TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
TDHCA Governing Board Approved Draft of
Proposed Multifamily Direct Loan Rule at
10 Texas Administrative Code ("TAC") Chapter 13

Disclaimer

Attached is a draft of the proposed Multifamily Direct Loan Rule at 10 TAC Chapter 13 that was approved by the TDHCA Governing Board on September 6, 2018. This draft incorporates changes made by the Board as a result of public comment at the meeting. This document, including its preamble, is scheduled to be published in the September 21, 2018 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.

Public Comment

Public Comment Period: Starts: 8:00 a.m. Austin local time on September 21, 2018 Ends: 5:00 p.m. Austin local time on October 12, 2018.

Comments received after 5:00 p.m. Austin local time on October 12, 2018 will not be accepted.

Written comments may be submitted, in hard copy/fax or electronic formats to:

Texas Department of Housing and Community Affairs
Attn: Andrew Sinnott
P.O. Box 13941
Austin, Texas 78711-3941
Fax: (512) 482-8851
Email: andrew.sinnott@tdhca.state.tx.us

Written comments may be submitted in hard copy, fax, or email formats within the designated public comment period. 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.

Attachment A: Preamble, including required analysis, for proposed repeal of 10 TAC Chapter 13, the Multifamily Direct Loan Rule

The Texas Department of Housing and Community Affairs (the "Department") proposes the repeal of 10 TAC Chapter 13, Multifamily Direct Loan Rule. The purpose of the proposed repeal is to provide for clarification of the existing rule through new rulemaking action.

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.

1. Mr. Irvine has determined that, for the first five years the proposed repeal would be in effect, the proposed repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous readoption making changes to an existing activity, administration of the Multifamily Direct Loan Program.

2. The proposed repeal does not require a change in work that would require the creation of new employee positions, nor is the proposed repeal significant enough to reduce work load to a degree that any existing employee positions are eliminated.

3. The proposed repeal does not require additional future legislative appropriations.

4. The proposed repeal does not result in an increase in fees paid to the Department nor in a decrease in fees paid to the Department.

5. The proposed repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.

6. The proposed action will repeal an existing regulation, but is associated with a simultaneous readoption making changes to an existing activity, administration of the Multifamily Direct Loan Program.

7. The proposed repeal will not increase nor decrease the number of individuals subject to the rule's applicability.

8. The repeal will not negatively nor positively affect this state's economy.

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 has evaluated this proposed repeal and determined that the proposed repeal will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The proposed repeal does not contemplate nor authorize a taking 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 proposed repeal as to its possible effects on local economies and has determined that for the first five years the proposed repeal would be in effect there would be no economic effect on local employment; therefore no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the proposed repeal is in effect, the public benefit anticipated as a result of the repealed section would be increased clarity and improved access to the Multifamily Direct Loan funds. There will not be economic costs to individuals required to comply with the repealed section.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Irvine also has

determined that for each year of the first five years the proposed repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 28, 2018, to October 12, 2018, to receive input on the proposed repealed section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Andrew Sinnott, Multifamily Direct Loan Administrator, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or email htc.public-comment@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. Austin local time OCTOBER 12, 2018.

STATUTORY AUTHORITY. The proposed repeal is made pursuant to TEX. GOV'T CODE, §2306.053, which authorizes the Department to adopt rules. Except as described herein the proposed repealed sections affect no other code, article, or statute.

10 TAC Chapter 13, Multifamily Direct Loan Rule

Attachment B: Preamble, including required analysis, for proposed new 10 TAC Chapter 13, Multifamily Direct Loan Rule

The Texas Department of Housing and Community Affairs (the "Department") proposes new 10 TAC Chapter 13, Multifamily Direct Loan Rule. The purpose of the proposed new section is to provide compliance with Tex. Gov't Code §2306.111 and to update the rule to: clarify program requirements in multiple sections, codify in rule practices of the division, and change citations to align with changes to other multifamily rules.

Tex. Gov't Code §2001.0045(b) does not apply to the rule proposed for action because it was determined that no costs are associated with this action, and therefore no costs warrant being offset.

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. Irvine 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, administration of the Multifamily Direct Loan Program.

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 proposed rule changes will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

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 expand, limit, or repeal an existing regulation.

7. The proposed rule will not increase nor decrease the number of individuals subject to the rule's applicability; and

8. The proposed rule will not negatively nor positively affect the state's economy.

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, §2306.111.

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

2. This rule relates to the procedures for multifamily direct loan applications and award through various Department fund sources. Other than in the case of a small or micro-business that is an applicant for such a loan product, no small or micro-businesses are subject to the rule. It is estimated that approximately 200 small or micro-businesses are such applicants; for those entities the new rule provides for a more clear, transparent process for doing so and does not result in a negative impact for those small or micro-businesses. There are not likely to be any rural communities subject to the proposed rule because this rule is applicable only to direct loan applicants for development of properties, which are not generally municipalities. The fee for applying for a Multifamily Direct Loan product is $1,000, unless the Applicant is a nonprofit that provides supportive services or the Applicant is applying for Housing Tax

Credits in conjunction with Multifamily Direct Loan funds, in which case the application fee may be waived. These 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.

There are 1,296 rural communities potentially subject to the proposed rule for which the economic impact of the rule is projected to be $0. 10 TAC Chapter 13 places no financial burdens on rural communities, as the costs associated with submitting an Application are born entirely by private parties. In an average year the volume of applications for MFDL resources that are located in rural areas is approximately fifteen. In those cases, a rural community securing a loan will experience an economic benefit, not least among which is the increased property tax revenue from a large multifamily Development.

3. The Department has determined that because there are rural MFDL 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 MFDL 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 nor authorize a taking 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 MFDL Developments, layered with housing tax credits, often involve a typical minimum investment of $10 million in capital, and more commonly an investment from $20 million to $30 million. Such a capital investment has direct, indirect, and induced effects on the local and regional economies and local employment. However, because the exact location of where program funds or developments are directed is not determined in rule, and is driven by real estate demand, there is no way to predict during rulemaking where these positive effects may occur. Furthermore, while the Department believes that any and all impacts are positive, that impact is not able to be quantified for any given community until MFDL awards and LIHTCs are actually awarded to a proposed Development, given the unique characteristics of each proposed multifamily Development.

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 MFDL Development layered with LIHTC and 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 MFDL awards.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX GOV'T CODE §2001.024(a)(5). Timothy K. Irvine, Executive Director, 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 improved clarity of program requirements in multiple sections, codification in rule practices of the division, and change citations to align with changes to other multifamily rules. There will not be any economic cost to any individuals required to comply with the new section because this rule does not have any new requirements that would cause additional costs to applicants.

f. FISCAL NOTE REQUIRED BY TEX GOV'T CODE §2001.024(a)(4). Mr. Irvine 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 it does not have any new requirements that would cause additional costs to applicants.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 28, 2018, to October 12, 2018, to receive input on the proposed repealed section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Andrew Sinnott, Multifamily Direct Loan Administrator, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or email htc.public-comment@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. Austin local time OCTOBER 12, 2018.

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.

CHAPTER 13 MULTIFAMILY DIRECT LOAN RULE

§13.1 Purpose

(a) Authority. The rules in this Chapter apply to the funds provided to Multifamily Developments through the Multifamily Direct Loan Program ("MFDL" or "Direct Loan Program") by the Texas Department of Housing and Community Affairs ("Department"). Notwithstanding anything in this Chapter to the contrary, loans and grants issued to finance the Development of multifamily rental housing are subject to the requirements of the laws of the State of Texas, including but not limited to Tex. Gov't Code, Chapter 2306 (sometimes referred to as the "State Act"), and federal law pursuant to the requirements of Title II of the Cranston-Gonzalez National Affordable Housing Act, Division B, Title III of the Housing and Economic Recovery Act (HERA) of 2008 - Emergency Assistance for the Redevelopment of Abandoned and Foreclosed Homes, Section 1497 of the Dodd-Frank Wall Street Reform and Consumer Protection Act: Additional Assistance for Neighborhood Stabilization Programs, Title I of the Housing and Economic Recovery Act of 2008, Section 1131 (Public Law 110-289), and the implementing regulations 24 CFR Part 91, Part 92, ~~and~~ Part 93, and Part 570 as they may be applicable to a specific fund source. The Department is authorized to administer Direct Loan Program funds pursuant to Tex Gov't Code, Chapter 2306, Subchapter I, Housing Finance Division.

(b) General. This Chapter applies to an award of MFDL funds by the Department and establishes the general requirements associated with the application and award process for such funds. Applicants pursuing MFDL assistance from the Department are required to certify, among other things, that they have familiarized themselves with all applicable rules that govern that specific program including, but not limited to this Chapter, Chapter 1 (relating to Administration), Chapter 2 (relating to Enforcement), Chapter 8 (relating to Section 811 PRA Program), and Chapter 10 of this Title (relating to Uniform Multifamily Rules), Chapter 11 of this Title (relating to Housing Tax Credit Program Qualified Allocation Plan ("QAP")) and Chapter 12 of this Title (relating to Multifamily Housing Revenue Bond Rules) will apply if MFDL funds are layered with those other Department programs. The Applicant is also required to certify that it is familiar with any other federal, state, or local financing sources that it~~:~~ identifies in its Application. Any conflict with rules regulations, or statutes will be resolved on a case by case basis that allows for compliance with all requirements. Conflicts that cannot be resolved may result in Application ineligibility.

(c) Waivers. Requests for waivers of any program rules or requirements must be made in accordance with 10 TAC §~~10~~11.207 of this title (relating to Waiver of Rules for Applications) and as limited by the rules in this Chapter. In no instance will the Department consider a waiver request that would violate federal program requirements or state or federal statute.

(d) Applications for Multifamily Direct Loan funds must meet all applicable eligibility and threshold requirements of Chapter 11 of this Title, the Qualified Allocation Plan.

§13.2 Definitions

The following words and terms, when used in this Chapter, shall have the following meanings, unless the context clearly indicates otherwise. Any capitalized terms not specifically mentioned in this section shall have the meaning as defined in Tex. Gov't Code, Chapter 2306, §§141, 142, and 145 of the Internal Revenue Code, 24 CFR Part 91, Part 92, Part 93, and 2 CFR Part 200~~,~~ and 10 TAC Chapter 11, the Qualified Allocation Plan~~ Chapter 10, of this Title (relating to Uniform Multifamily Rules)~~.

(1) Annual Income or Annual Incomes~~ means ---~~"~~annual~~ Annual income" as defined at 24 CFR §5.609, which includes but is not limited to the list of income in HUD Handbook 4350, and specifically excludes those items listed in HUD's Updated List of Federally Mandated Exclusions

from Income.

(2) Choice limiting activity~~ means any~~ Any transfer of title or similar action that occurs prior to a Development obtaining environmental clearance after an application for federal funds (HOME and~~,~~ NSP~~, and NHTF~~) has been submitted. Choice limiting activities also include closing on loans including loans for interim financing, signing of a contract, and commencing construction.

(3) Construction Completion~~ means~~ that necessary title transfer requirements and construction work have been performed~~ as reflected by the Development's~~ and the following documents have been issued for the Development: certificate(s) of occupancy (if New Construction)~~ and~~, Certificate of Substantial Completion (AIA Form G704), and a Final Construction Inspection Letter from Department staff.~~ and the final drawdown of funds has been disbursed~~. In addition, for Developments not layered with Housing Tax Credits, Construction Completion means all modifications requested as a result of the Department's Final Construction Inspection were cleared as evidenced by receipt of the Closed Final Development Inspection Letter.

(4) Community Housing Development Organization (CHDO)~~ means a~~ A private nonprofit organization that has experience developing and/or owning affordable rental housing and that meets the requirements in 24 CFR Part 92 for purposes of receiving HOME funds under the CHDO set-aside. In addition, a member of a CHDO's board cannot be a Principal of the development beyond his/her role as a board member of the CHDO or be an employee of the development team, and may not receive financial benefit other than reimbursement of expenses from the CHDO (e.g., a voting board member cannot also be a paid executive).

(5) ~~"~~Federal Affordability Period~~" means the~~ The period commencing on the date of Construction Completion and ending on the date which is the required number of years as defined by the federal program from the date of Construction Completion

(6) HOME Match-Eligible Unit~~ means~~ a Unit in the Development that is not assisted with HOME Program funds, but would qualify as eligible for Match under 24 CFR Part 92. Unless otherwise identified by the provisions in the Notice of Funding Availability ("NOFA"), ~~TCAP RF~~TCAP Repayment Funds ("TCAP RF") funds and matching contribution on NSP and NHTF Developments must be used on HOME-Match Eligible Units.

(7) Land Use Restriction ("LURA") Term~~ means~~ the period commencing on the effective date of the LURA and ending on the date which is the greater of the loan term or 30 years. The LURA may include both Federal Affordability Period and State requirements.

(8) Matching contribution (Match)~~ means A~~ contribution to a Development from nonfederal sources that may be in the form of one or more of the following:

(A)~~a.~~ Cash contribution (grant), except for cash contributions made by investors in a limited partnership or other business entity subject to pass through tax benefits in a tax credit transaction or owner equity (including deferred developer fee);

(B)~~b.~~ Reduced fees or donated labor from certain eligible contractors, subcontractors, architects, attorneys, engineers, excluding any contributions from a party related to the Developer or Owner;

(C)~~c~~. Net present value of yield foregone from a below market interest rate loan as described in HUD Community Planning and Development ("CPD") Notice 97-03;

(D)~~d.~~ Waived or reduced fees from cities or counties not related to the Applicant in connection with the proposed Development;

(E)~~e.~~ Donated land or land sold by an unrelated third party at a price below market value, as evidenced by a third party appraisal~~, from an unrelated party~~.

(9) Relocation Plan~~ means a~~ A residential anti-displacement and relocation assistance plan which (i) includes provisions consistent with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. §§4601-4655), implementing regulations at 49 CFR Part 24, and policy guidance in Real Estate Acquisition and

Relocation Policy and Guidance (HUD Handbook 1378) and the TDHCA Relocation Handbook; and in some HOME and NSP funded developments Section 104(d) of the Housing and Community Development Act of 1974, as amended and 24 CFR Part 42 (as modified for NSP), and (ii) is in form and substance consistent with requirements of the Department.

(10) Section 234 Condominium Housing basic mortgage limits ("234 Condo Limits") ~~means -- the~~ The per-unit subsidy limits for all MFDL funding. These limits take into account whether or not a Development is elevator served and any local conditions that may make development of multifamily housing more or less expensive in a given metropolitan statistical area. ~~Currently,~~If the high cost percentage adjustment applicable to the 234 Condo Limits for HUD's Fort Worth Multifamily Hub is applicable for all Developments that TDHCA finances through the MFDL Program, and confirmation will be included in the applicable NOFA.

(11) State Affordability Period ~~means -- the~~ The LURA Term as described in the MFDL contract and loan documents and as required by Department in accordance with the State Act which is usually an additional period after the Federal Affordability Period.

(12) Surplus Cash--When the first lien mortgage is a federally insured HUD or FHA mortgage, any cash remaining:
(A) After the payment of:
(i) All sums due or currently required to be paid under the terms of any superior lien;
(ii) All amounts required to be deposited in the reserve funds for replacement;
(iii) Operating expenses actually incurred by the borrower for the Development during the period with an appropriate adjustment for an allocable share of property taxes and insurance premiums;
(iv) Recurring maintenance expenses actually incurred by the borrower for the Development during the period;
(v) All other obligations of the Development approved by the Department; and
(B) After the segregation of an amount equal to the aggregate of all special funds required to be maintained for the Development; and
(C) Excluding payment of:
(i) All sums due or currently required to be paid under the terms of any subordinate liens against the property;
(ii) Any development fees that are deferred including those in eligible basis; and
(iii) Any payments or obligations to the borrower, ownership entities of the borrower, related party entities; any payment to the management company exceeding 5% of the effective gross income; incentive management fee; asset management fees; or any other expenses or payments that shall be negotiated between the Department and borrower.

§13.3 General Loan Requirements

(a) Direct Loan funds may be made available through a ~~Notice of Funding Availability ("~~NOFA~~")~~ or other similar governing document that includes the basic Application and funding requirements.

(b) Direct ~~loan~~ Loan funds may not be awarded if an underwriting report that has been issued by the Department's Real Estate Analysis Division has become final and concludes that the Development does not need the MDFL funding for which it has applied because it is over sourced.

(c) Direct Loan funds are composed of annual HOME and National Housing Trust Fund allocations from HUD, repayment of TCAP loans, HOME Program Income, NSP Program Income, and any other similarly encumbered funding that may become available by Board action, except as otherwise noted in this Chapter. Similar funds include any funds that are required to be ~~to be~~ loaned or granted for the development of multifamily property and are not governed by another Chapter in this Title.

(d) Direct Loan funds may be used for the predevelopment, acquisition, new construction, reconstruction, ~~or~~ rehabilitation, or preservation of affordable housing with suitable amenities, including real property acquisition, site improvements, conversion, demolition, or operating cost reserves, all subject to HUD guidance. Other expenses, such as financing costs, relocation expenses of any displaced persons, families, businesses, or organizations may be included. MFDL funds may be used to assist ~~directly~~ distressed developments previously funded by the Department when approved by specific action of the Department's Governing Board ("Board").

(e) While all costs associated with the Development and known by the sponsor must be disclosed as part of the Application, costs ineligible for reimbursement with Direct Loan funds in accordance with 24 CFR Part 91, Part 92, Part 93, Part 570, and 2 CFR Part 200, as federally required or identified in the NOFA include but are not limited to:
(1) Offsite costs;
(2) Stored Materials;
(3) Site Amenities;
(4) Detached Community Buildings;
(5) Carports and/or garages;
(6) Parking garages;
(7) Swimming pools;
(8) Commercial Space costs;
(9) Reserve accounts not related to NHTF;
(10) TDHCA fees;
(11) Syndication and organizational costs;
(12) Delinquent fees, taxes, or charges;
(13) Costs incurred more than 24 months prior to the effective date of the Direct Loan Contract unless the Application is awarded TCAP ~~Loan~~ R~~epayment funds~~F;
(14) Costs that have been allocated to or paid by another fund source;
(15) Deferred Developer fee; and,
(16) Other costs limited by Award or NOFA, or as established by the Board.

§13.4 Set-asides, Regional Allocation, and Priorities

(a) *Set-asides:* Specific types of Applications or Developments for which a portion of MFDL funds may be reserved in a NOFA will be grouped in set-asides. The Supportive Housing/Soft Repayment set-aside, CHDO set-aside, and General set-aside, as described below, are fixed set-asides that will be included in the annual NOFA. The remaining set-asides described below are flexible set-asides and are applicable only when identified in the NOFA. The amount of a single award may be credited to multiple set-asides, in which case the depleted portion of funds may be repositioned into an oversubscribed set-aside prior to a defined collapse deadline. Applications under any and all set-asides may or may not be layered with other Department Multifamily programs except as provided in this section or as determined by the Board to address unique circumstances not addressed by these rules.

(1) Fixed Set-Asides:
(A) Supportive Housing/Soft Repayment Set-Aside. The Supportive Housing/Soft Repayment ("SH/SR") ~~Set~~set-aside will be limited by the unencumbered interest revenue generated by multifamily loan payments and any amount under the NHTF allocation received by the Department and not otherwise programmed. Supportive Housing and Soft Repayment may be two independent set-asides in the NOFA, in order to accommodate fund source requirements. The SH/SR set-aside is reserved for developments that are not able to support amortizing debt due to higher costs for supportive services and/or extremely low income and rent restrictions. Soft repayment loans may be ~~provided with~~structured as deferred payable, deferred forgivable or cash flow ~~terms~~loans. It is the responsibility of the Applicant to account for any Eligible Basis and/or taxable event implications when requesting any of the potential loan structures available

in this set-aside. Applicants seeking to qualify under this set-aside must propose Developments that meet either:

(i) the Supportive Housing requirements in 10 TAC §11.2(b)~~10.3(a) in the Uniform Multifamily Rules~~ including the other underwriting consideration for Supportive Housing Developments 10 TAC §~~10~~11.302(g)(3) of the Underwriting and Loan Policy; or

(ii) the requirements in subclauses (I) - (III), funding exclusively units targeting 30% Area Median Income (AMI) households;

(I) All units assisted with MFDL funds must be available for households earning 30% AMI or less and have rents no higher than the rent limits for extremely low-income tenants in 24 CFR §93.302(b) ~~households earning 30% AMI or less.~~;

(II) Any Units assisted with MFDL funds may not also be receiving tenant-based voucher or tenant-based rental assistance to the extent that there are other available units within the Development that the voucher-holder may occupy; and

(III) Units assisted with MFDL may not be restricted to 30% AMI by another Department program or any other fund source.

(B) CHDO Set-~~aside~~Aside. Unless waived by HUD, a portion of the Department's annual HOME allocation, equal to at least 15%, will be set aside for eligible Community Housing Development Organizations ("CHDO") meeting the requirements of the definition of Community Housing Development Organization found in 24 CFR §92.2 and §13.2(4). Applicants under the CHDO Set-Aside must be proposing to develop housing in Development Sites located outside Participating Jurisdictions unless the award is made within a Persons with Disabilities ("PWD") set-aside or unless the requirement under Tex. Gov't Code §2306.111(c)(1) has been waived by the Governor as the result of a disaster declaration. CHDO funds are typically available as fully-repayable amortizing debt consistent with §13.~~4~~ 8 of this Chapter relating to debt structure policy. In instances where an application submitted under the CHDO Set-Aside also qualifies under the SH/SR Set-Aside, CHDO funds may be structured in accordance with the SH/SR Set-Aside requirements. A CHDO operating expenses grant may be awarded in conjunction with an award of MFDL funds under the CHDO set-aside in accordance with 24 CFR §92.208. Applications under the CHDO set-aside may not have a for profit special limited partner within the ownership organization chart.

(C) General. The General set-aside is for all other applications that do not meet the requirements of the SH/SR, ~~-~~CHDO set-asides, or flexible set-asides, if any. A portion of the General set-aside may be repositioned into the CHDO set-aside in order to fully fund a CHDO award that meets or exceeds the set-aside amount.

(2) Flexible Set-Asides:

(A) 4% and Bond Layered. The 4% and Bond Layered set-aside is reserved for Applications meeting all MFDL requirements that are layered with 4% Housing Tax Credits and Private Bond funds that do not meet the definition of CHDO.

(B) Persons with Disabilities ("PWD"). The PWD set-aside is reserved for Developments restricting units for tenants who meet the requirements of Tex. Gov't Code §2306.111(c)(2). MFDL funds will be awarded in a NOFA for the PWD set-aside only to the extent sufficient funds are available to award to at least one Application within a Participating Jurisdiction under Tex. Gov't Code §2306.111(c)(1).

(C) 9% Layered. The 9% Layered set-aside is reserved for applications meeting all MFDL requirements that are layered with 9% Housing Tax Credits, and do not meet the definition of CHDO. Awards under this set-aside are dependent on the concurrent award of a 9% HTC allocation.

(D) Additional set-asides may be developed, subject to Board approval, to meet the requirements of specific funds sources, or to address Department priorities.

(b) *Regional Allocation.* All funds in the annual NOFA will be initially allocated to regions and potentially subregions based on a Regional Allocation Formula ("RAF") within the set-asides. The RAF methodology may differ by fund source. HOME funds will be allocated in accordance

with Tex. Gov't Code Chapter 2306. The end date for the RAF will be identified in the NOFA, but in no instance shall it be less than 30 days from the date a link to the Board approved NOFA is published ~~in the *Texas Register*~~on the Department's website.

(1) After expiration of the RAF, funds collapse but may still be available within set-asides as identified in the NOFA~~.~~. Remaining funds within one or more set-asides may collapse in accordance with the NOFA. All Applications received prior to these ~~first two~~ collapse period deadlines will continue to hold their priority unless they are withdrawn, terminated, or funded.

(2) Funds remaining after expiration of the RAF, which have not been requested in the form of a complete ~~application~~Application, will be available statewide on a first-come first-served basis to Applications submitted after the collapse dates.

(3) In instances where the RAF would result in regional or subregional allocations insufficient to fund an ~~application~~Application, the Department may use an alternative method of distribution, including an early collapse, revised formula or other methods as approved by the Board, and reflected in the NOFA.

(c) *Priorities for the Annual NOFA.* Complete Applications received during the period of the RAF will be prioritized for review and recommendation to the Board, to the extent that funds are available both in the region and in the set-aside under which the application is received. If insufficient funds are available in a region to fund all Applications then the oversubscribed Applications will be evaluated only after the RAF and/or set-aside collapse and in accordance with the additional priority levels below, unless an Application received earlier is withdrawn or terminated. If insufficient funds are available within a region or set-aside, the Applicant may request to be considered under another set-aside if they qualify, prior to the collapse. Applications will be reviewed and recommended to the Board to the extent funds are available in accordance with the order of prioritization described in (1) - (3) of this subsection.

(1) Priority 1: Applications not layered with ~~2018~~ current year 9% HTC that are received prior to the ~~2018 9% HTC Application deadline~~Market Analysis Delivery Date as described in 10 TAC §11.2 Program Calendar for Competitive Housing Tax Credits. Priority 1 ~~applications~~ Applications will be prioritized based on score within their respective set-aside and subregion or region during the RAF period to the extent that two or more Applications are received in the same set-aside that request less than or equal to the amount available in the subregion or region. ~~If~~ Once the RAF ~~has collapsed~~period has ended, Applications will be reviewed on a first-come first served basis within their set-aside, or as reflected in the NOFA.

(2) Priority 2: Applications layered with ~~2018~~ current year 9% HTC will be prioritized based on their recommendation status and score for an HTC allocation. All Priority 2 applications will be deemed received on the Market Analysis Delivery Date as described in 10 TAC §11.2 Program Calendar. In order for an MFDL application layered with ~~2018~~ 9% HTC to be considered complete, Applications for both programs must be timely received. Priority 2 applications will be recommended for approval at the same meeting when the Board approves the ~~2018~~ 9% HTC allocations. Applications that are on the wait list for a 9% HTC allocation are not guaranteed the availability of MFDL funds. If the applicable NOFA is over-subscribed for MFDL funds, the Applicant will be notified and may amend their Application to accommodate another fund source.

(3) Priority 3: Applications that are received after the Market Analysis Delivery Date as described in 10 TAC §11.2 Program Calendar for ~~2018~~ 9% HTC Applications ~~deadline~~ on a first come first served basis for any remaining funds until the final deadline identified in the annual NOFA.

(d) Other Priorities. The Board may set additional priorities for the annual NOFA, and for one time or special purpose NOFAs.

§13.5 Award Process

(a) Notice of Funding Availability ("NOFA"). All MFDL funds from the annual allocation will be distributed pursuant to the terms of a published ~~through a~~ NOFA that provides the specific collapse dates and deadlines as well as set-aside and RAF amounts applicable to the MFDL

program, along with scoring criteria, priorities, award limits, and other Application information. Other funds may be distributed by NOFA or through other lawful methods approved by the Board. Set-aside, RAF, and total funding amounts may increase or decrease in accordance with the provisions herein without further Board action as long as the NOFA itself did not require Board action.

(b) Date of Receipt. Applications will be considered received on the business day of receipt. If an application is received after 5pm Austin Local Time, it will be determined to have been received on the following business day. Applications received on a non-business day will be considered received on the next day the Department is open. Applications will be considered complete at the time all required third party reports and application fee(s), in addition to the application, are received by the Department. Within certain set-aside, the date of receipt may be fixed, regardless of the earlier actual date a complete application is received. If multiple applications are received on the same date, in the same region, and within the same set-aside, then score and tiebreaker factors, as described in §13.6 for MFDL or 10 TAC §11.9 for Applications layered with 9% HTC, will be used to determine the Application's rank.

(c) Applications. MFDL Applicants must follow the applicable requirements in 10 TAC Chapter 11~~10,~~ Subchapter C, Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules for Applications. Failure to timely respond to any notice of ~~Administrative~~ Deficiency will result in suspension of the Application and~~a~~ reestablishment of the date of receipt of the Application to the final date at which the cure to the notice was received by the Department. If the date of receipt of the Application is reestablished, an Application could be de-prioritized in favor of another ~~application~~ Application received prior to the new ~~application~~ submission date.

(d) Market Analysis. Applications proposing Rehabilitation that request MFDL as the only source of Department funding may be exempted from the Market Analysis requirement in 10 TAC §11.205(2) if the Development's rent rolls for the most recent six months reflect occupancy of at least 80 percent.

(1) All applicants for MFDL funds, regardless of whether or not the Development Site is in a Participating Jurisdiction, must include the following language in the purchase contract or site control agreement: "Notwithstanding any other provision of this Contract, Purchaser shall have no obligation to purchase the Property, and no transfer of title to the Purchaser may occur, unless and until the Department has provided Purchaser and/or Seller with a written notification that: (1) it has completed a federally required environmental review and its request for release of federal funds has been approved and, subject to any other Contingencies in this Contract, (a) the purchase may proceed, or (b) the purchase may proceed only if certain conditions to address issues in the environmental review shall be satisfied before or after the purchase of the property; or (2) it has determined that the purchase is exempt from federal environmental review and a request for release of funds is not required. The Department shall use its best efforts to conclude the environmental review of the property expeditiously."

(2) Applications also requesting 9% HTC may have the ability to revise financing prior to award should MFDL funds be oversubscribed in a set-aside or for a fund source that has geographic limitations within a set-aside. The Department will provide notice to all impacted Applicants in the case of over-subscription.

(3) When determining the source of funds that an Application will receive when recommended for an award from a set-aside that has multiple sources of funds, the Department will prioritize sources of funds– for recommended Applications in the order described in (A)-(C), which may be limited by the type of activity an Application is proposing and/or the Development Site of an Application. The funds may further be prioritized or assigned to an Application based on limiting repayment risk and other considerations:

(A) Federal funds that have commitment and expenditure deadlines;
(B) Federal funds that do not have commitment and expenditure deadlines;
(C) Nonfederal funds that do not have commitment and expenditure deadlines.

(~~d~~e) Eligibility Criteria. The Department will evaluate the Application for eligibility and threshold at the time of full Application pursuant to the requirements of this Chapter and Chapter ~~10~~ 11 of this title (relating to ~~Uniform Multifamily Rules~~the Qualified Allocation Plan). If there are changes to the Application at any point prior to MFDL loan closing that have an adverse effect on the score and ranking order and that would have resulted in the application being ranked below another application in the ranking, the Department may terminate the Application.

(1) Applicants requesting MFDL as the only source of Department funds may meet the Experience Requirement under 10 TAC §~~10~~11.~~.~~204(6) ~~of this Chapter~~ or by providing evidence of the successful development, and operation for at least 5 years, of at least twice as many affordability restricted units as requested in the Application.

(2) Applications for Developments previously given awards from the Department, or where construction has already started or been completed, regardless of fund source and are not proposing acquisition and rehabilitation, must be found eligible by the Board. The Board may find other applicants eligible for good cause such as Developments assisted by the Department that have encountered adverse factors beyond their control that could materially impair their ability to provide the affordable housing. An application that requires a finding of eligibility by the Board must identify that fact in their application so that the staff may present the matter to the Board for an eligibility determination. A finding of eligibility under this section does not guarantee an award. In general, these applications will not be funded with HOME or NHTF funds.
(A) Requests for eligibility determinations under this paragraph must be received with the Application, so that staff may present the matter to the Board for an eligibility determination, and will not be considered more than 30 calendar days prior to the first Application acceptance date published in the NOFA.
(B) Criteria for the Board to consider would include (i) - (iii) of this subparagraph:
(i) evidence of circumstances beyond the Applicant's control which could not have been prevented by timely start of construction; or
(ii) Force Majeure events; and
(iii) evidence that no further exceptional conditions exist that will delay or cause further cost increases
(C) Applications for Developments previously given awards from the Department that ~~s~~ have not yet achieved Construction Completion, ~~Department funds~~ Applications will be evaluated at no more than the amount of Developer Fee proposed in the original Application. MFDL funds may not be used to fund increased Developer Fee, regardless of the allowability of the increase under other Department rules.

(f) The contractual terms of an award will be governed by and reflect the rules in effect at the time of application; provided, however, that any changes in federal requirements will be reflected in the contractual terms and further provided, that if, prior to execution of such contract, there are new rules in effect, the Applicant may elect to be governed by the new rules.

§13.6 Scoring Criteria

The criteria identified in paragraphs (1) - (7) of this section will be used in the evaluation and ranking of applications to the extent that other applications were received on the same date *and* within the same set-aside and prioritization. There is no rounding of numbers in this section, unless rounding is explicitly indicated for that particular calculation or criteria. The scoring items used to calculate the score for a 9% HTC layered application will be utilized for scoring for an MFDL Application, and evaluated in the same manner except as specified below. Scoring criteria in Chapter 11 of this title will always be superior to Scoring Criteria in this Chapter to the extent

that an MFDL Application is also concurrently requesting 9% housing tax credits.:
(1) Applicants eligible for points under 10 TAC §11.9(c)(4) related to the Opportunity Index (7 points).
(2) Tenant Services. Applicants eligible for points under 10 TAC §11.9(c)(3)(A) related to Tenant Services (9 points) Applicants eligible for points under 10 TAC §11.9(c)(3)(B) related to Tenant Services (1 point).
(3) Underserved Area. Applicants eligible for points under 10 TAC §11.9(c)(6) related to Underserved Area (up to 5 points).
(4) Subsidy per Unit. An application that caps the per unit subsidy limit (inclusive of match) for all Direct Loan units regardless of unit size at:
(A) $100,000 per MFDL unit (4 points).
(B) $80,000 per MFDL unit (8 points).
(C) $60,000 per MFDL unit (10 points).
(5) Rent Levels of Tenants. An Application may qualify to receive up to thirteen (13) points for placing the following rent and income restrictions on the proposed Development for the entire Affordability Period. These Units may not be restricted to 30 percent or less of AMGI by another fund source.
(A) At least 20 percent of all low-income Units at 30 percent or less of AMGI (13 points);
(B) At least 10 percent of all low-income Units at 30 percent or less of AMGI or, for a Development located in a Rural Area, 7.5 percent of all low-income Units at 30 percent or less of AMGI (12 points); or
(C) At least 5 percent of all low-income Units at 30 percent or less of AMGI (7 points).
(6) Tenant Populations with Special Housing Needs. An Application may qualify to receive two (2) points by serving Tenants with Special Housing Needs. Points will be awarded as described in subparagraphs (A) - (B) of this paragraph. If pursuing these points, Applicants must try to score first with subparagraph (A) and then subparagraph (B),both of which pertain to the requirements of the Section 811 Project Rental Assistance Program ("Section 811 PRA Program") (10 TAC Chapter 8).
(A) An Applicant or Affiliate that Owns or Controls an Existing Development that is eligible to participate in the Department's Section 811 Project Rental Assistance Program ("Section 811 PRA Program") will do so in order to receive two (2) points. In order to qualify for points, the Existing Development must commit to the Section 811 PRA Program at minimum 10 Section 811 PRA Program Units, unless the Integrated Housing Rule, 10 TAC §1.15, or the 811 Program Rental Assistance Rule ("811 Rule"), 10 TAC Chapter 8, limits the Development to fewer than 10 Section 811 PRA Program Units. The same Section 811 PRA Program Units cannot be used to qualify for points in more than one Application. The Applicant or Affiliate will comply with the requirements of 10 TAC Chapter 8.
(B) An Applicant or Affiliate that does not meet the Existing Development requirements of 10 TAC Chapter 8 but still meets the requirements of 10 TAC §8.3 is eligible to receive two (2) points by committing Units in the proposed Development to participate in the Department's Section 811 PRA Program. In order to be eligible for points, Applicants must commit at least 10 Section 811 PRA Program 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 Program Rental Assistance Rule ("811 Rule"), 10 TAC Chapter 8, limits the Development to fewer than 10 Section 811 PRA Program Units. The same Section 811 PRA Program Units cannot be used to qualify for points in more than one Application. The Applicant will comply with the requirements of 10 TAC Chapter 8.

(7) Tiebreaker. In the event that two or more Aapplications receives the same number of points based on the scoring criteria above, staff will recommend for award the Application that proposes the greatest percentage of 30% AMGI MFDL units within the Development that would convert to households at 15% AMGI in the event of a tie in the Tiebreaker Certification.

§13.7 Maximum Funding Requests

(a) The maximum funding request for all applications will be identified in the NOFA, and may vary by development type, set-aside, or fund source.

(b) Maximum Per-Unit Subsidy Limits. The 234 Condo limits with the applicable high cost percentage adjustment in effect at the time of application are the maximum per-unit subsidy limits ~~(inclusive of Match)~~ that an applicant may use to determine the amount of MFDL funds or other federal funds that may subsidize a unit. Stricter per-unit subsidy limits are allowable and incentivized as point scoring items in §13.6 Scoring Criteria. Per-unit subsidy limits as well as cost allocation analysis - ensuring that the amount of MFDL units as a percentage of total units is greater than the percentage of MFDL funds requested as a percentage of total development costs - will determine the amount of MFDL units required.

§13.8 Loan Structure and Underwriting Requirements

(a) Except for awards made under the ~~SR/SH~~SH/SR set-aside, all Multifamily Direct Loans awarded will be underwritten as fully repayable (must pay) at ~~not less than the Discount window primary credit rate published by the Federal Reserve (https://www.federalreserve.gov/releases/h15/)~~ a rate specified ~~on the date of initial publication of~~ in the NOFA and approved by the Board, ~~plus 200 basis points~~ and a 30 year amortization with a term that matches the term of any superior loans (within 6 months) at the time of application. If the Department determines that the Development does not support this structure, the Department may recommend an alternative that makes the development feasible under all applicable sections of 10 TAC §~~10~~11.300 related to Underwriting Policy, and §13.8(c). The interest rate, amortization period, and term for the loan will be fixed by the Board at Award, and can only be amended prior to closing by the process in §13.12 of this chapter.

(b) Changes to the total development cost and/or other sources of funds from the publication of the initial Underwriting Report to the time of loan closing must be reevaluated by Real Estate Analysis staff, who may recommend changes to principal amount and/or repayment structure for the Multifamily Direct Loan that will allow the Department to mitigate any increased risk. Where the Department determines such risk is not adequately mitigated, the award may be terminated or reconsidered by the Board. Increases in the principal or payment amount of any superior loans after the initial Underwriting Report must be approved by the Board.

(c) Direct Loans through the Department must adhere to the following criteria as identified in paragraphs (1) - (7) of this subsection if being requested as construction-to-permanent loans:

(1) The term for permanent loans shall be no less than ten (10) years and no greater than forty (40) years and the amortization schedule shall be thirty (30) years. The Department's loan must mature at the same time or within six (6) months of the shortest term of any senior debt so long as neither exceeds forty (40) years and six (6) months.

(2) Amortized loans shall be structured with a regular monthly payment beginning on the first day of the 25th full month following the actual date of loan closing and continuing for the loan term.

(3) If the first lien mortgage is a federally insured HUD or FHA mortgage the Department may approve a loan structure with annual payments payable from Surplus Cash Flow provided that the debt coverage ratio, inclusive of the loan, continues to meet the requirements in this subchapter.

(4) If the proposed first lien is a federally insured HUD or FHA mortgage that requires the Direct Loan to be subject to 75% of Surplus Cash Flow, staff will require the debt service coverage ratio on both the federally insured loan and the Department's loan – as restricted to 75% of Surplus Cash Flow – to continue to meet the minimum 1.15 in accordance with 10 TAC §10.302(d)(4)(D).

(5) Loans shall be secured with a deed of trust with a permanent lien position that is superior to any other sources for financing including hard repayment debt that is less than or equal to the Direct Loan amount and superior to any other sources that have soft repayment structures, non-amortizing balloon notes, have deferred forgivable provisions or in which the lender has an identity of interest with any member of the Development Team; and,

(6) If the Direct Loan amounts to more than 50 percent of the Total Housing Development Cost, except for Developments also financed through the USDA §515 program, the Application must include the documents as identified in subparagraphs (A) - (B) of this paragraph:

(A) a letter from a Third Party CPA verifying the capacity of the Applicant, Developer, or Development Owner to provide at least 10 percent of the Total Housing Development Cost as a short term loan for the Development; or

(B) evidence of a line of credit or equivalent tool equal to at least 10 percent of the Total Housing Development Cost from a financial institution that is available for use during the proposed Development activities.

(7) If the Direct Loan is the only source of permanent Department funding for the Development:

-(A) The Development Owner must provide equity in an amount not less than 20 percent of Total Housing Development Costs.

(i) An Applicant for Direct Loan funds may request Board approval to have an equity requirement of less than twenty percent (20%). The request must specify the proposed equity that will be provided and provide support for why that reduced level of equity will be sufficient to provide reasonable assurance that such owner will be able to complete construction and stabilization timely. This support case will be reviewed by staff, and staff will provide their assessment and recommendation to the Board. The Applicant's support should include all mitigating or supporting factors including, by way of example, and not by way of limitation, performance bonds or collateral, lines of credit, or intercreditor agreements. "Sweat equity" or other forms of equity that cannot be readily accessed will not be allowed to count toward the equity requirement.

(~~A~~B) For Applicants proposing new construction, an "as completed" appraisal that reflects the prospective value of the completed property consistent with rent and income restrictions proposed in the Application pursuant to 10 TAC §11.304 which results in total repayable loan to value of not greater than 80% must be provided.

(C~~B~~) For Applicants proposing rehabilitation, the "as is" appraisal required by 10 TAC §11.205(4) may meet this requirement without needing an "as completed" appraisal provided the loan to value is not greater than 80%.

(8) All Direct Loan applicants where other third-party financing entities are part of the sources of funding must submit a *pro forma* and lender approval letter evidencing review of the Development and the Principals as described in 10 TAC §11.9(e)(1). Where no third-party financing exists, the Department reserves the right to procure a third-party evaluation which will be required to be prepaid by the applicant.

(d) Direct Loans through the Department must adhere to the following criteria as identified in paragraphs (1) - (3) of this subsection if being requested as construction only loans:

(1) The term of the construction loan must be coterminous with any superior construction loan. In the event that the Direct Loan is the only construction loan, the term may not exceed 24 months;
(2) The interest rate will be specified in the NOFA and approved by the Board; and
(3) Up to 50% of the construction loan may be advanced at loan closing should there be

sufficient costs to reimburse that amount.

§13.9 Construction Standards

All Developments financed with Direct Loans will be required to meet at a minimum all applicable state and local codes, ordinances, and standards; the 2012 International Existing Building Code ("IEBC") or International Building Code ("IBC") as applicable. Rehabilitation Developments must meet the requirements in paragraphs (1) - (6) of this section.

(1) recommendations made in the Environmental Assessment and any Physical Conditions Assessment with respect to health and safety issues, life expectancy of major systems (structural support; roofing; cladding and weatherproofing; plumbing; electrical; and heating, ventilation, and air conditioning) must be implemented;

(2) for properties originally constructed prior to 1978, the Physical Conditions Assessment and rehabilitation scope of work must be provided to the party conducting the lead-based paint and/or asbestos testing, and the rehabilitation must implement the mitigation recommendations of the testing report;

(3) all accessibility requirements pursuant to 10 TAC Subchapter B must be met;

(4) the broadband infrastructure requirements described in 24 CFR §92.251(a)(2)(vi) or (b)(1)(x) or 24 CFR §93.301(a)(2)(vi) or 24 CFR 93.301(b)(2)(vi) as applicable;

(5) properties located in the designated catastrophe areas specified in 28 TAC §5.4008 must comply with 28 TAC §5.4011(relating to Applicable Building Code Standards in Designated Catastrophe Areas for Structures Constructed, Repaired or to Which Additions Are Made On and After January 1, 2008); and

(6) should IEBC be more restrictive than local codes, or should local codes not exist, then the Development must meet the requirements imposed by IEBC.

§13.10 Development and Unit Requirements

(a) The bedroom/bathroom/amenities and square footages for Direct Loan Units must be comparable to the bedroom/bathroom/amenities and square footages for the total number of Units in the Development based on the amount of Direct Loan funds requested~~, inclusive of Match,~~ as a percentage of total Direct Loan eligible costs. As a result of this requirement, the Department will always use the Proration Method as the Cost Allocation Method in accordance with CPD Notice 16-15 except as described in (b) of this section. Additionally, the amount of Direct Loan funds requested ~~inclusive of Match~~ cannot exceed the per-unit subsidy limit included in the NOFA. ~~For example, in a 20 Unit Development composed of 6 1-bedroom, 10 2-bedroom, and 4 3-bedroom units, where the amount of Direct Loan funds requested is $1,000,000, and the total Direct Loan-eligible project costs are $4,000,000, 25 percent of each unit type must be a Direct Loan Unit ($1,000,000 Direct divided by $4,000,000). In the example below, the square footages are the same for each unit that has the same number of bedrooms and all fractional units are rounded up to require the next whole number of MFDL Units. In this example, even though the amount of Direct Loan funds (inclusive of Match) as a percentage of total Direct Loan-eligible costs (25 percent) would result in a minimum 5 units if the percentage was applied on a total unit basis, the 25 percent must be applied to each unit type with partial Units rounded up to the next whole number, resulting in 2 additional units for a total of 7 Direct Loan Units. Please see CPD Notice 16-15 for further guidance.~~ Direct Loan units must be provided as a percentage of each unit type, in proportion to the percentage of total costs included in the Direct Loan.

(b) For HOME, NSP, and TCAP RF, Direct Loan Units must float throughout the Development unless the Development also contains public housing units that will receive Operating Fund or Capital Fund assistance under Section 9 of the 1937 Act as defined in 24 CFR §5.100. For NHTF, Direct Loan Units must float throughout the Development except as

prohibited by 24 CFR §93.203. Floating Direct Loan units may only float among the Units as described in the Direct Loan Contract and Direct Loan Land Use Restriction Agreement ("LURA"), or as specifically approved in writing by the Department.

(c) The minimum affordability period for all Direct Loan Units awarded under a NOFA will match the greater of the term of the loan or 30 years unless a lesser period is approved by the Board and when assisting distressed developments.

(d) If the Department is the only source of funding for the Development, all Units must be restricted.

(e) If the Direct Loan funds are layered in a 9% Development that is electing Income Averaging to qualify under IRC §42, the Direct Loan units required by the LURA must continue to be provided at the income levels committed at the time of Application. Unit designations may not change to meet Income Averaging requirements.

§13.11 Post-Award Requirements

(a) Direct Loan awardees must execute an Award Letter and Loan Term Sheet provided by the Department within thirty (30) calendar days after receipt of the letter. The Award Letter and Loan Term Sheet will be conditional in nature and provide a basic outline of the terms and conditions approved by the Board.

(b) If a Direct Loan award is returned after Board approval, or if the Applicant or Affiliates fail to ~~to meet federal commitment or expenditure requirements~~timely close the loan, begin and complete construction, or leave a portion of the Direct Loan award unexpended, penalties may apply under 10 TAC § 11.9(f) and/or the Department may prohibit the Applicant and all Affiliates from applying for MFDL funds for a period of 2 years ~~if they have returned their funds or have failed to take necessary action specified in one or more agreement with the Department where the failure resulted in the Department's failure to meet federal commitment and expenditure requirements~~.

(c) Direct Loan awardees must ~~obtain~~ submit a fully completed environmental ~~clearance~~ review (if applicable) including any applicable reports ~~(if applicable) and meet all requirements for commitment of funds~~ to the Department within ~~180~~ 90 days after ~~award~~the Board approval date. Direct Loan awardees that commit any choice limiting activities prior to obtaining environmental clearance may lead to termination of the Direct Loan award.

(d) Direct Loan awardees must execute a Contract within sixty (60) ~~months~~ days of ~~the Board approval date~~environmental clearance being obtained, or, if environmental clearance is not required, within 60 days after the Board approval date.

(e) Loan closing must occur and construction must begin no later than three (3) months from the effective date of a Contract.

(f) The Development Owner is required to submit quarterly construction status reports to the Asset Management Division as described and by the deadlines specified in §10.402(h).

(g) In addition to any other requirements as the result of any other Department funding sources, the Development Owner must submit a mid-construction development inspection request once the development has met 25% construction completion as indicated on the G703 Continuation Sheet. Inspection staff will issue a mid-construction development inspection letter that confirms that work is being done in accordance with the applicable codes, the construction contract, and construction documents. Up to 50 percent of the Direct Loan award will be released prior to issuance of the mid-construction development inspection letter.

(h) Construction must be completed, as reflected by the development's certificate(s) of occupancy and Certificate of Substantial Completion (AIA Form G704), and a final development inspection request must be submitted to the Department within 18 months of the actual loan

closing date, with the repayment period beginning on the first day of the 25th month following the actual date of loan closing. The final development inspection letter will verify committed amenities have been provided and confirm compliance with all applicable accessibility requirements.

(i) Receipt of a Closed Final Development Inspection Letter, indicating that all deficiencies identified in the Final Inspection Letter have been corrected, must occur within 24 months of the actual date of loan closing. The Final Development Inspection may be conducted concurrently with a Uniform Physical Condition Standards ("UPCS") inspection. However, any letters associated with a UPCS inspection will not satisfy the Closed Final Development Inspection Letter requirement.

(j) Extensions to ~~any of~~ the ~~above~~ benchmarks in subsections (a) to (i) of this section may only be ~~made for good cause and~~ approved by the ~~Department~~ Executive Director or authorized designee ~~if construction is timely started~~in accordance with §13.12 or §13.13 of this Chapter as applicable;

(k) Initial occupancy of all MFDL assisted Units by eligible tenants shall occur within six (6) months of the final Direct Loan draw. Requests to extend the initial occupancy period must be accompanied by documentation of marketing efforts and a marketing plan. The marketing plan may be submitted to HUD for final approval, if required ~~for~~ by the MFDL fund source;

(l) Repayment will be required on a per Unit basis for Units that have not been rented to eligible households within eighteen (18) months of the final Direct Loan draw.

(m) Termination of the Direct Loan award and repayment of all disbursed funds will be required for any Development that is not completed within four (4) years of the effective date of a Direct Loan Contract.

~~(n) Closing Deadline: Awards will be made subject to closing deadlines established at the time of award by the Board subject to the conditions in §13.8(a), which may only be extended in accordance with §13.12 on the basis of delays caused by circumstances outside the control of the applicant or constraints in arranging a multiple source closing. An extension will not be available if an Applicant has:~~

~~(1) failed to timely begin or complete processes required to close; including~~

~~(A) finalizing all equity and debt financing; or~~

~~(B) the environmental review process; or~~

~~(2) made changes to the Development that require additional underwriting by the Department without sufficient time to complete the review.~~

(n~~o~~) Loan Closing: In preparation for closing any Direct Loan, the Development Owner must submit the items described in paragraphs (1) - (7) of this subsection:
(1) Documentation of the prior closing or concurrent closing with all sources of funds necessary for the long-term financial feasibility of the Development.
(2) Due diligence determined by the Department to be prudent and necessary to meet the Department's rules and to secure the interests of the Department.
(3) Where the Department will have a first lien position and the Applicant provides personal guarantees from all principals, as well as documentation that closing on other sources is reasonably expected to occur within three (3) months, the Executive Director or authorized designee may approve a closing to move forward without the closing on other sources. The Executive Director as the authorized designee of the Department must require a personal guarantee, in form and substance acceptable to the Department, from a Principal of the Development Owner for the interim period;
(4) When Department funds have a first lien position during the construction period, assurance of completion of the Development in the form of payment and performance bonds in the full

amount of the construction contract or equivalent guarantee in the sole determination of the Department is required. Such assurance of completion will run to the Department as obligee. Development Owners utilizing the USDA §515 program are exempt from this requirement but must meet the alternative requirements set forth by USDA;
(5) Documentation required for closing includes, but is not limited to:
(A) Draft Owner/General Contractor agreement and draft Owner/Architect agreement prior to closing with final executed copies required by the day of closing;
(B) survey of the Property that includes a certification to the Department, Development Owner, Title Company, and other lenders;
(C) plans and specifications for review by the Department's inspection staff. Inspection staff will issue a plan review letter that is intended to assist in identifying early concerns associated with the Department's final construction requirements~~;~~;
(D) if layered with Housing Tax Credits, a fully executed limited partnership agreement between the General Partner and the tax credit investor entity (may be provided concurrent with closing);
(E) final Development information, including but not limited to a final development cost schedule, sources and uses, operating *pro forma,* annual operating expenses, cost categories for the Direct Loan funds, updated written financial commitments or term sheets and any additional financing exhibits that have changed since the time of application;
(~~f~~6) if required by the fund source, prior to Contract Execution unless an earlier period is described in Chapter 10 of this title, the Development Owner must provide verification of:
(A) environmental clearance;
(B) Site and Neighborhood clearance;
(C) documentation necessary to show compliance with the Uniform Relocation Assistance and Property Act and any other relocation requirements that may apply; and
(D) any other documentation that is necessary or prudent to meet program requirements or state or federal law in the sole determination of the Department.
(7) The Direct Loan Contract as executed, which will be drafted by counsel or its designee for the Department. No changes proposed by the Developer or Developer's counsel will be accepted unless approved by the Department's Legal Division or its designee.

(o~~p~~) Loan Documents. The Development Owner is required to execute all loan closing documents required by and in form and substance acceptable to the Department's Legal Division

(1) Loan closing documents include but are not limited to a promissory note, deed of trust, construction loan agreement (if the proceeds of the loan are to be used for construction), LURA, Architect and/or licensed engineer certification of understanding to complete environmental mitigation if such mitigation is identified in HUD's environmental clearance or the Real Estate Analysis Division (REA) Underwriting Report and assignment and security instruments whereby the Developer, the Development Owner, and/or any Affiliates (if applicable) grants the Department their respective right, title, and interest in and to other collateral, including without limitation the Owner/Architect agreement and the Owner/General Contractor agreement, to secure the payment and performance of the Development Owner's obligations under the loan documents. In the event the Development receives funding that requires the Department's funding to be in a subordinate position, the individual who is able to control the Development (all such individuals if more than one possess such power jointly and severally) will execute a personal guaranty in favor or the Department that in the event that the Development fails to fulfill its requirements of affordability for the required period, and as a result the Department is required to repay funds to the U. S. Department of Housing and Urban Development using non-federal funds and the net proceeds available to the Department after a foreclosure, deed in lieu of foreclosure, or similar disposition of the Development are insufficient to make such repayment, the guarantor(s) will jointly and severally guarantee repayment of that amount.
(2) Repayment provisions will require repayment on a per unit basis for units that have not been rented to eligible households within eighteen (18) months of the final Direct Loan draw;

termination and repayment of the Direct Loan award in full will be required for any Development that is not completed within four (4) years of the date of Direct Loan Contract execution.
(3) Loan terms and conditions may vary based on the type of Development, Real Estate Analysis underwriting report, and the set-aside under which the award was made.

(~~p~~q) Disbursement of Funds. The Borrower must comply with the requirements in paragraphs (1) - (9) of this subsection in order to receive a disbursement of funds to reimburse eligible costs incurred. Submission of documentation related to the Borrower's compliance with these requirements may be required with a request for disbursement:
(1) All requests for disbursement must be submitted through the Department's Housing Contract System, using the MFDL draw workbook or such other format as the Department may require.
(2) Documentation of the total construction costs incurred and costs incurred since the last disbursement of funds must be submitted. Such documentation must be signed by the General Contractor and certified by the Development architect and is generally in the form of an AIA Form G702 or G703;
(3) Disbursement requests must include a down-date endorsement to the Direct Loan (mortgagee) title policy or Nothing Further Certificate that includes a title search through the date of the Architect's signature on AIA form G702. For release of retainage the down-date endorsement to the Direct Loan title policy or Nothing Further Certificate must be dated at least thirty (30) calendar days after the date of the ~~construction~~ completion as certified on the Certificate of Substantial Completion (AIA Form G704) with $0 as the work remaining to be completed. Disbursement requests for acquisition and closing costs~~, or requests for soft costs only,~~ are exempt from this requirement;
(4) At least 50 percent of the funds will be withheld from the initial disbursement of loan funds to allow for periodic disbursements;
(5) The initial draw request for the development must be entered into the Department's Housing Contract System no later than ten business days prior to the one year anniversary of the effective date of the Direct Loan Contract;
(6) Up to 75 percent of Direct Loan funds may be drawn before providing evidence of Match. Thereafter, the Borrower must provide evidence of Match being credited to the Development prior to release of the final 25 percent of funds;
(7) Developer fee disbursement shall be limited by Section 13.11(p)(9) and further conditioned upon:
(A) for Developments in which the loan is secured by a first lien deed of trust against the Property, 75 percent shall be disbursed in accordance with percent of construction completed. 75 percent of the total allowable fee will be multiplied by the percent completion, as documented by the construction contract and as may be verified by an inspection by the Department. The remaining 25 percent shall be disbursed at the time of release of retainage; or
(B) for Developments in which the loan is not secured by a first lien deed of trust or the Development is also utilizing Housing Tax Credits, developer fees will not be reimbursed by the Department except as follows. If all other lenders and syndicator in a Housing Tax Credit development (if applicable) provide written confirmation that they do not have an existing or planned agreement to govern the disbursement of developer fees and expect that Department funds shall be used to fund developer fees, they ~~developer fees~~ shall be reimbursed in the same manner as described in subparagraph (A) of this paragraph; and
(C) the Department may reasonably withhold any disbursement in accordance with the Loan Documents and if it is determined that the Development is not progressing as reasonably necessary to meet the benchmarks for the timely completion of construction of the Development as set forth in the loan documents, or that cost overruns have put the Development Owner's ability to repay its Direct Loan or complete the construction at risk in accordance with the terms of the loan documents and within budget. If disbursement has been

withheld under this subsection, the Development Owner must provide evidence to the satisfaction of the Department that the Development will be timely completed and occupied in order to continue receiving funds. If Disbursement is withheld for any reason, disbursement of any remaining developer fee will be made only after construction of the Development has been completed, and all requirements for expenditure and occupancy have been met;

(~~7~~8) ~~expenditures~~ Expenditures must be allowable and reasonable in accordance with federal and state rules and regulations. The Department shall review~~–~~ each expenditure requested for reasonableness. The Department may request the Development Owner make modifications to the disbursement request and is authorized to modify the disbursement procedures set forth herein and to establish such additional requirements for payment of Department funds to Development Owner as may be necessary or advisable for compliance with all program requirements;

(~~8~~9) ~~table~~ Table funding requests will not be considered unless the Direct Loan Contract has been executed and all necessary documentation has been completed and submitted to the Department at least ten (10) calendar days prior to planned closing;

(~~9~~10) Following fifty percent construction completion, any funds will be released in accordance with the percentage of construction completion. ~~, not to exceed ninety percent of award,~~ 10 percent of requested Hard Costs will be retained and will not be released until the final draw request. If the Development is receiving funds from more than one MFDL source, the retainage requirement will apply to each fund source individually. ~~Retainage will be held until a~~All of the items described in subparagraphs (A) - (G) of this paragraph are ~~received~~required in order to approve the final draw request:

(A) Fully executed Certificate of Substantial Completion (AIA Form G704) with $0 as the cost estimate of work that is incomplete;

(B) A down date endorsement to the Direct Loan title policy or Nothing Further Certificate dated at least 30 calendar days after the date of completion as certified on the Certificate of Substantial Completion (AIA Form G704);

(C) For Developments not layered with Housing Tax Credits, a Closed Final Development Inspection Letter from the Department;

(D) For Developments subject to the Davis-Bacon Act, evidence from the Senior Labor Standards Specialist that the final wage compliance report was received and approved or confirmation that HUD maintains Davis-Bacon oversight as a result of a HUD-insured first lien loan;

(E) ~~Receipt of~~ Certificate(s) of Occupancy (if New Construction);

(F) Development completion reports which includes but is not limited to documentation of full compliance with the Uniform Relocation Act/104(d), ~~Davis-Bacon Act~~, Match Documentation requirements, and Section 3 of the Housing and Urban Development Act of 1968, as applicable to the Development, and any other applicable requirement; and

(G) If applicable to the Development, certification from Architect or a licensed engineer that all HUD and REA environmental mitigation conditions have been met.

(~~10~~11) The final draw request must be submitted within 24 months from loan closing. Extensions to this deadline may only be granted in accordance with §13.12(3) of this Chapter.

§13.12 Pre-Closing Amendments to Direct Loan Terms

The Executive Director or authorized designee may approve amendments to loan terms prior to closing as described in paragraphs (1) - (6) of this section. Board approval is necessary for any other changes prior to closing.

(1) extensions of up to 6 months to the loan closing date ~~specified by the Board~~ required in §13.11(e) in ~~accordance with §13.11(m)~~ of this Chapter. An Applicant must document good cause, which includes but is not limited to delays caused by circumstances outside the control of the applicant or constraints in arranging a multiple source closing.~~;~~ An extension will not be available if an Applicant has:

(A) failed to timely begin or complete processes required to close; including
(i) finalizing all equity and debt financing; or
(ii) the environmental review process; or
(B) made changes to the Development that require additional underwriting by the Department without sufficient time to complete the review.

(2) changes to the loan maturity date to accommodate the requirements of other lenders or to maintain parity of term;
(3) extensions of up to 12 months to §13.11(h) or (i)~~for the construction completion, loan conversion date, and/or final draw deadline~~ date based on documentation that the extension is necessary to complete construction and that there is good cause for the extension. Such a request will generally not be approved prior to initial loan closing;
(4) changes to the loan amortization or interest rate that cause the annual repayment amount to decrease less than 20 percent or any changes to the amortization or interest rate that increase the annual repayment amount;
(5) decreases in the Direct Loan amount, provided the decrease does not jeopardize the financial viability of the Development. Increases will generally not be approved unless the Applicant competes for the additional funding under an open NOFA;
(6) changes to other loan terms or requirements as necessary to facilitate the loan closing without exposing the Department to undue financial risk.

§13.13 Post-Closing Amendments to Direct Loan Terms

(a) The Executive Director or authorized designee may approve extensions of up to 12 months to §13.11(h), (i), or (p)(11) of this Chapter based on documentation that there is good cause for the extension.

(b) Except in cases of Force Majeure, changes to federal awards will only be processed after the Development is reported to the federal oversight entity as completed and the last of the MFDL funds have been drawn.

(~~b~~c) The Executive Director or authorized designee may approve amendments to loan terms post-closing as described in paragraphs (1) - (3) of this section. Board approval is necessary for any other changes post closing.
(1) changes to the amortization or maturity date to accommodate the requirements of other lenders or maintain parity of term, provided the changes result in the Direct Loan continuing to meet the requirements of §13.8(c)(1) and (3);
(2) resubordination of the Direct Loan in conjunction with refinancing provided the conditions in (A) – (E) are met:
(A) The Borrower is current with loan payments to the Department, and no notice has been given of any Event of Default on any MFDL loan. Histories of late or non-payment on any other MFDL loan may result in denial of the request;
(B) The refinance does not propose payment ~~of outstanding debt or profit directly~~ to any of the Development Owner or Developer parties (including the Limited Partners);
(C) A proposal for partial or full repayment of the MFDL lien is made with the request; and
(D) The new superior lien is in an amount that is equal to or less than the original senior lien and does not negatively affect the financial feasibility of the Development.
(E) Changes to accommodate refinancing with a new superior lien that is in an amount that exceeds the original senior lien and which will be directly applied to property improvements as evidenced by the loan or security agreements (exclusive of fees associated with the refinance and any required reserves) will be considered on a case by case basis.
(3) Changes required to the Department's loan terms or amounts that are part of an approved Asset Management Division work out arrangement.