability corporation is deemed~~, for the purposes of these rules, ~~to be~~ the functional equivalent of a general partner.

~~(5755)~~ Governing Body--The elected or appointed body of public or tribal officials responsible for the enactment, implementation, and enforcement of local rules ~~and the implementation and enforcement of applicable laws~~ for its respective jurisdiction.

~~(5856)~~ Governmental Entity--Includes federal, state or local agencies, departments, boards, bureaus, commissions, authorities, and political subdivisions, special districts, tribal governments, and other similar entities.

~~(5957)~~ Gross Capture Rate--~~Calculated as the Relevant Supply divided by the Gross Demand, and as described in §11.302(i)(1) (GCR)--Defined in §11.303(d)(10)(F) of this chapter (relating to Feasibility Conclusion).~~

~~(60)~~ Gross Demand--~~The sum of Potential Demand from the Primary Market Area (PMA) and demand from other sources, as described~~~~(58)~~ Gross Demand--Defined in §11.303(d)(9)(E)(ii) of this chapter ~~(relating to Market Analysis Rules and Guidelines).~~

~~(61)~~ Gross Program Rent--~~Maximum rent limits based upon the tables promulgated by the Department's division responsible for compliance, which are developed by program and by county or Metropolitan Statistical Area (MSA) or Primary Metropolitan Statistical Area (PMSA) or national non-metro area.~~

~~(62)~~(59) Gross Program Rent--The Department's published maximum applicable rent limits.

(60) 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)~~61 Hard Costs--The sum total of Building Costs, Site Work costs, Off-Site Construction costs, and contingency.

~~(64)~~ Historically Underutilized Businesses (HUB) ~~An entity that is certified as such under and in accordance with Tex. Gov't Code, Chapter 2161.~~

~~(65)~~62 HOME Match Eligible Unit--~~A Unit in the Development that may or may not be assisted with HOME Program funds, but~~ would qualify as eligible for Match under 24 CFR Part 92 and CPD Notice 97-03 or subsequent HUD guidance.

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

~~(6763)~~ Housing Credit Allocation--An allocation of Housing Tax Credits by the Department to a ~~Development~~an Owner as provided for in Code.

~~(6864)~~ Housing Credit Allocation Amount--With respect to a Development or a building within a Development, the amount of Housing Tax Credits ~~the Department and the Board, if applicable, determines to be necessary for the financial feasibility of the Development and its viability as a Development throughout the Affordability Period listed initially in a Carryover Allocation Agreement or Determination Notice, then later in one or more IRS Form(s) 8609.~~

~~(6965)~~ HTC Development ~~(also referred to as HTC Property)~~--A Development subject to an active LURA for Housing Tax Credits allocated by the Department.

~~(70)~~ HTC Property--~~See HTC Development.~~

~~(7166)~~ Initial Affordability Period--The Compliance Period or such longer period ~~as shall have been~~ elected by the Owner as the minimum period for which ~~Units in the~~ Development ~~shall will~~ be ~~retained for low income tenants and rent restricted, as set forth in under~~ the LURA.

~~(72)~~ Integrated Disbursement and Information System (IDIS)--~~The electronic grants management information system established by HUD to be used for tracking and reporting HOME and NHTF funding and progress, and which may be used for other sources of funds as established by HUD.~~

~~(7367)~~ Land Use Restriction Agreement (LURA)--An agreement, regardless of its title, between the Department and the Development Owner which is a binding covenant upon the Development Owner and successors in interest, that, when recorded, encumbers the Development with respect to the requirements of the programs for which it receives funds. (§2306.6702)

~~(7468)~~ Low-Income Unit ~~(also referred to as a Rent Restricted Unit)~~--A Unit that is intended to be restricted for occupancy by an income eligible household, ~~as defined by the Department utilizing its published income limits.~~

~~(75)~~ Managing General Partner--A general partner of a partnership (or, as provided for in the definition of General Partner in this subsection, its functional equivalent) that is vested with the authority to take actions that are binding on behalf of the partnership and the other partners. The term Managing General Partner can also refer to a manager or managing member of a limited liability company where so designated to bind the limited liability company and its members under its Agreement or any other person that has such powers in fact, regardless of their organizational title.

~~(7669)~~ Managing General Partner--~~See General Partner.~~

~~(70)~~ Market Analysis--~~Sometimes referred to as "Market Study."~~ 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.

~~(7771)~~ Market Analyst--A ~~real estate appraiser or other~~ professional satisfying the qualifications in §11.303(c) of this chapter, ~~and familiar with the subject property's market area who prepares a Market Analysis.~~

~~(7872)~~ 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 ~~are made~~ to actual rents on Comparable Units to account for differences in net rentable square footage, functionality, overall condition, geographic location ~~(with respect to the subject Property based on proximity to primary employment centers, amenities, services, and travel patterns);~~, age, Unit amenities, utility structure, and Common Area amenities. The achievable rent conclusion must also consider the proportion of market Units to total Units proposed in the subject Property.

~~(79)~~ Market Study--~~See Market Analysis.~~

~~(80)~~(73) Material Deficiency--Any deficiency in a pre-application or an Application or other documentation that exceeds the scope of an Administrative Deficiency ~~-inability, including~~

(A) inability to provide documentation that existed prior to submission of an Application to substantiate claimed points or meet threshold requirements ~~may be considered material and may result in denial of the requested points or a termination in the case of threshold items. It is possible that; 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 ~~and as such would be characterized as constituting a Material Deficiency.~~

~~(81)~~(74) Multifamily Programs Procedures Manual--The manual produced and amended from time to time by the Department ~~which reiterates and implements the rules and that~~ provides guidance ~~for the filing of multifamily related documents.~~ The Manual is not a rule ~~and, rather~~ is ~~provided~~ only ~~as good faith guidance and~~ assistance.

~~(82)~~(75) National Standards for the Physical Inspection of Real Estate (NSPIRE)--As developed by the Real Estate Assessment Center of HUD.

~~(83)~~(76) Net Operating Income (NOI)--The income remaining after all operating expenses, including replacement reserves and taxes have been paid, ~~as provided for in §11.302(d)(3) of this chapter (relating to Operating Feasibility);~~

~~(8477)~~ Net Program Rent--~~Calculated as Gross Program Rent less Utility Allowance~~Defined in §11.302(d)(1)(A)(v) of this chapter.

~~(8578)~~ Net Rentable Area (NRA)--~~The Unit space that is~~ available exclusively to the tenant and ~~is~~ heated and cooled by a mechanical HVAC system. ~~NRA is measured to the outside of the studs of a Unit or to the middle of walls in common with other Units. If the construction does not use studs, NRA is measured to the outside of the material to which the drywall is affixed.~~ Remote Storage of no more than 25 square feet per Unit may be included in NRA. ~~For Developments using Multifamily Direct Loan funds the Remote Storage may, although only be included in NRA if the storage area it shares a wall with the residential 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, patios, or other areas not actually available to the tenants for their furnishings, nor does NRA include the enclosing walls of such areas or patios. NRA is measured to the outside of either

~~(86)~~(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.

~~(79)~~ Non-HTC Development--~~Sometimes referred to as Non-HTC Property.~~ Any Development not utilizing Housing Tax Credits or Exchange funds.

~~(8780)~~ Notice of Funding Availability (NOFA)--A notice issued by the Department ~~that announces~~announcing funding availability, ~~usually on a competitive basis,~~ for multifamily rental programs ~~requiring Application submission from potential Applicants.~~

~~(8881)~~ Office of Rural Affairs--An office established within the Texas Department of Agriculture; formerly the Texas Department of Rural Affairs.

~~(8982)~~ Off-Site Construction--Improvements up to the ~~Development~~ Site such as the cost of roads, water, sewer, and other utilities to provide access to and service the Site.

(83) 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)).

~~(90)~~ One Year Period (1YP)--~~The period commencing on the date on which the Department and the Owner agree to the Qualified Contract price in writing and continuing for 12 calendar months.~~

~~(91) Owner--See Development Owner.~~

~~(9284)~~ Person--Without limitation, any natural person, corporation, partnership, limited partnership, joint venture, limited liability company, trust, estate, association, cooperative, government, political subdivision, agency or instrumentality, or other organization or entity of any nature whatsoever, and ~~shall include~~includes any group of Persons acting in concert toward a common goal, including the individual members of the group.

~~(9385)~~ Person or Persons with Disabilities--With respect to an individual, means that such person has:

(A) A physical or mental impairment that substantially limits one or more major life activities of such individual;

(B) A record of such an impairment; or

(C) Is regarded as having such an impairment, to include persons with severe mental illness and persons with substance abuse disorders.

~~(9486)~~ Physical Needs Assessment--See Scope and Cost Review.

~~(9587)~~ 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 ~~that are~~ annexed by a city, town, or village through limited-purpose annexation are ~~considered to be~~ part of ~~the~~that incorporated area ~~of that city, town, or village~~ for purposes of this chapter. The Department may provide a list of Places for reference.

~~(96) Post Award Activities Manual--The manual produced and amended from time to time by the Department which explains the post award requirements and provides guidance for the filing of such documentation.~~

~~(97) Potential Demand--The number of income eligible, age, size, and tenure appropriate target households in the designated market area at the proposed placement in service date.~~

~~(98)(88) Potential Demand--Defined in §11.303(d)(9)(E)(iii) of this chapter.~~

~~(89)~~ 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--Sometimes referred to as "Primary Market Area." The area defined by the Market Analyst as described in §11.303 of this chapter (relating to Market Analysis Rules and Guidelines) from which a proposed or existing Development is most likely to draw the majority of its prospective tenants or homebuyers.~~

~~(10090)~~ Primary Market--See "Primary Market Area."

~~(91)~~ Primary Market Area (PMA)--~~See Primary Market Defined in §11.303(d)(8) of this chapter.~~

~~(10192)~~ Principal--Persons that will be capable of exercising Control pursuant to §11.1(d) of this chapter ~~(relating to the definition of Control)~~ over a partnership, corporation, limited liability company, trust, or any other private entity.

~~(10293)~~ 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. ~~Contract Rents, if applicable, will be used as the Pro Forma Rent.~~

~~(10394)~~ 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.

~~(10495)~~ Qualified Census Tract (QCT)--those tracts designated as such by the U.S. Department of Housing and Urban Development. (HUD).

~~(10596)~~ Qualified Contract (QC)--A bona fide contract ~~to acquire the non-low income portion of the building for fair market value and the low-income portion of the building~~ for an amount not less than ~~the Applicable Fraction (specified in the LURA) of the calculation as defined within in Code §42(h)(6)(F) of the Code.~~

~~(10697)~~ 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 (relating to Qualified Contract Requirements).~~

~~(10798)~~ Qualified Contract Request (Request)--A request containing all information and items required by the Department relating to a Qualified Contract.

~~(10899)~~ Qualified Entity--Any entity permitted under Code, ~~§42(i)(7)(A) and any entity controlled by such a qualified entity.~~

~~(109100)~~ Qualified Nonprofit Development--A Development ~~which that~~ meets the requirements of Code, ~~§42(h)(5),~~ Tex. Gov't Code §2306.6729, and §2306.6706(b), which includes the required involvement of a Qualified Nonprofit Organization, and is seeking Competitive ~~Housing Tax Credits~~ HTCs.

~~(110101)~~ Qualified Nonprofit Organization--An organization that meets the requirements of Code ~~§42(h)(5)(C) for all purposes, and for an allocation in the nonprofit set-aside or subsequent transfer of the Property, when applicable, meets the requirements of),~~ Tex.

Gov't Code §2306.6706, and §2306.6729, and ~~Code, §42(h)(5), including having a Controlling interest in the Development~~ §2306.6706(b) for all purposes.

~~(111102)~~ Reconstruction--The demolition of one or more residential buildings in an Existing Residential Development and the construction of Units on the same or another ~~Development~~ Site. At least one Unit must be reconstructed in order to qualify as Reconstruction. ~~The total number of Reconstructed Units to be reconstructed will be determined by program requirements. Developments using Multifamily Direct Loan funds are required to follow~~ count as New Construction for purposes of calculating the applicable federal requirements. Replacement Reserves under §11.302(d)(2)(I).

~~(112103)~~ 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 ~~Development Site, but does not include Adaptive Reuse.~~ ~~(§2306.004(26-a)) Reconstructed Units will be considered New Construction for purposes of calculating the Replacement Reserves under §11.302(d)(2)(I) (relating to Operating Feasibility). More specifically, Rehabilitation is the repair, refurbishment, or replacement of existing mechanical or structural components, fixtures, and finishes. Rehabilitation will correct deferred maintenance, reduce functional obsolescence to the extent possible, and may include the addition of: energy efficient components and appliances; life and safety systems; site and resident amenities; and other quality of life improvements typical of new residential Developments.~~ Site, but does not include Adaptive Reuse. (§2306.004(26-a))

~~(113104)~~ Relevant Supply--~~The supply Defined in §11.303(d)(10)(E) of Comparable Units in proposed and Unstabilized Developments targeting the same population including this chapter.~~

~~(A) The proposed subject Units; and~~

~~(B) Comparable Units in previously approved but Unstabilized Developments in the PMA.~~

~~(114105)~~ Report--See Underwriting Report.

~~(115106)~~ Request--See Qualified Contract Request.

~~(116107)~~ 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.

~~(117108)~~ 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 ~~minimum purchase price as an amount~~ defined in Code §42(i)(7) or as established in accordance with an applicable LURA.

~~(118109)~~ Rural Area--

(A) A Place that is located:

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

(ii) within the boundaries of a ~~primary metropolitan statistical area or a~~ metropolitan statistical area, if the statistical area has a population of 25,000 or ~~less~~ fewer 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.

~~(119110)~~ Scope and Cost Review (SCR)--Sometimes referred to as ~~"Physical Needs Assessment," "Project Capital Needs Assessment," or "Property Condition Report."~~ The SCR provides an. An evaluation of the physical condition of an existing Property to ~~evaluated~~ determine the immediate cost to rehabilitate and ~~to determine costs~~ of future capital improvements ~~to maintain the Property. The.~~ An SCR must be prepared in accordance with §11.306 of this chapter ~~(relating to Scope and Cost Review Guidelines), as it relates to a specific Development.~~

~~(120111)~~ Scoring Notice--Notification (s) provided to an Applicant of the score for their Application after staff review. ~~More than one Scoring Notice may be issued for a Competitive HTC~~

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

~~(121) Single Room Occupancy (SRO)--An Efficiency Unit that meets all the requirements of a Unit except that it may, but is not required, to be rented on a month to month basis to facilitate Transitional Housing. Buildings with SRO Units have extensive living areas in~~

~~common and are required to be Supportive Housing and include the provision for substantial supports from the Development Owner or its agent on site.~~

~~(122)(113)~~ Site Control--Ownership or a current contract or series of contracts that meets the requirements of §11.204(9) of this chapter, ~~that is legally enforceable giving the Applicant the ability, not subject to any legal defense by the Owner or anyone else, to develop and operate a Property and subject it to a LURA reflecting the requirements of any awards of assistance it may receive from the Department.~~

~~(123)~~ (114) 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 each year, is final and authoritative for Applications submitted in the following Application round.

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

~~(124)(116)~~ State Housing Credit Ceiling--The aggregate amount of Competitive ~~Housing Credit~~HTC Allocations that may be made by the Department during any calendar year, ~~as determined from time to time by the Department in accordance with applicable federal law, including Code, §42(h)(3)(C), and Treasury Regulation §1.42-14.~~

~~(125)(117)~~ Sub-Market--An area defined by the Underwriter based on general overall market segmentation promulgated by market data tracking and reporting services from which a proposed or existing Development is most likely to draw the majority of its prospective ~~tenants or homebuyers~~residents.

~~(126)(118)~~ Supportive Housing--A residential rental Development and Target Population meeting the requirements of subparagraphs (A) - (F) ~~of this paragraph below:~~

(A) Be intended for and targeting occupancy for households ~~in need of~~that may benefit from specialized and specific non-medical services ~~in order to maintain housing or transition into independent living;~~

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

(i) ~~have offer~~ supportive services provided by the Applicant, an Affiliate of the Applicant, or a Third Party provider ~~if the service provider is~~ 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 ~~Multifamily~~ 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 ~~deemed to be~~ sufficient to address any unanticipated operating losses;

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

(vi) have Tenant Selection Criteria that fully comply with §10.802 of this title ~~(regarding Written Policies and Procedures), which~~and that 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 ~~(regarding Reasonable Accommodations), and~~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-) ~~Temporary denial for a minimum of~~ 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-) ~~Temporary denial for a minimum of~~ 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 ~~be provided~~receive written notice of their ability to provide materials that support mitigation. ~~Mitigation may be provided~~ 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. ~~In addition, the~~The criteria

must include provision for individual review of permanent or temporary denials if the conviction is more than ~~7~~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 ~~7~~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;~~and.~~

(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 ~~(i.e. the. The~~ Development must have an appeal process for other required criteria). ~~As part of the appeal process where~~ the prospective resident ~~must be~~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 ~~physical, intellectual, or developmental~~ 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~~are 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 ~~on a case-by-case basis;~~.

(D) Supportive services must meet the minimum requirements provided in ~~clauses (i)-(iv) of~~ 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) ~~must include readily available resident services or service coordination that~~ either aid in addressing debilitating conditions, or assist residents in securing ~~the~~ skills, assets, and connections needed for independent living; and
- (iv) ~~a resident may~~ not be required to ~~access supportive services in order to~~ qualify for or maintain tenancy in a ~~rent restricted~~ Unit that the household otherwise qualifies for; ~~and~~.

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

(i) ~~not~~ 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 ~~payments~~ subject to available cash-flow) is permissible if sourced by federal funds and ~~otherwise structured to meet valid debt requirements for tax credit eligible basis considerations.~~

(VI) 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 ~~Development~~ approved by the ~~Asset Management Division~~Department.

(ii) ~~financed~~Financed with debt that meets feasibility requirements under Subchapter D of this chapter without exemptions and ~~must also be~~ 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 ~~subclauses (i) -- (vi) of~~ this clause:

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

(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.

~~(127119)~~ Target Population--The designation of types of housing populations ~~shall include, including~~ Elderly ~~Developments and those that are~~ Supportive Housing ~~Developments~~. All others ~~will be considered to~~ serve general populations ~~without regard to any subpopulations, although the Application. An Applicant or Owner~~ may request ~~that any other populations required for targeting, to have a non-Elderly~~ preference, or limitation ~~by for another population(s) required for~~ a federal or state fund source ~~are identified. An~~

Applicant or Owner of a LIHTC Development may request to have a preference or limitation for another non-Elderly special needs population, if such preference or limitation meets the general public use requirements and is listed under §11.1(d)(118)(C)(vii) plus Colonia residents, Persons with a Disability, farmworkers, or those involved in artistic or literary activities, or as otherwise approved by the Board.

~~(128)~~120) Tax-Exempt Bond Development--A Development requesting or having been issued a Determination Notice for Housing Tax Credits and ~~which~~that receives a portion of its financing from the proceeds of Tax-Exempt Bonds ~~which are~~ subject to the state volume cap as described in Code, §42(h)(4).

~~(129) Tax-Exempt Bond Process Manual--The manual produced and amended from time to time by the Department which explains the process and provides guidance for the filing of a Housing Tax Credit Application utilizing Tax-Exempt Bonds.~~

~~(130) TDHCA Operating Database--Sometimes referred to as "TDHCA Database." A consolidation of recent actual income and operating expense information collected through the Department's Annual Owner Financial Certification process, as required and described in Chapter 10, Subchapter F of this title (relating to Compliance Monitoring), and published on the Department's website (www.tdhca.state.tx.us).~~

~~(131)~~(121)) 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 ~~Development~~ Owner.

~~(132)~~122) Total Housing Development Cost--The sum total of the acquisition cost, Hard Costs, soft costs, Developer Fee, and General Contractor fee incurred or to be incurred through lease-up by the ~~Development~~ Owner in the acquisition, construction, rehabilitation, and financing of the Development.

~~(133) Transitional Housing--A Supportive Housing Development funded with HOME, NSP, HOME ARP or TCAP RF, and not layered with Housing Tax Credits that includes living Units with more limited individual kitchen facilities and is:~~

- ~~(A) Used exclusively to facilitate the transition of homeless individuals and those at risk of becoming homeless to independent living within 24 months; and~~

~~(B) Is owned by a Development Owner that includes a Governmental Entity or a nonprofit which provides temporary housing and supportive services to assist such individuals in, among other things, locating and retaining permanent housing. The limited kitchen facilities in individual Units must be appropriately augmented by suitable, accessible shared or common kitchen facilities.~~

~~(134)~~123) Underwriter--The author(s) of the Underwriting Report.

~~(135)~~124) Underwriting Report--Sometimes referred to as the Report. A decision-making tool prepared by the ~~Department's Real Estate Analysis Division~~ Department that contains a synopsis of the proposed Development and ~~that~~ reconciles the Application information, ~~including its financials and market analysis, with the underwriter's analysis. The Report allows the Department and Board to determine whether the Development will be financially feasible as required by Code §42(m), or other federal or state regulations.~~

~~(136)~~125) 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 ~~(relating to Multifamily Housing Bond Rules and Multifamily Direct Loan Rule, respectively) that may, but are not required to, be used to satisfy the requirements of the applicable rule.~~

~~(137)~~126) 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)~~127) 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)~~128) U.S. Department of Agriculture (USDA)--Texas Rural Development Office (TRDO) serving the State of Texas.

~~(140) U.S. Department of Housing and Urban Development (HUD)-~~(129) HUD-regulated Building--A building for which the rents and utility allowances of the building are reviewed by HUD.

~~(141)~~130) Unstabilized Development--A Development with Comparable Units that has been approved ~~for funding by the Department's Board of Directors or is currently under construction or by the Department and~~ has not maintained a 90% occupancy level for at least 90 days following construction completion. ~~A development may be deemed stabilized by the Underwriter based on factors relating to a development's lease-up velocity, Sub-Market rents, Sub-Market occupancy trends, and other information available to the~~

~~Underwriter.~~ The Market Analyst may not consider such development stabilized in the Market ~~Study~~Analysis.

(~~142~~131) Urban Area--A Place that is located within the boundaries of a ~~primary metropolitan statistical area or a~~ metropolitan statistical area other than a Place described in paragraph (~~117~~ 109)(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~~132) Utility Allowance--The estimate of tenant-paid utilities made in accordance with Treasury Regulation, §1.42-10 and §10.614 of this title ~~(relating to Utility Allowances)~~.

(~~144~~133) 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 ~~Housing & Urban Development~~HUD data, the Department ~~shall~~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, ~~with the exception of census tract boundaries for which 2020 Census boundaries.~~ ACS data must be 5-year estimates (not more specific data) unless otherwise specified. The Department will be used, unless otherwise noted. All 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 throughout in this chapter ~~will mean,~~ the 2020 Census ~~tracts, boundaries~~ unless otherwise noted. Applicants may need to provide Census tract information based on the 2020 boundaries as well as the ones defined by and 2010 boundaries, if 2020 data ~~based on 2020 tract boundaries~~ are not available as of August 1, ~~2025~~2026 for the specific item in question. ~~All American Community Survey (ACS) data must be 5-year estimates, unless otherwise specified and it is the ACS data that will be used for population determination. The availability of more current data shall be disregarded. Where other data sources are specifically required, such as NeighborhoodScout, the data available after August 1, but before Full Application Final Delivery Date, will be permissible. The NeighborhoodScout report submitted in the Application must include the report date.~~ All references to QCTs throughout this chapter mean ~~the 2026 QCTs~~those designated by HUD to be effective in ~~2026.~~ 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:

~~Where this chapter requires the division of Census tracts into quartiles, if the number of tracts is not evenly divisible by four, the Department shall divide the quartiles in the following manner:~~

~~(1) If the division of the tracts into quartiles leaves (1) one excess tract, then the first quartile shall~~will contain the excess tract.;

~~(2) If the division of the tracts into quartiles leaves (2) two excess tracts, then the first and second quartiles shall~~will contain an excess tract each.; or

~~(3) If the division of the tracts into quartiles leaves (3) three excess tracts, then the first, second, and third quartiles shall~~will contain one excess tract each.

(f) Deadlines. Where the chapter identifies a specific date or deadline ~~is identified in this chapter, the, the Department must receive the relevant~~ information or documentation ~~subject to the deadline must be received by the Department~~ on or before 5:00 p.m. Austin local time on the day of the deadline. ~~If the deadline falls on a weekend or holiday, the deadline is 5:00 p.m. Austin local time on the next day which is not a weekend or holiday and on which the Department, if the Department is open for general operation, or if not, the first day after the deadline when it is open.~~ Unless otherwise noted or provided in statute, deadlines are based on calendar days. ~~Deadlines~~The Department will not waive deadlines, with respect to both date and time, ~~cannot be waived~~ 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. ~~Applicants should further ensure that all~~All required documents ~~are included, must be~~ legible, properly organized, and tabbed, ~~and that materials in required formats. Materials~~ involving digital media ~~are~~must be in the required format, complete, and fully readable. ~~Applicants are strongly encouraged to submit the required items well in advance of established deadlines.~~

(g) Documentation to Substantiate Items and Representations in a Competitive HTC Application. ~~In order to ensure the appropriate level of transparency in this highly competitive program, The Department posts~~ Applications and all correspondence and other information ~~relating to each Application are posted on the Department's 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, ~~such as claims for points, qualification for set-asides, meeting of threshold requirements, or timely requesting a waiver or determination. Any Application that staff identifies as having insufficient support information will be directed to cure the matter via the Deficiency process. Applicants are reminded that this process may not be used to increase a scoring item's points or to change any aspect of the proposed Development, financing structure, or other element of the Application. Although a responsive narrative will be created after Application submission, all facts and materials to substantiate any item in response to such an Administrative Deficiency must have been clearly established at the time of submission of the Application.~~

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

(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 ~~will be the site used~~ for that analysis. ~~There is no opportunity for higher~~Higher scoring or performing sites ~~to cannot~~ elevate the score or performance of other sites in ~~the a~~ scattered site Application.

(j) Public Information Requests. ~~Pursuant to Tex. Gov't Code §2306.6717, any~~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 ~~shall be deemed as~~ consent to the release of any and all information contained therein, ~~including supporting documents and exhibits. As part of its certifications, the~~ The Applicant ~~shall~~will certify that the authors of ~~the~~ reports, documents, and other information ~~and documents~~ submitted with the Application have given their consent ~~to the Applicant to submit all reports and other information and documents to the Department, and~~ 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. ~~In considering resolutions regarding housing de-concentration issues, threshold requirements, or scoring criteria, municipalities~~Municipalities and counties ~~should consult their own staff and legal counsel as to are responsible for determining~~ whether their handling of actions regarding such resolution(s) required under this chapter are consistent with Fair Housing laws ~~as they may apply, including, as applicable, consistency with any Fair Housing Activity Statement Texas (FHAAT) form on file, any current Analysis of Impediments to Fair Housing Choice, any current Assessment of Fair Housing,~~ or any current plans such as one year action plans or five year consolidated plans for HUD block grant funds, ~~such as HOME or CDBG funds.~~

(l) Request for Staff Determinations. ~~Where the requirements of this chapter do not readily align with the activities proposed in an Application, an~~An Applicant may request and Department staff may provide a determination ~~to an Applicant~~ explaining how staff will review an Application in relation to the applicable rules. ~~In no instance will staff provide a determination regarding, other than for~~ a scoring item. Any~~The Department must receive~~ such request ~~must be received by the Department in writing~~ prior to submission of the pre-application (if applicable to the program) or Application (if no pre-application was submitted). 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 the articulated purpose of or policies addressed by a particular rule or requirement, materiality of elements, substantive elements of the development plan that relate to a term or definition, a common usage of the particular term, or other issues relevant to a rule or requirement. All such requests and determinations will be conveyed in writing.~~ If the determination is finalized after submission of the pre-application or Application, the Department may allow corrections to ~~the pre-application or the Application that are~~ directly related ~~to the issues in the determination. It is an Applicant's sole responsibility to request a determination and an Applicant may.~~ An Applicant may not rely on any determination for another Application regardless of similarities ~~in a particular fact~~

~~pattern.~~ For any Application that does not ~~request and subsequently~~ receive a determination, the definitions and applicable rules will ~~be applied~~ apply as used and defined herein. An Applicant may appeal a staff determination for their Application, using following the Appeal Process ~~provided for~~ in §11.902 of this chapter (~~relating to Appeals Process 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. ~~A staff or Executive Director~~ Staff's determination ~~not timely appealed cannot be further appealed or challenged.~~ may take into account

(1) the articulated purpose of our 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.

§11.2. Program Calendar for Housing Tax Credits.

(a) Competitive HTC Deadlines. ~~Non~~ The Department may extend non-statutory deadlines ~~specifically listed~~ in the Program Calendar ~~may be extended by the Department for a period of not more than 5~~ up to five business days ~~provided that if~~ the Applicant has, in writing, requested an extension prior to the ~~date of the~~ original deadline and ~~has established to the reasonable satisfaction of the Department that there is~~ good cause for the extension.

Deadline	Documentation Required
01/06/ 2026 <u>2027</u>	Application Acceptance Period Begins. Public Comment period starts.
01/ 09/2026 <u>13/2027</u>	Pre-Application Final Delivery Date (including waiver requests).

02/ 16/2026 <u>15/2027</u>	Deadline for submission of Request for Preliminary Determination in accordance with §11.8(d) of this chapter.
02/ 16/2026 <u>15/2027</u>	Deadline for submission of Application for FTP <u>FTP</u> access if pre-application not submitted.
Deadline	Documentation Required
02/ 27/2026 <u>26/2027</u>	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; Environmental Site Assessments (ESAs); Scope and Cost Reviews (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/ 06/2026 <u>05/2027</u>	Market Analysis Delivery Date pursuant to §11.205 of this chapter<u>due date.</u> Deadline for Quantifiable Community Participation (<u>QCP</u>) documentation for Applications that were not initially submitted as a Pre-Application.
04/15/ 2026 <u>2027</u>	Deadline for Third Party Request for Administrative Deficiency.
Early June 2026	Scoring Notices Issued for Majority of Applications Considered “Competitive.”

06/ 03/2026 <u>01/2027</u>	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 2026 <u>2027</u>	On or before June 30, publication of the list of Eligible Applications for Consideration for Award in July.
July 2026 <u>2027</u>	On or before July 31, Board issuance of Final Awards.
Deadline	Documentation Required
August 2026 <u>2027</u>	Commitments are Issued.
11/ 02/2026 <u>01/2027</u>	Carryover Documentation Delivery Date.
07/01/ 2027 <u>2028</u>	10% Test Documentation Delivery Date.
12/31/ 2028 <u>2029</u>	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. ~~Applicants are strongly encouraged to submit the required items well in advance of published deadlines. Other deadlines may be found~~Other deadlines are in Chapters 12 and 13 or a NOFA.

(1) The Full Application Delivery Date.~~The is the~~ deadline by which the Department must receive the Application ~~must be received by the Department. For Direct Loan Applications, deadlines,~~ including the Application Acceptance Date ~~will be defined~~ in the applicable NOFA for Direct Loan Applications and §11.201 of this chapter for Tax-Exempt Bond

Developments, ~~such deadlines are more fully explained in §11.201 of this chapter (relating to Procedural Requirements for Application Submission).~~

(2) The Administrative Deficiency Response Deadline. ~~Such deadline shall be~~ is five business days after the date on the deficiency notice, unless extended ~~as provided for in~~ under §11.201(6) of this chapter ~~(relating to Deficiency Process).~~

(3) ~~Third Party Report Delivery Date (Environmental Site Assessment (ESA), Scope and Cost Review (SCR) (if applicable), Appraisal (if applicable), Market Analysis and the Feasibility Report (if applicable)). For Direct Loan Applications, For Direct Loan Applications not also requesting Tax Credits or Bonds, Applicants must submit~~ the Third Party reports meeting the applicable NOFA requirements ~~described in §11.205 of this title (relating to Required Third Party Reports) must be submitted in order for the Application to be considered complete, unless the Application is made in conjunction with an Application for Housing Tax Credits or Tax Exempt Bond, in which case the Delivery Date for those programs will apply.~~ For Tax-Exempt Bond Developments, the ~~Third Party Reports must be received by the Department~~ must receive Third Party Reports pursuant to §11.201(2) of this chapter.

(4) ~~Resolutions Delivery Date. Resolutions~~ The Department must receive resolutions required for Tax-Exempt Bond Developments ~~must be received by the Department~~ no later than 14 calendar days before the Board meeting or prior to the issuance of the Determination Notice, as applicable. ~~If the Direct Loan Application is made in conjunction with an Application for Housing Tax Credits, or Tax Exempt Bond Developments, the Resolution Delivery Date for those programs will apply to the Direct Loan Application.~~

~~(5) Challenges to Neighborhood Organization Opposition Delivery Date. Challenges must be received by the Department~~ (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) ~~Rules reciting statutory limitations are provided as a convenient reference only, and to~~ To the extent ~~there is any deviation~~ these rules deviate from the ~~provisions of~~ 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) ~~As required by Tex. Gov't Code §2306.6711(f), staff~~ Staff will not recommend ~~for award,~~ and the Board will not ~~make an~~ award to, an Application that proposes a ~~Development Site located in a county with a population that exceeds one million, if the proposed Development Site is also located~~ less than two linear miles from the proposed ~~Development Site of another Application~~ within said in a county with a population that is exceeds one million awarded in the same calendar year. (§2306.6711(f)) If awarding two or more

Applications ~~are submitted that~~ would violate §2306.6711(f), the Department will use the following priorities ~~will be used~~, in rank order, to determine which Application is reviewed to award:

(A) ~~Priority will first be determined using the~~The steps ~~described~~ in the Award Recommendation Methodology described in §11.6(3).

~~(B) In the event that two Applications are considered for review during the same step of Award Recommendation Methodology, then priority will be given to the~~(B) The higher-scoring Application, including consideration of tie breakers.

(C) Regardless of the priority established by (A) or (B), the Department will not give priority to an Application ~~that is~~ not recommended for an award at the July Board meeting ~~at which awards from the Application Round will be made will not be given priority~~ over another Application that ~~would~~ otherwise would be recommended for an award.

(2) This subsection does not apply if an Application is ~~located in an area that meets the requirements of Tex. Gov't Code §2306.6711(f-1), which excludes~~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 ~~as identified in §11.2(a) of this chapter (relating to Competitive HTC Deadlines), and the governing body of the municipality containing the Development,~~

(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 ~~as identified in §11.2(a) of this chapter, and the municipality is authorized to administer disaster recovery funds as a subgrant recipient, 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). ~~As provided for in Tex. Gov't Code §2306.6703(a)(4), if~~f a proposed Development is ~~located~~ in a municipality, or if ~~located~~ completely outside a municipality, a county, that has more than twice the state average of units per capita supported by Housing Tax Credits or private activity bonds at the time the Application Acceptance Period Begins~~begins~~ (or for Tax-Exempt Bond Developments, Applications submitted after the Application Acceptance Period Begins~~begins~~), then the Applicant-appropriate Governing Body must ~~obtain prior approval of~~approve the Development ~~from the Governing Body of the appropriate municipality or county containing the Development. (§2306.6703(a)(4))~~ Such approval must include an adopted resolution ~~adopted by the Governing Body of the municipality or county, as applicable,~~ setting forth a written statement of support, specifically citing Tex. Gov't Code §2306.6703(a)(4) in the text ~~of~~

~~the actual adopted resolution~~, and authorizing an allocation of Housing Tax Credits for the Development. ~~An acceptable, but not~~ Applicants must submit required, ~~form of resolution may be obtained in the Uniform Multifamily Application Templates. Required~~ documentation ~~must be submitted~~ by the Full Application Delivery Date ~~as identified in §11.2(a) of this chapter (relating to Competitive HTC Deadlines) or Resolutions Delivery Date in §11.2(b) of this chapter (relating to Tax-Exempt Bond and Direct Loan Only Application Dates and Deadlines),~~ 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 ~~all of~~ the criteria in subparagraphs (A) - (C) ~~of this paragraph shall~~ below will be ~~considered~~ ineligible.:

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

(B) ~~A Development that~~ has received ana new or supplemental allocation of Housing Tax Credits or private activity bonds, ~~or a Supplemental Allocation of credits,~~ for any New Construction at any time during the three-year period preceding the date the Application Round begins (or for Tax-Exempt Bond Developments the three-year period preceding the date the Certificate of Reservation is issued); and

~~(C) The Development in subparagraph (B) of this paragraph (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) ~~That is~~ using federal HOPE VI (or successor program) funds received through HUD;

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

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

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

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

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

(G) ~~That approved by~~ the Governing Body of the appropriate municipality or county ~~where the Development is to be located has~~ by vote specifically allowedallowing the construction of a new Development located within one linear mile or less from a Development described under paragraph (1)(A) of this subsection. ~~An acceptable, but not required, form of resolution may be obtained in the Uniform Multifamily Application Templates.~~ Required documentation must be submitted by the Full Application Delivery Date ~~as identified in §11.2(a) of this chapter, regarding Competitive HTC Deadlines, or Resolutions Delivery Date in §11.2(b) of this chapter, regarding Tax-Exempt Bond and Direct Loan-Only Development Dates and Deadlines,~~ 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 ~~must be provided in the Application.~~

(e) Limitations on Developments in Certain Census Tracts. An Application that proposes ~~thea~~ New Construction or Adaptive Reuse ~~of a Development proposed to be located~~ 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 ~~shall~~will be ~~considered~~ ineligible unless the appropriate Governing Body ~~of the appropriate municipality or county containing the Development has adopted~~adopts a resolution ~~that the Governing Body of the appropriate municipality or county containing the Development has of~~ no objection ~~to the Application.~~ (Rehabilitation Developments are not required to obtain such resolution exempt.) The ~~resolution~~Department must ~~be submitted~~receive the resolution by the Full Application Delivery Date ~~as identified in §11.2(a) of this chapter or Resolutions Delivery Date in §11.2(b) of this chapter,~~ as applicable.

(f) Proximity of ~~Development~~ Sites. (Competitive HTC Only) In a county with a population ~~that is of~~ less than one million, if two or more HTC Applications, regardless of the Applicant(s), ~~are proposing~~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 Breaker~~tie breakers, will be ~~considered~~ ineligible ~~and will not be reviewed~~ 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 ~~are proposing~~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 ~~considered~~ ineligible ~~and will not be reviewed~~ 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 ~~(relating to USDA Set-Aside) or §11.5(3) (relating to At-Risk Set-Aside).~~

§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 ~~Development~~ 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 ~~that has with~~ Applications pending for more than \$6 million ~~in credit~~ may notify staff in writing or by email of the Application(s) they will not pursue ~~in order to bring their request within the \$6 million cap. Any other. Such~~ Applications ~~they do not wish to pursue~~ will remain on the waiting list if not otherwise terminated. If the Applicant ~~has does~~ not ~~made this self-selection~~ select by this date, staff will first select the Application(s) that will enable ~~the Department to comply compliance~~ with the state and federal ~~non-profit~~ nonprofit set-asides, and ~~will then select~~ the highest scoring Application ~~(s)~~, including consideration of ~~Tie Breakers if there are tied scores. The Application(s) that does not meet Department criteria will not be reviewed unless the Applicant withdraws an Application that is eligible for an award and has been reviewed. All entities that are under common Control are Affiliates. For purposes of determining the \$6 million limitation, tie breakers. A Person is not ~~deemed to be~~ an Applicant, Developer, Affiliate, or Guarantor solely because it:~~

- (1) ~~Raises~~ raises or provides equity;
- (2) ~~Provides~~ "provides" qualified commercial financing ~~;"~~;
- (3) ~~Is~~ is a Qualified Nonprofit Organization or other not-for-profit entity that is providing solely loan funds, grant funds or social services;
- (4) ~~Receives~~ receives fees as a consultant or advisor that do not exceed \$200,000; or
- (5) ~~Is~~ is a mezzanine finance company that does not have Control.

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

(1) For any given Development 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. ~~In addition, for~~

(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 ~~annual~~ release of the ~~Internal Revenue Service~~ IRS notice regarding the credit ceiling. (2306.6711(h))

(3) For all Applications, the Department will consider the HTC amount requested in the funding request of the pre-application and Application to be the amount of Housing Tax Credits requested and will reduce the Applicant's request to the maximum allowable under this subsection through the underwriting process. While the Housing Tax Credit request amount for an Application may be reduced through the underwriting process or at the written request of staff, the Department shall otherwise consider the request amount final is final unless the Department reduces it.

(4) The Tax Credit request amount cannot be changed change through the Administrative Deficiency process. Regardless of the credit amount requested or any subsequent changes to the request made by staff, the 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 will be evaluated for an increase of up to 30% in Eligible Basis provided they meet based on meeting any one of the criteria identified in paragraphs (1) - (4) of this subsection. Staff will recommend no an increase or a partial increase in Eligible Basis if it is determined it would cause the Development only to be over-sourced, as determined by the Department, in which case a credit amount the extent necessary to fill the gap in financing will be recommended. In no instance will the boost exceed more than the amount of credits required to create the HTC rent-restricted Units. The criteria in paragraph (3) of this subsection are not applicable to Tax-Exempt Bond Developments for financial feasibility.

(1) The Development is located in a Qualified Census Tract (for New Construction or Adaptive Reuse and is in a QCT) (as determined by the Secretary of HUD

(A) that has less than 20% Housing Tax Credit Units per total households in the tract as reflected in the Department's current Site Demographic Characteristics Report. New Construction or Adaptive Reuse Developments located in a QCT that has in excess of 20% Housing Tax Credit Units per total households are not eligible for a 30% increase in Eligible Basis, which would otherwise be available for the Development Site pursuant to §42(d)(5) of the Code, unless, 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 Credit Units per total households and stating that the Governing Body of the appropriate municipality or county containing the Development has no objection to the Application.

(2) All Rehabilitation Developments where this rule is triggered in a QCT are eligible for the boost and are not required to obtain such a resolution from the Governing Body. An acceptable, but not required, form of resolution may be obtained in the Multifamily

~~Uniform Application Templates. Required.~~ The Department must receive required documentation ~~must be submitted by the Full Application Delivery Date as identified in §11.2(a) of this chapter (relating to Competitive HTC Deadlines), or or~~ Resolutions Delivery Date in §11.2(b) of this chapter (relating to Tax Exempt Bond and Direct Loan Application Dates and Deadlines), ~~as applicable.~~ as applicable. The Application must include a census map that includes the 11-digit census tract number and ~~clearly~~ shows that the proposed Development is ~~located within~~ in a QCT.

~~(23)~~ The Development is ~~located~~ in a Small Area Difficult Development Area (SADDA) ~~((based on Small Area Fair Market Rents as determined by the Secretary of HUD) or for Rural areas located in a) or~~ Difficult Development Area (DDA) ~~that has high construction, land and utility costs relative to the AMGI.~~ The Application must include ~~the SADDA or DDA~~ a map that ~~clearly~~ shows the proposed Development is ~~located within the boundaries of~~ in a SADDA or DDA ~~as applicable.~~

~~(34)~~ For Competitive HTC only, Development meets one of the criteria described in subparagraphs (A) - (F) ~~of this paragraph pursuant to Code, §42(d)(5)(B)(v): below:~~

(A) ~~The Development is located~~ in a Rural Area;

(B) ~~The Development~~ is entirely Supportive Housing ~~and is~~ in accordance with §11.1(d) of this chapter ~~(relating to the definition of Supportive Housing);;~~

(C) ~~The Development~~ meets the criteria for the Opportunity Index as defined in §11.9(c)(5) of this chapter ~~(relating to Competitive HTC Selection Criteria);;~~

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

(E) ~~The Development is~~ in an area covered by a concerted revitalization plan, ~~is not an Elderly Development, and is not located in a QCT. A Development will be considered to be in an area covered by a concerted revitalization plan if it is~~ (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) The Development is located in a Qualified Opportunity Zone designated under the Bipartisan Budget Act of 2018 (H.R. 1892). Pursuant to Internal Revenue Service Announcement 2021-10, the boundaries of the Opportunity Zone are unaffected by 2020 Decennial Census changes.~~

~~(4) For~~ (F) in a Qualified Opportunity Zone.

~~(5) The Department will underwrite Tax-Exempt Bond Developments, as a general rule, a QCT, non-metro DDA or SADDA to include the 30% boost if the designation would have to coincidecoincides with the program year the Certificate of Reservation is issued in order for the Department to apply the 30% boost in its underwriting evaluation. The Department acknowledges guidance contained in the Federal Register regarding effective dates of QCT, non-metro DDA and SADDA designations. Pursuant to the Federal Register Notice, unless federal guidance states otherwise, complete Applications (including all Third Party Reports) with a corresponding Certificate of Reservation that are submitted to the Department in the year the QCT, non-metro DDA or SADDA designation is not effective may be underwritten to include the 30% boost, providedprogram year or the bond issuer certifies having received a complete application in the year the QCT, DDA, or SADDA designation was submitted to the bond issuer in the year the QCT, non-metro DDA or SADDA designation was effective. Where this is the case, the Application must contain a certification from the issuer that speaks to the date on which such complete application (as defined in the Notice) was submitted.effective. If the issuer is a member of the organizational structure, then such certification must come from theits bond counsel to the issuer.~~

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

~~This section identifies the statutorily mandated Set-asides which the Department is required to administer. An Applicant may elect to compete in each of the Set-asides for which the proposed Development qualifies. In order to be eligible to compete in the Set-aside, the Application must meet the requirements of the Set-aside as of the Full Application Delivery Date. Election to compete in a Set-aside does not constitute eligibility to compete in the Set-aside, and Applicants who are ultimately deemed not to qualify to compete in the Set-aside will be considered not to be participating in the Set-aside for purposes of qualifying for points under §11.9(e)(3) of this chapter (related to Criteria promoting the efficient use of limited resources and applicant accountability). Commitments of Competitive HTCs issued by the Board in the current program year will be applied 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)). ~~At~~The Department will allocate at least 10% of the State Housing Credit Ceiling for each calendar year ~~shall be allocated to~~ Qualified Nonprofit Developments ~~which meet the requirements of Code, §42(h)(5) and Tex. Gov't Code §2306.6729 and §2306.6706(b).~~ Qualified Nonprofit Organizations must have the controlling interest in the ~~Development~~ 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. ~~If the Application is filed on behalf of a~~ limited liability company, the Qualified Nonprofit Organization must be the Manager of the controlling Managing Member. ~~Additionally, for Qualified Nonprofit Development in the Nonprofit Set-aside the~~The nonprofit entity or its nonprofit Affiliate or subsidiary must be the Developer or a co-Developer as evidenced in the development agreement. ~~An Applicant that meets the requirements to be in~~

~~the Qualified Nonprofit Set-aside is deemed~~ 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 ~~to not be treated under that Set-aside~~ 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 the right to~~ may request a change in this election or to not recommend ~~credits~~ an award for those unwilling to change elections if it receives insufficient Applications in the Nonprofit Set-Aside ~~are received~~. Applicants may not use different organizations to satisfy the state and federal requirements of the Set-aside.

(2) USDA Set-Aside. (§2306.111(d-2)). The Department will allocate 5% of the State Housing Credit Ceiling for each calendar year ~~shall be allocated~~ to Rural Developments ~~which are~~ financed through USDA. If an Application in this Set-aside involves Rehabilitation it will ~~be attributed to and~~ come from the At-Risk Development Set-aside; ~~if an Application in this set-aside involves~~ If New Construction it will ~~be attributed to and~~ come from the applicable Uniform State Service Region and ~~will~~ 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) Eligibility of Certain Developments to Participate in the USDA or Rural Set-asides.~~

~~(§2306.111(d-4)). (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 ~~(42 U.S.C. §§1484, 1485, or 1486)~~ 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 ~~the Development~~ it is located in a Rural Area. (§2306.111(d-4))

(B) All Applications that are eligible to participate under the USDA Set-aside ~~will be considered~~ are Rural for all scoring items under this chapter. ~~If a~~ Property receiving USDA financing ~~is~~ unable to participate under the USDA Set-aside ~~and it is located~~ in an Urban subregion, ~~it~~ will be scored as Urban.

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

(A) ~~At~~ The Department will allocate at least 15% of the State Housing Credit Ceiling for each calendar year ~~will be allocated~~ under the At-Risk Development Set-aside to Applications involving preservation of Developments identified as At-Risk (§2306.6714) and will ~~be deducted from the State Housing Credit Ceiling~~ deduct it prior to the application of the regional allocation formula ~~required~~ under §11.6 of this chapter ~~(relating to Competitive HTC Allocation Process)~~. Through this Set-aside, the Department, to the extent possible, shall allocate credits to Applications involving the preservation of Developments identified

~~as At-Risk Developments. (§2306.6714).~~ Rehabilitation Developments under the USDA Set-aside will have priority for 5% of the State Housing Credit Ceiling associated with this Set-aside ~~will be given as priority to Rehabilitation Developments under the USDA Set-aside; additional.~~ Additional Applications that qualify under the USDA Set-Aside may compete within ~~the At-Risk~~ this Set-Aside only if they meet the definition for an At-Risk Development, have submitted ~~sufficient~~ the required supporting documentation ~~within the Application to demonstrate qualification as an At-Risk Development,~~ 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 qualifying under ~~Tex. Gov't Code~~ §2306.6702(a)(5)(A) must meet the following requirements:

(i) ~~Pursuant to Tex. Gov't Code §2306.6702(a)(5)(A)(i), a Development must have received the benefit of~~ Received a subsidy ~~in the form of a qualified below market interest rate loan, interest rate reduction, rental subsidy, Section 8 housing assistance payment, rental supplement payment, rental assistance payment, or equity incentive from any of the programs provided in subclauses (I) to (VIII) of this clause. Applications participating in the At-Risk Set-Aside~~ must include evidence of the qualifying subsidy.

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

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

(III) Section 202, Housing Act of 1959 (~~1-212~~ 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 ~~administered by the United States Department of Housing and Urban Development~~ as specified by 24 CFR Part 886, Subpart A;

(VI) the Section 8 Housing Assistance Program for the Disposition of HUD-Owned Projects ~~administered by the United States Department of Housing and Urban Development~~ 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) ~~§42, Internal Revenue Code of 1986~~ Code §42.

(ii) ~~Any~~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) ~~will be considered~~ 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 ~~qualifying as At-Risk under §2306.6702(a)(5)(A)(ii)(b) will be considered eligible if the HUD-insured or HUD-held~~will qualify as At-Risk if such mortgage is eligible for prepayment.

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

(C) An At-Risk Development qualifying under ~~Tex. Gov't Code~~ §2306.6702(a)(5)(B) must meet one of the requirements under clause (i), (ii) or (iii) ~~of this below. Notwithstanding any other provision of law, an At-Risk Development previously allocated housing tax credits set aside under~~ subparagraph ~~and also meet(a) of this section does not lose eligibility for those credits if the stipulations noted in clause (iv) of this subparagraph;~~public housing Units are later converted under RAD. (§2306.6702(a)(5)(B)).

(i) Units to be Rehabilitated or Reconstructed ~~must be~~are owned by a public housing authority ~~(or a public facility corporation created by a public housing authority 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 ~~must have been~~are proposed to be disposed of or demolished, or already ~~disposed or demolished~~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 a public housing authority 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) ~~To the extent that an Application is eligible under Tex. Gov't Code §2306.6702(a)(5)(B)(iii), the~~The Development ~~must~~receives or will receive assistance through the Rental Assistance Demonstration (RAD) program administered by ~~the United States Department of Housing and Urban Development (HUD). Applications must include evidence that RAD,~~ participation is included in the applicable public housing plan ~~that was~~ most recently approved by HUD, and ~~evidence that HUD has~~ approved the Units proposed for Rehabilitation or Reconstruction for participation ~~in the RAD program; and.~~ (§2306.6702(a)(5)(B)(iii)).

~~(iv) Notwithstanding any other provision of law, an At-Risk Development described by Tex. Gov't Code §2306.6702(a)(5)(B) that was previously allocated housing tax credits set aside under subsection (a) of this section does not lose eligibility for those credits if~~

~~the portion of Units reserved for public housing as a condition of eligibility for the credits under Tex. Gov't Code §2306.6714 (a-1)(2) are later converted under RAD.~~

(D) An Application for a Development that includes the demolition of the existing Units ~~which that~~ 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, ~~pursuant to Tex. Gov't Code §2306.6702(a)(5)(B),~~ 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 ~~must propose~~proposes at least the same number of restricted Units (the Applicant may, ~~however,~~ add market rate Units, ~~); and other rules, limitations, approvals, and potential conflicting requirements based on fund source, number and unit type may be implicated by creating more units than the original number); and~~

(iii) either:

(I) the new Development Site ~~must either:~~

~~(I) qualify~~qualifies for points on the Opportunity Index under §11.9(c)(5) of this chapter ~~(relating to Competitive HTC Selection Criteria);;~~ or

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

(E) ~~If~~ Developments ~~at risk of losing affordability from~~meeting the ~~financial benefits available to the Development are able to~~ definition contained in §2306.6702(a)(5)(A)(ii) above must retain, renew, or replace ~~the~~ existing financial benefits and affordability ~~they must do so unless regulatory barriers necessitate~~ elimination of all or a portion of that benefit for the Development otherwise.

(i) ~~Evidence~~ The application includes evidence of the legal requirements that will unambiguously cause the loss of affordability ~~and that this will occur within the two~~

calendar years of July 31 ~~following~~ the year the Application is submitted, ~~and must be included with the application.~~

(ii) ~~For~~ Developments qualifying under Tex. Gov't Code §2306.6702(a)(5)(B), must retain only a portion of the subsidy ~~must be retained for the proposed Development,~~ but no less than 25% of the proposed Units must be public housing units ~~supported by public housing operating subsidy.~~ (§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 ~~remaining public housing benefits must be included in the Application, as well as~~ rest and a copy of the HUD-approved plan for demolition and disposition.

(F) Nearing 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 ~~includes Developments eligible to request a Qualified Contract under both Code, §42 and Department rules. Evidence must be provided in the form of. Applications must include~~

(i) a copy of the recorded LURA,

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

(iii) if applicable, documentation from the original application regarding the ~~Right of First Refusal. The Application must also include ROFR and~~ evidence that any applicable ~~Right of First Refusal~~ ROFR procedures have been completed prior to the pre-application Final Delivery Date.

~~(G) An~~ (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, ~~that is submitted to the Department after the Application has been filed and is under review will not be accepted.~~

§11.6. Competitive HTC Allocation Process.

This section identifies the general allocation process and the methodology by which awards during the Application Round are made.

(1) Regional Allocation Formula. The Department ~~shall~~ 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 ~~in each Rural and Urban subregion, consistent with the Regional Allocation Formula developed in compliance with Tex. Gov't Code §. (§2306.1115. As~~

~~authorized by Tex. Gov't Code and §2306.111(d-3), the Department will reserve \$750,000 in housing tax credits for Applications in rural areas in each uniform state service region.))~~ The process of awarding ~~the funds made available~~ within each subregion ~~shall will~~ follow ~~the process described in~~ this section. ~~Where In the event of a particular situation that is not contemplated and addressed explicitly by the process described herein, Department staff shall formulate will make~~ a recommendation ~~forto~~ the ~~Board's consideration~~ Board based on the objectives of the regional allocation formula ~~together with other policies and purposes set out in~~ Tex. Gov't Code, Chapter 2306 ~~and the Department shall provide the public the opportunity to comment on and propose alternatives to such a~~. In general the recommendation. ~~In general, such a recommendation shall will~~ not involve broad reductions in ~~the funding resource~~ request amounts ~~solely to accommodate regional allocation and shall not involve or~~ rearranging the Applications' competitive ranking of Applications within a particular subregion or set aside ~~except as described herein~~. The Department will provide the public the opportunity to comment on and propose alternatives. If ~~the Department staff~~ determines ~~that~~ an allocation ~~recommendation~~ would cause a violation of the \$6 million credit limit per Applicant, ~~the Department will make its then their~~ recommendation ~~will be~~ based on the criteria described in §11.4(a) of this chapter ~~(relating to Tax Credit Request, Award Limits and Increase in Eligible Basis)~~. 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 ~~the calculations periodically, other times~~ if those calculations change, until the credits are fully allocated.

(2) Credits Returned and National Pool Allocated After January 1. ~~For~~ The Department will first ~~replace~~ any ~~credits returned after January 1 and eligible for reallocation credits to its original subregion or set aside~~ (not including ~~credit returned and reallocated under force majeure provisions~~), the Department shall first return ~~returns and reallocations~~, treating the credits ~~to the subregion or set aside from which the original allocation was made. The credits will be treated in a manner consistent with the allocation process described in this section and may ultimately flow from the subregion and be awarded in the collapse process to an Application in another region, subregion or set aside. Consistent with the allocation process described in this section, credits that are~~ 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. ~~For any credit~~ The Department will award anything received from the ~~"national pool"~~ after the initial approval of awards in late July, ~~the credits will be added to any remaining credits and awarded~~ to the next Application on the waiting list for the state collapse, if sufficient ~~credits are available to meet the requirements of to fund~~ the Application ~~as may be amended after underwriting review~~.

(3) Award Recommendation Methodology. (§2306.6710(a) - (f); §2306.111) The Department will ~~assign, as described herein, Developments for review by the program and underwriting divisions. In general, Applications conduct application~~ reviews ~~will be conducted~~ in the order described in subparagraphs (A) - (F) of this paragraph based upon the Applicant self-score and an initial program review. ~~The Staff also will use the procedure identified in subparagraphs (A) - (F) of this paragraph will also be used 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). ~~The first set of reviews will be those Applications with the highest scores in the USDA Set-Aside until attaining the minimum requirements stated in §11.5(2) of this chapter (relating to Competitive HTC Set-Asides. (§2306.111(d)) are attained. The~~ The Department may exceed the minimum requirement ~~may be exceeded in order to fully award the full credit request or underwritten amount of the last Application selected to meet the USDA Set-Aside requirement.~~

(B) At-Risk Set-Aside Application Selection (Step 2). ~~The second set of reviews will be those 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 (relating to At-Risk Set-Aside) are attained. This. The Department may require exceed the minimum requirement to be exceeded to fully award the full credit request or underwritten amount of the last Application selected to meet the At-Risk Set-Aside requirement.~~ This step may leave less than originally anticipated in the 26 subregions to award under the remaining steps. ~~If the Department awards all eligible Applications participating in the At-Risk Set-Aside are awarded and the minimum requirement stated in §11.5(3) has does not been met meet the minimum,~~ the Department will award the highest scoring Applications in the USDA Set-Aside that are otherwise eligible to participate in the At-Risk Set-Aside Application(s) pursuant to §11.5(3)(A) of this chapter until that threshold is met 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 ~~will then be selected provided for which there are sufficient funds within the subregion to fully award the Application with the priorities in this subparagraph first prioritized to make full awards.~~ Applications electing the At-Risk or USDA Set-Asides ~~will not be eligible to receive are ineligible for~~ an award from ~~funds made generally available within each of the subregions a subregion.~~ In Urban subregions in which credits available do not allow ~~for achieving all of the priorities in clauses (iii) to (v) of this subparagraph to be achieved,~~ the Department will follow the priorities ~~will be followed~~ 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, calculate publish the maximum percentage ~~in accordance with Tex. Gov't Code §2306.6711(h), and will publish such percentages on its website. (§2306.6711(h))~~

~~(ii) In accordance with Tex. Gov't Code, §2306.6711(g), in~~ (ii) In Uniform State Service Regions containing a county with a population that exceeds 1.7 million, the Board ~~shall will~~ allocate ~~competitive tax~~ 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)), ~~is located in an Urban subregion, and is within the boundaries of a municipality with a population that exceeds 500,000.~~

(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 ~~shall~~will allocate ~~competitive tax~~ credits to the highest scoring Development, if any, that is ~~located~~ 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 ~~are reflected~~ in the Application's Sources and Uses.

(iv) In Urban subregions containing a county with a population that exceeds 1,000,000, the Board ~~shall~~will allocate ~~competitive tax~~ 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 ~~Development~~ Site that meets the requirements of items (a)-(c) of subparagraph (C)(i)(I) of §11.101(b)(5) ~~— (related to Common Amenities). Developments serving a Target Population that is~~. Elderly ~~or~~and Supportive Housing Developments are not eligible for this item. The Application must include a written agreement between the Applicant and the proposed Educational Provider.

(v) ~~In Urban and Rural subregions that do not contain a county with a population of at least 2,500,000, no~~Not more than one Application with a Supportive Housing Target Population ~~will~~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.~~

~~(vi) In Urban subregions that contain a county with a population of at least 2,500,000, no more than two Applications with a Supportive Housing Target Population will be awarded 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 ~~there are any tax~~ credits set-aside for Developments in a Rural Area in a specific Uniform State Service Region (Rural subregion) ~~that~~ remain after award under subparagraph (C) of this paragraph, those tax~~the Department will combine such~~ credits ~~shall be combined~~ into one "pool" and then be made available in any other Rural Area ~~in the state~~ to the Application in the most underserved Rural subregion as compared to the subregion's allocation, continuing with the priorities and limitations established in

§11.6(3)(C). This ~~rural~~ redistribution will continue until the Department allocates all ~~of the tax credits in the "pool" are allocated~~ to Rural Applications and at least 20% of the ~~funds credits~~ available to the State ~~are allocated~~ to Applications in Rural Areas. (~~§2306.111(d)(3))~~.f In the event ~~that~~ more than one subregion is underserved by the same percentage, the ~~priorities described in~~ Department will use clauses (i) - (ii) ~~of this subparagraph will be used below~~ to select the next most underserved subregion:

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

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

(E) Statewide Collapse (Step 5). ~~Any~~ The Department will combine any credits remaining after the Rural Collapse, including those in any subregion in the State, ~~will be combined~~ into one ~~"pool."~~ The funds will be used to award the highest scoring Application, and ~~continuing with the priorities and limitations established in~~ pursuant to §11.6(3)(C), in the most underserved subregion in the State compared to the ~~amount~~ amounts originally ~~made~~ 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, ~~within an Urban subregion of that service region. Therefore, certain Applications for Elderly Developments (as a result, some~~ may be excluded from ~~receiving an award from the collapse pool)~~. The Department will, publish the maximum percentage for each such Urban subregion, ~~calculate the maximum percentage in accordance with Tex. Gov't Code §2306.6711(h) and will publish such percentages~~ on its website. ~~This process will continue until the funds remaining are insufficient to award the next highest scoring Application that is not rendered ineligible through application of the elderly cap in the next most underserved subregion. (§2306.6711(h)).~~ At least seven calendar days prior to the July Board meeting ~~of the Department at which final awards of credits are authorized,~~ the Department will post on its website the most current ~~2024~~ State of Texas Competitive ~~Housing Tax Credit~~ 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 ~~award~~ determinations awards within the State Collapse. ~~In the event that~~ If more than one subregion is underserved by the same degree, the Department will use the priorities ~~described in~~ clauses (i) and (ii) ~~of this subparagraph will be used below~~ to select the next most underserved subregion:

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

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

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

(4) Waiting List. The Department will place Applications that do not receive an award by July 31 and remain active and eligible ~~will be recommended for placement~~ on the waiting list. The ~~waiting list is not static. The Department will use the~~ allocation process ~~will be used in determining the next Application to award. If credits are~~ determine awards, including making returned ~~through any process, those credits will first be made~~ HTCs first available in the set-aside or subregion from which they were originally awarded. ~~The first Application on the waiting list is in part contingent on the nature of the credits that became available for award. The Department shall~~

(A) The Department will hold all credit available after the late-July ~~awards until September 30 in order to collect credit that may become available when tax credit Commitments are submitted. Credit confirmed to be available, as of September 30, may be awarded to Applications on the waiting list unless insufficient credits are available to fund the next Application on the waiting list. For credit returned after September 30, awards from the waiting list will be made when the remaining balance is sufficient to award the next Application as may be amended on the waiting list based on the date(s) of returned credit. 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).

(C) Notwithstanding the foregoing, if decisions related to any returns or rescissions of tax credits are under appeal or are otherwise contested, the Department may delay awards until resolution of ~~such issues. The Department will evaluate all waiting list awards for compliance~~ appeals or other challenges to decisions related to returns or rescissions. Compliance with ~~requested Set-asides. This~~ Aside requirements may ~~cause some~~ result in awarding a lower-scoring Applications to be selected instead of a higher-scoring Application.

~~Where sufficient credit becomes available to award an Application on the waiting list later in the calendar year, staff-ranked application. Staff~~ may allow flexibility in meeting the Carryover Allocation submission deadline and changes to the Application as necessary to ensure to the extent possible that available resources are allocated help ensure allocation of credits by December 31. (§2306.6710(a) - (f); §2306.111).

(5) Credit Returns Resulting from Force Majeure Events. ~~In the event that~~ If the Department receives a return of Competitive HTC's ~~during the current program year~~ from an Application that received ~~a Competitive Housing Tax Credit~~ 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, ~~be allocated~~. 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 from the current year's tax credit allocation, and not be subject to the requirements of paragraph (2) of this section. The Board, making a determination must indicate of the year of the Multifamily Rules to be applied which apply to the Development. The Department's Governing Board may impose a deadline that is conditions, including an earlier than the Placed in Service Deadline and may impose conditions that were not placed on the original allocation. Requests. The Department will not consider requests to allocate returned credit separately where all of the requirements of this paragraph have not been met or requests for, waivers of any part of this paragraph will not be considered. In addition, requests will only be presented to the Board, or presentations not within 180 days of the applicable Placed in Service deadline. ~~For purposes of this paragraph, credits returned after September 30 of the preceding program year may be considered to have been returned on January 1 of the current year in accordance with the treatment described in §(b)(2)(C)(iii) of Treasury Regulation 1.42-14. The Board may approve the execution of a current program year Carryover Agreement regarding the returned credits with the Development Owner that returned such credits only if:~~

(A) The ~~credits were returned as~~ 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. ~~Force Majeure events are the following sudden and unforeseen circumstances outside the control of the Development Owner:~~ acts of God such as fire, tornado, flooding, significant and unusual rainfall or subfreezing temperatures, or loss of access to necessary water or utilities as a direct result of significant weather events; explosion; vandalism; orders or acts of military authority; unrelated party litigation; changes in law, rules, or regulations; national emergency or insurrection; riot; acts of terrorism; supplier failures; or materials or labor shortages. ~~If a Force Majeure event is also a presidentially declared disaster, the Department may treat the matter under the applicable federal provisions. Force Majeure events~~ The event must make construction activity impossible or materially impede its progress;

~~(B) Acts. Under no circumstance will the Board consider acts~~ or events caused by the negligent or willful act or omission of the ~~Development~~ Owner, Affiliate or a Related Party ~~shall under no circumstance be considered~~ to be caused by Force Majeure. ~~In order for The Owner must clearly explain how~~ rainfall, material shortages, or labor shortages ~~to constitute Force Majeure, the Development Owner must clearly explain~~ 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 ~~conducting their review and~~ forming a recommendation ~~to the Board.~~

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

(C) ~~To be eligible for consideration, construction~~ Construction of the Development must have already commenced;

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

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

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

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

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

(6) Credit Returns Due to Unforeseen Short-term Delays. ~~In the event that~~ If the Department receives a return of Competitive HTC's ~~during the current program year~~ from an Application that received ~~a Competitive Housing Tax Credit~~ an award during any of the preceding three program years, and the Development ~~is anticipated to~~ can be completed within six months of its original/initial deadline to place in service, such returned credit will, ~~if the~~ 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 ~~to its satisfaction, be allocated.~~ 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 current year's tax credit initial year of allocation, and not be subject to the requirements of paragraph (2) of this section. The Multifamily Rules from the initial year of allocation shall be applicable 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. ~~Requests. The Department will not consider either requests~~ to allocate returned credit separately where all ~~of the~~ requirements of this paragraph have not been met or requests for waivers of any part of this paragraph ~~will not be considered. For purposes of this paragraph, credits returned after September 30 of the preceding program year may be considered to have been returned on January 1 of the current year in accordance with the treatment described in 5(b)(2)(C)(iii) of Treasury Regulation 1.42-14.~~ Staff may ~~issue and either~~ execute a current program year Carryover Agreement ~~regarding the returned credits~~ with the ~~Development~~ Owner that returned such credits ~~only if~~ the following requirements are met. ~~In the event that staff cannot reasonably conclude that all necessary conditions have been met, it may 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 Development~~ An Owner claiming good cause ~~must provide~~ provided evidence of the circumstances.
- (C) The ~~Development~~ Owner ~~must prove that~~ proved it took reasonable steps ~~were taken~~ to minimize or mitigate any delay or damages, ~~that the Development Owner~~ it substantially fulfilled all reasonable obligations, ~~that it and~~ the Development ~~and Development Owner~~ was ~~were~~ properly insured, and that the Department ~~was~~ received timely ~~notified~~ notice of the likelihood of delay.
- (D) The good cause event prevents the ~~Development~~ Owner from meeting the placement in service requirements of the original allocation.
- (E) The requested current year Carryover Agreement allocates the same amount ~~of credit~~ as ~~that which~~ was returned.
- (F) ~~If the good cause event necessitates an insurance claim, the Department's Real Estate Analysis Division~~ The Department determines that the Development continues to be financially feasible ~~in accordance with the Department's underwriting rules~~ after taking into account any insurance proceeds ~~related to the event; and~~.
- (G) The ~~Development~~ Owner has not previously returned the credit allocation ~~and had it reallocated under any provision of this chapter.~~

§11.7. Tie Breaker Factors.

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

(1) For ~~Applications funded through~~ 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 ~~will be taken into consideration. The, not the~~ specific date of construction or conversion ~~will not affect this tie breaker.~~ A tie will persist if ~~two~~ Applications have the same year. ~~In the event that~~

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

~~(#)iii) The~~ Year submitted must be evidenced by the initial USDA loan documentation. ~~If such documentation does not exist or cannot be provided, the Application is ineligible for this tiebreaker. to be eligible.~~

(B) ~~Once 5% or more of the State Housing Credit Ceiling has been allocated to USDA developments, no~~No further applications with USDA financing ~~shall~~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 ~~to be located~~ 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. ~~Features~~Neither features that charge admission for the general public to access the entire property for the majority of the calendar year ~~are not eligible for consideration. A~~

~~school campus' nor facilities may not be used for this feature. located on a school campus count.~~ Unimproved land that has been dedicated but ~~that~~ is not operating as a public park will not qualify; ~~however, unless it is a wilderness areas area~~ with an intentional recreational use ~~(e.g., as evidenced by clear signage and established hiking or walking trails, bird watching areas, community gardens, or natural retreats) may qualify so long as they meet all requirements.~~

(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, and seafood; 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. Grocery stores that require paid membership may qualify.

(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 that is: Open 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) and be listed in the license verification system available on TSBP's website with an active license status. Delivery-only pharmacies and those listed by TSBP as "Closed Door" 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, in which case, the distance to the grocery store and distance to the pharmacy are still calculated separately.

(vi) An urgent care clinic that offers the provision of immediate medical service offering outpatient care for the treatment of acute and chronic illness and injury, excluding any emergency care facility licensed under Tex. Gov't Code Chapter 254 (as listed in the Texas Health and Human Services Directory of Freestanding Emergency Medical Care Facilities) and general hospitals licensed under Texas Health and Safety Code Section 241.003 (as listed in the Texas Health and Human Services Directory of General and Special Hospitals). To qualify under this definition, the facility must: maintain extended service hours defined as 10 operating hours on weekdays and operating hours on both Saturday and Sunday; accept walk-in clients; serve all clients regardless of age; and must provide radiology services.

(B) The linear ~~measurement~~measurements will be performed from the closest parcel boundary of the ~~Development~~ Site to the closest parcel boundary of each feature, with the feature's parcel boundaries being established by the central appraisal district. A feature's parking lot is included as part of that feature if it is immediately adjacent. The Department may prescribe a specific form to be used for ~~the calculation of these distances using GPS coordinates provided by the Applicant~~calculations.

(C) ~~In calculating this proximity, each feature's distance will be required for submittal, with the sum of the three closest features being used to produce the result.~~ The Application with the lowest sum of ~~proximity will~~proximities for its three shortest distances will receive preference.

~~(D) In the event that one of the top three features is~~ (D) A feature will be disqualified ~~due to if it does not conforming~~conform to the definitions provided ~~or, or the applicant misrepresents the distance.~~ If one of the three shortest distances to a substantial misrepresentation of distance from the development feature is disqualified, the fourth shortest distance will ~~be used as an opportunity to~~ replace the disqualified feature. ~~If multiple.~~ If more than three features are disqualified, the Application will not receive preference. If the competing application(s) also has ~~multiple~~more than three disqualified features, the tie will persist.

(E) ~~If the event that the sum~~sums of 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 preference will ~~be given~~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, ~~and will request,~~ not ~~be a lower amount as~~ adjusted ~~in the event that the Department's Real Estate Analysis Division recommends a lower Housing Tax Credit award than was initially requested by staff.~~

(4) If the tie persists, the preference will ~~be determined using this final tiebreaker~~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 ~~that~~ 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 a date)~~ and calculated by deducting the ~~year of the award from the~~ "Board Approval" column of the property inventory from year on the Site Demographics Characteristics report from the current year. ~~The specific month and date of the award are disregarded for this analysis. Developments awarded Housing Tax Credits but do not yet have a Land Use Restriction Agreement in place will be considered Housing Tax Credit assisted Developments for purposes of this paragraph according to the property inventory included in the HTC Site Demographic Characteristics Report.~~ The linear measurement ~~will be performed from~~is between closest ~~boundary to closest boundary of the Site~~boundaries as presented at

Pre-Application, ~~if a pre-application is submitted, or the Site presented at full~~ Application, whichever is closest.

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

(a) General Submission Requirements. ~~The pre-application process allows Applicants interested in pursuing an Application to assess potential competition across the 13 state service regions, subregions, and set-asides. Based on an understanding of the potential competition they can make a more informed decision about whether they wish to proceed to prepare and submit an Application. A complete pre-application is a pre-application that meets all of the Department's criteria, as outlined~~A pre-application is complete if it meets the criteria in subsections (a) and (b) of this section.

(1) ~~The pre-application Applicants must be submitted~~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 ~~as described in §11.901 of this chapter (relating to Fee Schedule),~~ not later than the pre-application Final Delivery Date ~~as identified in §11.2(a) of this chapter (relating to Competitive HTC Deadlines). If the pre-application and corresponding fee is not submitted on or before this deadline the Applicant will be deemed to have not made a pre-application.~~

(2) ~~Only Applicants may submit only~~ one pre-application ~~may be submitted by an Applicant~~ for each ~~Development~~ Site and for each Site Control document.

~~(3) Department review at this stage is limited, and not all issues of eligibility and threshold are reviewed or addressed at pre-application.~~(3) Acceptance by staff of a pre-application does not ensure that an Applicant satisfies all Application eligibility, threshold or documentation requirements. ~~While the pre-application is more limited in scope than the Application, pre~~Pre-applications are subject to the same limitations, restrictions, or causes for disqualification or termination as Applications, ~~and pre-applications will thus be subject to the same 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 ~~described in §11.2(a) of this chapter.~~

(b) Pre-Application Threshold Criteria. ~~Pursuant to Tex. Gov't Code §2306.6704(c) The Department will terminate~~ pre-applications ~~will be terminated~~ unless they meet the threshold criteria described in subsection (a) of this section and paragraphs (1) and (2) of this subsection. (§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 ~~(relating to Required Documentation for Application Submission)~~. For purposes of meeting this specific requirement related to pre-application threshold criteria, proof. Proof of consideration and any documentation required for identity of interest transactions is not required ~~at the time of~~ pre-application submission but ~~will be required at the time of~~ 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 ~~Development~~ Site is located, and a map of the census tract(s) with an outline of the proposed ~~Development~~ Site_;

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

(H) Proposed name of ownership entity_;

(I) If Supporting documentation of points ~~are~~ to be claimed related to Underserved Area and/or Proximity to Jobs, ~~documentation supporting those point elections~~_;

(J) The name and coordinates of the ~~nearest park, grocery store, and library meeting the criteria established in 10 TAC §11.7(2) as well as the name and coordinates of the school~~ 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 ~~is to~~ will be provided under §11.6(3)(C)(v), the election must be made at pre-application and may not change at full Application_; ~~and~~_;

(M) The name and address of the nearest ~~Housing Tax Credit~~ HTC assisted Development ~~that serves the same Target Population and was awarded 15 or fewer years ago following the calculation established as described in 10 TAC §11.7(3) according to the Department's property inventory tab 4~~ of the Site Demographic Characteristics Report this chapter.

(2) Evidence in the form of a certification ~~provided in the pre-application, that all of that~~ the notifications required under this paragraph have been made. (§2306.6704).

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

(B) Notification Recipients. Developments located in an extraterritorial jurisdiction (ETJ) of a municipality ~~are required to must~~ notify both municipal and county officials. ~~The notifications may be sent~~ by e-mail, fax or mail with registered return receipt ~~(or similar tracking mechanism in the).~~ The format must be either what is included in the Public Notification Template provided in the Uniform Multifamily Application Template or ~~in~~ an alternative format that meets the applicable requirements and achieves the intended purpose. Meetings and discussions do not constitute notification. The Applicant ~~is required to must~~ retain proof of delivery ~~in the event the Department requests proof of notification.~~ Acceptable evidence of such delivery ~~is demonstrated by includes~~ signed receipt for mail or courier delivery and confirmation of delivery for fax and e-mail. Officials to be notified are those ~~officials~~ in office at the time the pre-application is submitted; ~~however, a.~~ A mailed notification ~~that is correctly~~ addressed to the entity or officeholder rather than a specific person is acceptable so long as it ~~is mailed to the correct address and~~ otherwise meets all requirements. ~~Between the time of pre-application (if made) and full Application, the boundaries of an official's jurisdictions may change. If there is if~~ a change in jurisdiction between pre-application and the Full Application Delivery Date ~~that results in the Development being located in a new jurisdiction, the Applicant must make~~ additional notifications ~~must be made~~ at full Application to any entity ~~that has not been previously notified by the Applicant.~~ ~~Meetings and discussions do not constitute notification. Only a timely and compliant written notification to the correct entity constitutes notification.~~ No later than the date the pre-application is submitted, notification must be sent to ~~all of~~ the entities prescribed in clauses (i) - (viii) ~~of this subparagraph below:~~

(i) Neighborhood Organizations ~~on record with the state or county 30 days prior to the beginning of the Application Acceptance Period whose boundaries include the entire proposed Development Site; described in (b)(2)(A) above.~~

(ii) Superintendent of the school district in which the ~~Development~~ Site is located; ~~;~~

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

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

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

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

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

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

(C) Contents of Notification.

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

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

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

(III) ~~A~~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~~whether the Development proposes New Construction, Reconstruction, Adaptive Reuse, or Rehabilitation;

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

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

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

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

(IX) ~~Information~~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 such targeting or preferenced doing so is documented in the Application and is in full compliance with all applicable state and federal laws, (including state and federal fair housing laws.)

(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 have satisfied all of satisfy the pre-application requirements, including those in §11.9(e)(3) of this chapter (relating to Criteria promoting the efficient use of limited resources and applicant accountability), will be eligible for pre-application points. The order and scores of those Developments information released on the pre-application Submission Log do not represent a Commitment on the part of the Department or the Board to allocate ~~tax~~ credits to any Development and the Department bears no liability for decisions made by Applicants based on the ~~results of the~~ pre-application Submission Log. Inclusion ~~of a pre-application~~ on the pre-application Submission Log does not ensure that an Applicant will receive receiving points for a pre-application.

(d) Applicants that may be requesting might request a **Multifamily** Direct Loan ~~from the Department~~ may submit a Request for Preliminary Determination on or before February ~~13, 2026~~ , 2027. The Department may use the results of evaluation of the Request ~~may be used~~ 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 Multifamily a Direct Loan ~~funds with their full Application~~.

§11.9. Competitive HTC Selection Criteria.

(a) General Information. This section identifies the scoring criteria used in evaluating and ranking Applications. The criteria identified in subsections (b) – (e) of this section include those items required under Tex. Gov't Code, Chapter 2306, Code §42, and other criteria established in a manner consistent with Chapter 2306 and Code §42. 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) There is no rounding of numbers in this section for any of the calculations in order to achieve the desired requirement or limitation, unless rounding is explicitly stated as allowed for that particular calculation or criteria. The Application must include ~~one or more~~ maps indicating the ~~location of the Development Site and the related distanced~~ distances to the applicable ~~facility~~. Distances are to be facilities, measured from the nearest boundary of the ~~Development~~ 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) ~~Applications-The Department~~ will review only ~~be reviewed for~~ point items specifically elected in the Application- (including the Self-Scoring form, as applicable). Except for scoring items ~~that are~~ awarded based on tiered categories, if an Application ~~is determined to~~ does not qualify for the points elected, ~~Department~~ staff will not ~~evaluate the Application to~~ determine whether it might qualify for alternative points.

(3) ~~For scoring items that relate directly to the Application's finances, The Department~~ will not reassess points when costs or financing change after completion of underwriting or award (whichever occurs later), ~~the points attributed to an Application will not be reassessed~~ 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); ~~§42(m)(1)(C)(iii) and (ix)~~) An Application may qualify for up to fifteen (15) points under subparagraphs (A) and (B) ~~of this paragraph below~~.

(A) Unit Sizes (6 points). The Development must either meet the minimum requirements ~~identified in this subparagraph to qualify for points. Points for this item will be automatically granted for Applications involving, or involve~~ Rehabilitation (excluding Reconstruction), ~~for Developments receiving~~ receive funding from USDA, or ~~for be a~~ Supportive Housing ~~Developments without meeting these square footage minimums only if requested in the Self-Scoring Form~~ Development. If the Development involves both Rehabilitation and Reconstruction or New Construction, the Reconstruction or New Construction Units must meet these requirements:

- (i) ~~five hundred (500)~~ square feet for an Efficiency Unit;
- (ii) ~~six hundred (600)~~ square feet for a one Bedroom Unit;
- (iii) ~~eight hundred fifty (850)~~ square feet for a two Bedroom Unit;
- (iv) ~~one thousand fifty (1,050)~~ square feet for a three Bedroom Unit; and
- (v) ~~one thousand two hundred fifty (1,250)~~ square feet for a four Bedroom Unit.

(B) Unit, Development Construction, and Energy and Water Efficiency Features (9 points). Applicants ~~that elect in an Application~~ electing to provide specific amenity and quality features in every Unit at no extra charge to the tenant will ~~be awarded~~ earn points based on the ~~point structure provided~~ criteria in §11.101(b)(6)(B) of this title

~~(relating to Unit, Development Construction, and Energy and Water Efficiency Features) and as certified to in the Application. The amenities will be required to be identified in the LURA. Rehabilitation Developments and Supportive Housing Developments will start with a base score of five (5) points.~~

(2) Sponsor Characteristics. ~~(§42(m)(1)(C)(iv))~~ An Application may qualify to receive either any one of one (1) or two (2) points if it meets the requirements of either subparagraphs (A), (B), (C), or (D) ~~of this paragraph below.~~

~~((A))~~ (A) Qualified Nonprofit Organization. The ownership structure contains a Qualified Nonprofit Organization ~~provided and~~ the Application is submitted in the Nonprofit Set-Aside, meeting the criteria in §11.5(1) 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 ~~which prohibit for profit ownership~~, ownership will not be required for a nonprofit, only for Cash Flow or Developer Fee; the total ~~ownership~~ percentage must still equal 50%, even if it is only attributable to one ~~of the two categories.~~

~~((i))~~ ~~The Qualified Nonprofit Organization must materially participate in the Development and operation of the Development throughout the Compliance Period and must have experience directly related to the housing industry, which may include experience with property management, construction, development, financing, or compliance. Material participation means that the Qualified Nonprofit Organization is regularly, continuously, and substantially involved in providing services integral to the Development Team; providing services as an independent contractor is not sufficient.~~

~~((ii))~~ category. A Principal of the Qualified Nonprofit Organization ~~cannot be~~ 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 ~~said the~~ Qualified Nonprofit Organization). ~~(2 points).~~

~~((iii))~~ The Qualified Nonprofit Organization must ~~be~~ materially participate and have directly related housing experience, which may include property management, construction, development, financing, or compliance. (2 points)

(ii) The Qualified Nonprofit Organization is involved with the Development Services or in the provision of on-site tenant services during the ~~Development's~~ Affordability Period. ~~A Principal of the Qualified Nonprofit Organization cannot be a Related Party to or Affiliate, including the spouse of, any other Principal of the Applicant, Developer, or Guarantor (excluding another Principal of said Qualified Nonprofit Organization). (1 point).~~

(B) Nonprofit Organization. The ownership structure contains a nonprofit organization that meets the requirements of IRC-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 ~~of the Development~~ to that parent organization, doing so long as it meets the requirements of IRC-Code §42(h)(5)(C).

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

(iii) The ~~Applicant will provide a minimum of~~ Application qualifies for at least 3 additional points under §11.101(b)(7) of this chapter ~~(related to Resident Supportive Services)~~,₂ in addition to points selected under subsection (c)(3) of this section.

(C) Property Tax Status. The Application ~~does include a certification that the Owner will not include seek or effect~~ any exemptions, abatements, rebates, or similar reductions ~~related to the in~~ ad valorem taxes imposed by the relevant taxing units ~~in the Development Site's district. The Application must include a certification from the Development Owner that no such exemption or abatement will be sought or effected prior to the expiration of the federal Compliance period, as defined by Code, §42 (2 points).~~

(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 or affiliate thereof, and the entire ~~Development~~ Site is ~~located~~ 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); ~~and §42 (m)(1)(B)(ii)(4)~~) 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) of this paragraph below.

~~(A) For~~ (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 ~~under §42(g)(1)(A) or §42(g)(1)(B) of the Code, respectively; (Code §42(g)(1)):~~

- (i) ~~At least 60% of all Low-Income Units~~ 60% at 50% or less of AMGI in a Supportive Housing Development proposed by a Qualified Nonprofit (16 points);
 - (ii) ~~At least 40 % of all Low-Income Units~~ % at 50% or less of AMGI (15 points);
 - (iii) ~~At least 30% of all Low-Income Units~~ at 50% or less of AMGI (13 points); or
 - (iv) ~~At least 20% of all Low-Income Units~~ at 50-~~%%~~ % or less of AMGI (11 points).~~.)~~
- (B) ~~For~~ At least the following percentages of all Low-Income Units for Developments ~~proposed to be~~ located in areas other than those listed in subparagraph (A) of this paragraph ~~and~~ that propose to use either the 20-50 or 40-60 election ~~under~~ (Code §42(g)(1)(A) or §42(g)(1)(B) of the Code, respectively):
- (i) ~~At least 60% of all Low-Income Units~~ 60% at 50% or less of AMGI in a Supportive Housing Development proposed by a Qualified Nonprofit (16 points);
 - (ii) ~~At least 20% of all Low-Income Units~~ at 50% or less of AMGI (15 points);
 - (iii) ~~At least 15% of all Low-Income Units~~ at 50% or less of AMGI (13 points); or
 - (iv) ~~At least 10% of all Low-Income Units~~ 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~~average~~ Income election ~~under §(§42(g)(1)(C) of the Code)~~, the Average Income and Rent restriction for all Low-Income Units will be:
- (i) ~~The Average Income and Rent restriction for all Low-Income Units for the proposed Development will be~~ 54% or lower (15 points);
 - (ii) ~~The Average Income and Rent restriction for all Low-Income Units for the proposed Development will be~~ 55% or lower (13 points); or
 - (iii) ~~The average income and Rent restriction for all Low-Income Units for the proposed Development will be~~ 56% or lower (11 points).~~.)~~
- (D) For Developments ~~proposed to be~~ located in the areas other than those listed in subparagraph (C) of this paragraph ~~and~~ that propose to use the Average~~average~~ Income election ~~under (Code §42(g)(1)(C) of the Code)~~ the Average Income and Rent restriction for all Low-Income Units will be:
- (i) ~~The Average Income and Rent restriction for all Low-Income Units for the proposed Development will be~~ 55% or lower (15 points);

(ii) ~~The Average Income and Rent restriction for all Low-Income Units for the proposed Development will be~~ 56% or lower (13 points); or

(iii) ~~The Average Income and Rent restriction for all Low-Income Units for the proposed Development will be~~ 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 ~~a Development for the entire Affordability Period. If selecting. These points from are in addition to~~ paragraph (1)(A) or paragraph (1)(B) of this subsection, ~~these levels are in addition to those committed under paragraph (1) 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 ~~under paragraph (1) of this subsection.~~ These units must be maintained at ~~this~~ the indicated rent level throughout the Affordability Period ~~regardless of the Average Income calculation.~~ 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, ~~which are listed in under~~ §11.101(b)(7) of this chapter ~~(relating to Development Requirements and Restrictions)~~ 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. ~~Applicants may contact~~ The service providers may be those on the Department list, or ~~contact~~ other providers that serveserving the general area ~~in which the Development is located.~~ (1 point).]

(4) Section 811 Project Rental Assistance Program (811 PRA) and Residents with Special Housing Needs. (§2306.6710(b)(4); ~~§42(m)(1)(C)(v)~~) An Application may qualify to receive up to four (4) points ~~by serving Residents with Special Housing Needs under this paragraph.~~

Only Applications ~~that are~~ unable to meet the requirements of subparagraph (A) of this paragraph may qualify for points under subparagraphs (B) ~~or and~~ (C) of this paragraph ~~relating to Residents with Special Housing Needs.~~ The point ~~available~~ under subparagraph (D) of this paragraph is available to all Applications ~~that qualify~~. The Units identified for this scoring item may not be the same Units identified previously for the Section 811 PRA Program. ~~Due to the complexity of determining a Development's eligibility for 811 PRA, the~~ The Department will work with Applicants to resolve any errors made in good faith pertaining to ~~this scoring item~~ 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 ~~by serving tenants with special housing needs through for participation in the 811 PRA Program. Points will be awarded,~~ as described in ~~clauses (i) through (ii) of~~ 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 ~~the Section 811 PRA Program, as referenced in 10 TAC §8.4, Qualification Requirements for Existing Developments. In order to qualify for points, the Existing Development must commit to the Section 811 PRA Program at minimum 5% of the and commits at least 5% of its total Units to 811 PRA, unless the Integrated Housing Rule, limited to fewer under 10 TAC §1.15, or the 811 Project Rental Assistance Rule (811 Rule), 10 TAC Chapter 8, limits the Existing Development to fewer Section 811 PRA Program Units. 8.~~ The same Section 811 PRA Program Units cannot be used to qualify for points in more than one ~~HTC~~ Application. ~~The Applicant or Affiliate will comply with the requirements of 10 TAC Chapter 8.~~ (3 points)

(ii) ~~In order to be eligible for points, Applicants must commit~~ An Applicant commits at least 5% of the total Units in the proposed Development for participation in ~~the Section 811 PRA Program,~~ unless ~~the Integrated Housing Rule, 10 TAC §1.15, or the 811 Rule, 10 TAC Chapter 8, limits the Development limited to fewer Section 811 PRA Program Units. The Applicant will comply with the requirements of under 10 TAC §1.15 or 10 TAC Chapter 8.~~ (3 points)

(B) The Development ~~must commit~~ commits at least 5% of the total Units to Persons with Special Housing Needs. ~~For purposes of this subparagraph as described in §11.1(d)(118)(C)(vii) plus Colonia residents, Persons with Special Housing Needs is defined as a household where one or more individuals have alcohol or drug addictions, is a Colonia resident, a Person with a Disability, has Violence Against Women Act Protections (domestic violence, dating violence, sexual assault, and stalking), HIV/AIDS, homeless, veterans, and farmworkers. Throughout the Compliance Period, unless otherwise permitted by the Department, the Development~~ The Owner agrees to specifically the following. (2 points)

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

(ii) For an initial minimum twelve-month period during which, Units must either be occupied by Persons with Special Housing Needs or held vacant, (unless the Units receive HOME funds from any source. After the initial twelve-month period, the Development Owner will no longer be required to hold Units vacant for Persons with Special Housing Needs, but will be required to continue to specifically market Units to Persons with Special Housing Needs. (2 points)).

(C) If the The Development has committed Units under subparagraph (B) of this paragraph, the Development must commit 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 to be made available for those experiencing homelessness 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. Throughout the Compliance Period, unless otherwise permitted by the Department, the Development Owner agrees to specifically market the 2% of Units through the Continuum of Care and other homelessness providers local to the Development Site. In addition, the Department will require an initial minimum six-month period in Urban subregions, and an initial three-month period in Rural subregions, during which Units must either be occupied by Persons referred from the Continuum of Care or local homeless service providers, or held vacant, unless the Units receive HOME funds from any source. After the initial six-month or three-month period, the Development Owner will no longer be required to hold Units vacant but will be required to continue to provide quarterly notifications to the Continuum of Care and other homeless service providers local to the Development Site on the availability of Units at the Development Site. A Development is not eligible under this paragraph unless points have also been selected under subparagraph (B) of this paragraph. (1 point)

(D) If the Development is Supportive Housing (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) 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. ~~These points are only available to Developments that are proposed to be located on sites owned by the United States Department of Veterans Affairs (1 point).~~ (1 point)

(5) Opportunity Index. ~~{42(m)(1)(C)(i)} The Department may refer to locations qualifying for points under this scoring item as high opportunity areas in some materials.~~ Based on the ~~American Community Survey (ACS)~~ data, a Development is eligible for a maximum of seven (7) opportunity index points from subparagraphs (A) and (B) ~~of this paragraph~~ below.

~~(A) A proposed Development is eligible for up to two (2) opportunity index points if (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) ~~of this subparagraph~~ below:

~~(i) The Development Site is located entirely within a census tract that has:~~

~~(I) a poverty rate less than 20% or the median poverty rate among Census tracts for the region whichever is greater; and~~

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

~~(ii) The Development Site is located entirely within a census tract that has:~~

~~(I) a poverty rate less than 20% or the median poverty rate among Census tracts for the region, whichever is greater; and~~

~~(H)(ii)~~ a median household income in the third quartile among ~~Census~~ census tracts within the region, ~~and~~

~~(H)(i)~~ is contiguous to a census tract ~~that is~~ in the first or second quartile among tracts for median household income in the region, ~~and~~ that has a poverty rate less than 20% or the median poverty rate among tracts for the region, whichever is greater, and the ~~Development~~ Site is no more than ~~2~~ two miles from the boundary between the census tracts (1 point); or

(iii) The ~~Development~~ Site is ~~located~~ in a Rural Area and:

~~(I) is located entirely located within a Census tract that has a poverty rate less than 20% or the median poverty rate among Census tracts for the region, whichever is greater; and~~

~~(II) is located in~~ a Place ~~which that~~ 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. ~~All members~~No member of the Applicant or Affiliates ~~cannot 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 Neighborhood Scout report must include the date.

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

(I) The ~~Development Site is located~~ 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 ~~or from a multiuse hike-bike trail~~. 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 ~~Development Site is located~~ on a route, with sidewalks ~~for pedestrians~~, 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. Only Applicants may select only one of the following ~~may be selected~~:

(-a-) ~~The Development Site is~~ 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-) ~~The Development Site is~~ 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) ~~(1 point)~~

~~(III) The Development Site is located within 2 miles of a full-service grocery store. A full-service grocery store is a store of sufficient size and volume to provide for the needs of the surrounding neighborhood including the proposed Development; offering a wide variety of fresh, frozen, canned and prepared foods, including but not limited to a variety of fresh meats, poultry, and seafood; 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. (2 point).~~

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

(IV) The ~~Development~~ Site is ~~located~~ within 2two miles of a pharmacy. For the purposes of this ~~menu items~~subclause only, the pharmacy may ~~be claimed~~qualify if ~~it is~~ within the same building as a grocery store. (2 ~~point~~ points)

(V) The ~~Development~~ Site is ~~located~~ within 4four 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 ~~are do~~ not ~~considered in this category~~ qualify. (1 point)~~).~~

(VI) The ~~Development~~ Site is within 3three miles of a center ~~that is~~ 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 ~~Development~~ Site is ~~located~~ 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 ~~in which the Development Site is located~~. (1 point)

(VIII) The ~~Development~~ Site is ~~located~~ within 2two 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 ~~that~~ 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. The library must not be age or subject-restricted and must be at least partially funded with government funding. (1 point)

(IX) The ~~Development~~ Site is ~~located~~ within ~~6~~six miles of an accredited university or community college, (including two-year colleges), as confirmed by the Texas Higher Education Coordination Board (THECB). ~~To be considered a university for these purposes, the provider of higher education), with a physical campus where classes are regularly held. Universities~~ must ~~have the authority to confer bachelor's~~bachelor's degrees. ~~Two-year colleges are considered and~~ community colleges, ~~and to be considered for these purposes~~ must confer at least ~~associate's~~associate's degrees. ~~The university or community college must have a physical campus, where classes are regularly held for students pursuing their degrees, within the required distance; online~~Online-only institutions do not qualify ~~under this item.~~ (1 point)

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

(XI) ~~Development~~The Site is within ~~2~~two miles of an indoor recreation facility available to the public. ~~Examples include, including~~ but ~~are~~ 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 ~~is~~does not ~~eligible~~qualify. (1 point)

(XII) ~~Development~~The Site is within ~~2~~two miles of an outdoor, dedicated, and permanent recreation facility available to the public. ~~Examples include, including~~ but ~~are~~ not limited to, swimming pools or splash pads, tennis courts, golf courses, softball fields, or basketball courts. (1 point)~~.)~~

(XIII) ~~Development~~The Site is within ~~2~~two miles of community, civic or service organizations that provide regular and recurring substantive services, ~~beyond exclusively congregational or member-affiliated activities~~, available to the entire community (~~this could include religious organizations or organizations like the Kiwanis or Rotary Club as long as they make services available without regard to affiliation or membership~~).not exclusively for members or a congregation). (1 point)~~.)~~

(XIV) ~~Development~~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) ~~(\$2306.6710(b)(4)) If at~~At Application, the ~~Development~~Site is ~~located~~ in a county with a population of 1.2 million or more, but less than 4 million, and is ~~located~~ 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=AL 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 Development Site is located within 5 miles of a full-service grocery store. A full-service grocery store is a store of sufficient size and volume to provide for the needs of the surrounding neighborhood including the proposed Development; offering a wide variety of fresh, frozen, canned and prepared foods, including but not limited to a variety of fresh meats, poultry, and seafood; 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. (2 point)-.~~

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

(II) The ~~Development~~ Site is ~~located~~ within 5five miles of a pharmacy. For the purposes of this ~~menu items~~subclause only, the pharmacy may ~~be claimed~~qualify if ~~it is~~ within the same building as a grocery store. (2 ~~point~~-)points)

(III) The ~~Development~~ Site is ~~located~~ within 5five 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 ~~are do~~ not ~~considered in this category~~qualify. (1 point)-)

(IV) The ~~Development~~ Site is ~~located~~ within 5five miles of a center that is 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)-)

(V) The ~~Development~~ Site is ~~located~~ 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 ~~in which the Development Site is located~~. (1 point)-)

(VI) The ~~Development~~ Site is ~~located~~ within 5five 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 ~~that~~ 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 ~~Development~~ Site is ~~located~~ within 5five miles of a public park with a playground. (1 point)-.]

(VIII) The ~~Development~~ Site is ~~located~~ within 15fifteen miles of an accredited university or community college, (including two-year colleges), as confirmed by ~~the Texas Higher Education Coordination Board (THECB). To be considered a university for these purposes, the provider of higher education, with a physical campus where classes are regularly held. Universities~~ must ~~have the authority to confer bachelor's~~bachelor's degrees. ~~Two-year colleges are considered and community colleges, and to be considered for these purposes~~ must confer at least ~~associate's~~associate's degrees. ~~The university or community college must have a physical campus, where classes are regularly held for students pursuing their degrees, within the required distance; online~~Online-only institutions do not qualify ~~under this item.~~ (1 point)-.]

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

(X) ~~Development~~The Site is within 4four miles of an indoor recreation facility available to the public. ~~Examples include, including~~ but ~~are~~ 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 ~~is~~does not ~~eligible~~qualify. (1 point)-.]

(XI) ~~Development~~The Site is within 4four miles of an outdoor, dedicated, and permanent recreation facility available to the public. ~~Examples include, including~~ but are not limited to, swimming pools or splash pads, tennis courts, golf courses, softball fields, or basketball courts. (1 point)-.]

(XII) ~~Development~~The Site is within 4four miles of community, civic or service organizations that provide regular and recurring substantive services, ~~beyond exclusively congregational or member-affiliated activities,~~ available to the entire community (~~this could include religious organizations or organizations like the Kiwanis or Rotary Club as long as they make services available without regard to affiliation or membership~~) not exclusively for members or a congregation. (1 point)-.]

(XIII) ~~Development~~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. ~~(§§2306.6725(a)(4) and (b)(2); 2306.127(3), 42(m)(1)(C)(i) and (ii)). Points are not cumulative and~~ 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 ~~therefore~~ limited to selecting one subparagraph. If an Application qualifies for points under paragraph (5) of this subsection, ~~then the Application it~~ is not eligible for points under subparagraphs (A) and (B) of this paragraph. Years are measured in whole years, ~~(not month and a date) and~~ calculated by deducting the ~~year of the award from the "Board Approval" column of the property inventory of year on~~ the Site Demographic~~Demographics~~ Characteristics Report~~report~~ from the current year. ~~The specific month and date of the award are disregarded for this analysis.~~ The Application must include evidence that the ~~Development Site meets the requirements. An Application may qualify to receive up to five (5) points if the Development Site meets any one of the criteria described in subparagraphs (A) - (G) of this paragraph:~~ Site meets the requirements.
~~((§§2306.6725(a)(4) and (b)(2); 2306.127(3))~~

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

(B) ~~(§2306.127(3)).~~ The ~~Development~~ Site is ~~located~~ 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) ~~(§2306.6725(b)(2)).~~ The ~~Development~~ Site is ~~located~~ 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. ~~Applications proposing Rehabilitation shall not consider the~~ 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 ~~Development~~ Site is ~~located~~ 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) ~~of this paragraph,~~ the ~~Development~~ Site is ~~located~~ 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) ~~The Development Site is located within a census tract and~~ Neither the census tract itself ~~and all containing the Site nor any~~ of its contiguous census tracts ~~do not~~ have another Development ~~that was~~ awarded 10 or fewer years ago that serves the same Target Population as the proposed Development. ~~Applications proposing Rehabilitation shall not consider the~~ 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 ~~Development~~ 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 ~~Development~~ 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 ~~that~~ has not ~~yet~~ 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 ~~Development~~ Site is ~~located~~ 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. ~~(§42(m)(1)(C)(i))~~ An Application may qualify to receive up to four (4) points if the ~~Development~~ Site is ~~located~~ 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 ~~used will be based~~ considered is solely ~~on that~~ 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. ~~This determination will be based on the latest data set posted to the US Census website on or before August 1, 2025. The Development will use~~ The Applicant will import OnTheMap's function to import GPS coordinates ~~that clearly fall within the Development for the~~ Site, and submit the OnTheMap resulting chart/map ~~report submitted in the Application must include~~ (including the report date). This scoring item will not apply to Applications under the At-Risk or USDA Set-Aside.

(A) Proximity to Jobs. ~~For Development~~ Sites in Urban subregions ~~a Development~~ may qualify for points under this subparagraph if ~~it meets one~~ within five miles of ~~the criteria in clauses (i)–(iv) of this subparagraph.~~

(i) ~~The Development is located within 5 miles of~~ 10,000 jobs. (4 points)

(ii) ~~The Development is located within 5 miles of~~ 8,000 jobs- (3 points)

(iii) ~~The Development is located within 5 miles of~~ 6,500 jobs- (2 points)

(iv) ~~The Development is located within 5 miles of~~ 4,500 jobs- (1 ~~points~~point)

(B) Proximity to Jobs. ~~For Development~~ Sites in Rural subregions ~~a Development~~ may qualify for points under this subparagraph if ~~it meets one of the criteria in clauses within~~ five miles of:

(i) ~~-(iv) of this subparagraph.~~

~~(i) The Development is located within 5 miles of~~ 6,000 jobs- (4 points)

(ii) ~~The Development is located within 5 miles of~~ 4,500 jobs- (3 points)

(iii) ~~The Development is located within 5 miles of~~ 3,000 jobs- (2 points)

~~(iv) The Development is located within 5 miles of~~ (iv) 1,500 jobs- (1 ~~points~~point)

(C) Access to Jobs. A ~~Development site~~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 ~~Development~~ Site is ~~located~~ on a route, with sidewalks ~~for pedestrians, that is~~ 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 ~~prior to on or before the~~ Final Input from Elected Officials Delivery Date ~~and must;~~ be submitted to the Department no later than the Final Input from Elected Officials Delivery Date as identified in §11.2(a) of this chapter, ~~relating to Competitive HTC Deadlines. Such resolution(s) must; and~~ specifically identify the Development whether by legal description, address, Development name, Application number or other verifiable method. Resolutions received by the Department ~~setting forth that~~stating the municipality and/or county objects to or opposes the Application or Development will result in zero points awarded ~~to the Application~~ for that Governing Body. If a ~~Development site~~Site is located partially within a municipality and partially within a county or extraterritorial jurisdiction, an Application will receive positive points ~~will only be awarded~~ if a resolution is obtained from both entities.

~~Such resolutions will be added to the Application posted on the Department's website.~~
Once a resolution is submitted to the Department it may not be changed or withdrawn. ~~For an Application with a proposed Development Site that, at the time of the initial filing of the Application, is:~~

(A) Within a municipality, the Application will receive points ~~from either:~~

~~(i) Seventeen (17) points~~ for a resolution from the municipality's Governing Body ~~of that municipality expressly setting forth that the municipality stating it:~~

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

~~(ii) Fourteen (14) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality~~(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) ~~of this subparagraph and under~~and clause (iii) or (iv) of this subparagraph for a resolution from the Governing Body expressly stating the following.

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

~~(ii) Seven (7) points for a resolution from the Governing Body of that municipality expressly setting forth that the~~The municipality has no objection to the Application or Development. (7 points)

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

~~(iv) Seven (7) points for a resolution from the Governing Body of that county expressly setting forth that the~~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 ~~from either~~for a resolution from the county's Governing Body expressly stating it:

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

~~(ii) Fourteen (14) points for a resolution from the Governing Body of that county expressly setting forth that the county(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. ~~The commitment of Development funding and must be reflected in the Application as a financial benefit to the Development, i.e. reported as (a source of funds on the Sources and Uses Form or reflected in a lower cost in the Development Cost Schedule, such as notation of a reduction in building permits and related costs.)~~ Documentation must include a letter from an official of ~~thea relevant~~ municipality, county, or other instrumentality ~~with jurisdiction over the proposed Development~~ 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 ~~for Applications located~~ in Urban subregions or \$250 or more ~~for Applications located~~ in Rural subregions ~~for the benefit of the Development. The letter must, and describe the value and form of the contribution, the form of the contribution, e.g. (reduced fees or gap funding, and any caveats to delivering the contribution.)~~ 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); ~~§42(m)(1)(C)(i)~~) 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, ~~the Development Site is located in an area declared to be a disaster area under the Tex. Gov't Code §418.014.~~

(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 order for the statement to qualify for review, the Neighborhood Organization must have been in current, valid existence with boundaries that contain the entire Development Site. In addition, the Neighborhood Organization must be Site, and on record with the Secretary of State or relevant county 30 days prior to the beginning of the Application Acceptance period with the Secretary of State or county in which the Development Site is located as of 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 ~~of the~~ requirements in subparagraph (A) of this paragraph. ~~Letters received and be sent by the Department setting forth that the eligible Neighborhood Organization objects to or opposes the Department (letters only included in the Application or Development will be added to the Application posted on the Department's website. Written statements from the Neighborhood Organizations included in an Application and not received by the Department from the Neighborhood Organization will not be scored but will be counted as public comment qualify).~~

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

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

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

(iii) ~~certification that no~~No person required to be listed in accordance with Tex. Gov't Code §2306.6707 with respect to the ~~Development to which the~~ Application requiring their listing ~~relates~~ participated in any way in the deliberations of ~~the Neighborhood Organization, including any~~or votes taken; by the Neighborhood Organization.

(iv) ~~certification that at~~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; ~~and.~~

(v) ~~an~~An explicit expression of support, opposition, or neutrality. Any expression of opposition must be accompanied with at least one reason ~~forming the basis of that opposition. A Neighborhood Organization should be prepared to provide additional information with regard to opposition~~as the basis.

(B) Technical Assistance. ~~For purposes of this paragraph, if and only if there is~~ If no Neighborhood Organization ~~already in existence~~exists or is on record, the Applicant, ~~Development~~ Owner, or Developer ~~is allowed to~~may provide technical assistance in ~~the creation of or placing on record of a Neighborhood Organization~~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 ~~the values in~~ only one of the clauses (i) - (vi) of this subparagraph. ~~Points will (not be cumulative).~~ Where the Department receives more than one written statement ~~is received~~ for an Application, the score will be the average of all ~~statements received in accordance with this subparagraph will be assessed and awarded.~~

(i) Nine (9) points for explicit support from a Neighborhood Organization that, during at least one of the three prior Application Rounds, provided a written statement in opposition that qualified as ~~Quantifiable Community Participation opposing any Competitive Housing Tax Credit Application~~ 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 ~~Quantifiable Community Participation opposing any Competitive Housing Tax Credit Application~~ QCP and whose boundaries remain unchanged.

(iv) Four (4) points for statements of neutrality ~~from a Neighborhood Organization or~~ statements not explicitly stating support or opposition, or ~~an existing Neighborhood Organization provides~~ no statement of either support, opposition or neutrality, ~~which will be viewed as the equivalent of neutrality or lack of objection from a Neighborhood Organization.~~

(v) Four (4) points for areas where no Neighborhood Organization ~~is in existence, equating to neutrality or lack of objection, or where the Neighborhood Organization did not meet the explicit~~ 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 determinations,~~ of a local Governmental Entity ~~(including~~ municipality, county, school district, ~~or other local Governmental Entity having) with~~ jurisdiction or oversight ~~over the finding or determination. If any. Any~~ such statement is challenged, the challenger ~~challenge~~ must declare include the basis ~~for the challenge~~ and ~~submit such challenge~~ be submitted by the Challenges to Neighborhood Organization Opposition Delivery Date ~~May 1, 2026.~~ The Neighborhood Organization

expressing opposition will ~~be given~~have seven calendar days to provide ~~any~~ information ~~related to the issue of whether their assertions are contrary to the findings or determinations of a local Governmental Entity. All. The Department will provide all~~ such materials and ~~the~~its analysis ~~of the Department's staff will be provided~~ to a fact finder, ~~chosen by the Department, of its choice~~ for ~~review and a determination of the issue presented by this subsection.~~ The fact finder will ~~not~~ make determinations ~~as to the accuracy of the statements presented, but~~ only with regard to whether the statements are contrary to findings or determinations of a local Governmental Entity. The fact finder's determination will be final and may not be waived or appealed. ~~Should~~If the Neighborhood ~~Organization's~~Organization does not respond within seven days or the fact finder finds its statements ~~be found~~ to be contrary to findings or determinations of a local Government Entity, ~~or should the Neighborhood Organization not respond in seven calendar days,~~ then the Application ~~shall be eligible for~~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 statements 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 be on the State Representative's letterhead or submitted in such a manner as to verify the sender, be signed by the State Representative, identify the specific Development and express whether the letter conveys support, neutrality, or opposition. This~~The Department will accept documentation ~~will be accepted~~ with the Application or through delivery ~~to the Department either~~ from the Applicant or the State Representative ~~and must be submitted no later than the Final Input from Elected Officials Delivery Date as identified in §11.2(a) of this chapter (relating to Competitive HTC Deadlines). Letters received by the Department from State Representatives will be added to the Application posted on the Department's website.~~ Once a letter is submitted to the Department it may not be changed or withdrawn. ~~Therefore, it is encouraged that letters not be submitted well in advance of the specified deadline in order to facilitate consideration of all constituent comment and other relevant input on the proposed Development.~~ State Representatives to be considered are those in office at the time the letter is submitted and whose district boundaries include the Development Site. ~~If the office is vacant, the Application will be considered to have received a neutral letter. Neutral letters or letters that do not specifically refer to the Development will receive zero (0) points.~~Site. A letter from a state representative expressing the level of community support may be expressly based on ~~the representative's~~an understanding or assessments of indications of support by others, ~~such as local government officials, constituents, or other applicable representatives of the community.~~ In providing this letter, pursuant to Tex. Gov't Code §2306.6710(b)(1)(J), the letter a representative may ~~either~~ express their position ~~of support, opposition, or neutrality regarding the Application, which shall be presumed to reflect their assessment of the views of their~~

~~constituents, or they may provide a statement of the support, opposition, or neutrality of their constituents regarding the Application with or without expressing their personal views on the matter. 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.

(B) No Letter from a State Representative. To qualify under this subparagraph, the Department must receive no written statement ~~can be received~~ for an Application from the State Representative ~~who represents the geographic area in which the proposed Development is located~~ whose district boundaries include the Site, unless the sole content ~~of the is to convey he or she will not provide a~~ written statement ~~is to convey to the Department that no written statement will be provided by the State Representative for a particular Development.~~ Points available under this subparagraph will be based on how an Application scores under paragraph (1) of this subsection ~~(relating to Local Government Support). If a Development site. If a Site~~ is located partially within a municipality and partially within a county or extraterritorial jurisdiction, the Application will earn positive points ~~will only be awarded if with~~ a resolution ~~is obtained~~ from both entities. For an Application with a ~~proposed Development~~ 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 ~~a resolution from the Governing Body of that municipality expressly setting forth that the municipality supports the Applicationsupport; or Development; or~~

(II) Zero (0) points for no ~~resolution or a resolution from the Governing Body of that municipality expressly setting forth that the municipality has no objection to the Application or Development~~ or resolution; or

(III) Negative eight (-8) points for ~~a resolution from the Governing Body of that municipality expressly setting forth that the municipality opposes the Application or Development~~ opposition.

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

(I) Four (4) points for ~~a resolution from the Governing Body of that municipality expressly setting forth that the municipality supports the Application or Development~~support.

(II) Zero (0) points for ~~no resolution or a resolution from the Governing Body of that municipality expressly setting forth that the municipality has a municipality no objection to the Application or Development~~resolution.

(III) Negative four (-4) points for ~~a resolution from the Governing Body of that municipality expressly setting forth that the municipality opposes the Application or Development~~municipality opposition.

(IV) Four (4) points for ~~a resolution from the Governing Body of that county expressly setting forth that the county supports the Application or Development~~support.

(V) Zero (0) points for no ~~resolution~~objection or ~~a resolution from the Governing Body of that county expressly setting forth that the county has no objection to the Application or Development.~~

(VI) Negative four (-4) points for ~~a resolution from the Governing Body of that county expressly setting forth that the county opposes the Application or Development~~county 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 ~~a resolution from the Governing Body of that county expressly setting forth that the county supports the Application or Development~~support; or

(II) Zero (0) points for no ~~resolution or a resolution from the Governing Body of that county expressly setting forth that the county has no objection to the Application or Development~~or resolution; or

(III) Negative eight (-8) points for ~~a resolution from the Governing Body of that county expressly setting forth that the county opposes the Application or Development~~opposition.

(6) Input from Community Organizations. (§2306.6725(a)(2)) Where, at the time of Application, the ~~Development~~ Site does not fall within the boundaries of any qualifying Neighborhood Organization or ~~there is a qualifying Neighborhood Organization that one~~ has given either no statement or a statement of neutrality (as described in subparagraph B(4)(C)(iv) or (v) ~~of this subsection~~), ~~then, in order to ascertain if there is community support,~~ 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. ~~No more than four (4) points will be awarded under this point item under any circumstances. All letters of support must be~~ submitted within the Application. Once a letter is submitted to the Department it may not be changed or withdrawn. ~~Should an~~ An Applicant ~~elect~~electing this option ~~and the Application receives letters in opposition, then will lose~~ one (1) point ~~will be subtracted~~ from the score under this paragraph for each letter in opposition, ~~provided that the letter is~~ from an organization that would otherwise qualify under this paragraph. ~~However, at no time will the Application receive a score (not to be~~ lower than zero (0) ~~for this item. Letters received by the Department setting forth that the community organization objects to or opposes the Application or Development will be added to the Application posted on the Department's website.)).~~

(A) An Application may receive two (2) points for each letter of support submitted from a community or civic organization that serves the community ~~in which~~where the ~~Development~~ Site is located. ~~Letters of support must identify~~ identifying the specific Development and ~~must state~~stating support of the specific Development at the proposed location. ~~To qualify, the~~The organization must be qualified as tax exempt and have as a primary ~~(not ancillary or secondary)~~ purpose the overall betterment, development, or improvement of the community as a whole or of a major aspect of the community ~~such as improvement of (e.g., schools, fire protection, law enforcement, city-wide transit, flood mitigation, or the like).~~ 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 ~~that the community or civic organization remains in good standing by providing evidence is tax exempt~~ from a federal or state government database ~~confirming that the exempt status continues. An Organization must also provide evidence of its participation and participates~~ in the community in which the ~~Development~~ Site is located ~~(including, but not limited to, a listing of services or members, brochures, annual reports, etc. Letters of support from organizations that cannot provide reasonable evidence that they are active in the area that includes the location of the Development Site will not be awarded points. For purposes of this subparagraph, community and civic organizations do not include neighborhood organizations, governmental entities (excluding Special Management Districts as described in subparagraph C), or taxing entities.)).~~

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

(C) An Application may receive two (2) points for a letter of support from a Special Management District formed under Tex. Local Gov't Code chapter 375 whose boundaries, as of the Full Application Delivery Date ~~as identified in §11.2(a) of this chapter, (relating to Competitive HTC Deadlines, Program Calendar for Competitive Housing Tax Credits), include the Development, include the~~ Site.

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

(7) Concerted Revitalization Plan or Opportunity Zone. ~~(§42(m)(1)(B)(iii)(III) and (C)(iii)).~~ 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, ~~related to Opportunity Index.~~

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

(i) An Application may qualify to receive points if the ~~Development~~ 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 ~~local planning~~ documents ~~that together have been approved by~~ the municipality approved as a plan to revitalize the specific area. ~~The plan and supporting documentation must be submitted using the CRP Application Packet. No more than two local plans may be submitted for each proposed Development. The concerted revitalization plan and~~ may be a Tax Increment Reinvestment Zone ~~(TIRZ) or, Tax Increment Finance (TIF),~~ or similar plan. A city- or county-wide comprehensive plan, ~~(including a HUD consolidated plan or one-year action plan required to receive HUD funds plans)~~ does not ~~equate to a concerted revitalization plan. However, a comprehensive plan may include~~ qualify unless it includes plans for specific areas targeted for revitalization ~~that would qualify so long as that plan and~~ meets all requirements of this section.

(iii) The ~~proposed Development 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 ~~copy of the plan or a link to the online plan and a~~ description of where to find the specific information required below ~~can be found in the plan.~~ The plan must ~~meet the criteria described in subclauses (I) and (II) of this clause:~~

~~(I) The concerted revitalization plan, or each of the local planning documents that compose the plan, must (I)~~ have been published by the municipality or county in which the ~~Development Site~~ is located ~~;~~ and

~~(II) The plan must~~ be current at the time of Application.

(v) If the Application includes an acceptable Concerted Revitalization Plan, ~~up to seven (7)~~ the Department will award points ~~will be awarded~~ as follows:

(I) the ~~proposed Development Site~~ is ~~located within or is not in~~ a Qualified Census Tract ~~QCT~~ and ~~has submitted~~ includes a letter from the appropriate ~~local~~ municipal official ~~for the municipality~~ (or county if the ~~Development Site~~ is completely outside of a municipality) that explicitly identifies the proposed Development as contributing to ~~the~~ its concerted revitalization efforts ~~of the municipality or county (as applicable)~~ (7 points); or

~~(II) the proposed Development Site is not located within a Qualified Census Tract and has submitted a letter from the appropriate local official for the municipality (or county if the Development Site is completely outside of a municipality) that explicitly identifies the proposed Development as contributing to the concerted revitalization efforts of the municipality or county (as applicable) (7 points); or~~

~~(III) the proposed Development Site does not have a letter described in items (I) and (II) of this subclause (5 points).~~

(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 ~~with support from~~ using USDA, ~~and/or HUD, the HOME program, or the CDBG program(s), and~~

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

(C) ~~Opportunity Zones For Developments located in either an Urban or Rural Area. The Development~~ The Site is located entirely within a Federal Opportunity Zone as ~~designed~~ defined 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 ~~are awarded~~ 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)); ~~§42(m)(1)(C)(iii)~~) For the purposes of this scoring item, Eligible Building Costs ~~will be defined as~~ are Building Costs voluntarily included in Eligible Basis for the purposes of determining a Housing Credit Allocation. ~~Eligible Building Costs will exclude (other than structured parking or commercial space that is not included in Eligible Basis),~~ and voluntary Eligible Hard Costs ~~will~~ include general contractor overhead, profit, and general requirements. The square footage used will be the ~~Net Rentable Area (NRA).~~ The calculations will be based on the cost listed in the Development Cost Schedule and NRA shown in the Rent Schedule. ~~if the proposed Development is 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 ~~compare~~ 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 ~~and adjust the square foot cost targets in this item by that same percentage.~~

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

(i) the voluntary Eligible Building Cost per square foot is less than or equal to ~~\$155.12~~ \$159.20 per square foot; or

(ii) the voluntary Eligible Hard Cost per square foot is less than or equal to ~~\$207.21~~\$212.66 per square foot.

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

(i) the voluntary Eligible Building Cost per square foot is less than or equal to ~~\$165.54~~\$169.89 per square foot; or

(ii) the voluntary Eligible Hard Cost per square foot is less than or equal to ~~\$217.63~~\$223.35 per square foot.

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

~~(i) Twelve (12) points for Applications which include voluntary Eligible Hard Costs plus acquisition costs included in Eligible Basis that are less than or equal to \$207.21 per square foot; or~~

(i) \$212.66 per square foot; (12 points) or

~~(ii) Twelve (12) points for Applications which include voluntary Eligible Hard Costs plus acquisition costs included in Eligible Basis that are less than or equal to \$268.57~~\$275.63 per square foot, if located in an Urban Area, and ~~that~~ qualify for 5 or more points under subsection (c)(5)(A) and (B) of this section, ~~related to Opportunity Index;~~ (12 points) or

~~(iii) Eleven (11) points for Applications which include voluntary Eligible Hard Costs plus acquisition costs included in Eligible Basis that are less than or equal to \$268.57 per square foot.~~

(iii) \$275.63 per square foot. (11 points)

(3) Pre-application Participation. (§2306.6704) An Application ~~may qualify to~~will receive ~~up to six (6) points~~ provided for submitting a pre-application ~~was submitted~~ by the Pre-Application Final Delivery Date. ~~Applications that meet all of and meeting~~ the requirements described in subparagraphs (A) - (K) ~~of this paragraph will qualify for six (6) points 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~~;Nonprofit).

(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 ~~what was reflected in~~ the pre-application self-score~~;~~.

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

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

(H) The ~~distance used to determine the~~ Tie Breaker distance established in 10 TAC §11.7(2) ~~remains the same or does not decrease between~~represented at pre-application ~~and cannot improve at~~ full Application. ~~If closer features to the Development Site are identified that could potentially result in a lower distance used for the Tie Breaker, Applicants may elect to continue using the higher distance submitted with the Pre-Application in order to not be disqualified from pre-application points;~~

(I) For Applications funded through the USDA Set-Aside; year of initial construction as a residential Development remains the same or is not earlier~~;~~.

(J) If the Applicant elects a high quality Pre-Kindergarten ~~is to be provided~~ under §11.6(3)(C)(v), ~~the~~this election ~~must be made at pre-application and may does~~ not change at full Application~~;~~.

(K) 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 ~~for the proposed Development meets less than~~ one of the levels described of Total Housing Development Cost in clauses (i) - (iv) of this subparagraph below:

(i) 10%, and the Development leverages CDBG Disaster Recovery, HOPE VI, RAD, or Choice Neighborhoods funding ~~and (the Housing Tax Credit Funding Request is less than 10% of the Total Housing Development Cost (3 points). The~~ Application must include a commitment ~~of such funding;); (3 points)~~ or

(ii) ~~if the Housing Tax Credit funding request is less than 10% of the Total Housing Development Cost (3 points); or~~

(iii) ~~if the Housing Tax Credit funding request is less than 11% of the Total Housing Development Cost (2 points); or~~

(iv) ~~if the Housing Tax Credit funding request is less than 12% of the Total Housing Development Cost (1 point);~~

(B) The ~~calculation of the percentages stated~~ calculations in subparagraph (A) ~~of this paragraph above~~ will be based strictly on the figures listed in the Funding Request and Development Cost Schedule. ~~Should staff issue~~ Staff will perform the calculation again and adjust the score (if necessary) if an Administrative Deficiency ~~that~~ requires a change in either form, ~~then the calculation will be performed again and the score adjusted, as necessary. However, points. Points~~ may not increase based on changes to the Application. ~~In order to be eligible for points, no more than 50% of the Developer Fee can be deferred.~~

(5) Extended Affordability. (§§2306.6725(a)(5) and (7); 2306.111(g)(3)(C); 2306.185(a)(1) and (c); 2306.6710(e)(2); ~~and 42(m)(1)(B)(ii)(II)~~) An Application may qualify to receive up to four (4) points for ~~this item;~~ the Owner agreeing to extend the Affordability Period to:

(A) ~~Development Owners that agree to extend the Affordability Period for a Development to~~ 45 years total; (4 points)

(B) ~~Development Owners that agree to extend the Affordability Period for a Development to~~ 40 years total; (3 points) or

(C) ~~Development Owners that agree to extend the Affordability Period for a Development to~~ 35 years total. (2 points)

(6) Historic Preservation. (§2306.6725(a)(6); ~~§42(m)(1)(C)(x)~~).

(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) ~~For Developments with~~ under 100 total Units and at least 55% ~~of the residential Units shall will~~ be constructed fully or partially within the Certified Historic Structure. , or

- (ii) ~~For Developments with~~ 100 total Units or more, and at least 55 ~~of the residential Units shall~~will be constructed fully or partially within the Certified Historic Structure.
- (B) ~~To qualify for points, the Development must receive historic tax credits before or by the issuance of Forms 8609.~~ The Application must include ~~either~~ documentation from the Texas Historical Commission that
- (i) the Property is currently a Certified Historic Structure, or ~~documentation determining preliminary eligibility for Certified Historic Structure status and evidence that the Texas Historic Commission~~
 - (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) Each Development may qualify for these points only once.~~ (C) An Application may not receive these points if it involves a Development that was previously awarded Competitive ~~Housing Tax Credits~~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)~~); §42(m)(1)(C)(viii)~~). An Application may receive ~~points~~one (1) point under subparagraphs (A) or (B) ~~of this paragraph below.~~
- (A) ~~An Application may qualify to receive (1 point) for Development Owners that~~The Owner will agree to provide a right of first refusal ~~to purchase the Development~~ upon or following the end of the Compliance Period in accordance with Tex. Gov't Code, §2306.6726 and ~~the Department's rules including §10.407 of this title (relating to Right of First Refusal) and §10.408 of this title (relating to Qualified Contract Requirements).~~
- (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 ~~of the property~~ to purchase the dwelling at a selected term ~~but no earlier than~~between the end of the Compliance Period and ~~no later than~~ the Extended Use Period. A Owners may attribute a de minimis amount of a participating tenant's rent ~~may be attributed~~ to the purchase of a Unit. ~~Such commitment will be, as~~ reflected in the LURA ~~for the Development.~~ The Applicant must provide a description of how they will
- (i) implement the 'rent-to-own' activity, ~~how they will~~
 - (ii) make tenants aware of the opportunity, and ~~how they will~~
 - (iii) implement the right at the end of the selected term.

(C) If a Development ~~is layered with~~ 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.

~~§42(m)(1)(C)(viii). (1 point)~~

(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) ~~of this paragraph. These points are below~~ (not available in the At-Risk or USDA Set-Asides-). (1 point)

~~(A) The Board cannot and will not waive the deadline and will not consider waiver under its general rule regarding waivers. (A)~~ Failure to ~~acquire the site and submit construction permits by~~ 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 ~~that remain on~~ awarded from the waiting list ~~after awards are made in late July that ultimately receive an award~~ 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 ~~to the Board,~~ and the Board may find, that an Applicant or Affiliate should be ineligible to compete in the following year's competitive Application Round, or ~~that it should be~~ assigned a penalty deduction in the following year's competitive Application Round of no more than two points for each submitted Application ~~(Tex. Gov't Code §2306.6710(b)(2))~~ because it meets the conditions for any of the items listed in paragraphs (1) - (4) of this subsection. For ~~those~~ items pertaining to non-statutory deadlines, ~~an exception to the penalty may be made if~~ the Board or Executive Director, ~~(as applicable, makes) may make an exception to the penalty based on~~ an affirmative finding ~~setting forth~~ that the need for ~~an~~ deadline extension ~~of the deadline~~ was beyond the reasonable control of the Applicant and could not have been reasonably anticipated. ~~Any such~~ The Department must notify the affected party of any matter to be presented for final determination ~~of deduction~~ by the Board ~~must include notice from the Department to the affected party~~ not less than 14 days prior to the scheduled Board meeting. ~~The Executive Director may, but is not required, to issue a formal notice after disclosure if it is determined that the matter does not warrant point deductions.~~ The Executive Director may ~~make a determination that~~ determine the matter does not warrant point deduction only for paragraph (1) of this subsection. ~~(§2306.6710(b)(2)), 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 Housing Tax Credit~~ an HTC Commitment from a preceding Application round will be attributable to the Applicant or Affiliate of an Application submitted in the current Application ~~round referenced above.~~

(1) ~~If the~~ The Applicant or Affiliate requested an extension of or failed to meet the original Carryover submission or 10% Test deadline(s) ~~or has requested an extension of the~~

~~Carryover submission deadline or the 10% Test deadline~~ (relating to either submission or expenditure).

(2) ~~If the~~The Applicant or Affiliate failed to meet ~~the~~ federal commitment or expenditure requirements, deadlines to enter into a Contract, or close a Direct Loan, or did not meet benchmarks of ~~their~~the Contract ~~with the Department~~.

(3) ~~If the~~The Applicant or Affiliate, in the Competitive HTC round immediately preceding the current round, failed to meet the Readiness to Proceed deadline to both ~~close financing~~acquire the Site and provide evidence of ~~an executed construction contract permit submission~~ under subsection ~~(e)(9e)(8)~~ of this section ~~(related to Readiness to Proceed)~~.

(4) ~~If the~~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 ~~purpose of the~~ Third Party Request for Administrative Deficiency (RFAD) ~~process is to allow~~allows an unrelated person or entity to bring new, material information about an Application to staff's attention. ~~Such Person may request staff to consider whether a matter in an Application in which the Person has no involvement should be the subject of an Administrative Deficiency. While an Administrative Deficiency may be issued as the result of an RFAD, not all RFADs will result in an Administrative Deficiency being issued.~~

(b) Staff will ~~consider each~~not act on a RFAD ~~received and proceed as it deems appropriate under the applicable rules including, if the Application in question has a noncompetitive score relative to other Applications in the same Set Aside or subregion or will not be eligible for an award through the award recommendation methodology as outlined in §11.6(3) of this chapter (related to Competitive HTC Allocation Process), not reviewing the matter further.~~

~~(c) If the assertion(s) in the RFAD describe matters that are part of the~~it describes Application review process, matters and ~~the RFAD does not contain~~contains only information ~~not~~ present in the Application, ~~staff will not review or act on it.~~

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

~~(e) Requestors~~(d) Upon filing, requestors must provide, ~~at the time of filing the request~~ all information that the requestor offers in support of the deficiency. ~~A~~i copy of the request and supporting information ~~must be provided by the requestor~~ directly to the Applicant ~~at the same time it is provided to the Department. Requestors must provide; and~~ sufficient credible

evidence that, if confirmed, would substantiate the deficiency request. ~~Assertions~~The Department will not consider assertions not accompanied by supporting documentation susceptible to confirmation ~~will not be considered. An RFAD or~~ that ~~expresses~~express the requestor's opinion ~~will not be considered.~~

(~~fe~~) Staff ~~shall~~will provide to the Board a written report summarizing each ~~third-party request for administrative deficiency and RFAD and~~ the ~~manner in which~~way it was addressed. Interested persons may provide testimony on this report before the Board ~~takes any formal action to accept~~accepts the report. ~~When the Board receives a report on the disposition of RFADs it~~ The Board may, ~~for any staff disposition contained in the report, either~~ change ~~the staff's~~ conclusion if ~~it believes the change is~~ necessary to bring the result into compliance with applicable laws and rules ~~as construed by the Board; or if~~ remand it back to staff based on public testimony, ~~it believes staff's conclusion should be revisited, it may remand the RFAD to staff for further consideration,~~ which may result in a reaffirmation, reversal, or modification.

~~(g) The results of a RFAD may not be appealed by the requestor, and~~ (f) The Board will consider testimony ~~to the Board~~ arguing staff's determination ~~will not be considered unless only if~~ the requestor can show ~~that~~ staff failed to follow the applicable rule. The requestor may not appeal the RFAD results.

~~(h) A(g) The Applicant may appeal a~~ scoring notice or termination notice that results from a RFAD ~~may be appealed by the Applicant as further~~ (as described in §11.902 of this chapter; ~~relating to Appeals Process:).~~

~~(i) Information~~ (h) The Board and staff will consider information received after the RFAD deadline ~~will not be considered by staff or presented to the Board unless the information is of such a matter as to warrant~~ 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. ~~The purpose of this section is to identify specific requirements and restrictions related to a Development Site seeking multifamily funding or assistance from the Department.~~

(1) Floodplain.

(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 ~~develop the site in full compliance~~ fully comply with the National Flood Protection Act and all applicable federal ~~and~~, state, and local statutory and regulatory requirements. ~~The Applicant will have to use floodplain maps and comply with regulation as they exist at the time of commencement of construction.~~ Even if not required by such provisions, ~~the Site must be developed so that~~ all finished ground floor elevations are must be at least one foot above the floodplain and parking and drive areas are can be no lower than six inches below the floodplain. ~~If there are more stringent federal or local requirements they must also be met.~~

(B) Applicants requesting NHTF ~~funds from the Department must also meet the federal environmental provisions under 24 CFR §93.301(f)(1)(vi).~~ Applicants requesting HOME, HOME-ARP, or NSP PI funds from the Department must meet the applicable federal environmental provisions ~~under 24 CFR Part 58, as in effect at the time of execution of executing~~ the Contract between the Department and ~~the~~ Owner.

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

(D) All Developments located within a 100 year floodplain must state such status in the Tenant Rights and Resource Guide ~~that part or all of the Development Site is located in a floodplain, and that it is encouraged that they and encourage residents to~~ consider getting appropriate insurance or take necessary precautions. ~~However, where~~

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

(2) Undesirable Site Features.

(A) An Application will be ineligible due to an Undesirable Site Feature ~~will render an Application ineligible unless acceptable mitigation as determined by staff or the Board is undertaken. For or staff determine it is mitigated. A~~ Competitive HTC ~~Applications, Application will be ineligible~~ if staff identifies it did not disclose an undesirable site feature reflected in clause (i) - (x) of subparagraph (E) ~~and it was not disclosed, the Application shall be terminated by staff. If Department staff identifies what it believes would constitute). Staff may issue an Administrative Deficiency for an~~ undesirable site feature not listed in this paragraph or covered under clause (xi) of subparagraph (E), ~~staff may issue an Administrative Deficiency. In the event that staff cannot reasonably conclude) or defer to the Board to decide~~ whether a feature is ~~considered~~ undesirable, ~~it,~~

(B) Staff ~~may defer to the Board for decision.~~

~~(B) grant an exemption (potentially including mitigation) for~~ Rehabilitation (excluding Reconstruction) Developments with ongoing and existing federal assistance from HUD, USDA, or ~~Veterans Affairs (VA)~~ and Developments encumbered by a TDHCA LURA ~~the earlier of the first day of the Application Acceptance Period for HTC, Application Acceptance Date for Direct Loan, or date the pre-application is submitted (if applicable) may be granted an exemption by staff; however, depending on the undesirable site feature(s) staff may recommend mitigation still be provided as appropriate. Such an exemption must be requested at the time of or prior to the filing of an Application, and~~ Historic Developments that ~~would~~ otherwise would qualify under §11.9(e)(6) of this chapter ~~(related to Criteria promoting the efficient use of limited resources and applicant accountability) may be granted. An Applicant must request such an exemption, and such exemption must be requested~~ at the time of or prior to ~~the~~ filing of ~~an~~ the Application.

(C) ~~Requests for pre~~Pre-determinations of Site eligibility ~~prior to pre-application or Application submission for a prior calendar year~~ will not be binding ~~on full Applications submitted at a later date in the current one.~~ For Tax-Exempt Bond Developments where the Department is the Issuer, the Applicant may ~~submit a request for a~~ pre-

determination at pre-application ~~or for Tax-Exempt Bond Developments, or~~ utilizing a local issuer ~~a, the Applicant may~~ request ~~for~~ a pre-determination ~~may be submitted~~ prior to Application submission. ~~An Applicant should understand that any~~Any determination ~~made~~ by staff or the Board ~~at that point in time regarding Site eligibility~~ based on the documentation presented, is preliminary ~~in nature. Should additional~~. Additional or changed information ~~related to any of the Undesirable Site Features~~ become available changing while the Application is under review, ~~or the information by which the original determination was made changes in a way that could affect eligibility,~~ then such information will be re-evaluated by staff and may result in an Administrative Deficiency or re-evaluation.

~~(D) If a state or federal cognizant agency would require a new facility under its jurisdiction to have a minimum separation from housing, the Department will defer to that agency and require the same separation for a new housing facility near an existing regulated or registered facility. In addition to these limitations, a Development Owner must ensure that the proposed Development Site and all construction thereon~~ (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.~~

(F) The Undesirable Site Features include those described in clauses (i) - (xi) of this subparagraph. The distances are ~~to be measured~~ from the nearest boundary of the ~~Development~~ Site to the nearest boundary of the property or easement containing the undesirable feature, unless otherwise noted ~~below~~. Where ~~there is~~ a local ordinance ~~that specifies the proximity of such~~ smaller distances between an undesirable feature ~~to a~~ and multifamily development ~~that has smaller distances than the minimum distances noted below, then, an Application may use~~ such smaller distances ~~may be used and (must include documentation such as a copy of the local ordinance identifying such distances relative to the Development Site must be included in the Application).~~ Pre-existing zoning ~~does is~~ not ~~meet the requirement for~~ a local ordinance.

(i) ~~Development Sites located~~ within 300 feet of junkyards. ~~For purposes of this paragraph, a junkyard shall be~~ defined as stated in Texas Transportation Code §396.001~~;~~.

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

(iii) ~~Development~~ Sites ~~located~~ within 300 feet of a sexually-oriented business. ~~For purposes of this paragraph, a sexually-oriented business shall be~~ defined in Local Government Code §243.002, or as zoned, licensed and regulated as such by the local municipality;

(iv) ~~Development~~ Sites located within 500 feet of active railroad tracks, measured from the closest rail to the Site boundary ~~of the Development Site~~, 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 ~~the Applicant~~ commits to perform sound mitigation in accordance with HUD standards as if they ~~were directly applicable to the Development~~ applied; or

(III) the railroad ~~in question~~ is commuter or light rail;

(v) ~~Development~~ Sites ~~located~~ within 500 feet of ~~heavy industry (i.e. facilities that require consistent with the general characteristics of heavy industry, such as requiring~~ extensive use of land and machinery, ~~produce~~ producing high levels of external noise ~~such as (manufacturing plants), or that maintain maintaining~~ fuel storage facilities, ~~to the extent that these qualifying items are consistent with the general characteristics of heavy industry. Gas. Does not include gas~~ stations and other similar facilities ~~that are not consistent with the characteristics of heavy industry are not considered an undesirable site feature~~;

(vi) ~~Development~~ Sites ~~located~~ within 10 miles of a nuclear plant;

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

(viii) ~~Development~~ Sites that contain or are adjacent to an easement for one or more ~~pipelines, situated underground or aboveground, which carry highly volatile liquids or Development Sites located adjacent to a pipeline easement (for a pipeline~~ pipelines carrying highly volatile liquids), ~~the Application~~ must include a plan for developing near the pipeline(s) and any mitigation, ~~if any~~, in accordance with a report conforming to the Pipelines and Informed Planning Alliance ~~(PIPA)~~;

(ix) ~~Development~~ Sites ~~located~~ within 2two miles of refineries capable of refining more than 100,000 barrels of oil daily;

(x) ~~Development~~ Sites ~~that are located~~ 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, ~~except that. An Application will remain eligible if the Development Site is located in a Noise Contour between 65 and is less than 70 decibels, the Development Site will not be considered to have an Undesirable Site Feature if and~~ the Applicant has engaged a qualified Third Party to perform a noise assessment and ~~the Applicant~~ commits to perform sound mitigation in accordance with HUD standards as if they ~~were directly applicable to the Development, or applied.~~

(xi) Any Site ~~deemed staff deems~~ unacceptable, ~~which would include, 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 ~~use~~ and which cannot be adequately mitigated. ~~If staff believe that a Site should be deemed unacceptable under this provision due to information that was not included in the Application, it~~ Staff will provide the ~~Applicant with written~~ 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 unless absent a determination of acceptable mitigation ~~as determined by staff or the board is undertaken. If the Development Site has any of the characteristics described in subparagraph (D) of this paragraph, the Applicant by staff or the Board. Applicants must disclose the presence of such characteristics in the Application submitted to the Department. For 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, should staff determine that the Development Site has any of the characteristics described in subparagraph (D) of this paragraph and such characteristics were not disclosed, the Application shall be terminated by staff. failing to disclose.~~

(B) ~~Requests for pre~~Pre-determinations of Site eligibility prior to pre-application or Application submission will not be binding on full Applications ~~submitted at a later date.~~ For Tax-Exempt Bond Developments

(i) where the Department is the Issuer, the Applicant may submit the documentation described under subparagraph (EC) of this paragraph at pre-application, ~~or for Tax-Exempt Bond Developments~~

(ii) utilizing a local issuer ~~may~~ request ~~for~~ a pre-determination ~~may be submitted~~ prior to Application submission. ~~An Applicant should understand that any~~

(iii) Any determination ~~made~~ by staff or the Board ~~at that point in time regarding Site eligibility~~ based on the documentation presented, ~~is preliminary in nature. Should additional. Additional or changed~~ information ~~related to any of the~~

~~Neighborhood Risk Factors become available while the Tax-Exempt Bond Development or Direct Loan only Application is under review, or the information by which the original determination was made changes in a way that could affect eligibility, then such information will be re-evaluated by staff and staff may issue may result in an Administrative Deficiency- or re-evaluation.~~

~~(C) The presence of any characteristics listed in subparagraph (D) of this paragraph will prompt staff to perform an assessment of the Development Site and neighborhood, which may include a site visit. Mitigation to be considered by staff is identified in subparagraph (E) of this paragraph. Preservation of affordable units alone does not present a compelling reason to support a conclusion of eligibility.~~

~~(D) The Neighborhood Risk Factors include those noted in clauses (i) — (ii) of this subparagraph and additional information as applicable to the neighborhood risk factor(s) disclosed as provided in subparagraph (E) of this paragraph must be submitted in the Application. In order to be considered an eligible Site despite the presence of Neighborhood Risk Factors, an Applicant must demonstrate actions being taken that would lead staff to conclude that there is a high probability and reasonable expectation the risk factor will be sufficiently mitigated or significantly improved prior to placement in service and that the risk factor demonstrates a positive trend and continued improvement. Conclusions for such reasonable expectation may need to be affirmed by an industry professional, as appropriate, and may be dependent upon the severity of the Neighborhood Risk Factor disclosed.~~

~~(i) The Development Site is located within a census tract that has a poverty rate above 40% for individuals (or 55% for Developments in regions 11 and 13). Rehabilitation Developments with ongoing and existing federal assistance from HUD, USDA, or Veterans Affairs (VA), and Developments encumbered by a TDHCA LURA re exempt from this Neighborhood Risk Factor.~~

~~(ii) The Development Site is New Construction or Reconstruction and is located in a census tract (or for any adjacent census tract with a boundary less than 500 feet from the proposed Development Site that is not separated from the Development Site by a natural barrier such as a river or lake, or an intervening restricted area, such as a military installation) in an 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 (excluding Reconstruction) with ongoing and existing federal assistance from HUD, USDA, or ~~Veterans Affairs (VA),~~ and Developments encumbered by a TDHCA LURA are exempt ~~from this Neighborhood Risk Factor.~~~~

~~(E) Information regarding mitigation of neighborhood risk factors should be relevant to the risk factors that are present in the neighborhood.~~(i) Mitigation must include documentation of efforts underway at the time of Application, and ~~should~~ include the measures described in ~~clauses (i)–(ii)~~subclauses ((I) or (II)) of this ~~subparagraph~~clause or such other mitigation ~~as~~ the Applicant determines appropriate to support ~~a finding of~~ eligibility. Preservation alone is inadequate to support a conclusion of eligibility. If staff determines ~~that the Development a Site cannot be found eligible and the Applicant appeals that decision to the Board is ineligible,~~ the Applicant may not present new information ~~at~~in an appeal to the Board ~~meeting~~.

~~(i) Mitigation for Developments in a census tract that has a poverty rate that exceeds 40% may include a resolution from the Governing Body of the appropriate municipality or county containing the Development, acknowledging the high poverty rate and authorizing the Development to move forward. If the Development is located in the ETJ, the resolution would need to come from the county.~~

~~((i))~~ Evidence by the most qualified person (Police Chief, Sheriff, or individual responsible for the relevant beat or area) that the data and evidence establish ~~that there is a~~ reasonable basis to ~~proceed on the belief~~conclude that ~~the crime data shows, or will show, a favorable trend such that within the next two years~~ Part I violent crime ~~for that location~~either

~~(-a-) is expected to be less than currently below 18 per 1,000 persons or the data and evidence reveal that the data reported on neighborhoodscout(neighborhoodScout.com does not accurately reflect the true nature of what is occurring and what is inaccurate), or~~

~~(-b-) is actually occurring does not rise~~trending favorably and is expected within two years to the level to cause a concern to the Board over the level of below 18 per 1,000 persons.

~~((II))~~ Part I violent crime ~~for the location. The data and evidence may be based on violent crime data~~is from the ~~city's applicable~~ police ~~department or county sheriff's department,~~ as applicable based on the location of the Development, for the police beat or patrol area within which the Development Site is located, based on the population of the police- for the beat or patrol area that yields a crime rate below the threshold indicated in this section or that would yield a crime rate below the threshold indicated in this section by the time the Development is placed into service. The instances of violent crimes within the police- based on its population or Part I violent crime data within the beat or patrol area that encompassencompasses the census tract, calculated based on the census tract population ~~of the census tract, may also be used.~~ The data must include incidents reported during the entire calendar year ~~previous to~~before the

~~year of Application. Violent year. Staff may request violent crimes reported through the date of Application submission may be requested by staff as part of the assessment performed under subparagraph (C) of this paragraph. A. Such data must show that it is reasonable to assume, based on a demonstrated positive trend, a crime rate below 18 per 1,000 persons by the time the Development places into service and that 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 (i.e. Chief of Police or Sheriff (as applicable) or the police officer/detective for the police beat or patrol area containing the proposed Development Site), including, that includes a description of efforts by such enforcement agency and results of addressing issues of crime and the results of their efforts may be provided, and depending on the data provided by the Applicant, such written statement may be required, as determined by staff. It is expected that such written statement would also speak to, including whether there is a reasonable expectation that based on the efforts underway there is crime data that reflects a favorable downward trend in crime rates. will trend down based on the efforts.~~

~~(F) In order for the Development Site to be found eligible, including when mitigation described in subparagraph (E) of this paragraph is not provided in the Application, despite the existence of one or more Neighborhood Risk Factors, the Applicant must explain how the use of Department funds at the Development Site is consistent with the goals in clauses (i) – (iii) of this subparagraph. If the Board grants an Appeal of staff's determination of Site eligibility, the Board shall document the reasons for a determination of eligibility.~~

~~(i) Preservation of existing occupied affordable housing units to ensure they are safe and suitable or the new construction of high quality affordable housing units that are subject to federal rent or income restrictions.~~

~~(ii) Determination that the risk factor(s) that has been disclosed are not of such a nature or severity that should render the Development Site ineligible based on the assessment and mitigation provided under subparagraphs (C) and (D) of this paragraph.~~

~~(iii) No mitigation was provided, or in staff's determination the mitigation was considered unsatisfactory and the Applicant has requested a waiver of the presence of Neighborhood Risk Factors on the basis that the Development is necessary to enable the state, a participating jurisdiction, or an entitlement community to comply with its obligation to affirmatively further fair housing, a HUD approved Conciliation Agreement, or a final and non-appealable court order and such documentation is submitted with the disclosure.~~

(4) ~~Site and Neighborhood Standards (Direct Loan and HOME-ARP only).~~ 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 ~~in 24 CFR §983.57(e)(2) or (3). A Development requesting NHTF funds that meets the federal definition of reconstruction in 24 CFR §93.2 must also meet these standards.~~

(b) Development Requirements and Restrictions. ~~The purpose of this subsection is to identify specific restrictions on a proposed Development requesting multifamily funding by the Department.~~

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

(A) General ~~Ineligibility Criteria include:~~

~~(i) Developments such as hospitals~~(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 ~~(as provided in under~~ Code §42(i)(3)(B)(iii) and (iv)~~);~~).

~~(ii) any Development with any~~Any building(s) with four or more stories that does not include an elevator. ~~Developments~~Not applicable where topography or other Site characteristics ~~of the Site~~ require basement splits such that ~~a tenant~~tenants will not have to walk more than two stories to ~~fully utilize~~ their Unit and all Development amenities, ~~will not require an elevator;~~

~~(iii) a Housing Tax Credit Development that provides~~Provides on-site continual or frequent nursing, medical, or psychiatric services. ~~Refer to~~See IRS Revenue Ruling 98-47 for clarification of assisted living;;

~~(iv) a Development that proposes~~Proposes population limitations that violate §1.15 of this title ~~(relating to Integrated Housing Rule);~~

~~(v) a Development seeking Housing Tax Credits that will~~Will not meet the general public use requirement under Treasury Regulation, §1.42-9 ~~or a documented exception thereto;~~

~~(vi) a Development utilizing~~Utilizing a Direct Loan ~~that is~~ subject to the Housing and Community Development Act, 104(d) requirements ~~and~~ proposing Rehabilitation or Reconstruction, ~~if 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; ~~or.~~

(vii) ~~any~~ New Construction or Reconstruction proposing more than 35.00% efficiency and/or one-Bedroom Units. ~~This requirement will not apply to (other than Elderly or Supportive Housing Developments. For Historic Developments, this requirement will not apply to any units constructed within the Historic structure. For any New Construction or Reconstruction undertaken as part of a Historic Application, those newly constructed or reconstructed Units must meet this standard. The).~~ Units that are part of ~~the~~ Historic structure ~~will do not be included in the total count~~ when determining ~~if the Application meets~~ this requirement.

(viii) Competitive ~~Housing Tax Credit~~ HTC Applications that involve any existing ~~Housing Tax Credit~~ HTC Development that has any building that placed in service on or after January 1, ~~2006, for its most recent award of Housing Tax Credits~~ 2008.

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

(x) Competitive ~~Housing Tax Credit Applications~~ 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 there is 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~~ includes:

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

(ii) any ~~Elderly Development with any containing~~ Units ~~having with~~ more than two Bedrooms ~~with the exception of, excluding~~ up to three specifically-designated employee Units ~~reserved for the use of the manager, maintenance, or security officer. These employee Units must be specifically designated as such; or~~

(iii) any New Construction, Reconstruction, or Adaptive Reuse ~~Elderly Development (including Elderly in a Rural Area)~~ 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~~)(C) 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) is ineligible with no opportunity for mitigation. If the

(iii) The Board grants will document the reason(s) for granting an Appeal of staff's determination of Site eligibility, the Board shall document the reasons for a determination of eligibility.

(2) Development Size Limitations. The minimum Development size is 16 Units. The maximum is 80 units for Competitive Housing Tax Credit or Multifamily HTC or Direct Loan-only Developments involving New Construction or Adaptive Reuse in Rural Areas are limited to a maximum of 80 total Units. 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 (related to Feasibility Conclusion). There is no maximum for Rehabilitation Developments do not have a limitation as to the maximum number of Units.

(3) Rehabilitation Costs. Developments involving Rehabilitation must establish a scope of work that will substantially improve the interiors of all units and exterior deferred maintenance, and meet the minimum Rehabilitation amounts identified of Building Costs and Site Work in subparagraphs (A) - (C) of this paragraph. Such Developments must maintain such amounts must be maintained through the issuance of IRS Forms 8609. For Developments with multiple buildings that have varying using the earliest building placed in service dates, the earliest date will be used for purposes of establishing the minimum Rehabilitation amounts. Applications must meet the Rehabilitation amounts identified in subparagraphs (A), (B) or (C) of this paragraph. For Tax-Exempt Bond Developments that include existing USDA funding that is continuing or new USDA funding, staff may consider the cost standard under subparagraph (A) of this paragraph on a case by case basis.

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

(C) For all other Developments, the Rehabilitation will involve at least \$35,000 per Unit in Building Costs and Site Work.

(4) Mandatory Development Amenities. (§2306.187) New Construction, Reconstruction or Adaptive Reuse Units must include all ~~of the~~ 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; ~~however, but must provide~~ access ~~must be provided~~ to a comparable amenity in a Common Area. All amenities listed below must be at no charge to the residents. Owners must provide Residents ~~must be provided~~ written notice of the Development's applicable required amenities ~~for the Development.~~ The Board may waive one or more of the requirements of this paragraph for Developments that will include Historic Tax Credits, ~~with~~ based on evidence submitted with the request for amendment that the ~~amenity has not been approved by the~~ Texas Historical Commission (THC) or National Park Service, ~~as applicable. Applicants for Multifamily Direct Loans should be aware that certain~~ (NPS) ~~has not approved it. Certain~~ amenities are not eligible for Direct Loan funding, ~~including without limitation, detached community spaces, furnishings, swimming pools, athletic courts, and playgrounds, as more fully described at §13.3 of this title (relating to General Loan Requirements).~~ Amenities include:

- (A) All Units ~~must~~ 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; (unless not approved by THC or NPS).
- (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 lighting in all Units;
- (L) All areas of the Unit (excluding exterior storage space on an outdoor patio/balcony) ~~must~~ have heating provided by an electric heat pump system or natural gas 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 exempt.

(M) Adequate parking spaces consistent with local code, ~~unless. If~~ there is no local code, ~~in which case~~ the requirement ~~would be~~ 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 ~~the~~ 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. ~~If a~~ The Application must include evidence of any requested waiver or variance of local code parking requirements ~~has been requested then evidence to that effect must be included in the Application;~~

(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); ~~and,~~ not required if not approved by THC or NPS).

(O) Adequate accessible parking spaces consistent with the federal and state requirements ~~of the 2010 ADA Standards with the exceptions listed in "Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities" 79 FR 29671, the Texas Accessibility Standards, and if covered by the Fair Housing Act, HUD's Fair Housing Act Design Manual.~~

(5) Common Amenities.

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

- (i) ~~Developments with~~ 2 points for 16 to 40 Units ~~must qualify for two (2) points;~~
- (ii) ~~Developments with~~ 4 points for 41 to 76 Units ~~must qualify for four (4) points;~~
- (iii) ~~Developments with~~ 7 points for 77 to 99 Units ~~must qualify for seven (7) points;~~
- (iv) ~~Developments with~~ 10 points for 100 to 149 Units ~~must qualify for ten (10) points;~~
- (v) ~~Developments with~~ 14 points for 150 to 199 Units ~~must qualify for fourteen (14) points;~~ or
- (vi) ~~Developments with~~ 18 points for 200 or more Units ~~must qualify for eighteen (18) points.~~

(B) ~~These~~The points in this paragraph are not associated with any selection criteria ~~points~~. The amenities must be for the benefit of all residents and made available throughout normal business hours and maintained throughout the Affordability Period. ~~Residents~~Owners must ~~be provided~~provide residents written notice of the elections made ~~by~~. An amenity does not qualify under this paragraph if the Development Owner- If charges fees or deposits ~~in addition to rent are charged for amenities, then the amenity may not be included among those provided to satisfy the requirement. All amenities must it.~~ Amenities must meet all applicable accessibility standards, including ~~those adopted by the Department, and where~~the Department's. Where a ~~specific~~ space or size requirement ~~for a listed amenity~~ is not specified ~~then the amenity 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, will have the test applied)~~ based on the number of Units per individual site and the amenities selected must be distributed proportionately across all sites. A Development ~~composed~~ 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. ~~In the case of additional phases of a Development any amenities that are~~Amenities anticipated to be shared with ~~the first a previous~~ phase development cannot be claimed for purposes of meeting this requirement for ~~the second a subsequent~~ phase. ~~The second phase must include enough points to meet this requirement that are provided on the Development Site, regardless of resident access to the amenity in another phase. All amenities must be available to all Units via an accessible route.~~

(C) The common amenities and respective point values are set out in clauses (i) - (v) of this subparagraph, ~~which are grouped primarily for organizational purposes. Applicants are not required. There is no requirement~~ to select a specific number of amenities from each section. An Applicant can only count an amenity once; ~~therefore~~ combined functions (~~a library which~~ is part of a community room) will only qualify ~~for points~~ under one category.

(i) Community Space for Resident Supportive Services includes:

(I) ~~Except in Applications where more than 10% of the Units in the proposed Development are Supportive Housing SRO Units, an~~An Application ~~may will~~ qualify ~~to receive 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 ~~associated educational space at the Development Site. To receive the points the Applicant must commit committing~~ to all of items (-a-) - (-c-) below (unless more than 10% of this subclause the Units will be Supportive Housing single room occupancy).

(-a-) Space and Design. The educational space ~~for the HQ Pre-K program~~ must be ~~provided on the Development Site and must be a suitable and site;~~ appropriately designed ~~space for educating children that for~~ an independent school district or open-enrollment charter school ~~can utilize to establish and to~~ operate a HQ Pre-K program. ~~This space includes;~~ include at a minimum a bathroom and large closet in the classroom space; ~~appropriate design considerations made for the safety and security of the students;~~ including have limited and secure ingress and egress to the classroom space; and ~~satisfaction of satisfy~~ the requirements of all applicable building codes for school facilities. ~~The Applicant must provide in the~~ The Application must include a copy of the applicable current school facility code requirements ~~applicable to the Development Site and,~~ certifications from the Owner and Architect ~~certifications that they understand the associated those~~ space and design requirements ~~reflected in those code requirements. The Application must also include, 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 ~~as~~ described in subitems (-1-) - (-5-) ~~of this item, and provide evidence of such agreement below and submit it~~ to the Department ~~on with~~ or before ~~submission of~~ the Cost Certification. ~~Lack of evidence of such agreement by Failure to meet~~ the deadline will be cause for rescission of the Carryover Agreement ~~for Competitive HTC Applications.~~

(-1-) ~~The agreement must be~~ Be between the Owner and an Educational Provider.

(-2-) ~~The agreement must reflect~~ Reflect that ~~at the Development Site 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 ~~proposed~~ Development and that is available for general public use, ~~meaning (students other than those residing at the Development elsewhere may attend).~~

(-3-) ~~Such agreement must reflect a provision that~~ Reflect that the Owner will give the school or provider the option to operate the HQ Pre-K program ~~in the space at the Development Site will continue to be made available to the school or provider until such time as the school or provider wishes it elects to withdraw from the location. This provision. The Owners will not limit the Owner's~~ retain a right to terminate the agreement for good cause.

(-4-) ~~Such agreement must set~~ 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 ~~that may arise~~arising as the result of ~~the operation~~operating the HQ Pre-K program.

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

(-c-) If an Educational Provider ~~who has entered into an agreement~~ becomes defunct or elects to withdraw from the agreement ~~and provision of services at the location,~~ (as provided for in subitem (-b-)(-3-) ~~of this subclause 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 ~~listed in subitem (-b-)(1) of this subclause above.~~ If the Commissioner or Owner identifies another interested open-enrollment charter school or school district ~~is identified by the Texas Commissioner of Education or the Owner,~~ the Owner must enter into a subsequent agreement with ~~the interested open-enrollment charter school or school district and continue it~~ to offer HQ Pre-K services. If another interested provider cannot be identified, ~~and 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 considered to be in violation of its commitment to the Department. If the Owner is not able to find a provider, they must notify the Commissioner annually of the availability of the space.

(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 ~~and selected by the Development Owner. The. Such~~ room(s) ~~devoted to meeting this requirement~~ must equal the lesser of 15 square feet times the total number of Units, ~~but need not exceed or~~ 2,000 square feet ~~in total.~~ 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. ~~The room(s) must include storage space, such as closets or cabinetry (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 ~~and selected by the Development Owner. The. Such~~ room(s) ~~devoted to meeting this requirement~~ must equal the lesser of 10 square feet times the total number of Units, ~~but need not exceed or~~ 1,000 square feet ~~in total.~~ 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. ~~The room(s) must include storage space, such as closets or cabinetry (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 ~~that is~~ limited to the Development's ~~tenancy~~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. ~~Monitoring may be on-site or off-site~~ (2 points)~~).~~
- (IV) Twenty-four hour, seven days a week recorded camera~~/~~/security system in each building. (1 point)~~).~~
- (V) ~~The provision of a~~A courtesy patrol service that, at a minimum, answers after-hour resident phone calls regarding noise and crime concerns or apartment rules violations and ~~that can dispatch to the apartment community~~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) ~~Furnished fitness~~Fitness center~~, indoors or in a designated room with climate control and that allows for after-hours access.~~ Equipped with a variety of commercial use grade or quality fitness equipment (at least one item for every 40 Units)~~. Choose from the following: stationary bicycle, elliptical trainer, treadmill, rowing machine, universal gym, multi-functional weight bench, stair-climber, dumbbell set, or other similar equipment. Equipment shall be commercial use grade or quality. Fitness center must be located indoors or be a designated room with climate control and allow for after hours access. (1 point).~~This item and subclause (III) are mutually exclusive. (1 point)
- (III) ~~Furnished fitness center. Equipped with a variety of fitness equipment (at least one item for every 20 Units). Choose from the following: stationary bicycle, elliptical trainer, treadmill, rowing machine, universal gym, multi-functional weight bench, stair-climber, dumbbell set, or other similar equipment. Equipment shall be commercial use grade or quality. Fitness center must be located indoors or be a designated room with climate control and allow for after-hours access. (2 points).~~

(III) Fitness center, same as subclause (II) above other than twice as many items. This item and subclause (II) above are mutually exclusive. (2 points)

(IV) One Children's Playscape Equipped for five to 12 year olds, or one Tot Lot ~~(2 points)~~. Must be covered with enough shade canopy or awning, ~~intended~~ to keep equipment cool, and provide shade and ultraviolet protection. This item ~~can only be selected if and~~ subclause (V) ~~of this clause is not selected. 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 ~~(4 points)~~. Must be covered with enough shade canopy or awning, ~~intended~~ to keep equipment cool, and provide shade and ultraviolet protection. This item ~~can only be selected if and~~ subclause (IV) ~~of this clause is not selected. 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 ~~to play such games. (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) ~~Dog~~ Fully enclosed dog Park area ~~that is fully enclosed~~ (the perimeter fencing may be used for part of the enclosure) ~~and intended for~~ that allows tenant owned dogs to run off-leash (~~requires that the~~ 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) ~~a resident~~ Resident-run community garden with annual soil preparation and mulch provided by the Owner and access to water ~~(which may be subject to local water usage restrictions)~~. (1 point)

(VIII) Each Unit above the first floor is accessible by at least two elevators. (2 points)

(v) Community Resources amenities include:

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

(II) ~~Barbecue~~ Permanently installed barbecue grill and picnic table ~~with~~, at least one of each for every 50 Units (1 point). ~~Grill must be permanently installed (no portable grills).~~

(III) Business center with workstations and seating, internet access, ~~1~~ one printer and ~~at least~~ one scanner ~~which~~ (may be integrated with the printer), and either ~~2~~ 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 ~~at~~ (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) ~~High-speed Wi-Fi with advanced telecommunications capacity~~Same as determined under 47 U.S.C. 1302 ~~(IX) above but~~ with coverage throughout the Development. (2 points)~~).~~

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

(XII) ~~Package Lockers or secure package room.~~ Automated Package Lockers or secure package room ~~provided at a location within the complex~~ that can be accessed by residents 24/7 and at no charge ~~to the resident.~~ To qualify, there ~~would need~~needs to be at least one locker for every eight residential units. (2 points)~~).~~

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

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

(XV) Access to ~~onsite~~on-site 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. ~~Developments proposing~~All New Construction or Reconstruction ~~will be required to~~Units must meet the minimum sizes ~~of Units as provided~~ in clauses (i) - (v) of this subparagraph. ~~These minimum requirements are~~ (not associated with any selection criteria. ~~Developments proposing~~). Rehabilitation Units (excluding Reconstruction) ~~or and~~ Supportive Housing Developments ~~will not be subject to the requirements of this subparagraph. If the Development involves both Rehabilitation and Reconstruction or New Construction, the Reconstruction or New Construction Units must meet these requirements. The requirements are~~are exempt.

(i) ~~four hundred fifty (450)~~ square feet for an Efficiency Unit;

(ii) ~~five hundred fifty (550)~~ square feet for a one Bedroom Unit;

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

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

(v) ~~one thousand, two hundred (1,200)~~ square feet for a four Bedroom Unit.

(B) Unit, Development Construction, and Energy and Water Efficiency Features. ~~Housing Tax Credit~~HTC Applicants ~~may select amenities for the score of an Application under this section, but~~ must maintain the points associated with ~~those amenities by maintaining the amenity selected or providing substitute amenities with equal or higher point values.~~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 ~~include enough amenities to~~ meet a minimum of nine (9) points. Direct Loan Applications not layered with ~~Housing Tax Credits must include enough amenities to~~HTCs must meet a minimum of five (5) points. ~~The amenity shall be for every Unit at no extra charge to the tenant. The points selected at Application and corresponding list of amenities will be required to be identified in the LURA, and the points selected at Application must be maintained throughout the Affordability Period.~~ Applications involving scattered site Developments must have a specific amenity located within each Unit to count for points. Rehabilitation Developments 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 ~~include enough amenities to~~ meet a minimum of nine (9) points. ~~At least two (2) points must be selected from clause (iii), Energy and Water Efficiency Features, of this subparagraph.~~

(i) Unit Features include:

(I) ~~Covered~~covered entries; (0.5 point);

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

(III) ~~Microwave~~microwave ovens; (0.5 point);

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

(V) ~~Storage~~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 ~~and which (does not need to be in the Unit but must be on the Property site)~~; (0.5 point);

(VI) ~~Covered~~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 ~~must be provided~~); (1 point);

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

(IX) ~~Breakfast~~breakfast Bar (a space, ~~generally between the kitchen and dining area,~~ that includes an area for seating ~~although actual,~~ seating ~~such as bar stools does itself not have to be provided~~); (0.5 point);

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

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

(XII) ~~Kitchen~~kitchen island; (0.5 points);

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

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

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

(XVI) ~~Hard~~hard floor surfaces in over 50% of unit NRA; (0.5 point);

(ii) Development Construction Features include:

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

(II) ~~Thirty~~thirty year roof; (0.5 point);

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

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

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

(VI) ~~Green~~green Building Features. ~~Points under this item are intended to promote energy and water conservation, operational savings and sustainable~~

~~building practices. Four (4) points~~ Applicants may ~~be selected~~ select from only one of the categories ~~described~~ in items (-a-) - (-d-) of this subclause. If the Development involves scattered sites, ~~there each~~ must ~~be incorporate~~ green building features ~~incorporated into each site in order to qualify for these.~~ (4 points)

(-a-) Enterprise Green Communities. The Development ~~must incorporate~~ incorporates, at a minimum, all items necessary to obtain Enterprise Green Communities certification applicable to the construction type ~~(i.e. New Construction, Rehabilitation, etc.)~~ as provided in the most recent version ~~of the Enterprise Green Communities Criteria~~ found at <http://www.greencommunitiesonline.org>.

(-b-) Leadership in Energy and Environmental Design (LEED). The Development ~~must incorporate~~ incorporates, at a minimum, all ~~of the~~ applicable criteria necessary to obtain a LEED Certification, ~~regardless of the for any~~ rating level ~~achieved~~ (i.e., Certified, Silver, Gold or Platinum).

(-c-) ICC/ASHRAE - 700 National Green Building Standard (NGBS). The Development ~~must incorporate~~ incorporates, at a minimum, all ~~of the~~ applicable criteria necessary to obtain a NGBS Green Certification, ~~regardless of the for any~~ rating level ~~achieved~~ (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 ~~laundry equipment (washers and dryers)~~ for each individual Unit; (must be front loading washer and dryer in required accessible Units); (2 points)

(III) ~~Recessed~~ 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~~ Bathrooms; (0.5 point)

(VI) EPA WaterSense or equivalent qualified showerheads and faucets in all ~~bathrooms~~ Bathrooms; (0.5 point)

(VII) 15.2 SEER2 HVAC, ~~or in Region 13, an efficient evaporative cooling system. For in Region 13, or a radiant barrier in the attic for~~ Rehabilitation (excluding Reconstruction) where such systems are not being replaced ~~as part of the scope of work, a radiant barrier in the attic is provided;~~ (1 point);

(VIII) 16.0 SEER2 HVAC, for New Construction or Rehabilitation; (1.5 points);

(IX) ~~A~~ Heating provided by an electric heat pump system or natural gas and air-conditioning provided by an electric heat pump system (1.5 points)

(X) a rainwater harvesting/collection system or locally approved greywater collection system; (0.5 points);

(~~XI~~) Wi-Fi enabled, Energy-Star or equivalently rated ~~"smart"~~ thermostats installed in all units. (1 point); ~~and~~

(~~XI~~) ~~Solar~~ (XII) 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, ~~which are grouped primarily for organizational purposes.~~ Applicants are not required to select a specific number of services from each section. Tax-Exempt Bond Developments must select meet a minimum of eight (8) points; Direct Loan Applications not layered with ~~Housing Tax Credits~~ HTCs must include enough services to meet a minimum of four points. The LURA will include the points selected ~~and~~, complete list of supportive services ~~will be included in the LURA and the timeframe by which services are offered must be in accordance with §10.619 of this title (relating to Monitoring for Social Services) and maintained, and a requirement to maintain them~~ throughout the Affordability Period. The Owner may change, ~~from time to time,~~ the services offered; ~~however, if~~ the overall points as selected at Application must remain the same. ~~A Development;~~ however, a 45-day notice must be provided to tenants of the change. Staff may require an Owner ~~may be required~~ to substantiate such service(s) ~~if requested by staff.~~ Should the QAP in subsequent years provide different services than those listed in subparagraphs (A) - (E) of this paragraph, the ~~Development~~ Owner may request an Amendment as provided in under §10.405(a)(2) of this chapter ~~(relating to Amendments and Extensions).~~ The services provided should ~~be those that will~~ directly benefit the Target Population ~~of the Development. Residents, Owners~~ must be provided provide residents written notice of the elections made ~~by the Development Owner. No, not charge~~ fees ~~may be charged~~ to the residents for any of the services, there must be provide adequate space ~~for the intended, and make~~ services ~~and services offered should be~~ accessible to all (e.g. exercises, exercise classes ~~must be offered in a manner that would~~ enable a person with a disability to participate). Unless otherwise specified, Owners must provide either services ~~must be provided~~ on-site or transportation to ~~those~~ off-site services ~~identified on the list must be provided. The.~~ Applicants may not use the same service ~~may not be used~~ for more

than one scoring item. ~~These services are intended to be provided by a~~ An entity qualified and reputable ~~provider~~ in the specified industry ~~such that the experience and background of the provider demonstrates with~~ sufficient knowledge ~~to be providing~~ must provide the service. In general, on-site leasing ~~staff~~ or ~~property~~ maintenance staff ~~would~~ are not ~~be considered~~ a qualified provider. Where applicable, the services must be documented by a written agreement with the provider. ~~Unless otherwise noted in a particular clause, courses and services must be offered by an onsite instructor(s).~~

(A) Transportation Supportive Services include:

- (i) shuttle, at least three days a week, to a grocery store and pharmacy ~~or (may be inside a major, big-box retailer that includes a grocery store and pharmacy, OR) or~~ a daily shuttle, during the school year, to and from nearby schools not served by a ~~school~~ 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) ~~provide~~ a High Quality Pre-Kindergarten (HQ Pre-K) program and associated educational space at the ~~Development~~ Site meeting the requirements of paragraph (5)(C)(i)(I) of this subsection. ~~(Half; (half~~ of the points required under this paragraph) ~~); and~~
- (ii) ~~Twelve~~ 12 hours of weekly, organized, on-site services provided ~~to K-12 children~~ by a dedicated service coordinator or third-party entity. ~~Services include 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) ~~); and~~
- (iii) services intended to track and address school truancy in children, as evidenced by a written agreement with the applicable school district, and that include transportation services for Developments not served by the school's bus system, individual case management, and incentives to promote school attendance. (3 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 on-site~~ Common Area ~~on site to an adult audience by persons skilled or trained in the subject matter being presented, such as, including~~ English as a second language ~~classes,~~ computer

training, financial literacy ~~courses~~, homebuyer counseling, health education ~~courses~~, certification courses, GED preparation ~~classes~~, resume and interview ~~preparatory classes, prep, and~~ general presentations about community services and resources, ~~and any other course, class, or presentation that may equip residents with new skills that they may wish to develop.~~ (3.5 points);

(ii) ~~annual~~ Annual income tax preparation (offered by an income tax prep service) or IRS-certified ~~VITA~~ (Volunteer Income Tax Assistance) program (offered by a qualified individual) that ~~also emphasizes~~ includes how to claim the Earned Income Tax Credit. (1 point);

(iii) ~~contracted~~ Contracted career training and placement partnerships with local worksource offices, culinary programs, or vocational counseling services; ~~may include resident training, including~~ programs that train and hire residents for job opportunities inside the ~~development~~ Development in areas like leasing, tenant services, maintenance, landscaping, or food and beverage operation. (2 points);

(iv) ~~external~~ External partnerships for provision of weekly substance abuse meetings at the ~~Development Site.~~ (1 point);

(v) ~~reporting~~ Reporting rent payments to credit bureaus for any resident who affirmatively elects to participate, ~~which will be a requirement of the LURA for the duration of the Affordability Period.~~ (2 points); and

(vi) ~~participating~~ Participating in a ~~non-profit~~ nonprofit 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. ~~The case manager who~~ who may be an employee of the ~~owner~~ Owner or a third-party social service provider and ~~shall be~~ 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 ~~that are~~ at risk of eviction for nonpayment of rent. ~~For The case manager will offer~~ households that voluntarily choose ~~choosing~~ to participate, ~~the case manager shall offer in~~ an eviction holdoff agreement providing a minimum of ~~6~~ six months ~~for the household~~ to resolve the past due balance and forgiving any ~~late fees~~ associated ~~with that balance, late fees~~ regardless of whether they have been paid, ~~should the agreement be fulfilled.~~ 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 ~~in the community~~ that provide emergency rental assistance and other financial support and assist the household in applying ~~for these programs.~~ (5 points);

(D) Health Supportive Services include:

- (i) ~~food~~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 ~~on a monthly basis~~ or upon request ~~by a resident. While it is possible that transportation may be.~~ Transportation provided to a local food bank ~~to meet the~~meets this requirement ~~of this resident service, the resident must if residents are~~ not ~~be~~ required to pay for ~~the items they receive at the food bank received.~~ (2 points);)
- (ii) ~~annual~~Annual health fair provided by a health care professional. (1 point);)
- (iii) ~~weekly~~Weekly exercise classes (offered at times when most residents would be likely to attend). (2 points); ~~and~~)
- (iv) ~~contracted onsite~~Contracted on-site occupational or physical therapy services for Elderly Developments or ~~Developments where the service is provided for Persons with Disabilities and documentation to that effect can be provided for monitoring purposes.~~ (2 points);)

(E) Community Supportive Services include:

- (i) ~~partnership~~Partnership with local law enforcement or local first responders to provide quarterly on-site social and interactive activities intended to foster relationships with residents ~~(such activities could include, 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~~Twice monthly arts, crafts, and other recreational activities ~~(e.g., including~~ Book Clubs and creative writing classes). (1 point);)
- (iv) ~~twice~~Twice monthly on-site social events ~~(i.e., including~~ potluck dinners, game night, sing-a-longs, movie nights, birthday parties, holiday celebrations, etc.). (1 point);)
- (v) ~~specific~~Specific service coordination services offered by a qualified ~~Owner or Developer, qualified provider or through external, contracted parties~~ for seniors, Persons with Disabilities, or Supportive Housing. (3 points);)
- (vi) ~~weekly~~Weekly home chore services (~~such as including~~ valet trash removal, assistance with recycling, furniture movement, etc.). ~~and quarterly preventative maintenance including light bulb replacement)~~ for Elderly Developments or

~~Developments where the service is provided for Persons with Disabilities and documentation to that effect can be provided for monitoring purposes.~~ (2 points);)

(vii) ~~any of the programs~~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; ~~prevents and reduces the incidence of unplanned pregnancies; and encourages the formation and maintenance of two-parent families~~ (1 point);

(III) prevents and reduces the incidence of unplanned pregnancies; and

(IV) encourages the formation and maintenance of two-parent families. (1 point)

(viii) ~~a~~A part-time resident services coordinator with a dedicated on-site office space ~~at the Development~~ or a contract with a third-party to provide the equivalent of 15 hours or more of weekly resident supportive services ~~at the Development.~~ (2 points); ~~and~~

(ix) ~~provision, by either~~Either the ~~Development~~ Owner or a community partner, ~~of~~ 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 ~~accessibility~~ requirements ~~as identified~~ in subparagraphs (A) - (F) of this paragraph and any other applicable state or federal rules and requirements. ~~The accessibility requirements are further identified in the Certification of Development Owner as provided in the Application.~~

(A) The Development ~~shall~~must comply with the accessibility requirements under Federal and state law, and as further defined in Chapter 1, Subchapter B of this title (relating to Accessibility Requirements). (§§2306.6722; 2306.6730).

(B) Regardless of building type, all Units accessed by the ground floor or by elevator ~~(affected units)~~ must comply with the visitability requirements in clauses (i) - (iii) of this subparagraph. ~~Design specifications for each item must comply with the standards of~~ and the Fair Housing Act Design Manual. Buildings occupied for residential use on or before March 13, 1991 are exempt ~~from this requirement. If the townhome Units of a Rehabilitation Development do not have a bathroom on the ground floor, the~~ 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 ~~be in compliance~~ 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;~~and.~~

(iii) ~~Each affected unit~~ All Units accessed by the ground floor or by elevator must include the features in subclauses (I) - (V) ~~of this clause~~ below:

(I) At least one zero-step, accessible entrance;;

(II) At least one ~~bathroom~~ Bathroom or half-bath with toilet and sink on the entry level. ~~The with a layout of this bathroom or half bath must comply~~ that complies with one of the specifications set forth in the Fair Housing Act Design Manual;;

(III) The ~~bathroom~~ Bathroom or half-bath must have the appropriate blocking relative to the toilet for the later installation of a grab bar, ~~if ever requested by the tenant of that Unit;~~

(IV) There must be an accessible route from the entrance to the ~~bathroom~~ Bathroom or half-bath, and the entrance and bathroom must provide usable width;~~and.~~

(V) Light switches, electrical outlets, and thermostats on the entry level must be at accessible heights.

~~(C) The Development Owner is and will remain in compliance with state and federal laws, including but not limited to, fair housing laws, including Chapter 301, Property Code, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), the Fair Housing Amendments Act of 1988 (42 U.S.C. §§3601 et seq.); the Civil Rights Act of 1964 (42 U.S.C. §§2000a et seq.); the Americans with Disabilities Act of 1990 (42 U.S.C. §§12101 et seq.); the Rehabilitation Act of 1973 (29 U.S.C. §§701 et seq.); Fair Housing Accessibility; the Texas Fair Housing Act; and that the Development is designed consistent with the Fair Housing Act Design Manual produced by HUD, and the Texas Accessibility Standards. (§2306.257; §2306.6705(7))~~

(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 ~~be~~ treated count as substantial alteration, in accordance with Chapter 1, Subchapter B of

this title ~~(relating to Section 504 of the Rehabilitation Act of 1973 and the Fair Housing Act).~~

~~(E) For all Developments other than Direct Loan Developments, for~~ (E) For the purposes of determining the appropriate distribution of accessible Units across Unit Types, assuming all ~~the~~ Units have similar features, only the number of Bedrooms and Full Bathrooms will ~~be used to~~ define the Unit Type, ~~but accessible.~~ 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, ~~for purposes of determining the appropriate distribution of accessible Units across Unit Types, the~~ the definition of Unit Type will ~~be used.~~ ~~However, define the Unit Type, although~~ a single story Unit may be substituted for a townhome Unit, if ~~the single story Unit~~ it contains the same number of Bedrooms and Full Bathrooms/Half Bathrooms (as applicable), and has an equal or greater square footage.

(F) ~~Alternative~~ The Department must approve alternative methods of calculating the number of accessible Units required ~~in a Development must be approved by the Department~~ 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.

~~This subchapter establishes the procedural requirements for Application submission. Only A Site may be the subject of only one Application may be submitted for a Development Site in an Application Round. While the Application Acceptance Period is open or prior to the Application deadline, an Applicant may withdraw an Application and subsequently file a new Application utilizing using the original pre-application fee (as applicable) that was paid as long as no the Department did not perform substantive evaluation was performed by the Department and the re-submitted Application relates to the same Development Site, consistent with §11.9(e)(3) of this chapter (relating to Criteria promoting the efficient use of limited resources and applicant accountability). Withdrawal. Otherwise, withdrawal of an Application is permanent. Applicants are subject to the schedule of fees as set forth in §11.901 of this chapter (relating to Fee Schedule).~~

(1) General Requirements.

(A) An Applicant ~~requesting funding from the Department~~ must submit an Application ~~in order to be considered for receive~~ an award. An Application must be complete (including all required exhibits and supporting materials) and submitted by the required program deadline. ~~If an Application, including the corresponding Application fee as described in §11.901 of this chapter, is not submitted to the Department on or before the applicable deadline, the An Applicant will be deemed not to have made an Application; provided, however, that errors may cure an error in the calculation of applicable fees may be cured via an Administrative Deficiency. The deficiency period for curing fee errors will be until 5:00 p.m. on the third business day following the date of the deficiency notice and (date may not be extended. Failure to cure such an error timely will be grounds for termination).~~

(B) ~~Applying for multifamily funds from the Department is a technical process that must be followed completely. As a result of the competitive nature of some funding sources, an Applicant should proceed on the assumption that deadlines are fixed and firm with respect to both date and time and cannot be waived except where authorized and for truly extraordinary circumstances, such as the occurrence of a significant natural disaster that makes timely adherence impossible. If checks or original Carryover Allocation Agreements are physically delivered to the Department, it is the Applicant's responsibility to be Applicants are responsible for being within the Department's doors by the appointed deadline, when making physical deliveries. All Applications and all related materials are to must be delivered electronically pursuant to the Multifamily Programs Procedures Manual. Applicants are strongly encouraged to submit the required items well in advance of~~

~~established deadlines. Applicants must ensure that all documents are~~ and legible, properly organized and tabbed, and ~~that materials are~~ fully readable ~~by the Department~~.

(C) The Applicant must timely upload ~~a matching~~ .PDF copy and Excel ~~copy~~ copies of the complete Application to the Department's secure web transfer server. ~~The PDF copy and Excel copy of the Application must match. If variations exist between the two copies, Staff may issue~~ an Administrative Deficiency ~~will be issued~~ 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*. ~~Additional Applicants must upload additional~~ files required for Application submission outside the Uniform Application ~~must also be uploaded~~ to the secure web transfer server. ~~It is the responsibility of the Applicant to confirm the upload to the Department's secure web transfer server. Applicants are responsible for confirming the upload was successful and to do so in advance of the deadline. If an Applicant can view the~~ timely by viewing the uploaded files ~~that were uploaded, then that shall serve as an indication that the Application was uploaded and received by the Department. Staff, may, as a courtesy, confirm that the Application files were uploaded, but shall not be. Staff may confirm the upload but is not~~ obligated ~~or required to confirm such submission. Where there are instances of computer problems, mystery glitches, etc. that prevent the Application from being received by the Department prior to the deadline, the Application may be terminated~~ to do so.

(D) Applications must include materials addressing all ~~of the~~ items enumerated in this chapter and other chapters, ~~as applicable. If an Applicant does not believe that a specific~~ For any required item ~~should be applied~~ not submitted, the Applicant must include, ~~in its place, a statement identifying the required item, stating that it is not being supplied, and a statement as to explaining why the Applicant does not believe it should be required.~~

(2) Filing of Application for Tax-Exempt Bond Developments. Applications must be submitted ~~to the Department~~ as described in either subparagraph (A) or (B) of this paragraph. ~~Applications will be required to~~ and satisfy the requirements of this chapter and applicable Department rules ~~that coincide~~ coinciding with the year the Certificate of Reservation is issued. ~~Those Applications that receive~~ receiving a Traditional Carryforward Designation will be subject to the QAP and applicable Department rules in place ~~at when~~ the time Department receives the Application ~~is received by the Department, unless determined~~ staff determines otherwise ~~by staff. Regardless. 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~~ the Application pursuant to 34 TAC §190.3(b)(13), ~~it is the Department's expectation that~~. The Department may terminate an Application for not adhering to the requirements in this chapter ~~are adhered to, and that care and attention are given to the compilation of the Application, or the Application may be terminated.~~ Depending on the timing ~~associated with the release~~ of the online Multifamily Management System, ~~in lieu of submitting the Application as described herein for Priority 1 and 2 applications~~ release, staff may allow an Applicant to submit an Intent to Apply for 4% Housing

Tax Credits form~~7~~ (and the required Application Fee~~7~~) 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. ~~Applicants should refer to the TBRB website or discuss with their issuer or TBRB staff, the deadlines regarding lottery participation and the timing for the issuance of the Certificate of Reservation based on lottery results. Depending~~ Applications must meet clauses (i) - (iii) of this subparagraph depending on the Priority designation of the application filed with TBRB, ~~the Application submission requirements to the Department under clauses (i) - (iii) of this subparagraph must be met.~~ For those that participate in the Lottery but are not successful (~~i.e.~~ 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 (~~i.e.~~ Priority 3 applications) or TBRB has sent an email stating the application is next in line (~~i.e.~~ 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: ~~If 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)~~7~~ upon notice from the TBRB that the Application is next in line to receive a Certificate of Reservation, ~~a complete Application will not be required to be submitted and~~ (staff will notify TBRB accordingly. ~~However, if there are~~). If changes to the Development that are different from what the Department originally approved ~~that~~ would constitute an amendment under §10.405 of this title ~~(relating to Amendments and Extensions) a~~, the Applicant must request ~~for~~ an Amendment ~~must be submitted to the Department.~~ 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~~7~~ (including all required Third Party Reports, ~~accompanied by the~~) 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 ~~only~~ submit only the complete Application (excluding all required Third Party Reports), for purposes of meeting TBRB requirements to have the Certificate of Reservation issued. ~~In this case, the~~ 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, ~~which should be~~ 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 ~~following the after~~ submission of ~~such the~~ Third Party Reports. If the fifth day falls on a weekend or holiday, the submission deadline ~~shall will~~ be on the next business day. For Third Party Reports ~~that are~~ submitted after the fifth of the month, ~~it will be staff's~~ 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: ~~Once the Certificate of Reservation has been issued, the~~ The same Application submission requirements ~~as indicated in 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, ~~however, only after the Application is considered complete (i.e. Application Fee and all Third Party Reports) will staff~~. 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 the Department is up to determined by~~ the Applicant ~~and if~~. If not submitted on the fifth of the month, ~~it will be staff's~~ 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 ~~the~~ Third Party Reports, before the TBRB can issue the Certificate of Reservation ~~can be issued by the TBRB. The Third Party Reports, if~~. If not submitted with the Application to meet the TBRB submission requirement, Third Party Reports must ~~then~~ 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 ~~shall will~~ be on the next business day. If ~~the Third Party Reports are not~~ submitted on ~~a date other than~~ the fifth of the month, ~~it will be at staff's~~ 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; ~~or~~.

(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 ~~they~~the Department will ~~be considered~~consider them accepted ~~by the Department~~ and meeting the submission deadline for the applicable Board meeting date or administrative issuance of the Determination Notice, as applicable.

(C) ~~Generally, the~~The Department will require at least 90 days to review an Application ~~unless staff can complete its evaluation in sufficient time for earlier consideration. If the Application is, or 120 days if~~ layered with other Department funds ~~the Department will require at least 120 days to complete its evaluation. If, at the time of Application submission, other Department funding is over-subscribed, the submitted Application cannot include a request for such funds. An Applicant should expect this timeline to apply,~~ regardless of whether the Board will need to approve ~~the~~ issuance of the Determination Notice or ~~it is determined that staff can issue the Determination Notice~~do so administratively ~~for a particular Application. Applicants should be aware that unusual financing structures, portfolio transactions, the need to resolve Administrative Deficiencies and changes made by an Applicant after the Application has been reviewed by staff may require additional time to review. In instances where an Application necessitates more staff time to review than normal, where an Application is suspended due to the inability to resolve Administrative Deficiencies by the original deadline, or an extension to respond to an Administrative Deficiency is requested, staff. 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. ~~Moreover, such review period may be longer depending on the volume of Applications under review and statutory program timing constraints associated with such Applications. The prioritization of Applications will be subject to the~~Application review priority is established in paragraph (5) of this section.

(D) Withdrawal of Certificate of Reservation. ~~Applications~~The Department will consider as withdrawn any Application under review by the Department that ~~have~~has 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, ~~the Department. Staff will consider the Application withdrawn and provide~~ the Applicant ~~will be provided~~ notice to that effect. Once a new Certificate of Reservation is issued, ~~it will be at the Department's~~Department has the discretion to determine whether the existing Application can still be utilized ~~for purposes of review~~ 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 ~~other Applications~~others under review once a new Certificate of Reservation is issued, ~~regardless of the stage of review the Application was in prior to the withdrawal of the Certificate of Reservation,~~ or that it ~~maintain~~maintains the originally selected Board meeting or targeted administrative issuance date for the Determination Notice, as applicable.

(E) Applicants must submit Direct Loan Applications ~~must be submitted~~ in accordance with the requirements in this chapter, §13.5 ~~(relating to the Application and Award Process)~~, and the applicable ~~Notice of Funding Availability (NOFA)~~.

(F) ~~The Department has contracted with a third party for the development of an online Multifamily Management System (MMS), which may enable for the online submission of Applications. The Department may invite a limited number of Applicants to submit Applications through that system. Should that occur, staff~~The Staff may provide reasonable relief from non-statutory deadlines and other requirements of this chapter to facilitate ~~that~~ testing. ~~No advantage will be provided to~~ of an online system. Applicants that participate in ~~this~~such testing ~~will receive no advantage~~.

(3) Withdrawal of Application. An Applicant may withdraw an Application prior to or after ~~receiving an award of funding~~ by submitting to the Department written notice ~~of the withdrawal. To the extent, Return of~~ a Direct Loan award ~~is returned~~ after Board approval, may result in penalties ~~may be~~ imposed on the Applicant and Affiliates in accordance with §13.11(a) of this title ~~(relating to Post Award Requirements)~~.

(4) Competitive Evaluation Process. ~~Applications believed likely to be competitive. The Department will undergo a program review for compliance with submission requirements and selection criteria, as applicable. In general, conduct~~ Application reviews ~~by the Department shall be conducted~~ based upon the likelihood ~~that an Application will be competitive for an award based upon the region, set aside, self score, received date, or other ranking factors. Thus, non-competitive or of being competitive and may not review~~ lower scoring Applications ~~may never be reviewed. The Director of Multifamily Finance will identify those Applications that will receive a full program review based upon a reasonable assessment of each Application and its relative position to other Applications, but no Application with a competitive ranking shall be skipped or otherwise overlooked.~~ This initial assessment may be a high level assessment, ~~not a full assessment.~~ ~~The Real Estate Analysis division shall~~ Department will underwrite Applications that received a full program review and remain competitive ~~to determine financial feasibility and an appropriate funding amount. In making this determination, the Department will use~~ using §11.302 of this chapter ~~(relating to Underwriting Rules and Guidelines)~~ and §13.6 of this title ~~(relating to Multifamily Direct Loan Rule)~~, as applicable. The Department may have an external party perform all or part of the underwriting evaluation ~~and components thereof to the extent it determines appropriate. The~~ Prior to commencing the evaluation, an Applicant will pay the expense of any external underwriting ~~shall be paid by the Applicant prior to the commencement of the aforementioned evaluation pursuant to §11.901(5) of this chapter (relating to Fee Schedule, Appeals and other Provisions). The reviews by the Multifamily Finance Division and the Real Estate Analysis Division will be conducted to meet the requirements of the Program or NOFA under which the Application was submitted.~~ Applications will undergo a previous participation review in accordance with Chapter 1, Subchapter C of this title ~~(relating to Previous Participation) and a Development Site may be evaluated by the~~ The Department or its agents may evaluate a site and neighboring areas through a physical ~~site~~ inspection or ~~site~~ visit, ~~(which may include neighboring areas)~~.

independent of or concurrent with a site visit ~~that may be~~ performed in conjunction with §11.101(a)(3) ~~(relating to Neighborhood Risk Factors).~~ The Department may provide the Applicant a scoring notice ~~reflecting such score to the Applicant no later than 21 days prior to the final Board approval of awards,~~ which will trigger appeal rights and ~~corresponding~~ deadlines pursuant to Tex. Gov't Code §2306.6715 and under §11.902 of this chapter ~~(relating to Appeals Process).~~ For an Application for which the selection criteria are reviewed, the scoring notice for the Application will be sent to the Applicant no later than 21 days prior to the final Board approval of awards. (§2306.6715)

(5) Order of review of Applications under various Programs. ~~This paragraph identifies how ties or other matters will be handled when dealing with de-concentration requirements, capture rate calculations, and general order of review of Applications submitted under different programs.~~

(A) De-concentration. ~~Priority will be established based on the~~ The earlier date associated with an Application. ~~The dates that will be used to establish priority are,~~ as follows:

(i) for Tax-Exempt Bond Developments, the ~~issuance date of~~ the TBRB issues the Certificate of Reservation ~~issued by the TBRB; or in instances where there is, or for a Traditional Carryforward Designation associated with an Application, the date~~ the Department ~~will utilize the date~~ receives the complete HTC Application associated with the Traditional Carryforward Designation ~~is submitted to the Department;~~

(ii) for all other Developments, the date the Department receives the Application ~~is considered received by the Department;~~ 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 ~~Housing Tax Credit~~ HTC Application from the current Application Round on the waiting list.

(B) General Review Priority. ~~Order~~ Staff will establish the order of reviews of Applications under various multifamily programs ~~will be established based on Department staff's consideration of any applicable statutory timeframes associated with a program or Application~~ in relation to the volume of Applications being processed.

(6) Deficiency Process. ~~The purpose of the deficiency process is to allow an Applicant to provide clarification, explanation, or non-material missing information to resolve inconsistencies in the original Application or to assist staff in an efficient and effective review of the Application. The deficiency process does not require staff to request information from the Applicant in order to complete the Application. Applicants are encouraged to utilize manuals or other materials produced by staff, as additional guidance in conjunction with the rules to provide appropriate support for each item substantiating a claim or representation, such as claims for points, qualification for set-asides, or meeting of threshold and eligibility requirements. Because the~~

~~review of an Application occurs in several phases, deficiency notices~~ The Department may be issued ~~issue a deficiency notice~~ during any ~~of these phases~~ review phase. Staff will ~~send email~~ the deficiency notice ~~via an e-mail~~ to the Applicant and one other contact party if identified in the Application. ~~It is the Applicant's responsibility to ensure that~~ The Applicant is responsible for ensuring e-mails ~~sent from TDHCA staff to the Applicant or contact~~ are not electronically blocked or redirected ~~by a security feature as they will be considered to be received once they are sent.~~ The ~~time period for responding to a deficiency notice to respond~~ commences on the first business day following the deficiency notice date. ~~Deficiency~~ The Department may send deficiency notices ~~may be sent~~ to an Applicant prior to or after the end of the Application Acceptance Period and ~~may also be sent~~ in response to ~~reviews on~~ post-award submissions, submission reviews. Responses ~~are required to be submitted electronically as a PDF or multiple~~ must be one or more PDF files ~~and must be~~ uploaded to the Application's ServU http file. ~~Email~~ The Department will not accept emailed responses ~~will not be accepted. A review of the response provided by the Applicant may reveal that issues initially identified as an Administrative Deficiency are actually determined to be beyond the scope of an Administrative Deficiency process, meaning they are Material Deficiencies not susceptible to being resolved. Department staff. Staff~~ may in good faith provide an Applicant confirmation ~~that of receiving~~ an Administrative Deficiency response ~~has been received~~ or that such response is satisfactory. ~~Communications from staff that the response was satisfactory do, which does~~ not establish any entitlement to points, eligibility status, or to any presumption of having fulfilled any requirements. ~~Final~~ 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 ~~are reserved for the Department staff and Board.~~

(A) ~~A) It is critical that the use of the deficiency process not unduly slow the review process, and since the process is intended to clarify or explain matters or obtain at the Department's request missing information, there is an expectation that a party responding to an Administrative Deficiency will be able to respond immediately. It is the responsibility of a person who receives a deficiency to address is responsible for addressing the matter in a timely manner so that staff has the ability 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 that of adverse consequences if the materials do not fully resolve the matter there may be adverse consequences such as (point deductions, suspension, or termination. Extensions relating to Administrative Deficiency deadlines may only be extended up to five days if documentation needed to resolve the item is needed from a Third Party, the documentation involves Third Party signatures needed on certifications in the Application, or an extension is requested as a reasonable accommodation.)~~ 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. ~~Unless an extension has been timely requested and granted prior to the deadline, if a deficiency is not fully resolved to the satisfaction of the Department by 5:00 p.m. on the fifth business day following the date of the deficiency notice, then~~ An Application will lose five (5) points ~~shall be deducted~~ from the selection criteria score for each ~~additional day the~~ deficiency remains unresolved. ~~Points deducted for failure to timely respond to a~~ after 5:00 p.m. on the fifth business day following the date of the deficiency ~~will~~ notice (does) not impact the ~~Pre-Application pre-application~~ score. ~~If~~ 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, ~~then the Application shall be terminated,~~ subject to the Applicant's right to appeal. ~~An~~ 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, ~~and may (including not~~ adding any set-asides, ~~increase~~ increasing the requested ~~credit~~ HTC amount, ~~revising~~ revising the Unit mix ~~(both income levels and Bedroom mixes), or adjust their, or adjusting the~~ self-score ~~except in response to a direct request from the Department to do so as a result of an Administrative Deficiency.~~ (§2306.6708(b); §2306.6708) ~~Applicants may not use the~~ The Deficiency Process ~~to~~ may not increase a scoring item's points or ~~to~~ change any aspect of the proposed Development, financing structure, or other element ~~of the Application. To the extent that the review of deficiency documentation or the imposing of point reductions for late responses alters the score assigned to the Application, such score will be reflected in the updated application log published on the Department's website or a Scoring Notice may be issued unless specifically allowed by rule.~~

(C) Deficiencies for Tax-Exempt Bond Developments. Unless ~~an extension the Applicant has been requested~~ an extension prior to the deadline, deficiencies must be resolved to the Department's satisfaction ~~of the Department~~ by 5:00 p.m. on the fifth business day following the date of the deficiency notice. ~~Applications with unresolved deficiencies after 5:00 p.m. on the fifth business day following the date of the deficiency notice will be suspended~~ Otherwise the Department will suspend the Application from further processing and notify the Applicant. The Department will ~~be provided with notice to that effect.~~ ~~If~~ 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, ~~there are deficiencies that remain unresolved, the Application will be terminated and the Applicant will be provided notice to that effect.~~ If an Applicant appeals a staff termination ~~to~~ the Board, ~~Board decisions on terminations are~~ decision is final and an Applicant ~~will~~ may not ~~be allowed to~~ re-apply under

the same Certificate of Reservation due to the limited timeframe allowed ~~under the existing Reservation.~~

(D) Deficiencies for Direct Loan-only Applications. Deficiencies must be resolved to the ~~Department's~~ satisfaction ~~of the Department~~ 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. ~~Applications with unresolved deficiencies after 5:00 p.m. on the fifth business day following the date of the deficiency notice will be suspended from further processing and the Applicant will be provided with notice to that effect. If, on the fifth business day following the date of the suspension notice, there are deficiencies that remain unresolved, the Application may be terminated and the Applicant will be provided notice to that effect.~~ 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 ~~shall~~will be the new Application Acceptance Date pursuant to §13.5(c) of this title ~~(relating to Multifamily Direct Loan Rule). Applicants should be prepared for additional time needed for completion of staff reviews as described in paragraph (2)(B) of this section. Should, After Termination~~ an Applicant ~~still desire to move forward with the Development after Termination, must submit~~ a completely new Application ~~must be submitted, (along with a new Application Fee, as applicable, pursuant) to rule~~move forward with the Development. All ~~of the~~ deficiencies ~~noted~~ in the original deficiency notice must be incorporated into the re-submitted Application, which will have a new Application Acceptance Date.

(7) Limited Reviews. ~~If, after the submission of the Application, an Applicant identifies an error in the Application that could likely be the subject of a Deficiency, the~~An Applicant may request a limited review of ~~the specific and limited issues in need of clarification~~subparagraphs (A) or correction. The issue may (B) of this paragraph (not relaterelated to the score of an Application. This limited review may only cover the specific issue and not the entire Application. If the limited review results in the identification of an issue that requires). Staff will request any correction or clarification, ~~staff will request such~~ through the Deficiency process ~~as stated in paragraph (6) of this section, if deemed appropriate. A limited review is intended to address:~~

(A) Clarification of issues that ~~Department~~ staff would have difficulty identifying due to the omission of information ~~that the Department may have access to~~available only through Applicant disclosure, such as a prior removal from ~~a tax credit~~an HTC transaction or participation in a Development ~~that is~~ not identified in the previous participation portion of the Application; ~~or,~~

(B) Technical correction of non-material information that would cause an Application ~~deemed non-competitive~~ to be ~~deemed~~ competitive and, ~~therefore,~~ subject to a staff review. For example, failure to mark eligibility for the Nonprofit Set-Aside ~~in an Application~~

~~that otherwise included complete submission of~~when all necessary documentation ~~for participation~~was included in the ~~Nonprofit Set Aside~~Application.

(8) Challenges to Opposition. ~~Any~~An Applicant may challenge a written statement from a Neighborhood Organization expressing opposition ~~to an Application may be challenged~~ if it is contrary to findings or determinations, ~~(including zoning determinations,)~~ of a municipality, county, school district, or other local Governmental Entity ~~having~~with relevant jurisdiction or oversight ~~over the finding or determination. If any such comment is challenged, the.~~ The challenger must declare the basis ~~for the challenge~~ and submit ~~such challenge~~ by the Challenges to Neighborhood Organization Opposition Delivery Date ~~as identified~~ in §11.2 of this chapter and no later than May 1 of the current year for Competitive HTC Applications. The Neighborhood Organization expressing opposition will ~~be given~~have seven calendar days to provide ~~any information related to the issue of whether their assertions are contrary to the findings or determinations of a local Governmental Entity. All.~~ Staff will provide all such materials and ~~the~~its analysis ~~by staff will be provided~~ to a fact finder, chosen by the Department, ~~for review and a determination. The fact finder will~~ of whether the statements are contrary to a local Governmental Entity's findings or determinations (not make determinations as to the accuracy of the statements presented, but only regarding 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.

§11.202. Ineligible Applicants and Applications.

~~The purpose of this section is to~~Anyone may identify ~~those~~ situations in which an Application or Applicant may be ~~considered~~ ineligible for ~~Department funding and subsequently terminated. Such matters may be brought to the attention of staff by anyone, including members of the general public.~~ award. The items ~~listed in this section include those requirements in Code, §42, Tex. Gov't Code, Chapter 2306, and other criteria considered important by the Department, and does not represent~~in this section ~~are not~~ an exhaustive list of ineligibility criteria ~~that may otherwise be identified in applicable rules, federal statutes or regulations, or a specific program NOFA. The Application may include, or Department staff.~~ Staff may request, documentation or verification of compliance with any requirements related to the eligibility of an Applicant, Application, ~~Development~~ Site, or Development. ~~One or more of the~~The matters ~~enumerated~~ in paragraph (1) of this section may also serve as a basis for debarment, or ~~the~~ assessment of administrative penalties, ~~and nothing.~~ Nothing herein ~~shall limit~~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 ~~considered~~ ineligible if any of the criteria in subparagraphs (A) - (N) ~~of this paragraph below~~ apply to those identified on the organizational chart for the Applicant, Developer and Guarantor. ~~An Applicant is ineligible if the Applicant, Developer, or Guarantor:~~

(A) Has been or is barred, suspended, or terminated from participation in a state or Federal program, including those ~~listed~~ in the U.S. government's System for Award Management (~~SAM~~); (§2306.0504)

(B) Has been convicted of a state or federal felony crime involving fraud, bribery, theft, misrepresentation of material fact, misappropriation of funds, or other similar criminal offenses within 15 years preceding the received date of Application or ~~Pre-Application~~pre-application submission (if applicable);].

(C) ~~Is, at~~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; ~~subject to~~

(ii) a federal tax lien (other than a contested lien for which provision has been made); or ~~the subject of a proceeding in which a Governmental Entity has issued an order to impose~~

(iii) penalties, ~~suspend~~suspended funding, or ~~take~~ 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 ~~considered relevant by the Governmental Entity~~;].

(D) Has materially breached a contract with a public agency, and, if such breach is permitted to be cured ~~under the contract~~, has been given notice ~~of the breach~~ and a reasonable opportunity to cure, ~~and yet~~ failed to ~~cure that breach~~do so within the ~~time~~ specified ~~in the notice of breach~~time.

(E) Has misrepresented to a subcontractor the extent to which the Developer has benefited from contracts or financial assistance ~~that has been~~ awarded by a public agency, including the scope of the Developer's participation in contracts with the agency, and the amount of financial assistance awarded to the Developer by the agency;].

(F) Has been found by the Board to be ineligible based on a previous participation review performed in accordance with Chapter 1 Subchapter C of this title ~~(relating to Previous Participation Review)~~;].

(G) Is delinquent in any loan, fee, or escrow payments to the Department ~~in accordance with the terms of the loan, as amended~~, or is otherwise in default with any provisions of such Department loans, and for which ~~no~~the Department has not approved a repayment plan ~~has been approved by the Department~~;].

(H) Has failed to cure any past due fees owed to the Department within the time frame provided ~~by notice from the Department~~ 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 a provision of Tex. Gov't Code, or~~ Chapter 572, from participating in the Application in the manner and capacity they are participating~~;~~

(J) ~~Has, without prior approval from the Department, had~~ Had previous Contracts or Commitments ~~that have been~~ partially or fully Deobligated ~~(without prior Department approval)~~ during the 12 months prior to ~~the Application~~ submission ~~of the Application~~, 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 ~~for a Development;~~

(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, ~~in the Application,~~ any Principal ~~or any,~~ entity, or Person in the Development ownership structure who was or is involved as a Principal in any other affordable housing transaction, 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 ~~or persons(s)~~ and development involved, ~~the identity of~~ each other development, ~~and~~ contact information for the other Principals of each such development, a narrative description of the facts and circumstances of the termination or proposed termination, and any appropriate supporting documents. ~~An Staff may refer an~~ Application ~~may be referred~~ to the Board for a determination of a person's fitness to be involved as a Principal with respect to an Application, ~~which may include a staff recommendation,~~ using the factors described in clauses (i) - (v) ~~of this subparagraph below~~ as considerations:

(i) the amount of resources in ~~a Development~~ and ~~the amount of the~~ benefit received from the Development;

(ii) the legal and practical ability to address issues that may have precipitated the termination or proposed termination ~~of the relationship;~~

(iii) the role of the person in ~~causing or materially contributing to~~ any problems with the success of the development;

(iv) the person's compliance history, including ~~compliance history~~ on other developments; and

(v) any other facts or circumstances that have a material bearing on the question of the person's ability to be a compliant and effective participant in their ~~proposed~~ role as described in the Application~~;-~~.

(N) Fails to disclose ~~in the Application~~ any voluntary compliance agreement or similar agreement with any governmental agency ~~that is the result of negotiation regarding resulting from~~ noncompliance of any affordable housing Development ~~with any requirements. Any such agreement impacting the proposed Development or any other affordable housing Development controlled by the Applicant must be disclosed; or,~~

(O) Controls an existing ~~Housing Tax Credit~~ HTC Development that has been approved by staff or the ~~Governing~~ Board for return and reallocation ~~of tax credits~~ under ~~any option established at~~ 10 TAC §11.6 two or more times and ~~that~~ has not yet commenced construction. ~~Controlling multiple existing Housing Tax Credits Developments that have been approved under 10 TAC §11.6 one time each will not trigger this ineligibility criteria.~~ For Applications that are only requesting Competitive ~~Housing Tax Credits~~ HTCs, an Applicant ineligible ~~Applicant~~ under this subparagraph may ~~submit an Application by the Full Application Delivery Date and be considered~~ be eligible if the disqualifying Development has commenced construction as of the May meeting of the ~~Governing~~ Board or May 31st, whichever is sooner. ~~Any ineligible Applicant under this subparagraph that chooses to submit a Competitive Housing Tax Credit Application Any such Applicant~~ assumes the risk of doing so, ~~and staff.~~ Staff will not recommend to the Board any waiver ~~in the event that if~~ the disqualifying Development does not commence construction in time ~~for the Applicant to become eligible.~~

(P) Would violate Tex. Prop. Code §5.253.

(2) Applications. An Application ~~shall~~ will be ineligible if any of the criteria in subparagraphs (A) - (C) ~~of this paragraph apply to the Application: 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. ~~An ex parte communication, which~~ occurs when an Applicant or Person representing an Applicant initiates substantive contact (~~i.e. any 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). ~~Such action is prohibited. For Applicants seeking funding after initial awards have been made, such as waiting list Applicants, the ex parte~~

~~communication prohibition remains in effect so long as the Application remains eligible for funding. The ex parte provision does not prohibit the Board from participating in social events at which a Person with whom communications are prohibited may, or will be present; provided that no matters related to any Application being considered by the Board may be discussed; 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 ~~of the Application;~~ or has a Material Deficiency~~;~~~~or~~.

(C) For any Development utilizing ~~Housing Tax Credits~~HTCs or Tax-Exempt Bonds:

~~if (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), the Applicant or a Related Party is or has been a person covered by Tex. Gov't Code §2306.6703(a)(1);~~

(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~~;~~~~or~~.

(iii) ~~the~~The Applicant proposes to replace in less than 15 years any private activity bond financing ~~of the Development~~ 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)).

~~A~~An Application must include a certification~~, as provided in the Application,~~ that the Applicant met the requirements and deadlines identified in paragraphs (1) - (3) of this section ~~must be submitted with the Application. For Applications utilizing Competitive Housing Tax Credits, notifications generally must not be~~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. ~~If No additional notifications were are required to those made in order to satisfy requirements of pre-application submission (if applicable to the program) for the same Application, then no additional notification is required at Application. Should requirements. If~~ the jurisdiction of ~~the an~~ official ~~holding any position or role~~ described in paragraph (2) of this section ~~change~~changes between the submission of a pre-application and ~~the submission of an~~ Application ~~in a manner such that results in the Development being within is in~~ a new jurisdiction, ~~Applicants are required to~~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.

~~(A) The Applicant must identify and notify all Neighborhood Organizations on record with the county or the state as of 30 days prior to the beginning of the Application Acceptance Period and whose boundaries include the entire proposed Development Site. As used in this section, "on record with the state" means on record with the Secretary of State.~~

~~(B) The Applicant must list, in the certification form provided in the pre-application and Application, all Neighborhood Organizations on record with the county or state as of 30 days prior to the beginning of the Application Acceptance Period and whose boundaries include the proposed Development Site.~~

(2) Notification Recipients. ~~No later than the date the Application is submitted, notification must be sent to all of the entities identified in subparagraphs (A) – (H) of this paragraph. Developments located in an Extra-Territorial Jurisdiction (ETJ) of a city are required to notify both city and county officials. The notifications may be sent by e-mail, fax or mail with return receipt requested or similar tracking mechanism. A template for the notification is included in the Application Notification Template provided in the Application. Evidence of notification is required in the form of a certification provided in the Application. The Applicant is required to retain proof of delivery in the event it is requested by the Department. Evidence of proof of delivery is demonstrated by a signed receipt for mail or courier delivery and confirmation of receipt by recipient for fax and e-mail. Officials to be notified are those in office at the time the Application is submitted; however, a mailed notification that is addressed to the entity or officeholder rather than a specific person is acceptable so long as it is mailed to the correct address and otherwise meets all requirements. Note that between the time of pre-application (if made) and full Application, the boundaries of their jurisdictions may change. Meetings and discussions do not constitute notification. Recipients include:~~

~~(A) Neighborhood Organizations on record with the state or county as of 30 days prior to the beginning of the Application Acceptance Period whose boundaries include the entire Development Site;~~

~~(B) Superintendent of the school district in which the Development Site is located;~~

~~(C) Presiding officer of the board of trustees of the school district in which the Development Site is located;~~

~~(D) Mayor of the municipality (if the Development Site is within a municipality or its extraterritorial jurisdiction);~~

~~(E) All elected members of the Governing Body of the municipality (if the Development Site is within a municipality or its extraterritorial jurisdiction);~~

~~(F) Presiding officer of the Governing Body of the county in which the Development Site is located;~~

~~(G) All elected members of the Governing Body of the county in which the Development Site is located; and~~

~~(H) State Senator and State Representative of the districts whose boundaries include the Development Site.~~

(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.

~~(A) The notification must include, at a minimum, all information described in clauses (i) —(ix) of this subparagraph:~~

~~(i) the Applicant's name, address, individual contact name, and phone number;~~

~~(ii) the Development name, address, city and county;~~

~~(iii) a statement indicating the program(s) to which the Applicant is applying with the Texas Department of Housing and Community Affairs;~~

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

~~(v) the physical type of Development being proposed (e.g. single family homes, duplex, apartments, high-rise etc.);~~

~~(vi) the total number of Units proposed and total number of Low-Income Units proposed;~~

~~(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.~~

~~(B) The notification may not contain any false or misleading statements. Without limiting the generality of the foregoing, the notification may not create the impression that the proposed Development will target, provide a preference, or serve a Target Population exclusively, unless such population limitation, targeting, or preference is documented in the~~

~~Application, and is or will be in full compliance with all applicable state and federal laws, including state and federal fair housing laws; and~~

~~(C) Notifications or any other communications may not contain any statement that violates Department rules, statute, code, or federal~~ must comply with the content requirements in §11.8(b)(2)(C) of this chapter.

§11.204. Required Documentation for Application Submission.

~~The purpose of this~~ This section ~~is to identify~~ identifies the threshold documentation ~~that is~~ required at the time of Application submission, ~~unless specifically indicated or otherwise required by Department rule.~~ 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 Development Owner. ~~A~~ Applications must include an executed certification ~~of the information described in this subchapter as well as Subchapter B of this chapter must be executed by the Development Owner and addresses the specific requirements associated with the Development subparagraphs (A) - (I) below.~~ The Person executing the certification is responsible for ensuring the compliance of all individuals referenced therein ~~are in compliance with the certification~~ 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 ~~no local building codes~~ 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 ~~publish them on the Department's website~~ and 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 ~~which the Department may issue or award, 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 ~~shall be~~ is sufficient cause for the cancellation and rescission ~~of such Commitment, Determination Notice, Carryover Allocation, or Direct Loan Commitment~~ by the Department. If any such representations, undertakings and commitments concern or relate

to the ongoing features or operation of the Development, they ~~shall be enforceable even if not reflected in the Land Use Restriction Agreement. All such representations, undertakings and commitments are also enforceable by the Department and the residents of the Development, including enforcement by administrative penalties for failure to perform (consistent with Chapter 2, Subchapter C of this title, relating to Administrative Penalties), in accordance with the Land Use Restriction Agreement~~will be enforceable even if not reflected in the LURA.

(D) The ~~Development~~ Owner has read and understands the ~~Department's~~ fair housing educational materials posted on the Department's website as of the beginning of the Application Acceptance Period.

(E) The 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 ~~Development~~ Owner will specifically market to veterans through direct marketing or contracts with veteran's organizations and will specifically market to ~~the waitlist(s) of any public housing authority (PHA) waitlists for any PHA in the city and/or county the Development whose jurisdiction is located within and the PHA of any City within 5 five miles of the Development.~~ The ~~Development~~ Owner will ~~be required to~~ identify how they will specifically market to veterans and the PHA waiting ~~lists~~list(s) and report to the Department ~~in the annual housing report on the results of the marketing efforts to veterans and PHA waiting lists. Exceptions in the annual report. The Department must approve exceptions to this requirement must be approved by the Department.~~

(G) The ~~Development~~ Owner will comply with ~~any and~~ all notices required by the Department.

(H) ~~If the Development has~~ The Owner will comply with an existing LURA with the Department, ~~the Development Owner will comply with the existing restrictions.~~

(I) The ~~Development~~ Owner acknowledges that all Applications are subject to a review for compliance with applicable accessibility standards, including ~~those proposing the Rehabilitation of an existing Development.~~

(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 ~~must be executed by any individuals required to be listed on the organizational chart and also meeting the definition of Control. The certification must identify the various criteria relating to identifying the~~ eligibility requirements associated with multifamily funding ~~from the Department, including but not limited to the~~

criteria identified under §11.202 of this chapter ~~(relating to Ineligible Applicants and Applications).~~

(3) Engineer/Architect Certification Form. ~~The certification, addressing~~The Development engineer or accredited architect must certify all of the accessibility requirements applicable to the ~~Development Site, must be executed by the Development engineer or accredited architect after careful review of the Department's accessibility requirements, and~~ including Tex. Gov't Code §2306.6722 and §2306.6730.

(4) Notice, Hearing, and Resolution for Tax-Exempt Bond Developments. ~~In accordance with Tex. Gov't Code, §2306.67071, the~~The following actions must take place with respect to ~~the~~ filing ~~of~~ an Application and any Department consideration for a Tax-Exempt Bond Development. (§2306.67071)

~~(A) Prior to submission of an Application to the Department, an~~(A) An Applicant must provide notice of the intent to file the Application in accordance with §11.203 of this chapter ~~(relating prior to Public Notifications submitting to the Department.~~(§2306.6705(9)).)

(B) The Governing Body of a

(i) municipality must hold a hearing if the ~~Development Site is located within a municipality, or the extra-territorial jurisdiction (ETJ) of a municipality. The Governing Body of a~~

(ii) county must hold a hearing ~~unless the Development Site is located within a municipality. if not, or~~

(iii) For ~~Development Sites~~ located in an ETJ both the municipality and the county and municipality must hold hearings; however, the county and municipality may arrange for a joint a hearing. (these may be held jointly). The purpose of the hearing(s) ~~must be to solicit is for the public to have an opportunity to provide~~ input concerning the Application or Development ~~and the hearing(s) must provide the public with such an opportunity. The Applicant may be asked to substantively address the concerns of the.~~ The public or local government officials may ask the Applicant to substantively address their concerns.

(C) An Applicant must submit to the Department a resolution of no objection from the applicable Governing Body ~~.Such resolution(s) must specifically identify~~identifying the Development ~~whether~~ by legal description, address, ~~Development~~ name, Application number or other verifiable method. For ~~an Application with a Development Site that is:~~

(i) within a municipality, from its Governing Body;

(ii) within the ETJ of a municipality, ~~the Applicant must submit a resolution~~ from the Governing Body of ~~that municipality;~~both

~~(ii) within the ETJ of a municipality, the Applicant must submit both:~~

~~(I) A resolution from the Governing Body of~~ that municipality; and

~~(II) A resolution from the Governing Body of~~ the county; ~~or~~

(iii) within a county and not within a municipality or the ETJ of a municipality, ~~a resolution from the Governing Body of~~from the county.

(D) For purposes of ~~meeting~~ the requirements of subparagraph (C) of this paragraph, the resolution(s) must be submitted no later than the Resolutions Delivery Date described in §11.2(b) of this chapter ~~(relating to Tax-Exempt Bond Dates and Deadlines). An. Resolutions may not be older than four years. The Multifamily Programs Procedures Manual contains an acceptable, but not required, form of resolution may be obtained in the Multifamily Programs Procedures Manual. Applicants should ensure that the. Staff will invalidate resolutions without all have the appropriate references and certifications or the resolution may be determined by staff to be invalid. The representations regarding the Development made to the applicable Governing Body to obtain the resolution(s) must remain accurate, as reflected in the submitted Application. If. Should there be material aspects of changes to the Development that could have changed from when the Governing Body adopted impacted adoption of the resolution, it is incumbent upon(s), the Applicant to obtain is responsible for obtaining new resolution in order(s) to satisfy this requirement. No resolutions older than four years will be accepted.~~ 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 ~~Development Site is located~~ in an Urban Area or Rural Area ~~of a Uniform State Service Region.~~ The Department ~~shall make available~~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 ~~those that are an~~ Urban Area in the Site Demographics Characteristics Report. ~~Some Places are municipalities. For any Development Site~~ Sites located in the ETJ of a municipality and not in a Place, ~~the Application shall have the Rural Area or Urban Area designation of the ETJ's municipality whose ETJ within which the Development Site is located. For any Development Site, Sites not located within~~ the boundaries of a Place or the ETJ of a municipality, have the applicable designation ~~is that~~ of the closest Place.

(B) ~~Certain areas located within the boundaries of a primary metropolitan statistical area or a metropolitan statistical area can request a Rural designation from the Department for purposes of receiving an allocation Housing Tax Credits (§2306.6740). In order to apply for such a designation, a letter must be submitted from a~~ duly authorized official of ~~the~~ 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) ~~of this subparagraph. Photographs and other supporting documentation are strongly encouraged. In order for the area to be designated Rural by the Department for the current Application Round, such requests must be made below,~~ no later than December 15 of the previous year. ~~If staff is~~ (§2306.6740) Staff will grant the request if able to confirm ~~the~~ its findings ~~outlined in the request, the~~. The Rural designation will ~~be granted without further action and will remain in effect until such time that~~ the population as described in clause (i) ~~of this subparagraph below~~ exceeds 25,000. ~~In the event that If staff is unable to confirm,~~ the information contained in the request, the Applicant official will ~~be given~~ have an opportunity to supplement ~~their~~ the case. If, after receiving any supplemental information, staff still cannot confirm the rural nature of the Application, a recommendation for Staff will recommend denial ~~will be presented to the Board. if still unable to confirm.~~ The factors include:

~~(i) the population of~~ the political subdivision or census designated place;

(i) population does not exceed 25,000;

(ii) ~~the characteristics of the political subdivision or census designated place~~ and how those differ from the characteristics of the area(s) with which it shares a contiguous boundary;

(iii) ~~the percentage of the total border of the political subdivision or census designated place that is contiguous with other political subdivisions or census designated places designated as urban. For purposes of this assessment, areas~~ (less than 50% contiguity with urban designated places is presumptively rural in nature);

~~(iv) the political subdivision or census designated place~~ (iv) contains a significant number of unimproved roads or relies on unimproved roads to connect it to other places;

~~(v) the political subdivision or census designated place(v)~~ lacks major amenities commonly associated with urban or suburban areas; and

(vi) ~~the boundaries of the political subdivision or census designated place~~ contain, or are surrounded by, ~~significant areas of~~ undeveloped or agricultural land. ~~For purposes of this assessment, significant being~~ more than one-third of the total surface area ~~of political subdivision/census designated place~~, or a minimum of 1,000 acres immediately contiguous to the border.

(6) Financing Requirements.

(A) Non-Department Debt Financing. ~~Interim~~Applications must include interim and permanent financing sufficient to fund the proposed Total Housing Development Cost less any ~~other funds/resources~~ requested from the Department ~~must be included in the Application. For any. If a~~ Development ~~that~~ is a part of a larger development ~~plan~~ on the same site, the Department may request ~~and evaluate~~ information related to ~~the other components of the development plan in instances in which the whether~~ financial viability ~~of the Development is depends~~ in whole or in part ~~dependent upon on~~ the other portions ~~of the development plan. Any. The rent schedule must identify any~~ local, state or federal financing ~~identified in this section which that~~ restricts household incomes ~~at any level that is~~ lower than restrictions required or elected in accordance with this Chapter or Chapter 13 of this title ~~(relating to Multifamily Direct Loan) must be identified in the rent schedule and the. The~~ local, state or federal income restrictions must include corresponding rent levels in accordance with Code §42(g) if the Development will receive ~~housing tax credits. HTCs.~~ Financing amounts must be consistent throughout the Application ~~and acceptable. Acceptable~~ documentation ~~shall include includes~~ those ~~described~~ in clauses (i) - (iv) ~~of this subparagraph 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 ~~Development~~ Owner as grantor ~~in favor of the party providing such financing.~~

(ii) Term sheets for interim and permanent loans issued by a lending institution or mortgage company must be or include:

(I) ~~be~~ current, non-expired, and have been signed or otherwise acknowledged by the lender;

(II) ~~be~~ addressed to the ~~Development~~ Owner or Affiliate;

(III) for a permanent loan, include a minimum loan term of 15 years with at least a 30 year amortization or ~~for non-amortizing loan structures~~ a term of not less than 30 years for non-amortizing loans;

(IV) ~~include~~ either a committed and locked interest rate, or ~~the~~ lender estimated underwritten interest rate;

(V) ~~include~~ the “up to” principal amount of the loan; and

(VI) ~~include and address~~ any other material terms and conditions ~~applicable to the financing. The term sheet (may be conditional upon the completion of conditioned on completing~~ specified due diligence ~~by the lender and upon the~~ HTC award ~~of tax credits, if applicable;~~).

(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 ~~confirming that the Applicant has submitted~~ the Preliminary Assessment Tool ~~has been submitted by the Applicant to USDA.~~ The loan amount ~~that is~~ reported on the Schedule of Sources (tab 31 in the MF Uniform Application) and ~~that is~~ 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 ~~shall~~ must include the applicable pages from the HUD Application for Multifamily Housing Project. ~~If the HUDA submitted~~ Application must state if the HUD application has not been submitted ~~at the time the Application is submitted then a statement to that effect should be included in the Application along with and~~ an estimated date for submission. ~~Applicants should be aware that staff's doing so. Staff's~~ underwriting ~~of an Application~~ will not be ~~finalized~~ final and presented to the Board ~~until staff has evaluated~~ without evaluating the HUD Application ~~relative to the~~ Application.

(B) Gap Financing. ~~Any Applications must identify and describe any~~ anticipated federal, state, local or private gap financing, ~~whether soft or hard debt, must be identified and described in the Application. Applicants must and~~ provide evidence that an application ~~for such gap financing~~ has been made ~~to an available fund source. Acceptable documentation may include, including~~ a letter from the funding entity confirming ~~receipt of an~~ application receipt or a term sheet from the lending agency ~~which clearly describes~~ describing the financing amount and terms ~~of the financing.~~ Other Department funding requested with ~~Housing Tax Credit~~ HTC Applications must be ~~on~~ in a concurrent funding period ~~with the Housing Tax Credit Application, and no term sheet is required. All soft or below market rate financing necessary for financial feasibility must be committed by 10% test for~~

such Competitive Applications; a request. A term loan request must comply with the applicable terms of the NOFA under which an Applicant is applying 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 the ~~Development will be financed in part with~~ Application includes a capital contribution or debt by ~~the General Partner, Managing General Partner, any other any partner or investor that is not a partner~~ 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 ~~a Third Party CPA must be submitted that verifies the capacity of the contributor to provide the capital from funds that are not otherwise committed or pledged. Additionally, a letter from the contributor's bank(s) or depository(ies) must be submitted confirming sufficient funds are readily available to the contributor. The contributor must certify that the funds are and will remain readily available at Commitment and until the required investment is completed. Regardless of the amount, all following entities. All~~ capital contributions other than syndication equity will be ~~deemed to be a part of, and therefore added to, the~~ Deferred Developer Fee for feasibility purposes under §11.302(i)(2) of this chapter ~~(relating to Underwriting Rules and Guidelines) or whereor for~~ scoring is concerned, unless the ~~contribution is a seller note equal to or less than the acquisition price of the subject Development, the~~ Development is a Supportive Housing Development, ~~the Development is not supported with Housing Tax Credits~~ there are no HTCs, or the ownership structure includes a nonprofit organization with a documented history of fundraising sufficient to support ~~the development of~~ affordable housing development.

(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 available until completing the required investment.

(D) Equity Financing. (§2306.6705(2) and (3)) If applicable to the program, the Application must include a term sheet from a syndicator ~~that including,~~ at a minimum, includes:

(i) an estimate of the amount of equity dollars expected to be raised ~~for the Development;~~

(ii) the amount of ~~Housing Tax Credits~~ HTCs requested for allocation ~~to the Development Owner;~~

(iii) pay-in schedules; and

(iv) syndicator consulting fees and other syndication costs. ~~No syndication costs should be included in the Eligible Basis; and~~

(E) Financing Narrative. (§2306.6705(1)) ~~Applications must include a~~ narrative ~~should be submitted that describes~~ describing any special, complex, or unique aspects of the financing plan ~~for the Development, including as applicable, such as~~ any operating subsidies, project-based assistance, replacement reserves, or interest rate swaps; ~~and,~~ the status (dates and deadlines) for applications, approvals and closings, etc. associated with ~~the term sheets for~~ soft or other government sources, including the funding source; and any refinancing or loan assumptions for USDA loans, etc. ~~For~~ Applicants requesting Direct Loan funds and 9% LIHTC, ~~Match, as applicable, must be documented with~~ submit a letter from the anticipated Match provider ~~of Match~~ indicating ~~the provider's~~ willingness and ability to make a financial commitment ~~should if~~ the Development ~~receive an award of~~ receives a Direct Loan ~~funds.~~ 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. ~~All Applications must include a~~ 15-year pro forma estimate of operating expenses (or longer, if required by the NOFA), ~~in the form provided by the Department. Any "other" debt service included in the pro forma must include a description.~~

(B) Utility Allowances. ~~This exhibit, as provided in the Application, must be submitted along~~ Exhibit indicating which utilities are included in the estimate (complying with §10.614 of this title), including effective dates, and documentation from the ~~source of the~~ utility allowance estimate source used in completing the Rent Schedule ~~provided in the Application. This exhibit must clearly indicate which utility costs are included in the estimate and must comply with the requirements of §10.614 of this title (relating to Utility Allowances), including deadlines for submission. Where the Applicant uses any method that requires Department review. If applicable, documentation indicating that the Department has granted~~ the requested method ~~has been granted by the Department must be included in the Application. Applicants that are uncertain about the applicability of a Utility Allowance to the proposed Development are encouraged to contact the Department as early as possible prior to submitting the Application for guidance.~~

(C) Operating Expenses. ~~This exhibit, as provided in the Application, must be submitted~~ Exhibit indicating the anticipated operating expenses ~~associated with the Development. Any expenses noted as "other" in any of the categories must include a description.~~ "Miscellaneous" or other nondescript designations are not acceptable.

(D) Rent Schedule. ~~This exhibit, as provided in the Application, must meet~~Exhibit meeting the requirements of clauses (i) - (vi) ~~of this subparagraph below.~~ The LURA will reflect income and ~~corresponding~~ rent restrictions ~~will be reflected in the LURA~~ 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. ~~The requirements are:~~

(i) indicate the type of Unit restriction based on the ~~Unit's~~ rent and income restrictions;

(ii) reflect the rent and utility limits available at the time ~~the~~of Application ~~is submitted~~submission;

(iii) reflect gross rents ~~that cannot exceed the maximum rent limits unless documentation of consistent with~~ project-based rental assistance ~~is provided and rents are consistent with such assistance and documentation (if applicable legal requirements);~~;

(iv) have a Unit mix and net rentable square footages ~~that are~~ consistent with the site plan and architectural drawings;

(v) if applying for Direct Loan funds:

~~(I) Direct Loan, such~~ restricted Units will ~~generally be designated "floating" "float" (unless specifically disallowed under the program specific rules or as specifically allowed in a the NOFA);~~ and the following percentages of them must be available to households with the following income levels:

~~(II) if HOME, TCAP RF, and/or NSP PI are the anticipated fund source, the Application must have(s),~~ at least 90% ~~of the Direct Loan restricted Units be available to households or families whose incomes do not exceed 60% of the Area Median Income~~ at or below 60% AMI;

~~(III) in which (II) if HOME or TCAP RF are the anticipated fund source have(s),~~ at least 20% ~~of the Direct Loan restricted Units available to households or families whose incomes do not exceed 50% of the Area Median Income~~ at or below 50% AMI;

~~(IV) in which (III) if NHTF is the an anticipated fund source, have~~ 100% ~~of the Direct Loan restricted Units available to households or families whose incomes do not exceed at the greater of 30% of the Area Median Income or whose income is at or below~~ AMI or the poverty line;

~~(V) in which (IV) if NSP PI is the an anticipated fund source, have~~ at least 25% ~~of the Direct Loan restricted Units available to households or families whose incomes do not exceed at or below~~ 50% of the Area Median Income AMI;

~~(VI) in which~~ (V) if HOME-ARP is ~~the~~ an anticipated ~~fund~~ source, at least 20% at 60% AMI and 100% at 80% AMI during the State Affordability Period ~~have at least 20% of the Direct Loan restricted Units for households; and families whose incomes do not exceed 60% of the Area Median Income and 100% of the Direct Loan restricted Units for households and families whose incomes do not exceed 80% of the Area Median Income; and~~

(vi) if proposing to elect average income ~~averaging~~, Units restricted by any ~~fund~~ source other than ~~housing tax credits~~ HTCs must be specifically identified, ~~and all restricted Units, regardless of fund source, must be~~ and included in the average calculation.

(E) Development Costs. ~~This exhibit, as provided in the Application, must include the Exhibit including the~~ contact information for the person providing the cost estimate and ~~must meet~~ meeting the requirements of clauses (i) and (ii) ~~of this subparagraph. For below.~~ Applications ~~that include a scope of work that contains~~ with a combination of new construction and rehabilitation activities, ~~the Application~~ must include a separate development cost schedule exhibit for ~~only the costs attributed to the portion of the~~ rehabilitation ~~activities.~~

(i) ~~Applicants must provide a~~ A detailed cost breakdown of any projected Site Work costs (excluding site amenities), ~~if any,~~ prepared by a Third Party engineer. ~~If Site Work costs (excluding site amenities) exceed \$20,000 per Unit and are included in Eligible Basis, a letter must be provided from a certified public accountant allocating which portions of those site costs should be included in Eligible Basis.~~

(ii) If costs for Off-Site Construction are ~~included~~ in the budget as a line item, ~~or~~ embedded in the site acquisition contract, or referenced in the utility provider letters, then a Third Party engineer must provide an Off-Site Cost Breakdown ~~prepared by a Third Party engineer must be provided. The certification from a Third Party engineer must~~ and describe the necessity of the off-site improvements, ~~including~~ the relevant ~~requirements of the local jurisdiction with authority over building codes~~ 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)) ~~If Any related contract or other agreement securing~~ rental assistance, an operating subsidy, an annuity, or an interest rate reduction payment ~~is proposed to exist or continue for the Development, any related contract or other agreement securing those funds. Such documentation shall, at a minimum, identify~~ identifying the source and annual amount ~~of the funds~~, the number of units

~~receiving the funds covered~~, and ~~the its~~ term and expiration date ~~of the contract or other agreement~~.

(G) Occupied Developments. ~~The Applications must include the~~ items ~~identified~~ in clauses (i) - (vi) ~~of this subparagraph must be submitted with any Application where any structure on the Development Site is occupied below if~~, at any time after the Application Acceptance Period begins ~~or if the Application proposes the demolition of any housing occupied at any time after the Application Acceptance Period begins~~, any structure on the Site is occupied. If the Application includes a request for Direct Loan funds, Applicants must follow the ~~requirements of 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, and HUD Handbook 1378 ~~provides guidance and template documents~~). Failure to follow URA or 104(d) requirements do so will make the proposed Development ineligible for Direct Loan funds and may lead to result in a penalty under §13.11(b) of this title ~~(relating to Multifamily Direct Loan Rule)~~. If one or more ~~of the~~ items ~~described in clauses (i) - (vi) of this subparagraph~~ is do(es) not ~~applicable~~ apply based upon on the type of occupied ~~structures on the Development Site~~ structure, the Applicant must provide an explanation of ~~such non-applicability. Applicant must submit: 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 ~~;~~ and.

(ii) ~~a~~ 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 ~~at the date of the rent roll~~, Unit mix, and any vacant units ~~;~~.

(iii) ~~a~~ A written explanation of the process used to notify and consult with the tenants in preparing the Application ~~;~~ (§2306.6705(6))

(iv) ~~a~~ A relocation plan outlining relocation requirements and a budget with an identified funding source ~~;~~ (§2306.6705(6))

(v) ~~any~~Any documentation necessary for the Department to facilitate, or advise an Applicant with respect to or to ensure compliance with ~~the URA and any other~~applicable relocation laws or regulations ~~as may be applicable; and.~~

(vi) ~~if~~If applicable, evidence that the relocation plan has been submitted to all appropriate legal or governmental agencies ~~or bodies.~~ (§2306.6705(6))

(8) Architectural Drawings. ~~All~~ Applications must include the items identified in subparagraphs (A) - (D) ~~of this paragraph below,~~ unless specifically stated otherwise, and must be consistent with ~~all applicable exhibits throughout the rest of~~ the Application. The drawings must have a legible scale and show the dimensions of each perimeter wall and floor heights.

(A) ~~For all Developments a~~ site plan ~~must be submitted that includes~~including the items identified in clauses (i) - (xii) ~~of this subparagraph below:~~

(i) ~~states~~ the size of the site on its face;

(ii) ~~includes~~ a Unit and building type table matrix ~~that is consistent with the Rent Schedule and Building/Unit Configuration forms provided in the Application;~~

(iii) ~~includes~~ a table matrix specifying the square footage of Common Area space on a building ~~by building~~ basis;

(iv) ~~identifies~~ all residential and common buildings in place on the ~~Development Site and labels them consistently with the Rent Schedule and Building/Unit Type Configuration forms provided in the Application~~Site;

(v) ~~shows~~ the locations (by Unit and floor) of mobility and hearing/visual accessible Units (unless included in residential building floor plans);

(vi) ~~clearly delineates~~ the flood plain boundary lines or states there is no floodplain;

(vii) ~~indicates~~ placement of detention/retention pond(s) or states there are no detention ponds;

(viii) ~~describes, if applicable, description of~~ how flood mitigation or other required mitigation will be accomplished; (if applicable);

(ix) ~~indicates~~ the location and number of parking spaces, garages, and carports;

(x) ~~indicates~~ the location and number of accessible parking spaces, garages, and carports, including van accessible spaces;

(xi) ~~includes~~ information regarding local parking requirements; and

(xii) ~~indicates~~ 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 ~~must be submitted~~ for each building type. ~~Building floor plans must include, including~~ the locations of the accessible Units and ~~must also include~~ square footage calculations for balconies, breezeways, corridors and any other ~~areasspace~~ not included in net rentable area.

(C) Unit floor plans for each Unit Type ~~must be included in the Application and must include thewith~~ square ~~footage. Unit floor plans must be submitted for the~~footages, including accessible Units. ~~Applications for~~ Adaptive Reuse ~~are only required to~~Applications will include Unit floor plans for each distinct floor plan such as (one-Bedroom, or two-Bedroom,) and ~~for all floor plans~~ that vary in Net Rentable Area by 10% from the typical floor plan.

(D) Elevations ~~must be submitted~~ for each side of each building type (or ~~include~~ a statement that all other sides are of similar composition as the front) and ~~include~~ a percentage estimate of the exterior composition and proposed roof pitch. ~~Applications for Rehabilitation may~~Applications submit ~~photographs if the post-renovation drawings if proposing to alter~~ Unit configurations ~~are, or photographs if not being altered and post-renovation drawings must be submitted if Unit configurations are proposed to be altered.~~

(9) Site Control.

~~(A) Evidence that the Development Owner has Site Control must be submitted. If the (A) The Application must include evidence is not in the name of the Development Owner, then or an Affiliate of the Development Owner must have Site Control that allows for an (with the ability to assign the) has Site Control to the Development Owner. All of the 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, if any, to members of the Development Team must be identified at the time of Application. The Department may request (if any). An Owner must promptly provide documentation at any time after submission of an Application of the Development Owner's of its ability to compel title of any Affiliated property acquisition(s) and the Development Owner must be able to promptly provide such documentation or the Application, award, or Commitment may be terminated to the Department upon request. The Department acknowledges and understands that the Property may have one or more encumbrances at the time of Application submission and the Department will take into account will consider whether any such encumbrance is reasonable within the Owner's legal and financial ability of the Development Owner to address without delaying development on the timeline contemplated in the Application. To meet the requirements of subparagraph (B) of this paragraph below, Tax-Exempt Bond Developments that do not include requesting a request for Direct Loan or include the Department as the bond issuer, must certify in the Application 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 ~~in order~~ to verify the ~~site~~ acquisition cost as required in §11.302 of this chapter.

(B) ~~In order to establish Site Control, Applicants must provide~~ one of the items ~~described in clauses (i) - (iii) of this subparagraph must be provided below.~~ In the case of land donations, Applicants must demonstrate ~~that the~~ entity donating the land entity has Site Control as ~~evidenced~~ through one of the items ~~described in clauses (i) - (iii) of this subparagraph below~~ or other documentation acceptable to the Department. ~~Site Control items include:~~

(i) ~~a~~ A recorded warranty deed vesting indefeasible title in the ~~Development Owner or, an Affiliate~~ if transferrable ~~to the Development Owner, an Affiliate of the Owner,~~ with corresponding executed settlement statement (or functional equivalent for an existing lease with at least 45 years remaining); ~~or,~~

(ii) ~~a~~ 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; ~~or,~~

(iii) ~~a~~ 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 ~~can be characterized as~~ is an identity of interest transaction, as described in §11.302 of this chapter ~~(relating to Underwriting Rules and Guidelines),~~ then the Application must include additional documentation required ~~as further described therein must be submitted in addition to that of subparagraph (B) of this paragraph.~~

(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, ~~along with evidence that~~ and the fee title owner of the property agrees ~~agreeing~~ that the LURA may extend to the access ~~easement by the time of Commitment, Determination Notice or Contract (as applicable).~~

(E) If control of the entire proposed ~~Development~~ Site requires ~~that~~ vacating a plat ~~or,~~ right of way ~~be vacated to remove a right of way,~~ or similar dedication, the Application must include evidence that the ~~vacation/re-platting~~ process has started. Owner ~~must be included in the Application, and provide~~ evidence of control of the entire ~~Development~~ Site ~~must be provided~~ by the time of Commitment or Contract (as applicable).

(10) Zoning. (§2306.6705(5)) ~~Acceptable evidence of zoning for all Developments~~ Applications must include one of subparagraphs (A) - (D) ~~of this paragraph. In instances where annexation of a Development below. If a~~ Site ~~occurs~~ is annexed while the Application is under review, the Applicant must submit evidence of appropriate zoning with the Commitment or Determination

Notice. Letters ~~evidencing zoning status~~ must be from a local government official with appropriate jurisdiction and no more than ~~6~~six months old at Application submission, ~~except where such evidence is or updated annually~~ for an area where there is no zoning ~~and such letters must be updated annually by the political subdivision.~~

(A) No Zoning Ordinance in Effect. ~~The Application must include a~~A letter ~~from a local government official with appropriate jurisdiction stating that~~stating the Development is located within the boundaries of a political subdivision that has no zoning. This requirement does not apply to a ~~Development~~-Site located entirely in the unincorporated area of a county, and not ~~within the~~an ETJ ~~of a municipality.~~

(B) Zoning Ordinance in Effect. ~~The Application must include a~~A letter ~~from a local government official with appropriate jurisdiction~~ stating the Development is permitted under the provisions of the applicable zoning ordinance ~~that applies to the location of the Development.~~

(C) Requesting a Zoning Change, or a Specific or Special Use Permit. ~~The Application must include evidence in the form of a~~A letter ~~from a local government official with jurisdiction over zoning matters that~~stating the Applicant or Affiliate has ~~made formal application formally applied~~ for a required zoning change and ~~that~~ 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 ~~is not granted. Documentation. Owners must submit documentation~~ of final approval of appropriate zoning, including any necessary specific or special use permits, ~~must be submitted to the Department~~ with the Commitment or Determination Notice.

(D) ~~Zoning for~~ Rehabilitation Developments. ~~In an area with zoning, the Application~~Applications must include documentation of current zoning ~~(if applicable).~~ If the Property is currently conforming but with an overlay that would make it ~~a~~ non-conforming ~~use~~ as presently zoned, the Application must include a letter ~~from a local government official with appropriate jurisdiction which addresses the~~addressing items in clauses (i) - (v) ~~of this subparagraph: 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 ~~must be submitted~~ that includes a legal description ~~that is~~ consistent with the Site Control. If the title commitment or policy is dated more than six 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 ~~must be submitted.~~ Tax-Exempt Bond Developments ~~that do not include~~ requesting a request for Direct Loan or ~~include~~ the Department as the bond issuer are exempt from this requirement.

(A) The title commitment must list the name of the ~~Development~~ Owner as the proposed insured and list the seller or lessor as the current owner of the ~~Development~~ Site.

(B) The title policy must show that the ownership (or leasehold) of the ~~Development~~ Site is vested in the name of the ~~Development~~ Owner.

(12) Ownership Structure and Previous Participation.

~~(A) The Department assumes that the Applicant will be able to form any one or more business entities, such as a limited partnership, that are to be engaged in the ownership of a Development as represented in the Application, and that all necessary rights, powers, and privileges including, but not limited to, Site Control will be transferable to that entity.~~ (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. ~~A chart~~ Applicants must ~~be submitted that clearly illustrates the organizational structure of~~ submit charts for the proposed ~~Development~~ Owner ~~and of any~~ Developer, and Guarantor, (if applicable)

(i) illustrating the organizational structures,

(ii) identifying all Principals thereof, and

(iii) providing the names and ownership percentages of all Persons having an ownership interest ~~in the Development Owner, Developer and Guarantor, as applicable~~, whether directly or through one or more subsidiaries, ~~whether or not they have Control. Persons regardless of~~ having Control ~~over the Development should be specifically identified on the chart. Individual. The charts must include individual~~ board members and executive directors of nonprofit entities, governmental bodies, and corporations, as applicable, ~~must be included in this exhibit~~ and trusts must list all beneficiaries that have the legal ability to control or direct activities of the trust and are not just financial beneficiaries.

(iv) Notwithstanding the foregoing, in the case of ~~Housing Tax Credit~~ 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, ~~as provided in the Application,~~ must include all Persons identified on the organizational charts, and ~~further identify which of those Persons listed~~ Person(s) exercise Control of the Development.

(C) Previous Participation. ~~Evidence~~ Each of the following must ~~be submitted that each entity shown on the organizational charts described in subparagraph (B) of this paragraph and each individual who exercises Control over the Development has provided a copy of the~~ submit completed previous participation information ~~to the Department. Individual Principals of such entities identified on the organizational chart and on the List of Organizations form, must provide the previous participation information, unless excluded from such requirement pursuant to Chapter 1 Subchapter C of this title (relating to Previous Participation Review).~~ The information must include ~~a list of~~ all Developments that are, or were, previously under ownership or Control of the Applicant or each Principal, including any Person providing the required experience. ~~All and disclose all~~ participation in any Department funded or monitored activity, ~~(including non-housing activities, as well as Housing Tax Credit), and HTC developments or other programs administered by other states using state or federal programs must be disclosed.~~ federal funds. The individuals ~~providing previous participation information~~ must authorize the parties overseeing such assistance programs to release compliance histories to the Department.

(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.

(D) Direct Loan and 811 PRA. ~~In addition to the information required in (B) and (C) of this subparagraph, if~~ the Applicant is applying for Direct Loan funds or claiming points for ~~serving tenants with special housing needs through~~ 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, ~~when completing in~~ the organizational ~~chart~~ charts and the Previous Participation information. In addition, ~~for if requesting~~ 811 PRA, ~~if and~~ claiming points for an Existing Development(s), include the organizational chart for ~~the Existing Development(s) must also be included in the Application~~ each.

(13) Nonprofit Ownership. Applications ~~that involve~~involving a §501(c)(3) or (4) nonprofit, housing finance corporation or public facility corporation as the General Partner or Owner ~~shall~~must submit the documentation identified in subparagraph (A) or (B) ~~of this paragraph below~~, as applicable. ~~Additionally, , and~~ a resolution approved ~~at a regular meeting of~~by the majority of the board of directors ~~of the nonprofit~~, indicating their awareness of the organization's participation in each specific Application; and naming all board members ~~of the board~~ and employees who may act on its behalf, ~~must be provided. For Tax-Exempt Bond Developments, (if the bond issuer is the sole member of the General Partner, a copy of the executed inducement resolution~~ will meet the resolution meets this requirement ~~in this paragraph).~~

(A) Competitive HTC Applications for the Nonprofit Set-Aside. Applications for Competitive Housing Tax CreditsHTCs involving a §501(c)(3) or (4) nonprofit General Partner and which meet the Nonprofit Set-Aside requirements, must submit ~~all of~~ the documents described in clauses (i) to (v) ~~of this subparagraph 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 ~~treated~~ under the Nonprofit Set-Aside and a certification ~~that they do not expect to receive~~expecting a benefit in the HTC allocation ~~of tax credits~~ as a result of being Affiliated with a nonprofit, only need to submit the documentation in subparagraph (B) of this paragraph. ~~Required documents include:~~

(i) An IRS determination letter ~~which states that~~stating the nonprofit organization ~~has been determined by the Internal Revenue Service to be~~is tax-exempt under §501(c)(3) or (4) of the Code;.

(ii) The Nonprofit Participation exhibit ~~as provided~~ in the Application, including a list of the names and contact information for all board members, directors, and officers;.

(iii) A Third Party legal opinion stating that:

(I) ~~That~~ the nonprofit organization is not Affiliated with or Controlled by a for-profit organization and the basis for that opinion;

(II) ~~That~~ the nonprofit organization is eligible, as further described, for a Housing Creditan HTC Allocation from the Nonprofit Set-Aside pursuant to Code, §42(h)(5) and the basis for that opinion;

(III) ~~That~~ one of the exempt purposes of the nonprofit organization is to provide low-income housing;

(IV) ~~That~~ the nonprofit organization prohibits a member of its board of directors, other than a chief staff member serving concurrently as a member of the board, from receiving material compensation for service on the board. ~~If~~ 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) ~~That~~ the Qualified Nonprofit Development will have the nonprofit entity or its nonprofit Affiliate or subsidiary be the Developer or co-Developer as evidenced in the development agreement; and

(VI) ~~That~~ the nonprofit organization ~~has the ability~~is able to do business as a nonprofit in Texas~~;~~;

(iv) ~~a~~A copy of the nonprofit organization's most recent financial statement as prepared by a ~~Certified Public Accountant; and~~certified public accountant.

(v) ~~evidence~~Evidence in the form of a certification that a majority of the members of the nonprofit organization's board of directors principally reside:

(I) in ~~this state~~Texas, if the Development is ~~located~~ in a Rural Area; or

(II) ~~not more than within~~ ninety (90) miles ~~from of~~ the Development, if ~~the Development is not located in a Rural Area~~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 ~~which states that~~stating the nonprofit organization ~~has been determined by the Internal Revenue Service to be~~is tax-exempt under §501(c)(3) or (4) of the Code; and

(ii) the Nonprofit Participation exhibit as provided in the Application.

(C) If the Application involves a nonprofit ~~that is~~ not exempt from taxation under §501(c)(3) or (4) of the Code, then ~~they~~it must disclose ~~in the Application~~ the basis of their nonprofit status. Housing finance corporations or public facility corporations that do not have ~~such an~~ IRS determination letter ~~shall~~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. ~~This report, compiled by the Applicant or Third Party Consultant, and prepared in accordance with this paragraph, which reviews site conditions and development requirements of the Development and Development Site, is required and Applications must meet all of~~include a Feasibility Report meeting the criteria provided in subparagraphs (A) to (F) ~~of this paragraph. For Acquisition and below;~~ Rehabilitation Applications ~~that are only requesting 9% Housing Tax Credits, or 4% Housing Tax Credits~~HTCs and Tax-Exempt Bond

Developments for which the Department is not the bond issuer, will meet only subparagraph (D) of this paragraph is required to be submitted. ~~If an Application involves Acquisition and Rehabilitation along with other activities, the Feasibility Report is required for the entire Development. Tax-Exempt Bond Developments where the Department is the bond issuer, or Direct Loan Applications, a report that meets all of the criteria provided in subparagraphs).~~

(A) ~~to (F) of this paragraph~~ Reports must be submitted.

~~(A) For all Applications, careful focus and attention should be made regarding~~ address any atypical items materially impacting costs or the successful and timely execution ~~of the Development plan. The report must also~~ and include the following statement, ~~any:~~ "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 must provide a narrative overview of the Development in sufficient detail that would help a reviewer of the Application better understand the site, the site plan, off site requirements (including discussion of any seller contributions or reimbursements), any other unique development requirements, and their impact on Site Work and Off-Site Construction costs. It should specifically describe any atypical or unusual factors that will impact site design or costs, including but not limited to: Critical Water Quality Zones, habitat protection requirements, construction for environmental conditions (wind, hurricane, flood), and local design restrictions.~~

(B) An Executive Summary.

(C) ~~The Report should contain a~~ A general statement regarding the level of site development due diligence ~~that has been done relating to site development~~ (including discussions with local ~~government development offices~~). ~~Where ordinances or similar information is required, provide governments), providing~~ website links ~~rather than copies of the ordinance. Additionally, it should contain~~ 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 ~~impacting the Development.~~

(D) Survey as defined ~~by the Texas Society of Professional Surveyors in their~~ the Manual of Practice for Land Surveying in Texas (Category 1A - Land Title Survey or Category 1B - Standard Land Boundary Survey). Surveys (~~excluding those other than~~ for Rehabilitation ~~Developments~~) 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 ~~U.S. Geological Survey (USGS)/other~~ database topography), site drainage and detention, water and waste water utility tie-ins, general placement of retaining walls, set-back requirements, off-site improvements, and any other typical or locally required items. ~~Off site improvements required for utilities, detention, access or other requirement must be shown on the site plan or ancillary drawings.~~

(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 Environmental Site Assessment, Scope and Cost Review, Appraisal (if applicable), and the Market Analysis must be submitted no later than the Third Party Report Delivery Date as identified in §11.2(b) of this chapter (relating to Tax-Exempt Bond and Direct Loan Development Dates and Deadlines). For Competitive HTC Applications, the Environmental Site Assessment, Scope and Cost Review, Appraisal (if applicable), and the Primary Market Area map (with definition based on census tracts, and site coordinates in decimal degrees, area of PMA in square miles, and list of census tracts included) must be submitted no later than the Full The Department may terminate an Application Delivery Date as identified in §11.2(a) of this chapter (relating to Competitive HTC Deadlines Program Calendar) and the Market Analysis must be submitted no later than the Market Analysis Delivery Date as identified in §11.2(a) of this chapter. For Competitive HTC Applications, if the reports, in their entirety, are not received by the deadline, the Application may be terminated. An for failure to submit Third Party Reports as an electronic copy of the report in the format of in a single file containing all information and (exhibits clearly labeled) with the report type, Development name and Development location are required. All Third Party reports must be prepared in accordance with Subchapter D of this chapter (relating to Underwriting and Loan Policy) by the applicable deadline. The Department may request additional information or revisions from the report provider or revisions to the report as needed. In instances the absence of non-a response by the report provider, the~~

Department may substitute in-house analysis. The Department is not bound by any opinions expressed in the report.

(1) Environmental Site Assessment. ~~This report, required for all Developments and Applications must include an ESA prepared in accordance with the requirements of §11.305 of this chapter (relating to Environmental Site Assessment Rules and Guidelines),~~

(A) All ESAs must ~~not be~~ meet one of the following:

(i) dated ~~not~~ more than 12 months prior to ~~the date of Application submission for non-Competitive Applications, or the first day of either~~ the Application Acceptance Period for Competitive HTC Applications. ~~If this timeframe is exceeded, then- or Application submission for others; or~~

(ii) a letter or updated report ~~must be submitted,~~ dated not more than six months prior to the ~~date of Application submission or the first day of the Application Acceptance Period for Competitive HTC Applications~~ ~~dates above~~ from the ~~Person or organization which prepared the~~ initial assessment author confirming ~~that~~ the site has been re-inspected and either reaffirming ~~theits~~ conclusions ~~of the initial report~~ or identifying ~~the~~ changes ~~since the initial report.~~

~~(A) Existing Developments funded by USDA will not be required to supply this information; however, it is the Applicant's responsibility to ensure that the Development is maintained in compliance with all state and federal environmental hazard requirements.~~

~~(B) Existing Developments funded by USDA are exempt.~~

(C) If the report ~~includes a recommendation that~~ recommends an additional assessment ~~be performed,~~ then ~~a statement from the Applicant must be submitted~~ submit a statement with the Application indicating ~~that those it will perform such~~ additional assessments and recommendations ~~will be performed~~ prior to closing. If the assessments require further mitigating recommendations, then the Owner must submit evidence with the cost certification indicating ~~that the mitigating recommendations~~ they have been carried out ~~must be submitted at cost certification.~~

(2) Market Analysis. ~~The Applications must include a Market Analysis, required for all Developments and~~ prepared in accordance with the requirements of §11.303 of this chapter ~~(relating to Market Analysis Rules and Guidelines), must not be~~ dated not more than six months prior to the date of ~~Application submission or the first day of the Application Acceptance Period for Competitive HTC Applications~~ or Application submission for others. If the report is older ~~than six months,~~ but not more than 12 months prior to the ~~date of Application submission or the first day of the Application Acceptance Period for Competitive HTC Applications~~ forgoing dates, the Qualified Market Analyst ~~that prepared the report~~ author may provide a statement

~~that reaffirms~~ dated not more than six months prior to the foregoing dates reaffirming the findings ~~of the original Market Analysis. The statement may not be dated more than six months prior to the date of Application submission, or Application Acceptance Date for Direct Loan Applications, or the first day of the Application Acceptance Period for Competitive HTC Applications and must be accompanied by the original Market Analysis.~~

(A) For ~~Acquisition/~~Rehabilitation or Reconstruction projects ~~that meet~~meeting the following criteria, ~~a comprehensive market study as outlined in IRS Section 42(m)(1)(A)(iii) shall mean~~ Market Analysis means a location map and a written statement by a disinterested Qualified Market Analyst certifying ~~that the project meets these criteria:~~

(i) ~~All of the all~~ Units ~~in the project~~ 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) ~~The Units are~~ at least 80% of Units are occupied at time of Application; and

(iii) ~~Existing~~existing tenants have a leasing preference or right to return ~~to the Development as stated in~~under a relocation plan.

(B) The report must be prepared by a disinterested Qualified Market Analyst approved by the Department in accordance with ~~the approval process outlined in~~ §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, ~~required for Rehabilitation Developments and Identity of Interest transactions prepared in accordance with §11.304 of this chapter (relating to Appraisal Rules and Guidelines), will satisfy~~ satisfies the requirement for a Market Analysis; ~~however, (the Department may request additional information as needed. (§2306.67055; §42(m)(1)(A)(iii))(D). It is the responsibility of the Applicant to ensure that this analysis forms a sufficient basis for the Applicant to be able to use the information obtained to ensure that the Development will comply with fair housing laws.)~~

(3) Scope and Cost Review (SCR). ~~This report, required Applications~~ for Rehabilitation (excluding Reconstruction) and Adaptive Reuse ~~Developments and must include an SCR prepared in accordance with the requirements of §11.306 of this chapter (relating to Scope and Cost Review Guidelines), must~~dated not ~~be 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; or Application submission for others. If the report is older ~~than six months, but not more than 12 months prior to the date of Application submission or the first day of the Application Acceptance Period for Competitive HTC Applications, the report provider~~forgoing dates, the author may provide a statement ~~that reaffirms the findings of the original SCR. The statement may not be~~ dated not more than six months prior to the ~~date of Application~~

~~submission or the first day of the Application Acceptance Period for Competitive HTC Applications and must be accompanied by the original SCR. For Developments which require foregoing dates reaffirming the findings. A capital needs assessment from required by USDA the capital needs assessment may be substituted for qualifies as the SCR and may be more than six months old, as long as if USDA has confirmed confirms in writing that the existing capital needs the assessment is still acceptable and it meets the requirements of §11.306 of this chapter. All Rehabilitation Developments financed with Direct Loans must also submit a capital needs assessment estimating the useful life of each major system. This assessment must include including a comparison between the local building code and the International Existing Building Code of the International Code Council. The report must be accompanied by, and the Department's SCR Supplement in the form of an excel workbook as published on the Department's website. For. An SCR is not required for Rehabilitation (excluding Reconstruction) and Adaptive Reuse Tax-Exempt Bond Developments that do not include including a request for Direct Loan or where the Department is not the bond issuer, a Scope and Cost Review prepared by a Third Party is not required. The application (must include a Scope of Work Narrative as described in §11.306(j) of this chapter (relating to Scope and Cost Review Guidelines).~~

(4) Appraisal. ~~This report~~An Appraisal prepared in accordance with the requirements of §11.304 of this chapter ~~(relating to Appraisal Rules and Guidelines), is required for any Application claiming any portion of the building acquisition in Eligible Basis, and Identity of Interest transactions pursuant to Subchapter D of this chapter. 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 ~~the date of~~ Application submission, the Application Acceptance Date for Direct Loan Applications, or the first day of the Application Acceptance Period for Competitive HTC Applications. ~~For Developments that require an appraisal from USDA, the~~An appraisal required by USDA may be more than six months old, ~~as long as if~~ USDA ~~has confirmed~~confirms in writing that ~~the existing appraisal it~~ is still acceptable. Notwithstanding the foregoing, ~~if the Application contains a Market Analysis and the appraisal is not required to fulfill purposes other than establishing the value of land or buildings, an appraisal~~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's~~Board will base decisions regarding awards or the issuance of Determination Notices, if applicable, ~~shall be based upon the Department's~~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 ~~(relating to the Multifamily Direct Loan Rule)~~ 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 ~~shall~~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 ~~Department~~ staff. Good cause includes the Board's decision to apply discretionary factors where authorized.

The Department ~~reserves the right to~~ may reduce the amount of funds requested in an Application, condition the ~~Housing Tax Credit~~ 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 ~~subsequent to~~ after an award.

~~Waiver. The Department will not accept waiver requests on Competitive HTC Applications will not be accepted between submission of the Application and any 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 identify and 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. The Applicant must submit plans for mitigation or alternative solutions with the waiver request. Any such request for waiver submitted by an Applicant must be specific to an actual proposed Development and must be submitted to the Department in the format required in the Multifamily Programs Procedures Manual. Any waiver, if granted, shall apply solely to the Application and shall not constitute a general modification or waiver of the rule involved. All waiver requests must meet the requirements of paragraphs (1) and (2) of this section.~~

(1) A ~~waiver~~ 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 ~~of the Applicant~~ or is due to an overwhelming need. A Staff recommendation for a waiver may be subject to the Applicant's provision of alternative design elements or amenities ~~of a similar nature or that serve a similar purpose. Waiver. The Department will not consider waiver requests for items that were~~ elected to meet scoring criteria or where the Applicant ~~was provided~~ chose a menu of options ~~to meet the requirement will not be considered to satisfy this paragraph,~~ unless the Applicant demonstrates that all potential options have been exhausted.

(2) The waiver request must establish how, ~~by granting the waiver, it~~ better serves the policies and purposes articulated in Tex. Gov't Code §§2306.001, 2306.002, 2306.359, and 2306.6701, ~~(which are general in nature and apply to the role of the Department and its programs, including the Housing Tax Credit program) than not granting the waiver than not.~~

(3) The Board may not grant a waiver to provide, directly or implicitly, any Forward Commitments, unless ~~due to it determines~~ extenuating and unforeseen circumstances ~~as determined by the Board.~~ The Board may not waive any requirement contained in statute. The Board may grant a waiver ~~that is~~ in response to a natural, federally declared disaster that occurs

after the adoption of the ~~Qualified Allocation Plan~~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 ~~employed by the Department. This subchapter provides rules for the underwriting review of an affordable housing Development's financial feasibility and economic viability that ensures the most efficient allocation of resources while promoting and preserving the public interest in ensuring the long-term health of an awarded Application and the Department's portfolio. In addition, this subchapter guides staff in making recommendations to the Executive Director and the Board to help ensure procedural consistency in the determination of Development feasibility (Texas Government Code §§2306.081(c), 2306.185, and 2306.6710(d)). Due to the unique characteristics of each Development, the~~ (§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) ~~Pursuant to Tex. Gov't Code §2306.148 and §2306.185(b), the~~The Board is authorized to adopt underwriting standards as set forth in this section. ~~Furthermore, for Housing Credit Allocation, Code §42(m)(2), requires the tax credits allocated to a Development not to exceed the amount necessary to assure feasibility. Additionally, 24 CFR Parts 92 and 93, as further described in CPD Notices 15-11 and 21-10 require the Department to adopt rules and standards to determine the appropriate Multifamily Direct Loan feasibility. The rules adopted pursuant to the Tex. Gov't Code and the Code are developed to result in an~~ (§2306.148 and §2306.185(b)) The Underwriting Report (Report) ~~used by the Board in decision making with the goal of assisting as many Texans as possible by providing no more financing than necessary based on an independent analysis of Development feasibility. The Report generated~~ in no way guarantees or purports to warrant the Development's actual performance, feasibility, or viability ~~of the Development.~~

(2) ~~Oversourcing of Funds.~~ The total amount of Department-allocated funds/resources combined with any additional soft funds that are grants or below commercial-rate financing specifically provided for ~~the financing of~~ affordable housing from other units of government may not exceed the total cost of all non-market Units ~~at the development~~, calculated on a per-unit basis. ~~For purposes of this subsection, soft funds include any grants, below-market interest rate loans, or similar funds with a total cost to the Applicant that is below commercial-rate financing, but does not include payable loans provided at commercial rates~~

~~with deferred payments.~~ If the Department determines ~~that~~ a Development is ~~oversourced~~ over sourced, the Applicant ~~will be required to~~ must reduce the soft funds provided by other units of government ~~so as to no longer be~~ oversourced.

(b) Report Contents. The Report provides a synopsis and reconciliation of the Application information submitted by the Applicant. ~~For the purpose of this subchapter the term~~ Application includes, including additional documentation submitted after the initial award ~~of funds that is~~ relevant to any subsequent reevaluation. The Report contents will be based upon ~~on~~ information ~~that is~~ provided in accordance with and within the timeframes set forth in this chapter, Chapters 11, 12, or 13, or in a ~~Notice of Funds Availability (NOFA),~~ NOFA, as applicable.

(c) Recommendations in the Report. ~~The conclusion of the Report, if being recommended, includes a recommended award of funds or Housing Credit Allocation Amount and states any feasibility or other conditions to be placed on the award.~~ The award amount in a Report is ~~based on~~ the lesser of the ~~amounts determined using the~~ methods in paragraphs (1) - (3) ~~of this subsection below:~~

(1) Program Limit Method. For ~~Housing Credit Allocations~~ HTC, this method is based upon ~~on~~ calculation of Eligible Basis after applying all applicable cost verification measures and program limits ~~as described in this section. The Applicable Percentage used is defined in §11.1(d) of this chapter (relating to Definitions).~~ For ~~Department other~~ programs ~~other than Housing Tax Credits~~, this method is ~~based upon calculation of the funding limit in current the program rules or NOFA at the time of underwriting funding limit.~~

(2) Gap Method. This method evaluates the amount of funds needed to fill the gap ~~created by between~~ Total Housing Development Cost ~~less and~~ total non-Department ~~sourced funds or Housing Tax Credits.~~ resources. In making this determination, the Underwriter ~~resizes:~~

(i) Resizes any anticipated Deferred Developer Fee downward (but not less than zero) before reducing ~~the amount of Department funds or Housing Tax Credits. In the case of Housing Tax Credits, the syndication proceeds needed to fill~~ Department resources.

(ii) Divides the gap ~~in permanent funds are divided~~ by the syndication rate to determine the ~~amount of Housing Tax Credits. In making this determination and based upon specific conditions set forth in the Report, the Underwriter may~~ 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 ~~make adjustments to adjust~~ any Department financing, such that the cumulative ~~Debt Coverage Ratio (DCR)~~ conforms to the standards described in this section. ~~For Housing Tax Credit Developments at~~

(iv) At cost certification, consider timing adjusters ~~may be considered~~ as a reduction to equity proceeds ~~for this purpose. Timing adjusters must be if~~ consistent with ~~and documented in the original partnership agreement (at admission of originally admitting the equity partner)~~ but and relating to causes outside of the Developer's or Owner's control. The equity partner must provide a calculation of the ~~amount of the~~ adjuster ~~to be used by the Underwriter~~ amount.

(3) The Amount Requested. ~~The amount of funds that is requested by the Applicant. For Housing Tax Credit Developments (exclusive of Tax-Exempt Bond Developments) this amount is limited to the~~ The amount requested in the original Application documentation.

(d) Operating Feasibility. ~~The~~ The Underwriter tests a Development's operating feasibility ~~of a Development funded by the Department is tested~~ by analyzing its Net Operating Income (NOI) to determine ~~the Development's~~ ability to pay debt service and ~~meet~~ other financial obligations throughout the Affordability Period. ~~NOI is determined by subtracting operating expenses, including replacement reserves and taxes, from rental and other income sources.~~

~~(1) Income. In determining the~~ The Department will use the Underwriter's estimates unless the Applicant's EGI, Total Operating Expenses, and first year ~~stabilized pro forma, the~~ NOI are within 5% of the Underwriter's.

(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. ~~Miscellaneous, and miscellaneous~~ income, vacancy and collection loss limits ~~as set forth in based on~~ subparagraphs (B) and (C) of this paragraph, ~~(respectively, are used)~~ unless ~~well-documented support is provided and independently verified by~~ the Underwriter verifies otherwise.

(A) Rental Income. The Underwriter will ~~review~~ determine if the Applicant's proposed rent schedule ~~and determine if it is~~ consistent with ~~the~~ representations made ~~throughout in~~ the Application. ~~The Underwriter will and~~ independently calculate a Pro Forma Rent for comparison to the Applicant's estimate in 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 ~~justified and~~ supported by the attribute adjustment matrix of Comparable Units as described in §11.303 of this chapter ~~(relating to Market Analysis Rules and Guidelines). Independently. The Underwriter may use~~ independently determined Market Rents ~~by the Underwriter may be used~~ based on ~~rent~~ information gained from direct contact with comparable properties, ~~whether or even if~~ not used by the Market Analyst and other market data sources. ~~For all the~~

Development ~~that~~ 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 at the time when the underwriting begins. When The same GPR will apply to all Applications when underwriting for a simultaneously funded competitive round, ~~all Applications are underwritten with the Gross Program Rents for the same year.~~ If ~~Gross Program Rents are adjusted by~~ the Department after adjusts GPR between the close of the Application Acceptance Period, ~~but prior to and Report~~ publication ~~of the Report~~, the Underwriter may adjust the Effective Gross Income (EGI) to account for any increase or decrease ~~in Gross Program Rents for the purposes of determining the reasonableness of the Applicant's EGI.~~

(iii) Contract Rents. The Underwriter will review rental assistance contracts to Achievable Affordable Rents. The Underwriter will assume a 10% increase over the Market Analyst's conclusion of Achievable Affordable Rents if less than GPR and reasonably supported by the 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 ~~to the Development. Documentation supporting the and~~ likelihood of continued ~~rental assistance is also reviewed. The Underwriter will take, taking~~ into consideration the Applicant's intent to request ~~a Contract Rent an~~ increase. ~~At the discretion of the The~~ Underwriter, may use the Applicant's proposed rents ~~may be used~~ as the Pro Forma Rent, with the Report recommendations ~~of the Report~~ conditioned ~~upon on~~ receipt of final approval of ~~such an the~~ increase. Tenant-based vouchers or ~~tenant based~~ rental assistance ~~are do~~ not ~~included count~~ as Income.

(ivv) Utility Allowances. The Utility Allowances ~~used in underwriting~~ must ~~be in compliance comply~~ with all applicable federal guidance, and §10.614 of this title ~~(relating to Utility Allowances). Utility Allowances must be, including being~~ calculated for individually metered tenant paid utilities.

(vvi) Net Program Rents. Gross Program Rent less Utility Allowance.

~~(vi) Actual Rents~~ (vii) The Underwriter will review actual rents for existing Developments ~~will be reviewed~~ as supported by a current rent roll. ~~For, and for~~ Unstabilized Developments, use actual rents ~~will be~~ based on the most recent units leased with occupancy and leasing velocity ~~considered. Actual rents. The Underwriter~~ may ~~be adjusted by the Underwriter~~ adjust actual rents to reflect lease-up concessions and other market considerations.

~~(vii) Collected~~ (viii) Pro Forma Rent. Represents is the monthly rent amount collected for each Unit Type. ~~For: Contract Rent for~~ rent-assisted units, ~~the Contract Rent is used. In absence of a Contract Rent, and~~ the lesser of the Net Program Rent, Achievable Affordable Rent, Market Rent or actual rent ~~is used for others~~.

(B) Miscellaneous Income. ~~All~~ 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, ~~are anticipated to be included in a \$5 to \$30 per Unit per month range. Projected income from tenant-based rental assistance will not be considered. Exceptions may be made at the discretion of the~~ The Underwriter and must be may make exceptions if supported by either the Development's normalized operating history ~~of the Development~~ or other existing comparable properties within the same market area.

(i) The Applicant must show ~~that a tenant~~ tenants will not be required to pay the additional fee or charge as a condition of renting a Unit and ~~must show that the tenant has~~ 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) ~~Collection~~ The Underwriter will heavily discount collection rates of exceptional fee items ~~will generally be heavily discounted~~.

(iv) If the Owner will charge an additional fee ~~is charged~~ 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 ~~the amenity must be excluded from Eligible Basis~~ 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) ~~may be underwritten at a combined 5% vacancy rate~~.

~~(D) Effective Gross Income (EGI). EGI is the total of Collected Rent for all Units plus Miscellaneous Income less Vacancy and Collection Loss. If the Applicant's pro forma EGI is within 5% of the EGI independently calculated by the Underwriter, the Applicant's EGI is characterized as reasonable in the Report; however, for purposes of calculating the underwritten DCR the Underwriter's pro forma will be used unless the Applicant's pro forma meets the requirements of paragraph (3) of this subsection.~~

~~(2) Expenses. In determining the first year stabilized operating expense pro forma, the Underwriter evaluates the reasonableness of the Applicant's expense estimate based upon the characteristics of each Development, including the location, utility structure, type, the size and number of Units, and the Applicant's management plan. Historical, stabilized and certified financial statements of an existing Development or Third Party quotes specific to a Development will reflect the strongest data points to predict future performance. The Underwriter may review actual operations on the Applicant's other properties monitored by the Department, if any, or review the proposed management company's comparable properties. The Department's database of properties located in the same market area or region as the proposed Development also provides data points; expense data from the Department's database is available on the Department's website. Data from 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 may be referenced. In some cases 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. Estimates of utility savings from green building components, including on-site renewable energy, must be documented by an unrelated contractor or component vendor.~~

(2) Expenses.

(A) General and Administrative Expense. ~~(G&A)~~ Accounting fees, legal fees, advertising and marketing expenses, office operation, supplies, and equipment expenses. ~~G&A;~~ does not include partnership related expenses ~~such as~~ (asset management, accounting or audit fees. ~~Costs of~~ or tenant services ~~are not included in G&A.~~

(B) Management Fee. ~~Fee paid to the property management company to oversee the operation of the Property and is most often based upon a percentage of EGI as documented in an existing property management agreement or proposal.~~ The Underwriter will use the Applicant's proposed Management Fee if ~~it is within the range of 4% to 6% of EGI.~~ AAn Applicant must document a proposed fee outside of this range ~~must be documented.~~

(C) Payroll Expense. ~~Compensation, insurance benefits, and payroll taxes for on-site office, leasing and maintenance staff.~~ Payroll does not include ~~Third Party~~ third-party security ~~or,~~ tenant services contracts. ~~Staffing specific to tenant services, security~~ or other staffing not related to customary property operations ~~should,~~ which must be itemized and included in other expenses ~~or tenant services expense.~~

(D) Repairs and Maintenance Expense. ~~Materials and supplies for the repairs and maintenance of the Development including Third Party maintenance contracts. This line item does~~ Does not include costs ~~that are~~ customarily capitalized ~~that would result~~ resulting from major replacements or renovations.

(E) Utilities Expense. ~~Gas and electric energy expenses paid by the Development. An unrelated contractor or component vendor must document~~ Estimates of utility savings from green building components, including on-site renewable energy, ~~must be documented by an unrelated contractor or component vendor.~~

(F) Water, Sewer, and Trash Expense. ~~(WST). Includes all water, sewer and trash expenses paid by the Development.~~

(G) Insurance Expense. ~~Cost of Insurance coverage for the buildings, contents, and general liability, but~~ Does not include health or workman's compensation insurance.

(H) Property Tax. Includes real property and personal property taxes but not payroll taxes.

(i) ~~An~~ The Underwriter will calculate an assessed value ~~will be~~ calculated based on the capitalization rate if published by the county taxing authority. ~~If the county taxing authority does not publish a capitalization rate, a capitalization rate of, or either~~ 10% or a comparable assessed value ~~may be used if not.~~

(ii) ~~Other~~ The Underwriter may use other assessed values or property tax estimates ~~may be used~~ based on development specific factors ~~as determined by the Underwriter.~~

(iii) ~~If the Applicant proposes a property tax exemption or Payment in Lieu of Taxes (PILOT) agreement the~~ The Applicant must provide documentation in accordance with §10.402(d) of this title ~~(relating to Documentation Submission Requirements at Commitment of Funds). At the underwriter's discretion, if proposing a property tax exemption or Payment in Lieu of Taxes (PILOT) agreement. The Underwriter may require~~ such documentation ~~may be required~~ prior to Commitment or Determination Notice ~~if deemed necessary.~~

~~(I) Replacement Reserves. Periodic deposits to a reserve account to pay for the future replacement or major repair of building systems and components (generally items considered capitalized costs).~~ (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 ~~other Developments~~ 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 ~~Scope and Cost Review (SCR) or, for existing USDA developments,~~ an amount approved by USDA. The Underwriter may adjust the Applicant's assumption for reserves ~~may be adjusted by the Underwriter~~ if the amount ~~provided by the Applicant~~ is insufficient to fund capital needs as documented by the SCR during the first fifteen (15) years ~~of the long term pro forma.~~ ~~Higher reserves may be used if documented by a primary lender or syndicator.~~

(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 ~~must be reflected in EGI~~) and TDHCA's compliance fees. ~~For Developments financed by USDA, a Return to Owner (RTO) may be included as an operating expense in an amount consistent with the maximum approved by USDA or an amount determined by the Underwriter. This category does,~~ not include 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. ~~Resident~~ The Underwriter will not include resident services ~~are not included~~ as an operating expense or ~~included~~ in the DCR calculation unless:

- (i) ~~There is the Application documents~~ a ~~documented~~ 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. ~~The state or local government documentation must be provided in the Application and the dollar amount of the financial obligation must be included in the DCR calculation on the 15-year pro forma at Application;~~ or
- (ii) ~~The~~ the Applicant demonstrates a history of providing comparable supportive services and expenses at existing affiliated properties ~~within~~ in the local area; ~~and~~
- (iii) ~~On~~ on-site staffing or pro ration of staffing for coordination of services only, ~~and (not the provision of services,)~~ can be included ~~as a supportive services.~~

(L) Pro-Forma. In determining the operating expense, pro forma, the Underwriter evaluates the reasonableness of the Applicant's expense estimate based on

~~(L) Total Operating Expenses. The total of expense items described in subparagraphs (A) – (K) of this paragraph (relating to Operating Feasibility). If the Applicant's total expense estimate is within 5% of the final total expense figure calculated by the Underwriter, the Applicant's figure is characterized as reasonable in the Report; however, for purposes of calculating DCR, the Underwriter's independent calculation will be used unless the Applicant's first year stabilized pro forma meets the requirements of paragraph (3) of this subsection.~~

~~(3) Net Operating Income (NOI). The difference between the EGI and total operating expenses. If the Applicant's first year stabilized NOI figure is within 5% of the NOI calculated by the Underwriter, the Applicant's NOI is characterized as reasonable in the Report; however, for purposes of calculating the first year stabilized pro forma DCR, the Underwriter's calculation of NOI will be used unless the Applicant's first year stabilized EGI, total operating expenses, and NOI are each within 5% of the Underwriter's estimates. For Housing Tax Credit Developments at cost certification, actual NOI will be used as adjusted~~

~~for stabilization of rents and extraordinary lease-up expenses. Permanent lender and equity partner stabilization requirements documented in the loan and partnership agreements will be considered in determining the appropriate adjustments and the NOI used by the Underwriter. For Tax-Exempt Bond Developments that do not include a request for Direct Loan or where the Department is not the bond issuer, the Underwriter will not develop independent estimates of EGI, Total Operating Expenses, or NOI. The Applicant's NOI will generally be characterized as reasonable, subject to review for compliance with Underwriting Rules and Guidelines.~~

(4)(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.

(3) Debt Coverage Ratio. ~~DCR is calculated by dividing NOI by the sum of the debt service payments on all permanent or foreclosable lien(s) with scheduled and periodic payment requirements, including any required debt service on a Direct Loan subject to the applicable Notice of Funding Availability (NOFA) or other program requirements, and any on-going loan related fees such as credit enhancement fees or loan servicing fees. If executed loan~~

~~documents do not exist.~~ The Underwriter will calculate loan terms (including principal and interest payments ~~are calculated~~) based on the terms indicated in the loan documents if executed, or the most current term sheet(s). ~~Otherwise, actual terms indicated in the executed loan documents will be used. Unusual~~ if not. The Underwriter may consider unusual or non-traditional financing structures ~~may also be considered~~.

(A) Interest Rate. ~~The Underwriter will use the (A) Interest Rate.~~ The rate documented in the term sheet(s) or loan document(s) ~~will be used~~ for debt service calculations. Term sheets indicating a variable interest rate must provide the base rate index or methodology ~~for determining the variable rate index~~ 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 ~~of the interest rate as of the date of such statement.~~ At initial underwriting, the Underwriter may adjust the ~~underwritten~~ interest rate assumption based on market data ~~collected on~~ 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 ~~permanent lender's~~ minimum amortization period ~~will be used if not less than~~ 30 years and ~~not more than~~ maximum is 40 years. ~~Up (up to 50 years may be used for federally sourced or insured loans. For permanent lender debt with amortization periods less than 30 years, 30 years will be used. For permanent lender debt with amortization periods greater than 40 years, 40 years will be used. For non-Housing Tax Credit except for transactions that include Direct Loan funds).~~ The Underwriter will use the permanent lender's amortization period within that range. Non-HTC transactions may use a lesser amortization period ~~may be used~~ if the Direct Loans will be fully amortized over the same period ~~as the permanent lender debt~~.

(C) Repayment Period. ~~For purposes of projecting the DCR over a 30-year period for Developments with~~ For permanent financing structures with balloon payments in less than 30 years, the Underwriter will ~~carry~~ 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 ~~as set forth~~ in clauses (i) or (ii) of this subparagraph, the ~~acceptable~~ 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 ~~Housing Tax Credit~~ HTC Developments at cost certification).

(i) If the DCR is less than the minimum, the Report recommendations ~~of the Report~~ may be based on a reduction to debt service and the Underwriter will ~~make adjustments to~~ adjust the financing structure in the priority order ~~presented~~ in

subclauses (I) - (IV) ~~of this clause below~~ (subject to Direct Loan NOFA requirements and program rules~~;~~):

(I) ~~Aa~~ reduction to the interest rate of a Direct Loan that still meets the minimum in the applicable NOFA;

(II) ~~Anan~~ increase in the amortization period of a Direct Loan; and

(III) ~~Aa~~ reduction in the principal amount of a Direct Loan; ~~and~~

~~(IV) Anor an~~ assumed reduction in the permanent loan amount for non-Department funded loans based ~~uponon~~ 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 ~~of the Report~~ may be based on an increase to debt service and the Underwriter will ~~make adjustmentsadjust~~ to ~~the~~ assumed financing structure in the priority order ~~presented~~ in subclauses (I) - (III) ~~of this clause below~~ (subject to Direct Loan NOFA requirements and program rules~~;~~):

(I) an increase to the Direct Loan interest rate ~~of a Direct Loan~~ up to the lesser of the maximum ~~interest rate~~ pursuant to a Direct Loan NOFA or ~~the interest rate~~ on any senior permanent debt ~~or (if no senior permanent debt a market ratenone, as~~ determined by the Underwriter based on current market interest rates~~;~~

~~(II);~~ or a decrease in the Direct Loan amortization ~~period on a Direct Loan but~~ (not less than 30 years~~;~~); and

~~(III)~~ an assumed increase in ~~the non-Department~~ permanent loan amount ~~for non-Department proposed financing(s)~~ based ~~uponon~~ the rates and terms in the ~~permanent loan~~ term sheet ~~as long as they areif~~ within the ranges in subparagraphs (A) and (B) of this paragraph.

(iii) ~~For Housing Tax Credit Developments, a reduction in~~ The Department may reduce the recommended ~~Housing Credit~~ HTC Allocation Amount ~~may be made~~ based on the Gap Method described in subsection (c)(2) of this section as a result of an increased debt assumption~~, if any.~~

~~(iv) In order to comply with TDHCA's agreement with HUD,~~ (iv) Developments financed with a Direct Loan subordinate to FHA financing ~~will have to~~ subject to HUD's Multifamily Accelerated Processing Guide must meet a combined DCR of 1.0 using 75% of surplus cash after deducting the senior debt service ~~is deducted~~ from

~~Net Operating Income (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)

~~A mathematical example is provided in the Multifamily Procedures Manual.~~

(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 ~~may limit total debt service~~ if the Direct Loan is the senior primary debt.

(54) Long Term Pro forma. The Underwriter will create a 30-year operating pro forma using the criteria ~~provided~~ 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 ~~is utilized~~ for income and a 3% ~~annual growth factor is utilized~~ for operating expenses, except for management fees ~~that are~~ calculated based on a ~~percentage~~percent of ~~each year's~~ EGI.

(C) Adjustments ~~may be made to the long term pro forma if based on~~ satisfactory support documentation ~~is~~ provided by the Applicant or as independently determined by the Underwriter.

(e) Total Housing Development Costs. The ~~Department's~~Department will base the estimate of ~~the~~ Total Housing Development Cost ~~will be based~~ on the Applicant's Development cost schedule to the extent ~~that costs the Underwriter~~ can ~~be verified~~verify it to a reasonable degree of certainty using available tools and with documentation from the Applicant ~~and tools available to the Underwriter.~~ For New Construction Developments, the Department will use Underwriter's total cost estimate ~~will be used~~ unless the Applicant's ~~Total Housing Development Cost~~ is within 5% of it. The Department will base the ~~Underwriter's~~ estimate. ~~The Department's estimate of the Total Housing Development Cost~~ for Rehabilitation Developments or Adaptive Reuse Developments ~~will be based~~ on the estimated cost ~~provided in the SCR for the scope of work as defined by the Applicant and §11.306(a)(5) of this chapter (relating to SCR Guidelines);~~ (the Underwriter may make adjustments ~~to the SCR estimated costs.~~). If the Applicant's ~~cost estimate is utilized and the Applicant's~~ line item costs are inconsistent with ~~documentation provided in the Application or program rules, the Underwriter may make adjustments to the Applicant's Total Housing Development Cost.~~adjust. For Competitive ~~Housing Tax Credit~~HTC Applications, the Underwriter will adjust an Applicant's cost schedule line item to meet program rules. ~~Underwriter will but~~ not make subsequent adjustments to ~~the application to meet feasibility requirements as a result of the initial adjustment required to meet program rules.~~

(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 ~~(relating to Appraisal Rules and Guidelines)~~.

(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 ~~the URA~~ appraisal requirements ~~in the Uniform Relocation Assistance and Act of 1970~~, the underwritten acquisition cost will be the amount(s) ~~reflected~~ in the Site Control document(s) ~~for the Property~~. 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 ~~the Uniform Relocation Assistance and Acquisition Act of 1970~~ URA, the underwritten acquisition cost will be the lesser of the amount ~~reflected(s)~~ in the Site Control documents ~~for the property~~ or the ~~appraised~~ value ~~as~~ determined by an appraisal ~~that meets~~ meeting the requirements of §11.304 of this chapter ~~(relating to Appraisal Rules and Guidelines)~~. An appraisal is not required ~~if the~~ for donated land or buildings ~~are donated to the proposed Development, and if~~ no costs of acquisition appear on the Development Cost Schedule. ~~For an identity of interest transaction~~ 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, ~~the settlement statement for the most recent third-party acquisition must be included with the site control documents.~~

. An acquisition will be considered 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 in the case of~~ Application Date for a tax-exempt bond ~~or 4% tax credit application the Application Date)~~.

(iii) TDHCA prohibits cash-out to a related-party seller in an identity of interest transaction for Competitive ~~Housing Tax Credit~~ HTC Applications (~~This section~~ does

not apply to Existing Developments funded by USDA, or those that include a ~~Non-Profit~~Nonprofit, a Housing Authority, or an instrumentality of a Housing Authority in the ownership structure). For purposes of this paragraph, cash-out is ~~defined as~~ the lesser of the amount reflected in the Site Control documents ~~for the property~~ 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 ~~that are~~ 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, ~~shall do not be considered in 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 ~~are required~~ to substantiate the calculation of cash-out. The term sheet and ~~to support Department underwriting. All~~ seller notes in identity of interest transactions must comply with the following requirements:

(I) ~~The term sheet and note must~~ be cash-flow contingent, with no required payments unless surplus cash is available;

(II) ~~The term sheet and note must~~ have no ~~debt coverage ratio (DCR)~~ requirements for payment eligibility;

(III) ~~The term sheet and LPA must~~ state that the seller note is paid after deferred developer fee.

(iv) For all identity of interest acquisitions, the ~~cost used~~amount allowed at cost certification will be limited to the acquisition cost underwritten in the initial Application Underwriting ~~of the Application~~.

(v) ~~In cases where more land will be acquired (by)~~ If the Applicant or a Related Party ~~will acquire more land~~ than ~~will be utilized as~~ the Development Site 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 ~~ascribed to the proposed Development Site will be prorated~~ based on acreage from the total cost ~~reflected~~ in the Site Control document(s) or the appraisal, (if required). In making a proration, the Underwriter may use an appraisal ~~is required. An appraisal containing segregated values for the total acreage to be acquired, the acreage for the Development Site and the remainder acreage may be used by the Underwriter in making a proration determination based on relative value.~~ The Underwriter will not utilize 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 ~~approved by USDA.~~

(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 ~~that meets~~ meeting the requirements of §11.304 of this chapter ~~(relating to Appraisal Rules and Guidelines).~~ If the acquisition cost in the Site Control documents is less than the appraised value, Underwriter will ~~utilize the land value from~~ use the appraisal land value and adjust the building acquisition cost accordingly.

(2) Off-Site Costs. The Underwriter will only consider ~~costs of~~ 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.

~~(3) Site Work Costs. The Underwriter will only consider costs of Site Work, 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 ~~use~~ 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 ~~Housing Tax Credit~~ HTC developments, and

(iii) other acceptable cost data available ~~to the Underwriter to estimate Building Cost. Generally, the "Average Quality" multiple, townhouse, or single family.~~

(B) Applications must support costs, as appropriate, from the Marshall and Swift Residential Cost Handbook or other comparable published Third-Party data source, will be used based upon details provided in the Application and particularly building plans and elevations. Costs for multi-level parking structures must be supported 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 Average Quality standard. The Underwriter may consider a sales tax exemption for nonprofit General Contractors M&S base costs.

(BC) Rehabilitation and Adaptive Reuse.

(i) The Applicant must provide a scope of work and narrative description of the work to be completed. ~~The narrative should speak~~ 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 ~~that~~ the reader can understand the work ~~and it must generally be,~~ arranged consistent with the line-items on the SCR Supplement, ~~and must also be~~ 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 ~~as the basis for estimating Total Housing Development Costs.~~

(5) Contingency. ~~Total~~ The maximum total contingency, including ~~any for~~ soft ~~cost~~ contingency, will be limited to costs, is a maximum of 7% of Building Cost plus Site Work and Off-Site Construction for New Construction and Reconstruction Developments, ~~and 10% of Building Cost plus Site Work and Off Site Construction~~ for Rehabilitation and Adaptive Reuse Developments. For ~~Housing Tax Credit~~ HTC Developments, the percentage is applied to the sum of the eligible Building Cost, eligible Site Work costs and eligible Off-Site Construction costs ~~in calculating the eligible contingency cost.~~

(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.

(B) Total Housing Development Costs will not include any amounts in excess of the limits above.

(C) 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.

(D) 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. ~~General Contractor fees are limited to a total of 14% on Developments with Hard Costs of \$3 million or greater, the lesser of \$420,000 or 16% on Developments with Hard Costs less than \$3 million and greater than \$2 million, and the lesser of \$320,000 or 18% on Developments with Hard Costs at \$2 million or less. Any contractor fees to Affiliates or Related Party subcontractors regardless of the percentage of the contract sum in the construction contract (s) will be treated collectively with the General Contractor Fee limitations. Any fees paid to an organization to achieve a sales tax exemption will be included in the General Contractor Fee. Any General Contractor fees above this limit will be excluded from Total Housing Development Costs. For Housing Tax Credit Developments, the percentages are applied to the sum of the Eligible Hard Costs in calculating the eligible contractor fees. For Developments also receiving financing from USDA, the combination of builder's general requirements, builder's overhead, and builder's profit should not 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 be included in Eligible Basis.~~

(7) Developer Fee.

(A) For ~~Housing Tax Credit~~HTC Developments, the Developer Fee included in Eligible Basis cannot exceed ~~15%~~the following percents of the ~~project's~~ eligible costs, less Developer Fee, for Developments proposing 50 Units or more, 15%, and ~~20% of the project's eligible costs, less Developer Fee, for Developments proposing 49 Units or less. If the fewer, 20%. The Department~~

(i) will exclude any Developer Fee above this limit from Total Housing Development is an additional phase, proposed by any Principal 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 existing taxGeneral Contractor; construction oversight; consultative services; guaranties, financial, or credit Development, support if a Related Party or Affiliate; and any other customary or similar activities determined by the Developer Fee may not exceed 15%, regardless of the number of UnitsDepartment.

(B) For ~~Housing Tax Credit~~HTC Developments, any additional Developer Fee claimed for ineligible costs will be limited to the same percentage but applied only to ineligible Hard Costs. ~~Any Developer Fee above this limit will be excluded from Total Housing Development 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) ~~of and~~ the ~~Developer will be considered part of Developer Fee.~~ ~~All Developer's~~ costs for general and administrative expenses ~~for the Developer,~~ (including, but not limited to, travel, dining, and courier fees ~~will be considered~~) are part of the Developer Fee.

(C) For ~~Housing Tax Credit~~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-~~Housing Tax Credit~~HTC Developments, the percentage can be up to 7.5%, ~~but is based upon % 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. ~~All Term sheets must include all~~ fees required by the construction lender, permanent lender and equity partner ~~must be indicated in the term sheets.~~ Eligible construction period interest is limited to the lesser of the actual ~~eligible construction period interest, 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). ~~For tax-exempt bond (Tax-Exempt Bond) transactions may include up to 24 months of interest may be included.~~ Any excess over this amount will not ~~be included in count as~~ Eligible Basis. Construction period interest on Related Party or Affiliate construction loans ~~is only included in 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 ~~can demonstrate that it is~~ routinely engaged engages in construction financing to unrelated parties.

(9) Reserves. ~~Except for the underwriting of a Housing Tax Credit Development at cost certification, the~~ The Underwriter will ~~utilize~~use the amount presented in the Applicant's Development Cost Schedule up to ~~twelve~~12 months of stabilized operating expenses plus debt service (~~up to twenty-four~~24 months for USDA or HUD-financed rehabilitation transactions). ~~Reserve), and exclude~~ amounts exceeding these limits ~~will be excluded~~ from Total Housing Development Costs. ~~Pursuant to §10.404(c) of this title (relating to Operative Reserve Accounts), and for the underwriting of a Housing Tax Credit Development at cost certification, operating reserves that will be maintained for a minimum period of five years and documented in the Owner's partnership agreement or the permanent lender's loan documents will be included as a development cost.~~

(10) Soft Costs. ~~Eligible soft costs are generally costs that can be capitalized in the basis of the Development for tax purposes. The Underwriter will evaluate and apply the allocation of these soft costs in accordance with the Department's prevailing interpretation of the Code. Generally, the Applicant's costs are used; however 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. This includes, including any one-time fees or payments, excluding any. Any~~ upfront ground lease payments, to a Housing Finance Corporation, Public Finance Corporation, Housing Authority, or ~~Non-Profit~~ Nonprofit that is part of the project ownership structure or is otherwise involved in the project to qualify for a property tax exemption. ~~For 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, ~~the Underwriter will not develop independent estimates for Building Cost or Soft Costs. The Applicant's Total Housing Development Cost and Total Eligible Cost will generally be characterized as reasonable, subject to review for compliance with Underwriting Rules and Guidelines.~~

~~(11) Additional Tenant Amenities. For Housing Tax Credit Developments and after submission of the cost certification package, the (f) The Underwriter may consider costs of additional building and site amenities (suitable for the Target Population being served) proposed by the Owner in an amount not to exceed 1.5% of the originally underwritten Hard Costs. The additional amenities must be included in the LURA.~~

~~(f) Development Team Capacity and Development Plan.~~

~~(1) The Underwriter will evaluate and report on the overall capacity of the Development Team by reviewing aspects, including but not limited to those identified in subparagraphs (A) — (D) of this paragraph:~~

~~(A) Personal credit reports for development sponsors, Developer Fee recipients and those individuals anticipated to provide guarantee(s) in cases when warranted. The Underwriter may evaluate the credit report and identify any bankruptcy, state or federal tax liens or other relevant credit risks for compliance with eligibility and debarment requirements as found in Chapter 2 of this title (relating to Enforcement);~~

~~(B) Quality of construction, Rehabilitation, and ongoing maintenance of previously awarded housing developments by review of construction inspection reports, compliance on-site visits, findings of NSPIRE violations and other information available to the Underwriter;~~

~~(C) For Housing Tax Credit Developments, repeated or ongoing failure to timely submit cost certifications, requests for and clearance of final inspections, and timely response to deficiencies in the cost certification process; and~~

~~(D) Adherence to obligations on existing or prior Department funded developments with respect to program rules and documentation.~~

~~(2) While determine an Application is infeasible despite~~ all components of the Development plan ~~may~~ technically ~~meet~~ meeting the other individual requirements of this section, ~~a confluence of due to~~ serious concerns and unmitigated risks identified during the underwriting process ~~may result in an Application being determined to be infeasible by the Underwriter.~~ Any such recommendation ~~made under this subsection to deny an Application for a Grant, Direct Loan or Housing Credit Allocation~~ is subject to Appeal as further provided for in §11.902 of this chapter ~~(relating to Appeals).~~

(g) Other Underwriting Considerations. The Underwriter will evaluate additional feasibility elements ~~as described~~ in paragraphs (1) - (4) ~~of this subsection~~ 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. ~~The~~ the Underwriter ~~evaluates the site plan, floodplain map, survey and other information provided to determine if~~ determines any of the buildings, drives, or parking areas reside within the 100-year floodplain. ~~If such a determination is made by the Underwriter,~~ the Report will include a condition that:

(A) ~~The~~ the Applicant must pursue and receive a Letter of Map Amendment (~~LOMA~~) or Letter of Map Revision (~~LOMR-F~~); or

(B) ~~The~~ the Applicant must identify the cost of flood insurance for the buildings within the 100-year floodplain, or the entire property if a Direct Loan transaction, and certify ~~that the flood insurance will be obtained~~ obtaining it; and

(C) ~~The~~ the Development ~~must be proposed to be designed to~~ will comply with the QAP, Program Rules and NOFA, and applicable Federal or state requirements.

(3) ~~Proximity to Other Developments. Direct Loans.~~ The Underwriter will ~~identify in the Report any Developments funded or known and anticipated to be eligible for funding within one linear mile of the subject. Distance is measured in a straight line from nearest boundary point to nearest boundary point.~~

~~(4) Direct Loans. In accordance with the requirements of 24 CFR §§92.250 and 93.300(b), a request for a Direct Loan will not be recommended~~ 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, ~~unless~~. 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. The foregoing will not apply if the Applicant elects 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 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. The Department will calculate

(I) Annual Cash Flow ~~will be calculated~~ 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 Department will calculate~~ the total special reserve amount based on the Cash Flow at Direct Loan Closing underwriting. ~~The deposits into the special reserve account must be made annually from 25% of remaining annual cash flow until the total special reserve amount is reached. Alternatively,~~

(ii) Applicant ~~may request~~ requests an increase in the Direct Loan interest rate ~~be increased by Underwriter~~ at Direct Loan Closing underwriting if financial feasibility is still met. ~~If the Direct Loan is not recommended for approval, the remaining feasibility considerations under this section will be based on a revised sources schedule that does not contain the Direct Loan. This standard will also be used when the Development Owner is seeking 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. A special reserve account is not eligible for Developments layered with FHA financing that is subject to HUD's Multifamily Accelerated Processing Guide.~~

~~**(h) Work Out Development.** Developments that are underwritten subsequent to Board approval in order to refinance or gain relief from restrictions may be considered infeasible based on the guidelines in this section, but may be characterized as "the best available option" or "acceptable available option" depending on the circumstances and subject to the discretion of the Underwriter as long as the option analyzed and recommended is more likely to achieve a better financial outcome for the property and the Department than the status quo.~~

(h) Work Out Development. See the Department rules pertaining to asset management. """"

(i) Feasibility Conclusion. A The Report will characterize a Development ~~will be characterized as~~ infeasible if either paragraph (1) or (2) of this subsection applies. ~~The Development will be~~

~~characterized as infeasible if 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 method for determining capture rates for a Development is defined in §11.303 of this chapter (relating to Market Analysis Rules and Guidelines).~~ **The Underwriter will verify** ~~use~~ **either** the ~~conclusions of the~~ **Market Analysis** capture rates and may, at their discretion, ~~use or~~ independently acquired demographic data to calculate demand and may ~~make a determination of~~ **determine** the capture rates based ~~upon~~ **on** an analysis of the Sub-market. ~~The Development~~ **Any capture rates exceed the following:**

~~(A) Is characterized as an Elderly Development and the Gross Capture Rate or any AMGI band capture rate exceeds 10%; or~~

~~(B) Is outside a Rural Area and targets the general population, and the Gross Capture Rate or any AMGI band capture rate exceeds 10% (or 15% for Tax-Exempt Bond Developments located in an MSA (as defined in the HTC Site Demographics Characteristics Report) with a population greater than one million if the average physical occupancy is 92.5% or greater for all stabilized affordable housing developments located within a 20 minute drive time, as supported by the Market Analyst, from the subject Development); or~~

~~(C) Is in a Rural Area and targets the general population, and:~~

~~(i) contains Housing Tax Credit Units of 120 or less, and the Gross Capture Rate or any AMGI band capture rate exceeds 30%; or~~

~~(ii) contains more than 120 Housing Tax Credit Units, and the Gross Capture Rate or any AMGI band capture rate exceeds 10%; or~~

~~(D) Is Supportive Housing and the Gross Capture Rate or any AMGI band capture rate exceeds 30%; or~~

~~(E) Has an Individual Unit Capture Rate for any Unit Type greater than 65%; and~~

~~(F)~~

Maximum Capture Rates			
Population/Size	Area	Gross and AMGI Band	Unit
<u>Elderly</u>	<u>Any</u>	<u>10%</u>	<u>65%</u>
<u>General</u>	<u>Urban</u>	<u>10%</u>	<u>65%</u>
<u>General (120 HTC units or fewer)</u>	<u>Rural</u>	<u>30%</u>	<u>65%</u>
<u>General (121 HTC units or more)</u>	<u>Rural</u>	<u>10%</u>	<u>65%</u>

<u>Supportive Housing</u>	<u>Any</u>	<u>30%</u>	<u>65%</u>
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(A) Developments meeting the requirements of ~~subparagraph (A), (B), (C), (D) or (E) of this paragraph~~the graphic above may avoid being ~~characterized as~~ infeasible if clause (i) or (ii) ~~of this subparagraph below~~ apply:

(i) Replacement Housing. The proposed Development is comprised of affordable housing which replaces previously existing affordable housing within the Primary Market Area ~~as defined in §11.303 of this chapter (relating to Market Analysis Rules and Guidelines)~~ on a Unit for Unit basis, and gives the displaced tenants ~~of the previously existing affordable housing~~ a leasing preference; ~~or,~~

(ii) Existing Housing. The proposed Development is comprised of existing affordable housing, ~~whether defined by~~ (an existing land use and rent restriction agreement or if the subject rents are at or below 50% AMGI rents,) 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 ~~an~~ HTC allocation ~~of tax credits where,~~ the estimated Deferred Developer Fee, ~~based on the underwritten capitalization structure,~~ 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) ~~Except when underwritten at cost certification, the~~ The first year stabilized pro forma operating expense divided by the first year stabilized pro forma ~~Effective Gross Income~~ EGI is greater than 68% for Rural Developments 36 Units or ~~less~~ fewer, and 65% for all ~~other Developments~~ 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) ~~Aa~~ Debt Coverage Ratio below 1.15 at any time during years two through fifteen; or

(B) ~~Negative~~ negative Cash Flow at any time either throughout the term of a Direct Loan, or ~~at any time~~ during years two through fifteen for applications ~~that do not include a request for~~ 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 ~~not meeting the requirements of infeasible under~~ one or more of paragraphs (3)(A) or (4) of this subsection will be ~~re-characterized as~~ feasible if one or more of clauses (i) - (v) ~~of this subparagraph below~~ apply. ~~A Development financed with a Direct Loan, including a Supportive Housing Development, will not be re-characterized as feasible with respect to (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 ~~the HUD Rental Assistance Demonstration RAD~~ Program for at least 50% of the Units and the Application includes a firm commitment, ~~with terms (including Contract Rent and number of Units, is submitted at Application);~~

(ii) will receive USDA rental assistance for at least 50% of the Units ~~in association with USDA financing;~~

(iii) will be characterized as public housing ~~as defined by HUD~~ for at least 50% of the Units;

(iv) meets the requirements under §11.1(d)(~~124118~~)(E)(i) of this chapter ~~(relating to the Definition of Supportive Housing);~~ or

(v) has other long term project based ~~restrictions on rents~~support for at least 50% of the Units that ~~allow~~allows rents to increase based ~~upon~~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. ~~The analysis must determine the feasibility of the subject Development rental rates or sales price, and state conclusions as to the impact of the Development with respect to the determined housing needs. The Market Analysis must include a statement that the report preparer has read and understood the requirements of this section. The Market Analysis must also include a statement that the person or company preparing the Market Analysis 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, ~~and that the fee is in no way contingent upon the outcome of the Market Analysis. The report must also~~

~~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."~~

(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 ~~prepared for the Department~~ must allow the reader to understand the ~~market data presented, the~~ analysis ~~of the data~~, and ~~the~~ conclusions ~~derived from such data~~. All data ~~presented should~~ must reflect the most current information available and ~~the report must provide~~ include a parenthetical (in-text) citation or footnote describing the ~~data~~ source. The analysis must clearly lead the reader to the same or similar conclusions reached by the Market Analyst. ~~All~~ The report must present all steps leading to a calculated figure ~~must be presented in the body of the report~~.

(c) Market Analyst Qualifications. A Market Analysis ~~submitted to the Department~~ 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) ~~of this subsection below~~.

(1) The ~~approved Qualified Market Analyst list~~ Department will ~~be updated~~ update and ~~published~~ publish an approved Qualified Market Analyst list annually on or about November 1st. ~~If not listed as an approved Qualified Market Analyst by the Department, a~~ Market Analyst may request approval by submitting items in subparagraphs (A) - (F) ~~of this paragraph below~~ at least 30 calendar days prior to the first day of the ~~competitive tax credit~~ applicable Application Acceptance Period ~~or 30 calendar days prior to submission of any other application for funding for which the Market Analyst must be approved~~. 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 ~~has been~~ submitted to the Department in the previous ~~12~~ 24 months or it submits items (A), (B), (C) and (E) ~~are submitted~~ prior to October 1st. ~~Otherwise, the Market Analyst will automatically be removed from the list. Submission items include:~~ of the second year following the analyst's most recent submission.

(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 ~~members expected to be providing Market Analysis;~~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;and.

(F) A sample Market Analysis that conforms to ~~the Department's Market Analysis Rules and Guidelines, as described in~~ this section, in effect for the current year ~~in which the sample Market Analysis is submitted.~~

(2) ~~During the underwriting process each Market Analysis will be reviewed and any~~Any discrepancies with ~~the rules and guidelines set forth in~~ this section may ~~be identified and~~ require timely correction. Subsequent~~The Department may remove an analyst from the approved list for not conforming to the completion of the Application Round and as time permits, staff or a review appraiser will re-review a sample set of submitted market analyses to ensure that the Department's Market Analysis Rules and Guidelines are met. If it is found that a Market Analyst has not conformed to the Department's Market Analysis Rules and Guidelines, as certified to, the Market Analyst will be notified of the discrepancies in the Market Analysis and will be removed from the approved Qualified Market Analyst list.~~

(A) ~~In and of itself, removal~~Removal from the ~~list of approved Market Analysts~~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 ~~as an approved Qualified Market Analyst,~~ the Market Analyst must amend the previous report to remove all discrepancies or submit a new sample Market Analysis that conforms to the ~~Department's Market Analysis Rules and Guidelines, as described in this section, in effect for the year in which the updated or new sample Market Analysis is submitted.~~

(d) Market Analysis Contents. A Market Analysis ~~for a rental Development prepared for the Department must be organized in a format that follows a logical progression and~~ must include, at minimum, items addressed in paragraphs (1) - (13) ~~of this subsection~~below.

(1) Title Page. ~~Include~~ 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 of Development~~, 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, ~~and~~ signatures of all Market Analysts authorized to work on the assignment. ~~Include, 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 ~~for easy reference~~.

(4) ~~Market Analysis Summary. Include the Department's~~ The Department's Market Analysis Summary exhibit.

(5) Assumptions and Limiting Conditions. ~~Include a description~~ Description of all assumptions, both general and specific, made ~~by the Market Analyst~~ concerning the Property.

(6) Identification of the Real Estate. ~~Provide a~~ A statement to acquaint the reader with the Development. ~~Such information includes, including~~ street address, tax assessor's parcel number(s), and ~~Development~~ characteristics.

(7) Statement of Ownership. ~~Disclose the~~ The current owners of record and ~~provide a~~ three year history of ownership ~~for the subject Development~~.

(8) Primary Market Area- ~~(PMA))~~. A limited geographic area from which the Development is expected to draw most of its demand. ~~The size and shape of the PMA should be reflective of proximity to employment centers, services and amenities and contain the most significant areas from which to draw demand. All of the Market Analyst's~~ The Market Analyst must base all conclusions specific to the subject Development ~~must be based~~ on only one PMA definition. The Market Analyst must adhere to the methodology described in this paragraph ~~when determining the market area.~~ (§2306.67055)

(A) The ~~PMA will be defined by 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 ~~of the PMA~~ may exceed 100,000 if the amount over ~~the limit~~ is ~~contained within in~~ a single census tract.

(iv) 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 ~~of the PMA~~ must include the following:

(i) ~~a~~A detailed narrative specific to the PMA explaining:

(I) ~~How~~how the PMA boundaries ~~of the PMA~~ were determined with respect to census tracts chosen and factors for including or excluding ~~certain census~~ tracts in proximity to the Development;

(II) ~~Whether~~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~~what are the specific attributes of the Development's location within the PMA that would draw prospective tenants from other areas ~~of the PMA to relocate to the Development~~;

(IV) ~~What are the~~what specific attributes, ~~if known~~, of the Development itself ~~that (if known)~~ would draw prospective tenants currently residing in other areas ~~of the PMA to relocate to the Development~~;

(V) ~~If~~if the PMA crosses county lines, ~~discuss~~discussion of the different income and rent limits in each county and how ~~these~~ differing amounts would affect ~~the demand for the Development~~;

(VI) ~~For~~for rural Developments, ~~discuss~~discussion of the relative draw (services, jobs, medical facilities, recreation, schools, etc.) of the ~~Development's~~ 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. A rural PMA should not include significantly larger more populous areas unless the analyst can provide substantiation and rationale that the tenants would migrate to the Development's location from the larger cities~~ in and around the PMA;

(VII) ~~Discuss~~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~~A complete demographic report ~~for the defined PMA;~~

(iii) ~~a~~A scaled distance map indicating the PMA boundaries showing relevant ~~U.S.~~ census tracts with complete 11-digit identification numbers in numerical order with labels ~~as well as~~, the location of the subject Development and all comparable Developments. ~~The map must indicate, and~~ the PMA's total square miles ~~of PMA; and.~~

(iv) ~~a~~A proximity table indicating ~~distance from the Development~~distances and drive time estimates to employment centers, medical facilities, schools, entertainment, and any other amenities relevant to the potential residents ~~and include drive time estimates.~~

(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, ~~it may be necessary for~~ the Market Analyst may need to collect data from markets with similar characteristics and make quantifiable and qualitative location adjustments. ~~Provide a data sheet for each comparable development consisting of:~~

(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 ~~including:~~

~~(+)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 ~~of the subject property~~; and

(xii) for rental developments ~~only~~, the occupancy and turnover.

(9) Market Information.

(A) Identify the number of units for each of the categories in clauses (i) - (vi) ~~of this subparagraph 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. ~~The occupancy rate indicated in the Market Analysis may be used to support the overall demand conclusion for the proposed Development.~~ 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) All demographic reports must include~~ (i) population and household data for a five year period ~~with the year of~~ using Application submission as the base year;

~~(ii) All demographic reports must provide~~(ii) sufficient data to enable calculation of income-eligible, age-, size-, and tenure-appropriate household populations;

(iii) ~~For~~for Elderly Developments, ~~all demographic reports must provide~~a detailed breakdown of households by age and by income; and

(iv) ~~A~~a complete copy of all demographic reports relied ~~upon~~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 ~~proposed housing for the~~ Development as a whole and each Unit Type by number of Bedrooms ~~proposed~~ and rent restriction category ~~within the defined market areas~~ 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 ~~that~~who will ~~be living~~live in the proposed Development. ~~For example, the Market Analyst should use demographic data specific to the (e.g., elderly populations (and any other qualifying residents for Elderly Developments) to be served by an Elderly Development;), if available, and should avoid making adjustments from more general demographic data. For HOME-ARP, demand for Qualifying Populations must be identified in accordance with Section VI B.10.a.ii of CPD Notice 21-10. If Identify and document the source of adjustment rates are used based on more general data for any of the criteria described in subclauses (I) - (V) of this clause, they should be clearly identified and documented as to their source in the report below.~~

(I) Population. ~~Provide population~~ and household figures, supported by actual demographics, for a five year period with the year of Application submission as the base year.

(II) ~~Target.~~ If applicable, adjust the household projections for the qualifying demographic characteristics such as the minimum age of the population to be served ~~by the proposed Development.~~

(III) ~~Household Size Appropriate.~~ 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 ~~based on 2 persons per Bedroom or one person for Efficiency Units.~~

(IV) ~~Income Eligible.~~ 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 ~~based on 2 persons per Bedroom (round up) or one person for Efficiency Units.~~

(V) ~~Tenure Appropriate.~~ Adjust the income-eligible household projections for tenure (renter or owner) ~~. If) unless~~ tenure appropriate income eligible target household data is available, ~~a tenure appropriate adjustment is not necessary.~~

(ii) Gross Demand. ~~Gross Demand is defined as the~~ The sum of Potential Demand from the PMA, Demand from Other Sources, and External Demand.

(iii) Potential Demand. ~~Potential Demand is defined as the~~ 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:

~~(a)~~ minimum eligible income is based on a 40% rent to income ratio;

~~(b)~~ appropriate household size is defined as two persons per Bedroom (rounded up); and

~~(c)~~ 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.

~~(a)~~ minimum eligible income is based on a 40% rent to income ratio;

~~(b)~~ appropriate household size is defined as two persons per Bedroom (rounded up); and

~~(c)~~ Gross Demand includes both renter and owner households.

(IV) For Elderly Developments:

~~(a)~~ minimum eligible income is based on a 50% rent to income ratio; and

~~(b)~~ 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:

~~(a)~~ minimum eligible income is \$1; and

~~(b)~~ households meeting the occupancy qualifications of the Development ~~(data.~~
Data to quantify this demand may be based on statistics beyond the defined PMA but not outside the Applicant's historical service area ~~of the Applicant).~~

(VI) For ~~Developments~~Units with rent assisted units (Project Based Vouchers, ~~Project Based or~~ Rental Assistance, Public Housing Units):

~~(a)~~ minimum eligible income ~~for the assisted units~~ is \$1; and

~~(b)~~ maximum eligible income ~~for the assisted units~~ is the minimum eligible income of the corresponding affordable unit.

(iv) ~~For External Demand, assume~~Assume an additional 10% of Potential Demand ~~from the PMA to represent 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 ~~must be clearly stated~~;

(II) consideration of Demand from Other Sources is at the Underwriter's discretion ~~of the Underwriter~~;

(III) Demand from Other Sources must be limited to households ~~that are not~~ included in Potential Demand; and

(IV) if the Market Analysis identifies households with Section 8 vouchers ~~are identified~~ as a source of demand, ~~the Market Study~~it must include:

~~(a)~~ documentation of the number of vouchers administered by the local Housing Authority; and

~~(b)~~ 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 ~~Primary Market Area. Analysis must discuss~~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 ~~by the Development~~ in terms of items in subparagraphs (A) - (J) ~~of this paragraph 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 ~~within~~ the PMA.

(B) Rents. Provide ~~a~~ separate Market Rent ~~conclusion~~ and Achievable Affordable Rent conclusions for each proposed Unit Type by number of Bedrooms and rent restriction category. ~~Conclusions of and a separate attribute adjustment matrix. Document~~ Market Rent and Achievable Affordable Rent below the maximum Net Program Rent limit ~~must be well documented as the conclusions may impact the feasibility of the Development under §11.302.~~

~~(i) of this chapter (relating to Feasibility Conclusion). In support of the Market Rent conclusions, provide a separate attribute adjustment matrix for each proposed Unit Type by number of Bedrooms and rental restriction category. For HOME-ARP, Units for Qualified Populations will be underwritten at \$0 income, unless the Unit has project-based rental assistance or subsidy, or is supported by a capitalized operating reserve agreement.~~

~~(i) The Department recommends use of~~ HUD Form 92273.

~~(ii) A~~ (ii) Each attribute adjustment matrix must have a minimum of three developments must be represented ~~on each attribute adjustment matrix.~~

(iii) ~~Adjustments~~ Include adjustments for concessions ~~must be included~~, if applicable.

(iv) ~~Adjustments~~ Include adjustments for proximity and drive times to employment centers and services narrated in the Comparable Unit description, and the rationale for the amount ~~of the adjustments must be included.~~ (s).

(v) ~~Total~~ Support total adjustments in excess of 15% ~~must be supported~~ 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) ~~For Demand:~~

~~(i) state~~ 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) state the Gross Demand~~ for the proposed Development as a whole. ~~(If some households are eligible for more than one Unit Type due to overlapping eligible ranges for income or household size, adjust Gross Demand should be adjusted to avoid including households more than once);~~ and

~~(iii) state the Gross Demand~~ generated from each AMGI band. ~~(If some household incomes are included in more than one AMGI band, adjust Gross Demand should be adjusted to avoid including households more than once).~~

(E) ~~Relevant Supply.~~ The Relevant Supply of proposed and Unstabilized Comparable Units includes:

(i) ~~the~~ 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. ~~Approved Developments should be determined by, including:~~

(I) the HTC Property Development Inventory ~~that is~~ published on the Department's website as of December ~~31, 2024,~~ 31st of the year preceding the Application Acceptance Period for ~~competitive housing tax credit~~ Competitive HTC Applications;

(II) the most recent HTC Property Development Inventory ~~that is~~ published on the Department's website one month prior to the Application date of non-competitive ~~housing tax credit~~ HTC and Direct Loan Applications.

(iii) Unstabilized Comparable Units that are ~~located in close proximity~~ to the subject PMA ~~if they are 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~~ The Gross Capture Rate generated from the combined PMA must meet the feasibility criteria as defined in §11.302(i) ~~(relating to Feasibility Conclusion)~~.

(F) ~~Gross Capture Rate.~~ The Gross Capture Rate is ~~defined as~~ the Relevant Supply divided by the Gross Demand. ~~Refer to (see~~ §11.302(i) of this chapter ~~(relating to Feasibility Conclusion)~~.

(G) Individual Unit Capture Rate. ~~For for~~ each Unit Type by number of Bedrooms and rent restriction categories, ~~the individual unit capture rate is defined as~~ 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. ~~In order to calculate individual unit capture rates;~~ include each ~~household is included~~ in the capture rate for only one Unit Type.

(H) Capture Rate by AMGI Band. ~~For each AMGI band ((20%, 30%, 40%, 50%, 60%, and also 20%, 70%, and 80% if the Applicant will make the Income Average election), the capture rate by AMGI band%),~~ is ~~defined as~~ 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. ~~In order to calculate AMGI band rates, each household is included;~~ include each in the capture rate for only one AMGI band.

(I) Absorption. Project an absorption period for the subject Development to achieve Breakeven Occupancy. State the absorption rate the occupancy level at which income equals all operating expenses and mandatory debt service requirements.

(J) Market Impact. Provide an assessment of ~~the~~ subject Development's impact ~~the subject Development, as completed, will have on existing HTC Developments supported by Housing Tax Credits in the Primary Market.~~ PMA. (§2306.67055)

(11) ~~Photographs.~~ Provide labeled color photographs of the subject Property, the neighborhood, street scenes, and comparables. ~~An aerial photograph is desirable but not mandatory.~~

(12) ~~Appendices.~~ Any Provide in appendix form any Third Party reports used (including demographics ~~relied upon by the Market Analyst must be provided in appendix form. A)~~ and a list of works cited (including personal communications ~~also must be provided, and the Modern Language Association (MLA) format is suggested.~~).

(13) ~~Qualifications.~~ 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 ~~(relating to Market Analyst Qualifications).~~

(e) The Department ~~reserves the right to may~~ require the Market Analyst to address ~~such~~ other issues ~~as may be~~ relevant to ~~the Department's~~ evaluation of the need for the subject Development and ~~the provisions of the~~ particular program guidelines.

(f) ~~In the event that~~ 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 ~~PMA's~~ PMA's and all proposed and Unstabilized Units ~~in the extended Sub-Market Area;~~ The Underwriter may use the Gross Capture Rate from such an extended Sub-Market Area analysis ~~may be used by the Underwriter~~ as the basis for a feasibility conclusion.

(g) All Applicants ~~shall~~ will acknowledge, by virtue of filing an Application, that the Department ~~shall~~ is not ~~be~~ bound by ~~any such opinion or the~~ Market Analysis, and may substitute its own analysis and underwriting conclusions ~~for those submitted by the Market Analyst.~~

§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 ~~(USPAP) as adopted by the Appraisal Standards Board of the Appraisal Foundation. The appraisal must;~~

(B) be prepared by a general certified appraiser by the Texas Appraisal Licensing and Certification Board. ~~The appraisal must;~~

(C) include a statement that the report preparer has read and understood the requirements of this section. ~~The appraisal must;~~

(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~~

(E) describe sufficient and adequate data and analyses to support the final opinion of value.

(2) If an appraisal is required by the ~~Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, the appraisal~~URA it must also meet the requirements of 49 CFR Part 24 and HUD Handbook 1378. ~~(b) Self-Contained. An appraisal prepared for the Department must describe sufficient and adequate data and analyses to support the final opinion of value.~~

(3) The final value(s) must be reasonable, based on the information included. Any~~The appraiser must verify any~~ Third Party reports relied ~~upon by the appraiser must be verified by the appraiser as to the validity of the data and the conclusion~~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 ~~prepared for the Department~~ must be organized in a format that follows a logical progression. ~~In addition to the contents described in USPAP Standards Rule 2, the appraisal must and~~ include items addressed in paragraphs (1) - (12) ~~of this subsection below.~~

(1) Title Page. Include a statement with the following:

(A) identifying the Department as the client,

(B) acknowledging ~~that~~ the Department ~~is granted~~has full authority to rely on the findings of the report, and name and address of person authorizing report. ~~The title page must also 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

(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 ~~of appraisal~~, date of property inspection, name of person(s) inspecting the property, tax assessor's parcel number(s) of the site, estimate of marketing period, ~~and~~ signatures of all appraisers authorized to work on the assignment (including the appraiser who inspected the property. Include 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 ~~with the report for easy reference.~~

(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 ~~which occurred~~ within the past three years. Any and disclose any pending agreements of sale, options to buy, or listing of the subject Property ~~must be disclosed in the appraisal report.~~

(6) Property Rights Appraised. Include a statement as to the property rights (e.g., fee simple interest, leased fee interest, leasehold, etc.) being considered. ~~The appropriate interest must be~~ defined in terms of current appraisal terminology with the source cited.

(7) Site/Improvement Description. Discuss the site characteristics including subparagraphs (A) - (E) ~~of this paragraph below.~~

(A) Physical Site Characteristics. Describe dimensions, size (square footage, acreage, etc.), shape, topography, corner influence, frontage, access, ingress-egress, etc. associated with the ~~Development~~ Site. Include a plat map or survey.

(B) Floodplain. Discuss floodplain (including flood map panel number) and include a floodplain map ~~with~~ identifying the subject Property ~~clearly~~ identified.

(C) Zoning. ~~Report~~ Reports must include:

(i) the current zoning and description of the zoning restrictions ~~and;~~

(ii) probability of change in zoning;

(iii) any deed restrictions, where applicable, ~~and;~~

(iv) the type of Development permitted. ~~Any probability of change in zoning should be discussed. A statement as to;~~

(v) whether ~~or not~~ the improvements conform to the current zoning ~~should be included. A statement addressing whether or not the improvements~~ and could be rebuilt if damaged or destroyed, ~~should be included. If current;~~

(vi) if applicable, time and expense associated with the proposed zoning change if the zoning is ~~not consistent~~ inconsistent with the highest and best use, ~~and zoning changes are reasonable to expect, time and expense associated with the proposed zoning change should be considered and documented. A; and~~

(vi) a zoning map ~~should be included.~~

(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. ~~All, and all~~ applicable forms of depreciation ~~should be addressed~~ along with the remaining economic life.

(E) Environmental Hazards. ~~It is recognized appraisers are not experts in such matters and the impact of such deficiencies may not be quantified; however, the~~ The report ~~should~~ must disclose any potential environmental hazards (~~such as~~ 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. ~~The highest and best use analysis should consider, including~~ consideration of paragraph (7)(A) - (E) of this subsection as well as a supply and demand analysis.

(A) The appraisal must ~~inform the reader of state~~ any positive or negative market trends ~~which could influence the value of the appraised influencing the~~ Property. ~~Detailed value, including detailed data must be included~~ 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"~~). ~~All~~ considering all four elements (legally permissible, physically possible, feasible, and maximally productive) ~~must be considered.~~

(9) Appraisal Process. ~~It is mandatory that~~ The Appraisal must consider all three approaches, Cost ~~Approach~~, Sales Comparison ~~Approach~~, and Income ~~Approach~~, ~~are considered~~ in valuing the Property. If an approach is not applicable ~~to a particular property, provide~~ an adequate explanation ~~must be provided. why.~~

~~(A land value estimate must be provided if the)~~ Cost Approach ~~is not applicable.~~

~~(A) Cost Approach. This approach should give a clear and concise. 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) ~~Cost~~ Obtain cost comparables ~~are desirable; however, or~~ alternative cost information ~~may be obtained~~ from Marshall & Swift Valuation Service or similar publications. ~~The~~ (reference the section, class, page, etc. ~~should be referenced.~~

All.). Address and document all soft costs and entrepreneurial profit ~~must be addressed and documented.~~

(ii) ~~All~~ Discuss and analyze all applicable forms of depreciation ~~must be discussed and analyzed. Such discussion must be~~ consistent with the description of the improvements.

(iii) The land value estimate should include ~~a~~ sufficient ~~number of sales which are~~ current, and comparable, ~~and sales~~ similar to the subject in terms of highest and best use. Comparable sales information ~~should~~ 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 ~~should~~ must fall within the adjusted and unadjusted value ranges. ~~Consideration~~ When applicable, make consideration and appropriate cash equivalent adjustments to the comparable sales price for subclauses (I) - (VII) ~~of this clause should be made when applicable: below.~~

(I) ~~Property~~ property rights conveyed;

(II) ~~Financing~~ financing terms;

(III) ~~Conditions~~ conditions of sale;

(IV) ~~Location~~ location;

(V) ~~Highest~~ highest and best use;

(VI) ~~Physical~~ physical characteristics (e.g., topography, size, shape, etc.); and

(VII) ~~Other~~ other characteristics (e.g., existing/proposed entitlements, special assessments, etc.).

(B) Sales Comparison Approach. ~~This section should contain~~ 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. ~~The~~ Confirm the sales ~~must be confirmed~~ with the buyer, seller, or an individual knowledgeable of the transaction.

(i) Sales information ~~should~~ 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 ~~must be included.~~

(ii) The method(s) used in the Sales Comparison Approach must ~~be reflective of~~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. ~~Sufficient~~Include sufficient narrative ~~must be included~~ to permit the reader to understand the direction and magnitude of the individual adjustments, ~~as well as~~ and a unit of comparison value indicator for each comparable.

(II) Net Operating Income/Unit of Comparison. ~~The~~Calculate the Net Operating Income statistics for the comparables ~~must be calculated~~ in the same manner. ~~It should be disclosed~~Disclose if reserves for replacement have been included ~~in this method of analysis.~~ At least one other method ~~should~~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 ~~of the subject Property.~~

(i) Market Rent Estimate/Comparable Rental Analysis. ~~This section of the report should include~~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. ~~The comparables must and~~ be confirmed with the landlord, tenant or agent ~~and~~. Include individual data sheets ~~must be included. The individual data sheets should include~~with property address, lease terms, description ~~of the property~~ (e.g., Unit Type, unit size, unit mix, interior amenities, exterior amenities, etc.), physical characteristics ~~of the property~~, and location of the comparables. Analysis of the Market Rents ~~should~~must be sufficiently detailed to permit the reader to understand the appraiser's logic and rationale. ~~Adjustment~~Consider adjustment for lease rights, condition of the lease, location, physical characteristics of the property, etc. ~~must be considered.~~

(ii) Comparison of Market Rent to Contract Rent. ~~Actual~~Report, summarize, and analyze actual income for the subject along with the owner's current budget projections ~~must be reported, summarized, and analyzed.~~ If such data is unavailable, make a statement to this effect is required and appropriate assumptions and limiting conditions ~~should be made.~~ The Contract Rents ~~should~~must be compared to the market-derived rents. ~~A~~Make a determination ~~should be made~~ 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 ~~must be qualified.~~

(iii) Vacancy/Collection Loss. ~~Historical~~Report historical occupancy data and current occupancy level for the subject ~~should be reported~~ and ~~compared~~compare it to

occupancy data from the rental comparables and overall occupancy data for the ~~subject's Primary Market~~PMA.

(iv) Expense Analysis. ~~Actual~~Report, summarize, and analyze actual expenses for the subject, along with the owner's projected budget, ~~must be reported, summarized, and analyzed.~~ If such data is unavailable, include a statement to this effect is required and make appropriate assumptions and limiting conditions ~~should be made. Historical. Compare historical~~ expenses ~~should be compared~~ to comparables expenses of similar property types or published survey data (such as IREM, BOMA, etc.). Any~~Reconcile any~~ expense differences ~~should be reconciled.~~ Include historical data regarding the subject's assessment and tax rates and a statement as to whether ~~or not~~ any delinquent taxes exist.

(v) Capitalization. ~~The appraiser should present~~Present the capitalization method(s) ~~reflective~~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 ~~is utilized,~~ fully disclose and discuss the assumptions ~~must be fully disclosed and discussed.~~

(II) Yield Capitalization (Discounted Cash Flow Analysis). This method of analysis ~~should~~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 ~~that are~~ relevant for deriving ~~the market value of the Property.~~

(A) All appraisals ~~shall~~must contain a separate estimate of the ~~"as vacant"~~ market value of the underlying land, based ~~upon~~on current sales comparables. ~~The "as vacant" value assumes that there are~~ assuming no improvements on the property ~~and therefore (not considering demolition costs should not be considered.)~~. The appraiser ~~should~~must consider the fee simple or leased fee interest as appropriate.

(B) For existing Developments with any project-based rental assistance ~~that will remain~~remaining with the property after ~~the~~ 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. ~~if~~ 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 ~~rental rates~~ rents or occupancy ~~rates~~ on project-based developments, ~~this must be fully explained and supported to the satisfaction of the Underwriter.~~

(C) For existing Developments with rent restrictions, the appraisal must include the "as-is as-restricted" value. ~~In particular, the value must be~~ 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 ~~(generally below market debt)~~ that will remain in place and transfer to the new owner, the appraisal must include a separate value for ~~the existing favorable financing~~ it with supporting information. The appraiser will allocate 25% of the appraised favorable financing value ~~will be allocated~~ to land value and 75% ~~will be allocated~~ to building value, unless the ~~below market financing~~ use was used only for rehabilitation ~~only~~, in which case ~~the favorable financing 100%~~ will be attributed ~~100%~~ to the building. Applicant's allocation of favorable financing should be clearly explained.

(F) ~~If required the~~ The appraiser must include either a separate assessment of personal property, furniture, fixtures, and equipment (FF&E) or intangible items. ~~If personal property, FF&E, or intangible a statement such~~ items are not part of the transaction ~~or value estimate, a statement to such effect should be included.~~

(11) Marketing Time. ~~Given property characteristics and current market conditions, the~~ The appraiser(s) ~~should~~ must employ a reasonable marketing period. ~~The report should and~~ detail existing market conditions and relevant assumptions ~~considered relevant.~~

(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). ~~Photographs should be properly labeled. Photographs of~~ the neighborhood, street scenes, and comparables ~~should be included. An aerial photograph is desirable but not mandatory.~~

(d) Additional Appraisal Concerns. The ~~appraiser(s) must be aware of the Department program rules and guidelines and 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 ~~Environmental Site Assessments (ESA)~~ prepared for the Department must be conducted and reported in conformity with the standards of the American Society for Testing and Materials (ASTM). ~~The initial report must conform with~~ including the Standard Practice for Environmental Site Assessments: Phase I Assessment Process (ASTM Standard Designation: E1527-13 or any subsequent standards as published). ~~Any subsequent reports should also conform to ASTM standards and such other recognized industry standards as a reasonable person would deem relevant in view of the Property's anticipated use~~ for human habitation. ~~the initial report.~~ The ESA ~~shall~~must

(1) be conducted by a Third Party environmental professional at the Applicant's expense ~~of the Applicant, and;~~

(2) be addressed to the Department as a User of the report ~~as defined by ASTM standards~~. ~~Copies of reports provided to the Department which were (ESAs)~~ commissioned by other ~~financial~~ institutions must either address ~~Texas Department of Housing and Community Affairs~~ TDHCA as a co-recipient ~~of the report or or be accompanied by~~ letters from both the provider and the recipient ~~of the report may be submitted~~ extending reliance on the report to the Department. ~~The ESA report must also;~~

(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. ~~The report must also;~~

(4) include the following statement, ~~"any"~~ 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. ~~" The ESA report must."~~ ; 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 ~~is recommended~~ 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 ~~Development~~ 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 ~~on the Development Site,~~ 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 ~~on-site or within 0.25 miles of the site~~) that could potentially adversely impact the Development. Location A drawing or map must show the location of these items ~~must be shown on a drawing or map~~ in relation to the ~~Development~~ Site and all existing or future improvements. ~~The drawing must and~~ depict any blast zones (in accordance with HUD guidelines) and include HUD blast zone calculations~~;~~ ~~and~~.

(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 ~~currently exist on the Property, or are originating off site, but would nonetheless~~ affect the Property, the ~~Development~~ Owner must act on such a recommendation~~;~~ or provide a plan for either the abatement or elimination of the hazard. Evidence of The Application must include evidence of the action or a plan ~~for the abatement or elimination of the hazard must be presented upon Application submittal.~~

(d) For Developments in programs that allow a waiver of the Phase I ESA ~~such as an existing USDA funded Development, the Development,~~ the Owners are ~~hereby notified that it is their~~

~~responsibility~~responsible to ensure ~~that~~ the Development is maintained in compliance with all state and federal environmental hazard requirements.

(e) Those Developments which have or ~~are to~~will receive first lien financing from HUD may submit HUD's environmental assessment report, ~~provided that if~~ it conforms to the requirements of this section.

§11.306. Scope and Cost Review Guidelines.

(a) General Provisions. ~~The objective of the Scope and Cost Review Report (SCR) is to provide a self-contained report that provides a comprehensive description and evaluation of the current conditions of the Development and identifies a scope of work for the proposed repairs, replacements and improvements to an existing multifamily property or identifies a scope of work for the conversion of a non-multifamily property to multifamily use. The SCR author must~~The SCR required for Rehabilitation Developments (excluding Reconstruction) and Adaptive Reuse Developments is to provide a self-contained report that provides a comprehensive description and evaluation of the current conditions of the Development and identifies a scope of work for the proposed repairs, replacements and improvements to an existing multifamily property or identifies a scope of work for the conversion of a non-multifamily property to multifamily use. The SCR author must

(1) evaluate the sufficiency of the Applicant's scope of work and provide an independent review of the Applicant's proposed costs.~~The report must;~~

(2) be in sufficient detail for the Underwriter to fully understand all current conditions, scope of work and cost estimates. It is the responsibility of the Applicant to ensure that the scope of work and cost estimates submitted in the Application is provided to the author. The SCR must include a copy of the Development Cost Schedule submitted in the Application. The report must also 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."

(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 ~~in conformity~~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)"~~"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 ~~good quality color~~labeled photographs of the subject Real Estate (front, rear, and side elevations, on-site amenities, interior of the structure). ~~Photographs should be properly labeled.~~

(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 good quality~~ photographs) of the current conditions of all major systems and components ~~of the Development~~ regardless of ~~whether the system or component~~what will be removed, repaired or replaced. For historic structures, the SCR must contain a description ~~(with photographs)~~ of each aspect ~~of the building(s) that qualifies it~~qualifying as historic and must include a narrative explaining how the scope of work relates to maintaining the historic designation ~~of the Development.~~ Replacement. Describe replacement or relocation of systems and components ~~must be described;~~

(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. ~~Any New Construction must be described. Plans or drawings (that are in addition to~~ Include any plans or drawings ~~otherwise, in addition to those required by rule) and that relate, relating to any part of the scope of work should be included, if available;~~

(3) Useful Life Estimates. ~~For~~ Estimate the remaining useful life of each system and component ~~of the property the SCR must estimate its remaining useful life,~~ citing the basis or the source ~~from which such estimate is derived;~~

(4) Code Compliance. The SCR must document any known violations of any applicable federal, state, or local codes. ~~In developing the cost estimates specified herein, it is the responsibility of the~~ The Applicant ~~to ensure that is~~ responsible for ensuring the SCR adequately considers ~~any and all applicable federal, state, and local laws and regulations which are applicable and govern any work and potentially impact costs when developing cost estimates.~~ For Applications requesting a Direct Loan ~~funding from the Department,~~ the SCR ~~author~~ must include a comparison between the local building code and the International Existing Building Code ~~of the International Code Council;~~

(5) Program Rules. The SCR must assess the extent to which any systems or components must be modified, repaired, or replaced ~~in order~~ to comply with any specific requirements of ~~the~~ a housing program ~~under which the Development is proposed to be financed, the Department's Uniform Physical Condition Standards, and any or~~ scoring criteria ~~including amenities for which the~~ The Applicant ~~may claim points. It is the responsibility of the Applicant to inform~~ is responsible for informing the report author of those requirements ~~in the scope of work; for Direct Loan Developments this includes, but is not limited to the requirements in the Lead-Based Paint Poisoning Prevention Act (42 USC §§4821-4846), the~~

~~Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 USC §§4851-4856), and implementing regulations, Title X of the 1992 Housing and Community Development Act at 24 CFR Part 35 (including subparts A, B, J, K, and R), and the Lead: Renovation, Repair, and Painting Program Final Rule and Response to Children with Environmental Intervention Blood Lead Levels (40 CFR Part 745);.~~

(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 ~~(relating to Site and Development Requirements and Restrictions)~~ and identify the specific items in the scope of work and costs needed to ensure ~~that~~ the Development will meet these requirements upon ~~Rehabilitation (including conversion and Adaptive Reuse);completion.~~

(7) Reconciliation of Scope of Work and Costs. The SCR ~~report~~ must include the ~~Department's Scope and Cost Review Supplement (SCR Supplement) (with the SCR author's signature of the SCR author. The SCR Supplement must reconcile the scope of work and costs of the immediate physical needs identified by the SCR author with the Applicant's scope of work and costs.)~~. The costs presented on the SCR Supplement must be consistent with both the scope of work and immediate costs identified in the ~~body of the~~ SCR report body and the Applicant's scope of work and costs ~~as presented~~ in the Application. ~~VariationsThe SCR author must reconcile any variations between the costs listed on the SCR Supplement and the costs listed in the body of the SCR report or on the Applicant's Development Cost Schedule must be reconciled in a narrative analysis from the SCR provider. The~~ The Underwriter will use the consolidated scope of work and costs shown on the SCR Supplement ~~will be used by the Underwriter~~ in the analysis to the extent adequately supported in the report~~; and.~~

(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 developments, and Adaptive Reuse developments if applicable, immediately necessary repair and replacement should be identified for systems or components which are expected to have a remaining useful life of less than one year, which are found to be in violation of any applicable codes, which must be modified, repaired or replaced in order to satisfy program rules, or which 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 ~~which is identified as being an immediate need below, citing the basis or the source from which such cost estimate is derived.~~ 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.

(B) Proposed Repair, Replacement, or New Construction. If the development plan calls for additional scope of work ~~above and beyond the immediate repair and replacement items described in subparagraph (A) of this paragraph above,~~ the ~~additional scope of work~~ SCR must ~~be evaluated and~~ evaluate either the nature or source of obsolescence to be cured or improvement to ~~the operations of the Property discussed.~~ The SCR must provide a separate estimate of the costs associated with the additional scope of work, citing the basis or the source ~~from which such cost estimate is derived.~~

(C) Reconciliation of Costs. The combined costs described in subparagraphs (A) and (B) of this paragraph ~~should~~ must be consistent with the costs ~~presented on~~ 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 ~~provision of housing on the~~ Property. The SCR must estimate the periodic costs ~~which are expected to arise~~ for repairing or replacing each system or component or the property, based on the estimated remaining useful life ~~of such system or component as described in paragraph (1) of this subsection adjusted for completion of repair and replacement immediately necessary and proposed as described in subparagraphs (A) and (B) of this paragraph.~~ The SCR must include a separate table of the estimated long term costs ~~which identifies~~ 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. ~~The estimated costs for future years should be given~~ 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) ~~Any~~ 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 ~~will not be included in the underwritten Total Development Cost in the Report.~~

(f) ~~If a copy of such standards or a sample report have been provided for the Department's review, if such standards are widely used, and if all other criteria and requirements described in this section are satisfied, the~~ The Department also will ~~also~~ accept ~~copies of the following~~ reports commissioned or required by the primary lender ~~for a proposed transaction, which have been prepared in accordance with~~ 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 ~~consider for acceptance~~accept reports prepared according to other standards ~~which are~~ 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, ~~if~~

(2) such standards are widely used, and ~~if~~

(3) all other criteria and requirements described in this section are satisfied.

(h) ~~The SCR shall be conducted by a~~ Third Party will conduct the SCR at the Applicant's expense ~~of the Applicant,~~ and ~~addressed to Texas Department of Housing and Community Affairs~~ address TDHCA as either the client. ~~Copies of reports provided to the Department which were commissioned by other financial institutions should address Texas Department of Housing and Community Affairs as~~ or a co-recipient ~~of the report, or accompanied by~~ letters from both the provider and the recipient ~~of the report should be submitted~~ extending reliance ~~on the report to Texas Department of Housing and Community Affairs.~~

(i) The SCR report must include a statement that the ~~individual or company preparing the SCR report~~ 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 ~~the SCR.~~ ~~Because of the Department's heavy reliance on the independent cost information, the~~ it. The provider must not be a Related Party to or an Affiliate of any other Development Team member. ~~The SCR report must contain a statement indicating the report preparer has read and understood the requirements of this section.~~

(j) **Scope of Work Narrative.** ~~For~~ 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, ~~a Scope and Cost Review prepared by a Third Party is not required.~~ 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 ~~whether the system or component~~ what will be removed, repaired or replaced;

(2) ~~For~~for historic structures, a description of each aspect ~~of the building(s)~~ that qualifies ~~it~~ as historic, including a narrative explaining how the scope of work relates to maintaining the historic designation ~~of the Development~~; 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.

~~Any~~The following are the fees associated with the Department's programs.

(1) General Provisions. Applicants must submit any payment due under this chapter and assume the deadline for such payment is final.

(A) An Applicant with an outstanding balance of unpaid fees, ~~as stated in~~ under this section, will ~~cause an Applicant to~~ be ineligible to

(i) apply for Department ~~funding, ineligible to~~ resources,

(ii) receive additional Department funding associated with a Commitment, Determination Notice or Contract, and ~~ineligible to~~

(iii) submit extension requests, ownership transfers, and Application amendments ~~until such time the Department receives payment.~~

(B) Payments of the fees ~~shall~~ must be in the form of a check ~~and to the extent there are insufficient~~ unless the Department approves another form. Insufficient funds ~~being available, it~~ may cause the Application, Commitment, Determination Notice or Contract to be terminated or Allocation rescinded. ~~Other forms of payment may be considered on a case by case basis. Applicants will be required to~~ Applicants must pay any insufficient payment fees charged to the Department by the State Comptroller. ~~The~~ Unless prohibited by other parts of this chapter, the Executive Director may extend the fee deadline for specific extenuating and extraordinary circumstances, ~~unless prohibited by other parts of this chapter, provided if~~ the Applicant submits a written request for an extension ~~to a fee deadline~~ no later than five business days ~~prior to the deadline associated with the particular fee. For any payment that must be submitted in accordance with this chapter, staff in~~ advance. Staff may grant relief ~~of the associated deadline for that payment for a deadline~~ for unusual or unpredictable circumstances ~~that are~~ outside of the Applicant's control, such as inclement weather or failed deliveries. ~~Applicants must submit any payment due under this chapter and operate under the assumption that the deadline for such payment is final.~~

(12) Competitive ~~Housing Tax Credit~~ HTC Pre-Application Fee. A ~~Applicants must submit with the pre-application a fee, in the amount of \$10 per Unit, based on the total number of Units reflected in the pre-application, must be submitted with the pre-application in order for the pre-application to be considered accepted by the Department. Pre-applications in which~~ therein. Documentation of a Community Housing Development Corporation (CHDO) or a

private Qualified Nonprofit Organization ~~intends to serve~~ serving as the Managing General Partner ~~of the Development Owner, or Control the Managing General Partner of the Development Owner, may be eligible to receive (or having Control over such entity) will result in a 10% discount of 10% off the calculated pre-application fee provided such documentation is submitted with the fee.~~ (§2306.6716(d))

(23) Refunds of Competitive HTC Pre-application Application Fees. (§2306.6716(c)) Upon written request ~~from the Applicant~~, the Department ~~shall will~~ refund the ~~balance of the pre-application fee~~ for a Competitive HTC pre-application ~~that is withdrawn by the Applicant and that is not fully processed by.~~ In no instance will the Department refund a pre-application fee after February 1. The amount of refund will be commensurate with the level of review completed. ~~Initial:~~

(A) 50% for initial processing ~~will constitute 50% of the review,~~

(B) 30% for threshold review prior to a deficiency being issued ~~will constitute 30% of the review, and review, and~~

(C) 20% after deficiencies are submitted and reviewed ~~will constitute 20% of the review. In no instance will a refund of the pre-application fee be made after the Full Application Delivery Date for a pre-application that was fully submitted.~~

(34) Application Fee. Each Application must be accompanied by an Application fee.

(A) Housing Tax Credit Applications. ~~For Applicants having submitted a Competitive Housing Tax Credit HTC pre-application which that met the pre-application threshold requirements, and for which a pre-application fee was and paid, the fee must submit with an~~ Application a fee ~~will be of~~ \$20 per Unit ~~based on the total number of Units in the full Application reflected therein.~~ Otherwise, the Application fee will be \$30 per Unit ~~based on the total number of Units in the full Application. Applications in which. Documentation of a~~ CHDO or a private Qualified Nonprofit Organization ~~intends to serve~~ serving as the Managing General Partner ~~of the Development Owner, (or having Control the Managing General Partner of the Development Owner, may be eligible to receive over such entity) will result in a 10% discount of 10% off the calculated Application fee, provided such documentation is submitted with the fee.~~ (§2306.6716(d))

(B) Direct Loan Applications. The fee ~~will be~~ is \$1,000 per Application ~~except for those Applications that are layered with Housing Tax Credits and submitted simultaneously with the Housing Tax Credit Application. Pursuant to Tex. Gov't Code §2306.147(b), the Department is required to 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 ~~and if Direct Loan funds are awarded. In lieu of the Application fee, these. (§2306.147(b))~~ Such organizations must

include proof of their exempt status and a description of their supportive services as part of the Application. ~~The Application fee is not a reimbursable cost under the Direct Loan Program.~~

(45) Refunds of Application Fees. Upon written request ~~from the Applicant~~, the Department ~~shall~~will refund the ~~balance of the Application~~ fee for an Application ~~that is~~ withdrawn ~~by the Applicant and that is not fully processed by the Department.~~ The withdrawal must occur prior to any Board action regarding eligibility or appeal. In no instance will the Department refund an Application fee after final awards in July. The amount of refund will be commensurate with the level of review completed. ~~Initial:~~

(A) 10% for initial processing ~~will constitute,~~

(B) 10% of the review, for the site visit ~~will constitute 10% of the review,~~

(C) 40% for program evaluation review ~~will constitute 40% of the review,~~ and

(D) 40% for the underwriting review ~~will constitute 40% of the review. For Competitive HTC Applications, in no instance will a refund of the Application fee be made after final awards are made in July.~~

(56) Third Party Underwriting Fee. ~~The Department will notify Applicants will be notified in writing prior to the evaluation in whole or in part of a Development by an independent external underwriter if. The Department must receive the fee prior to engaging and the Department will credit such a review is required. The fee must be received by the Department prior to the engagement of the underwriter. The fees paid by the Development Owner to the Department for the external underwriting will be credited against the Commitment or Determination Notice Fee, as applicable, established in paragraphs (6) and (7) of this section, in the event that a Commitment or Determination Notice is issued by the Department to the Development Owner.~~

(67) Housing Tax Credit Commitment Fee. ~~No Owners must pay a fee equal to 4% of the annual HTC Allocation amount no later than the expiration date in the Commitment, a fee equal to 4. The Department may refund 50% of the annual Housing Credit Allocation amount must be submitted. If fee if the Development Owner has paid the fee and returns the credits allocation by November 1 of the current Application Round, then a refund of 50% of the Commitment Fee may be issued upon request.~~

(78) Tax-Exempt Bond Development Determination Notice Fee. ~~No 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 was requested, a fee equal to 4% of the annual Housing Credit Allocation amount must be submitted. If the Development. If the Owner has paid the fee and is not able unable to close on the bonds, then a the Department may refund of 50% of the Determination Notice Fee may be issued upon request, but fee if generally no later than within 90 days after of the Certificate of Reservation deadline.~~

(89) Tax-Exempt Bond Credit Increase Request Fee. ~~Requests for increases to the credit Owners requesting the Department increase the annual HTC Allocation amounts to be issued on IRS Forms Form(s) 8609 than what was reflected above the amount in the Determination Notice for Tax-Exempt Bond Developments must be submitted with pay a fee equal to 4% of the amount of the credits such increase for one year.~~

(910) Extension Fees.

~~(A) All extension requests for to extend deadlines relating to the Carryover, 10% Test (submission and expenditure), Construction Status Reports, or Cost Certification requirements submitted at least fewer than 30 calendar days in advance of the applicable original deadline will not be required to submit an extension fee. Any extension request submitted fewer than 30 days in advance or after the original deadline must be accompanied by include an extension fee of \$2,500. Fees The fees for each subsequent extension request on for the same activity will increase by increments of \$500, regardless of whether the first request was submitted thirty (30) calendar days in advance of the applicable deadline submission date.~~

~~(B) An extension fee will not be required for extensions requested on Developments that involve Rehabilitation when the Department or U.S. Department of Agriculture (USDA) is the primary lender, Developments if USDA or the Department, as the primary lender, is the cause responsible for the Applicant not meeting the deadline. For 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, extension fees will be automatically due (regardless of whether the Owner requests an extension request). For this purpose each report is submitted a separate activity. Unpaid extension fees related to Construction Status Reports will be accrued and must be paid prior to issuance of IRS Forms 8609. For purposes of Construction Status Reports, each report will be considered a separate activity. An extension fee of the deadline to submit the Determination Notice and associated documents will not be required, provided a written request was submitted to the Department.~~

(1011) Amendment Fees. ~~An amendment request for a non-material change that has not been implemented will not be required to pay an amendment fee. Material Owners must pay a fee of \$2,500 for material amendment requests (regardless of whether implemented or not), or non-material amendment requests that have already been implemented will be required to submit an amendment fee of \$2,500 in order for the request to be processed. Fees. The fees for each subsequent amendment request related to 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 and did not require a fee, must include a fee of \$3,000. Amendment fees and fee increases are not required for the Direct Loan programs during the Federal Affordability Period.~~

(1112) Right of First Refusal Fee. Requests for approval of the satisfaction of the ~~Right of First Refusal~~ROFR provision of the ~~Land Use Restriction Agreement (LURA)~~ must be accompanied by a non-refundable fee of \$2,500.

(1213) Qualified Contract Pre-Request Fee. ~~A Development~~An Owner ~~must file~~filing a preliminary Qualified Contract Request to confirm eligibility ~~to submit a Qualified Contract request. The Pre-Request must be accompanied by~~must pay a non-refundable processing fee of \$250.

(1314) Qualified Contract Fee. ~~Upon eligibility approval of the Qualified Contract Pre-Request, the Development~~An Owner ~~may file~~filing a Qualified Contract Request. ~~Such request must be accompanied by~~pay a non-refundable processing fee of \$3,000.

(1415) Ownership Transfer Fee. Requests to approve an ownership transfer must be accompanied by a non-refundable processing fee of \$1,000. ~~Ownership Transfer fees are not required unless~~ for Direct Loan only Developments during the Federal Affordability Period. For Developments ~~that were~~ 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 ~~by TDHCA~~ for preparation of documents by outside bond counsel.

(1516) Unused Credit or Penalty Fee for Competitive HTC Applications. ~~Development Owners who have more tax credits allocated to them than they can must return any HTCs they cannot substantiate through Cost Certification. Failure to do so will return those excess tax credits prior to issuance of IRS Form 8609. A result in a penalty fee equal to the one-year credit amount of the lost credits HTCs (10% of the total unused tax credit amount) will be required to be paid by the Owner prior to the issuance of IRS Form 8609 if the tax credits are not returned, and 8609's issued, within 180 days of the end of the first year of the credit period. This-). The Department may waive this penalty fee may be waived without further Board action if the Department recaptures and re-issuesable to allocate the returned tax credits in accordance with Code, §42- HTCs.~~

If an Applicant returns a full credit allocation after the Carryover Allocation deadline ~~required for that allocation~~, the Executive Director may recommend ~~to the Board the imposition of impose~~ a scoring penalty ~~on the score~~ for any Competitive ~~Housing Tax Credit~~HTC Applications submitted by that Applicant or any Affiliate ~~for any Application in~~ neither a concurrent Application Round ~~occurring concurrent to the return of credits (as further provided for in §11.9(f) of this chapter (relating to Factors Affecting Scoring and Eligibility in current and future Application Rounds),)~~ or, if no Application Round is pending, the Application Round immediately following ~~the return of credits. If any such point penalty is recommended to be assessed and presented for final determination by the Board, it must include notice from the~~. The Department ~~to must notify~~ the affected party not less than 14 calendar days prior to the scheduled Board meeting. The Executive Director may, ~~but is not required to~~, issue a formal

notice after disclosure ~~if it is determined upon a determination~~ that the matter does not warrant point penalties.

(1617) Compliance Monitoring Fee. ~~Upon receipt of the cost certification for HTC Developments, HTC Developments that are layered with Direct Loan funds, or upon the completion of the Development Period and the beginning of the repayment period for Direct Loan only Developments, the~~ The Department will invoice ~~the Development Owner for Owners~~ compliance monitoring fees. ~~For HTC only the amount due will equal of~~

~~(A) \$40 per low-income unit. For Direct Loan Only Developments the fee will be \$34 per Direct Loan Units, including HOME Match Eligible Units. Developments with both HTCs and Direct Loan, including HOME Match Eligible Units, will only pay one fee equal to \$40 per low income unit. Existing HTC developments with a Land Use Restriction Agreement that require payment of a compliance monitoring fee that receive a second allocation of credit will pay only one fee; the fee required by the original Land Use Restriction Agreement will be disregarded. For HTC Developments, the fee will be, 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 the credit period. For Direct Loan only Developments, the fee will be collected beginning with the first year of after Project Completion. The~~

~~HTC Developments with an existing LURA will owe only the forgoing fee. Owners must pay the invoice must be paid prior to either the issuance of IRS Form 8609 for HTC properties. For Direct Loan only Developments, the fee must be paid prior to the or release of final retainage. for Developments with no HTCs. Subsequent anniversary due dates on which the compliance monitoring fee payments are due shall be determined by the month the first building is placed places in service. Compliance fees may be adjusted from time to time by the Department.~~

(1718) Public Information Request Fee. ~~Public information requests are processed by the Department in accordance with the provisions of Tex. Gov't Code, Chapter 552. The Department uses the guidelines promulgated by the Office of the Attorney General to determine the cost of copying and other costs of production~~ producing public information requests.

(1819) Adjustment of Fees by the Department and Notification of Fees. (§2306.6716(b)) ~~All fees charged by the~~ The Department may revise any fees charged in the administration of the ~~Housing Tax Credit~~ HTC and Direct Loan programs ~~may be revised by the Department from time to time (including for compliance)~~ as necessary to ensure that such fees ~~compensate the Department for cover~~ its ~~administrative~~ costs and expenses. Unless the Department determines otherwise ~~determined by the Department~~, all revised fees ~~shall~~ apply to all Applications in process and all Developments in operation at the time of such revisions.

§11.902. Appeals Process.

(a) For Competitive HTC Applications, an Applicant or ~~Development~~ Owner may appeal ~~decisions made by the~~ Department decisions pursuant to Tex. Gov't Code §2306.0321 and §2306.6715 using the process identified in this section. ~~For Tax-Exempt Bond Developments and Direct Loan Developments (not layered with a Competitive HTC Application), an Applicant or Development Owner may appeal decisions made by the Department pursuant to §1.7 of this title (relating to Appeals). Matters that can be appealed include:~~ Matters that can be appealed include:

- (1) Aa determination regarding the Application's satisfaction of applicable requirements, Subchapter B of this chapter ~~(relating to Site and Development Requirements and Restrictions)~~ and Subchapter C of this chapter ~~(relating to Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules for Applications)~~,₂ pre-application threshold criteria, and underwriting criteria;
- (2) The Application scoring ~~of the Application under the applicable selection criteria;~~
- (3) Aa recommendation ~~as to of~~ the amount of Department funding to be ~~allocated to the Application awarded;~~
- (4) ~~Misplacement~~ misplacement of ~~an Application all~~ or ~~part part~~ of an Application, mathematical errors in scoring ~~an Application~~, or procedural errors resulting in unequal consideration ~~of the Applicant's proposal;~~
- (5) ~~Denial~~ denial of a requested change to a Commitment or Determination Notice;
- (6) ~~Denial~~ denial of a requested change to a loan agreement;
- (7) ~~Denial~~ denial of a requested change to a LURA;
- (8) Anyany Department decision that results in the termination or change in set-aside of an Application; and
- (9) Anyany other matter for which an appeal is permitted under this chapter.

(b) An Applicant or ~~Development~~ Owner may not appeal a decision made regarding an Application filed by or an issue related to another Applicant or ~~Development~~ Owner.

(c) An Applicant or ~~Development~~ Owner must file its appeal in writing with the Department not later than 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 ~~Development~~ 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 ~~that represents~~ representing the Applicant. For

Application related appeals, the Applicant must specifically identify the ~~Applicant's~~ grounds for appeal, based on the original Application and additional documentation filed with ~~the original Application~~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 ~~Executive Director's response to the appeal~~ or the Executive Director does not respond, the Applicant may appeal directly in writing to the Board. While 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 ~~must be disclosed in the appeal documentation filed with the Executive Director~~.

(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 ~~Housing Tax Credit~~HTC Application appeal prior to posting the agenda ~~being posted~~ for the July Board meeting at which awards from the Application Round will be made, the appeal may be posted to the Board agenda ~~prior to~~before the Executive ~~Director's issuance of a response~~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 ~~contained within~~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 ~~with the Department or Board~~ and 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, ~~Development~~ Owner, or other Person that fails to adhere to its obligations with regard to ~~the Department~~ programs ~~of the Department, whether~~ (contractual or otherwise), ~~made~~ false or misleading representations to the Department with regard to an Application, request for funding, or compliance requirements, or otherwise violated a provision of 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 ~~(relating to Administrative Penalties)~~ 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;~~or.~~

(2) In the case of the competitive ~~Low Income Housing Tax Credit~~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 ~~of any such failure to adhere to obligations or false or misleading representations. Point reductions under this section may be appealed to the Board.~~(subject to appeal to the Board).

§11.904. Alternative Dispute Resolution (ADR) Policy.

~~In accordance with Tex. Gov't Code §2306.082, it is the Department's policy to encourage~~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 ~~(relating to Alternative Dispute Resolution).~~ (§2306.082)

§11.905. General Information for Commitments or Determination Notices.

(a) ~~A~~The Department will not issue a Commitment or Determination Notice ~~shall not be issued~~ with respect to any Development for an unnecessary amount in accordance with Code §42(m)(2)(A) or where costs exceed the ~~cost for the total development, acquisition, construction or rehabilitation exceeds the limitations~~ established ~~by the Department and the Board~~limits.

(b) All Commitments ~~or and~~ Determination Notices, ~~whether reflected in the Commitment or Determination Notice or not, are made~~ remain subject to ~~full compliance with all~~ applicable provisions of law and the Department's ~~Department~~ rules, ~~all provisions of Commitment, Determination Notice~~their governing documents, and ~~Contract~~, satisfactory completion of underwriting, and ~~satisfactory resolution of any~~all related conditions ~~of underwriting, award, and, including~~ administrative deficiencies.

(c) The Department ~~shall~~will notify, ~~in writing, the mayor, county judge, or other~~ the appropriate official of the ~~municipality or county, as applicable, in which~~jurisdiction where the Development is located ~~informing him/her~~ of the Board's issuance of a Commitment Notice, ~~as applicable~~.

(d) The Department may cancel a Commitment, Determination Notice or Carryover Allocation prior to the issuance of IRS Form(s) 8609 ~~(for Housing Tax Credits)~~ or completion of construction ~~with respect to a Development~~ and/or apply administrative penalties if:

(1) The Applicant, ~~Development~~ Owner, or the Development, ~~(as applicable,)~~ fails, after written notice and a reasonable opportunity to cure, to meet any condition of ~~the conditions of such a~~ Commitment, Determination Notice or Carryover Allocation or any of

the undertakings and commitments made by the ~~Development~~ Owner in the Application ~~process for the Development;~~

(2) Any material statement or representation made by the ~~Development~~ Owner or made with respect to the ~~Development~~ Owner or the Development is untrue or misleading;

(3) An event occurs with respect to the Applicant or the ~~Development~~ Owner ~~which that~~ would have made the Application ineligible for funding pursuant to Subchapter C of Chapter 11 of this title ~~(relating to Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules)~~ if such event had occurred prior to issuance ~~of the Commitment, Determination Notice or Carryover Allocation; or~~

(4) The Applicant, ~~Development~~ 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 ~~of the Department.~~

§11.906. Commitment and Determination Notice General Requirements and Required Documentation.

(a) Commitment. For Competitive HTC Developments, the Department ~~shall~~will issue a Commitment to the ~~Development~~ Owner ~~which shall confirm~~confirming that the Board has approved the Application and state the Department's commitment to make a Housing Credit an HTC Allocation to the Development Owner in a specified amount, subject to the determining feasibility ~~determination described in~~under Chapter 11, Subchapter D of this title ~~(relating to Underwriting and Loan Policy) and the determination~~and that the Development satisfies the requirements of this chapter and other applicable Department rules. The Commitment ~~shall expire~~expires on the date specified ~~therein~~, which ~~shall~~will be 30 calendar days from the effective date, unless the ~~Development~~ Owner indicates acceptance by executing the Commitment, pays the required fee specified in §11.901 of this chapter ~~(relating to Fee Schedule);~~, and satisfies any conditions set forth therein ~~by the Department.~~ The Commitment expiration date may not be extended.

(b) Determination Notices. For Tax-Exempt Bond Developments, the Department ~~shall~~will issue a Determination Notice ~~which shall confirm~~confirming that the Development satisfies the requirements of this chapter ~~as applicable~~ and other applicable Department rules in accordance with ~~the Code~~ §42(m)(1)(D) ~~of the Internal Revenue Code (the Code).~~. The Determination Notice ~~shall~~will state the Department's determination of a specific amount of housing tax credits that HTCs for which the Development may be eligible ~~for, subject to the requirements set forth in the Department's rules, as applicable.~~ The Determination Notice ~~shall expire~~expires on the date specified ~~therein~~, which ~~shall~~will be 30 calendar days from the effective date, unless the ~~Development~~ 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 ~~by the Department.~~ For Tax-Exempt Bond Developments utilizing

(1) a local issuer, the Determination Notice expiration date may be extended for ~~a period not up to exceed 5~~five calendar days, ~~upon request. For Tax-Exempt Bond Developments utilizing;~~

(2) TDHCA as the bond issuer, the expiration date may be extended to coincide with the closing date. ~~If the requirements of the The Determination Notice, and any conditions of the Determination Notice are met, the Determination Notice shall will~~ be valid for a period of one year from ~~the its~~ effective date ~~of the Determination Notice~~, without distinction between a Certificate of Reservation or Traditional Carryforward Reservation. The one-year period may be extended for ~~a period not up to exceed 6~~six months, ~~upon request. Should an Applicant desire to have, The Department will not issue~~ a new Determination Notice ~~issued that reflects reflecting~~ a different ~~recommended credit~~HTC amount, ~~then without~~ a new Application ~~must be submitted that meets the requirements of §11.201(2) of this chapter.~~

(c) Documentation Submission Requirements at Commitment of Funds. ~~No Owners must provide the documentation in paragraphs (1) - (7) below no~~ later than the Commitment expiration date ~~of the Commitment~~ (or no ~~later than~~ December 31 for Competitive HTC Applications, whichever is earlier) or Determination Notice, ~~the documentation described in paragraphs (1) - (7) of this subsection must be provided.~~ Failure to ~~provide these documents~~do so may cause the Commitment or Determination Notice to be rescinded.

(1) For entities formed outside the state of Texas, evidence that ~~the entity 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 ~~can be provided~~ 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~~ 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 ~~can be provided~~ to that effect.

~~(3) Evidence~~(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 ~~in the form of a corporate resolution which indicates the sub-entity in Control consistent with the entity contemplated and described in the Application.~~

(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 ~~(relating to the Previous Participation Review)~~, 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 ~~(relating to Amendments and Extensions)~~.

(7) For Applications underwritten with a property tax exemption, submit documentation ~~must be submitted~~ in the form of a letter from an attorney identifying the statutory basis for the exemption and indicating ~~that~~ the exemption is reasonably achievable, subject to appraisal district review. Additionally, any Development with a proposed ~~Payment in Lieu of Taxes (PILOT)~~ agreement must provide evidence regarding ~~theits~~ its statutory basis ~~for the PILOT and its~~ terms.

(8) For Competitive HTC Applications, staff may grant relief of the deadline for any documentation that must be submitted ~~in accordance with~~ under this section, ~~staff may grant relief of the associated deadline~~, for unusual or unpredictable circumstances ~~that are~~ outside of the Applicant's control ~~such as~~ (inclement weather or failed deliveries. ~~Applicants must submit any payment due under this chapter and operate under the assumption that the deadline for such payment is final.~~)

(d) Post Bond Closing Documentation Requirements. Regardless of the bond issuer ~~of the bonds, no later than 60 calendar days following closing on the bonds, the Development, the~~ Owner must submit the documentation in paragraphs (1) - (6) ~~of this subsection. below no later than 60 calendar days following closing.~~

(1) ~~Training certificate~~ Certificate(s) from a Department approved ~~"~~property owner and manager Fair Housing trainer~~"~~ showing ~~that the Development~~ Owner and on-site or regional property manager ~~has~~ 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 ~~that~~ completing all parts or phases of the offered training ~~have been completed; two. Two~~ certificates supplied for the same part or phase of an offered training will not ~~be counted~~ count towards the five hour required minimum, ~~even if they were attended on different dates.~~ The ~~Development Owner~~ individual reflected on the certificate must be identified on the organizational chart as having Control.

(2) ~~A training certificate~~ 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 ~~that~~ completing all parts or phases of the offered training ~~have been completed; two. Two~~ certificates supplied for the

same part or phase of an offered training will not ~~be counted~~count towards the five hour required minimum, ~~even if they were attended on different dates.~~

(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 ~~(relating to Reporting Requirements).~~

(5) An initial construction status report consisting of items from §10.401(b)(1)-(6) of this title ~~(relating to Construction Status Reports).~~

(6) A current survey or plat of the ~~Development~~ Site prepared and certified by a duly licensed Texas Registered Professional Land Surveyor. ~~The survey or plat must clearly delineate~~ delineating the floodplain areas and ~~show~~showing all easements recorded against the Property and encroachments.

§11.907. Carryover Agreement General Requirements and Required Documentation.

~~Carryover (Competitive HTC Only).~~ All Developments that received a Commitment, and will not ~~be placed~~place in service and receive IRS Form(s) 8609 in ~~the~~that year ~~the Commitment was issued~~, must submit the Department's Carryover documentation, ~~in the form prescribed by the Department in the Carryover Manual~~, no later than the Carryover Documentation Delivery Date as identified in §11.2 of this title ~~(relating to Program Calendar for Competitive Housing Tax Credits)~~ of the year in which the Commitment is issued ~~pursuant to §42(h).~~

~~(1)(C) of the Code.~~

~~(4)~~ The Department will terminate Commitments ~~for credits will be terminated~~ if it does not receive the Carryover documentation ~~has not been received~~ by this deadline, unless an extension has been approved. This termination is subject to ~~right of~~ appeal directly to the Board, ~~and if so determined by the Board, immediately upon final termination by the Board, staff is directed to award the credits to other qualified Applicants on the approved waiting list.~~

(2) If the interim or permanent financing structure, syndication rate, amount of debt or syndication proceeds are ~~finalized but~~ different at the time of Carryover from ~~what was proposed in~~ the original Application, the Owner must provide applicable documentation ~~of such changes must be provided and the Development may be re-evaluated by the~~. The Department ~~for a reduction of credit~~may reduce the HTC allocation or change ~~in~~ conditions.

(3) All Carryover Allocations will be contingent upon the ~~Development~~ Owner providing evidence ~~that they have and will maintain~~of maintaining Site Control through the 10% Test or ~~through the~~ anticipated closing date, whichever is earlier. ~~For purposes of this paragraph,~~ Owners must address any changes to the ~~Development~~ Site acreage between

Application and Carryover ~~must be addressed by written explanation or, as appropriate,~~ in accordance with §10.405 of this title ~~(relating to Amendments and Extensions).~~

~~(4) Confirmation~~(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 ~~must be submitted with the Carryover Allocation.~~

SUBCHAPTER F. STATE HOUSING TAX CREDITS.

10 TAC §11.1001 - 11.~~1009~~1008

§11.1001. General.

- (a) This subchapter applies only to ~~2026~~2027 State Housing Tax Credits to supplement ~~Competitive~~ HTC awards ~~during the July Board meeting of the Department at which final awards of credits are authorized or to supplement Tax Exempt Bond Developments.~~
- (b) ~~For Competitive HTC Applications, submissions~~Submissions required to ~~make a request for~~ State Housing Tax Credits are ~~considered~~ a supplement to ~~the an~~ original Competitive HTC Application. Requests for State Housing Tax Credits are not considered Applications under the ~~2026~~2027 HTC Competitive Cycle nor are they part of the ~~2026~~2027 Application Round.
- (c) ~~For Competitive HTC Applications, an~~An allocation of State Housing Tax Credits will be processed as a Material Amendment to ~~the a~~ Competitive HTC Application under §10.405 of this title ~~(relating to Amendments and Extensions). No. The Department will not charge a~~ fee ~~shall be charged~~ for this Material Amendment.
- (d) For Competitive HTC Applications, revisions to costs included in a request for State Housing Tax Credits will not ~~have an~~ impact ~~on~~ points originally awarded under §11.9(e)(2) and (4) of this title ~~(relating to Costs of Development per Square Foot or Leveraging respectively).~~
- (e) Tax-Exempt Bond Developments ~~shall~~must meet the requirements of §11.~~1009~~1008 of this chapter ~~(relating to State Housing Tax Credits for Tax-Exempt Bond Developments).~~
- (f) Developments with HOME funds ~~from the Department or another Participating Jurisdiction,~~ will enter into a Contract and a LURA for HOME Match Eligible Units.
- (g) Credit requests for State Housing Tax Credits are the full ten-year value of the credits rather than the annual allocation and may not exceed the total value of the Development's federal housing tax credits.

§11.1002. Program Calendar for State Housing Tax Credits Associated with Competitive HTC Applications.

- (a) Competitive HTC Deadlines. ~~Non~~The Department may extend non-statutory deadlines specifically listed in the Program Calendar ~~may be extended by the Department~~ for a period of not more than five business days ~~provided that if~~ the Applicant has, ~~in writing,~~ requested an extension in writing prior to the ~~date of the~~ original deadline and has established ~~to the reasonable satisfaction of the Department that there is~~ good cause ~~for the extension.~~

Deadline	Documentation Required
2/ 27/2026 <u>26/2027</u>	Full Application Delivery Deadline, must include completed Intent to Request a State Housing Tax Credit Allocation
9/ 4/2026 <u>10/2027</u>	State Housing Tax Credit Request Form due
December 2026 <u>2027</u>	Allocation Certificates issued

§11.1003. State Housing Tax Credit Allocation Process Associated with Competitive HTC Applications.

(a) ~~Intent to Request State Housing Tax Credit Allocation.~~ Only those Applicants ~~that electing~~ to request ~~an a State Housing Tax Credit allocation of State Housing Tax Credits from the Department~~ by the Full Application Delivery Date specified in §11.2(a) or (b) of this chapter ~~(relating to Program Calendar)~~ are eligible to ~~submit a Request for~~request State Housing Tax Credits.

(b) The Department must receive Requests for State Housing Tax Credits ~~must be received~~ by the deadline specified in §11.1002 of this subchapter ~~(relating to Program Calendar for State Housing Tax Credits)~~ in the format required ~~by the Department~~.

~~(c) Minimum Request Amount.~~(c) The minimum request amount is \$3,000,000.

(d) Third Party Requests for Administrative Deficiency. ~~Due to the nature of the State Housing Tax Credit process and reliance on the Original Application and scores,~~The Department will not use the Third Party Request for Administrative Deficiency process ~~will not be utilized~~ 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 ~~(relating to Procedural Requirements for Application Submission)~~ will generally will apply to Requests for State Housing Tax Credits, unless otherwise specified in this Subchapter.

(b) The Department will rely on the Original Application ~~will be relied upon, as deemed final and reviewed by staff as part of the original award; the~~ The request for State Housing Tax Credits must only include the items authorized in this subchapter. Architectural Applicants may not submit architectural drawings, or other documents ~~that relate~~relating to changes to the Application other than revisions to the financing structure ~~may not be submitted.~~ The

Applicant must submit the required documents as a single PDF document and all spreadsheet exhibits ~~must also be provided in a usable spreadsheet format as further as~~ specified in the Department's released materials, ~~which, Staff will be incorporated~~ incorporate these into the Original Application ~~by staff,~~ 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) ~~The purpose of this section is to identify the threshold documentation that is specific to the Request for State Housing Tax Credits submission, unless specifically indicated or otherwise required by Department rule. Only those documents listed herein may be submitted.~~

(b) Certification, Acknowledgement, and Consent of Development Owner. AThe Owner must execute a certification of the information in this subchapter as well as Subchapter B of this chapter ~~must be executed by the Development Owner and addresses~~ addressing the specific requirements associated with the Development. The Person executing the certification is responsible for ensuring all individuals referenced therein ~~are in compliance~~ comply with the certification and ~~that they~~ 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 ~~Development~~ Site ineligible. Any change must be addressed under the requirements of §10.405 of this title ~~(relating to Amendments and Extensions).~~

(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 Applicants~~ State Housing Tax Credit Request Applicants must submit the appropriate documentation as described in §11.204(9) of this chapter ~~(relating to Site Control).~~

(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 ~~(relating to Zoning).~~

(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) Anan estimate of the amount of equity dollars expected to be raised ~~for the Development;~~

(2) ~~The~~ the amount of State Housing Tax Credits requested ~~for allocation to the Development Owner;~~

- (3) ~~Pay~~pay-in schedules;
- (4) ~~Syndicator~~syndicator consulting fees and other syndication costs; and
- (5) ~~An~~an acknowledgement of the amounts and terms of all other anticipated sources of funds and ~~if the Application reflects~~ an intent to elect average income ~~averaging there must be an acknowledgement to that effect in the term sheet.~~(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 ~~will only be reviewed~~ for items addressed in this subchapter. ~~In requests for State Housing Tax Credits the~~The Total Developer Fee and Developer Fee included in Eligible Basis cannot exceed the ~~Developer Fee~~ amounts in the Application's most recently published Real Estate Analysis report ~~for the Application. The Real Estate Analysis Division. 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, ~~for in~~ years ~~in which the Department receives~~when requests for ~~more~~ State Housing Tax Credits ~~than are exceed the amount~~ available, the Department ~~shall~~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 for households at or below 30% of AMGI proposed in the original application shall not be considered. The Department will award based solely upon new Units proposed in exchange for tax credit equity. The initial State Housing Tax Credit award shall be made to the Applicant with the lowest request amount per additional Units provided. Subsequent awards shall be made using the same metric)~~ until the Department can no longer fund a full credit request. In the case of a tie, preference ~~shall~~will be ~~determined based upon~~on the Original Application scores under §11.9 of this chapter ~~(relating to Competitive HTC Selection Criteria)~~ and, if applicable, the tie breaker factors established under §11.7 of this chapter ~~(relating to Tie Breaker Factors).~~

§11.1008. State Housing Tax Credits for Tax-Exempt Bond Developments.

~~(a) The request for State Housing Tax Credits shall be reflected in the~~(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 ~~shall~~ include a term sheet from a syndicator ~~that includes~~including the ~~amount of~~ State Housing Tax Credits ~~requested~~request amount and pricing information.

(b) For Applications that will receive a Certificate of Reservation from the ~~Texas Bond Review Board~~TBRB in January, an Applicant may submit the complete Application (~~which may with~~ or ~~may not include without~~ Third Party Reports, as ~~more fully~~ described under §11.201(2) of this chapter ~~(relating to Procedural Requirements for Application Submission))~~, from January 2 through January 31. The Department ~~shall utilize~~will use a first-come, first-served system for ~~establishing the~~ priority of requests ~~for the portion of the State Housing Tax Credit available for Tax-Exempt Bond Developments.~~

(c) Once the number of Applications submitted ~~exceed~~exceeds the amount of State Housing Tax Credits for Tax-Exempt Bond Developments ~~the Department can allocate, available, other~~ Applicants ~~for those Applications will be provided~~receive notice ~~to that effect and be given and~~ the opportunity to modify their Application through the Administrative Deficiency process to exclude the ~~request for the~~ State Housing Tax Credit.

(d) ~~Should~~The Department will notify the next Application in line should there be an amount of State Housing Tax Credits ~~to allocate~~allocated to an Application ~~and that Application is~~ withdrawn or terminated, or for which the Certificate of Reservation is withdrawn from the ~~Bond Review Board, the next Application in line, based on the received date will be notified that their Application will be underwritten with the State Housing Tax Credit. TBRB.~~ Alternatively, ~~in cases where~~ staff can make ~~seamless~~ adjustments to other line items to account for the lack of State HTC, ~~staff may make such adjustments automatically~~ 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 ~~of State Housing Tax Credits~~ to allocate for Tax-Exempt Bond Developments.

(f) The Department will issue Qualified Developments ~~will be issued~~ an Allocation Certificate, pursuant to Texas Insurance Code Chapters 171 and 233 that will reflect the State Housing Tax Credit Amount ~~recommended by the Department.~~