



Private Activity Bond Program  
2011 Multifamily Housing Revenue Bond Rules  
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### §35.1. Introduction.

The purpose of this chapter is to state the Texas Department of Housing and Community Affairs (the "Department") requirements for issuing Bonds, the procedures for applying for multifamily housing revenue Bond financing, and the regulatory and land use restrictions imposed upon Developments financed with the issuance of Bonds for the 2011 Private Activity Bond Program year. The rules and provisions contained in this chapter are separate from the rules relating to the Department's administration of the Housing Tax Credit Program. Applicants seeking a housing tax credit allocation should consult the Department's Qualified Allocation Plan ("QAP"), in effect for the program year for which the Housing Tax Credit application will be submitted. If the applicable QAP contradicts rules set forth in this chapter, the applicable QAP will take precedence over the rules in this chapter. The Department encourages the participation in the Multifamily Bond programs by working directly with Applicants, lenders, trustees, legal counsels, local and state officials and the general public to conduct business in an open, transparent and straightforward manner. The Department has simplified the process, within the limitation of statute, to affirmatively support and create affordable housing throughout the State of Texas.

### §35.2. Authority.

The Department receives its authority to issue Bonds from Chapter 2306 of the Texas Government Code. All Bonds issued by the Department must conform to the requirements of the Act. The Department will issue Bonds to finance the rehabilitation, preservation or construction of decent, safe and affordable housing throughout the State of Texas. Eligible Developments may include those which are constructed, acquired, or rehabilitated and which provide housing for individuals and families of Low Income, Very Low Income, or Extremely Low Income, and Families of Moderate Income. Notwithstanding anything herein to the contrary, tax-exempt Bonds which are issued to finance the Development of multifamily rental housing are specifically subject to the requirements of the laws of the State of Texas, including but not limited to Chapter 2306 and Chapter 1372 of the Texas Government Code relating to Private Activity Bonds, and to the requirements of the Code (as defined in this title).

### §35.3. 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 Texas Government Code, Chapter 2306, §§42, 141 and 145 of the Internal Revenue Code, and §1.1 of this title (relating to Definitions) and repeated in the Tax Credit (Procedures) Manual.

**(1) Eligible Tenants--means**

- (A) individuals and families of Extremely Low, Very Low and Low Income;
- (B) individuals and families of Moderate Income; or
- (C) Persons with Special Needs, in each case, with an Anticipated Annual Income not in excess of 140% of the area median income for a four-person household in the applicable standard metropolitan statistical area; provided that all Low-Income Tenants shall count as Eligible Tenants.

**(2) Institutional Buyer--means**

- (A) An accredited investor as defined in Regulation D promulgated under the Securities Act of 1933, as amended (17 CFR §230.501(a)), but excluding any natural person or any director or executive officer of the Department (17 CFR §230.501(a)(4) - (6)); or
- (B) A qualified institutional buyer as defined by 17 CFR §230.144(A), promulgated under the Securities Act of 1935, as amended.
- (3) **Owner**--An Applicant that is approved by the Department as qualified to own, construct, acquire, rehabilitate, operate, manage, or maintain a Development subject to the regulatory powers of the Department and other terms and conditions required by the Department and the Act.
- (4) **Persons with Special Needs**--Persons who:
- (A) Are considered to be disabled under a state or federal law;
- (B) Are elderly;
- (C) Are designated by the Board as experiencing a unique need for decent, safe housing that is not being met adequately by private enterprise; or
- (D) Are legally responsible for caring for an individual described by subparagraph (A), (B) or (C) of this paragraph and meet the income guidelines established by the Board.
- (5) **Private Activity Bond Program Scoring Criteria**--The scoring criteria established by the Department for the Department's Multifamily Housing Revenue Bond Program, §35.5(e) of this chapter (relating to Application Procedures, Evaluation and Approval).
- (6) **Private Activity Bond Program Threshold Requirements**--The threshold requirements established by the Department for the Department's Multifamily Housing Revenue Bond Program, §35.5(d) of this chapter.
- (7) **Program**--The Department's Multifamily Housing Revenue Bond Program.
- (8) **Tenant Services**--Social services, including child care, transportation, and basic adult education, that are provided to individuals residing in low income housing under Title IV-A, Social Security Act (42 U.S.C. §§601 et seq.), and other similar services.
- (9) **Tenant Services Program Plan**--The plan, subject to approval by the Department, which describes the Tenant Services to be provided by the Development Owner in a Development.
- (10) **Trustee**--A national banking association organized and existing under the laws of the United States, as trustee (together with its successors and assigns and any successor trustee).

#### §35.4. Bond Rating and Investment Letter.

- (a) **Bond Ratings.** All publicly offered Bonds issued by the Department to finance Developments shall have and be required to maintain a debt rating the equivalent of at least an "A" rating assigned to long-term obligations by Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc. or Moody's Investors Service, Inc. If such rating is based upon credit enhancement provided by an institution other than the Applicant or Development Owner, the form and substance of such credit enhancement shall be subject to approval by the Board, which approval shall be evidenced by adoption by the Board of a resolution authorizing the issuance of the credit-enhanced

Bonds. Remedies relating to failure to maintain appropriate credit ratings shall be provided in the financing documents relating to the Development.

- (b) Investment Letters. Bonds rated less than "A," or Bonds which are unrated must be placed with one or more Institutional Buyers and must be accompanied by an investment letter acceptable to the Department. Subsequent purchasers of such Bonds shall also be qualified as Institutional Buyers and shall sign and deliver to the Department an investment letter in a form acceptable to the Department. Bonds rated less than "A" and Bonds which are unrated shall be issued in physical form, in minimum denominations of one hundred thousand dollars (\$100,000), and shall carry a legend requiring any purchasers of the Bonds to sign and deliver to the Department an investment letter in a form acceptable to the Department.

#### **§35.5. Application Procedures, Evaluation and Approval.**

- (a) Application Costs, Costs of Issuance, Responsibility and Disclaimer. The Applicant shall pay all costs associated with the preparation and submission of the Pre-application--including costs associated with the publication and posting of required public notices--and all costs and expenses associated with the issuance of the Bonds, regardless of whether the Application is ultimately approved or whether Bonds are ultimately issued. At any stage during the Application process, the Applicant is solely responsible for determining whether to proceed with the Application, and the Department disclaims any and all responsibility and liability in this regard.
- (b) Pre-application. An Applicant who requests financing from the Department for a Development shall submit a pre-application in the format prescribed by the Department. Within fourteen (14) days of the Department's receipt of the pre-application, the Department will be responsible for federal, state, and local community notifications of the proposed Development. Upon review of the pre-application, if the Development is determined to be ineligible for Bond financing by the Department pursuant to §49.4 of this title (relating to Ineligible Applicants, Applications and Developments), the Department will send a letter to the Applicant explaining the reason for the ineligibility. If the Development is determined to be eligible for Bond financing by the Department, the Department will score and rank the pre-application based on the Private Activity Bond Program Scoring Criteria as described in subsection (e) of this section.
  - (1) The Department will rank the pre-application with higher scores ranking higher within each priority defined by §1372.0321, Texas Government Code. All Priority 1 Applications will be ranked above all Priority 2 Applications which will be ranked above all Priority 3 Applications, regardless of score, reflecting a priority structure which gives consideration to the income levels of the tenants and the rent levels of the units consistent with §2306.359, Texas Government Code. This priority ranking will be used throughout the calendar year. In the event two or more Applications receive the same score, the Department will use, as a tie-breaking mechanism, a priority first for Applications involving rehabilitation; then if a tie still exists, the Application with the greatest number of points awarded for Quality and Amenities for the Development; then if a tie still exists, the Department will grant preference to the pre-application with the lower number of net rentable square feet per bond amount requested. Pre-Applications must meet the threshold requirements as stated in the Private Activity Bond Program Threshold Requirements as set out in subsection (d) of this section.

- (2) After scoring and ranking, the Development and the proposed financing structure will be presented to the Department's Board for consideration of an inducement resolution declaring the Department's initial intent to issue Bonds with respect to the Development.
- (c) Approval of the inducement resolution does not guarantee final Board approval of the Bond Application. Department staff, for good cause, may recommend that the Board not approve an inducement resolution for an Application. Because each Development is unique, making the final determination is often dependent on the issues presented at the time the full Application is presented to the Board.
- (d) Pre-Application Threshold Requirements.
- (1) As the Department reviews the Application, the Department will use the assumptions as reflected in §1.32 of this title (relating to Underwriting Rules and Guidelines), even if not reflected by the Applicant in the Application.
- (A) Construction Costs Per Unit Assumption. Costs not to exceed \$85 per square foot for general population developments and \$95 for elderly developments (Rehabilitation developments are exempt from this requirement);
- (B) Anticipated Interest Rate and Term. As stated in the Summary of Financing Participants in the pre-application;
- (C) Size of Units as reflected in §49.8(5)(B) of this title (relating to Threshold Criteria).
- (2) Zoning. Evidence of appropriate zoning must be provided as referenced in §49.8(8)(B) of this title.
- (3) Proper Site Control. Properly executed and escrow receipted Site Control in the name of the Applicant (principal or member of the General Partner) valid through the inducement Board meeting at pre-application and ninety (90) days from the date of the Certificate of Reservation with the option to extend through the scheduled TDHCA Board meeting at full application. The potential expiration of site control does not warrant the application being presented to the TDHCA Board prior to the scheduled meeting.
- (4) Current Market Information (must support affordable rents).
- (5) Completed current TDHCA Bond Pre-Application.
- (6) Completed 2011 Bond Review Board Residential Rental Attachment.
- (7) Evidence of paid Application Fees (\$1,000 to TDHCA, \$2,000 to Vinson and Elkins, as the Department's bond counsel, and \$5,000 to Bond Review Board).
- (8) Boundary Survey or Plat clearly identifying the location and boundaries of the subject property.
- (9) Local Area map showing the location of the Property and Community Services/Amenities within a three (3) mile radius (radius ring or scale must be present on the map).
- (10) Organization Chart showing the structure of the Applicant and the ownership structure of any principals of the Applicant with evidence of Entity Registration or Reservation with the Office of the Secretary of State.
- (11) Required Notification. Evidence of notification is required in the form provided in the pre-application. The "Public Information Form" must be completed and include a list of all of the recipients (including names and complete addresses). Proof of delivery, though not required to be submitted with the Application, must not be older than three months prior to the date of Application submission date. Notification must be sent to all the following individuals and entities (if the QAP in effect for the program year for which the Bond and Housing Tax Credit applications are submitted reflect a notification process that is different from the process listed in subparagraphs (A) - (G) of this paragraph, then the QAP will override the notification process listed in subparagraphs (A) - (G) of this paragraph):

- (A) State Senator and Representative that represents the district containing the development;
- (B) Presiding Officer of the governing body of any municipality containing the development and all elected members of that body (Mayor, City Council members);
- (C) Presiding Officer of the governing body of the county containing the development and all elected members of that body (County Judge and/or Commissioners);
- (D) School District Superintendent of the school district containing the development;
- (E) Presiding Officer of the School Board of Trustees of the school district containing the development; and
- (F) The Applicant must request Neighborhood Organizations on record with the county or state whose boundaries include the proposed Development Site as follows:
  - (i) No later than fourteen (14) days prior to the date the Pre-application is submitted, the Applicant must e-mail, fax or mail with registered receipt a completed, "Neighborhood Organization Request" letter as provided in the Pre-application materials to the local elected official for the city and county where the Development is proposed to be located. If the Development is located in an area that has district based local elected officials, or both at-large and district based local elected officials, the request must be made to the city council member or county commissioner representing that district; if the Development is located in an area that has only at-large local elected officials, the request must be made to the mayor or county judge for the jurisdiction. If the Development is not located within a city or is located in the Extra Territorial Jurisdiction (the "ETJ") of a city, the county local elected official must be contacted. In the event that local elected officials refer the Applicant to another source, the Applicant must request Neighborhood Organizations from that source in the same format;
  - (ii) If no reply letter is received from the local elected officials by seven (7) days prior to the Pre-application submission, then the Applicant must certify to that fact in the Pre-application materials; and
  - (iii) The Applicant must list all Neighborhood Organizations on record with the county or state whose boundaries include the proposed Development Site as provided by the local elected officials, or that the Applicant has knowledge of (regardless of whether the organization is on record with the county or state) as of the Pre-Application submission in the "Certification of Notification Form" provided in the Pre-application.
- (G) No later than the date the Pre-application is submitted, Notification must be sent to all of the following individuals and entities by e-mail, fax or mail with registered receipt (email or fax to be "receipt confirmed") in the format required in the "Pre-application Notification Template" provided in the Pre-Application materials. Developments located in an ETJ of a city are not required to notify city officials; however the county officials are required to be notified. It is strongly encouraged that Applicants retain proof of delivery of the notifications to the persons or entities prescribed in clauses (i) - (ix) of this subparagraph in the event the Department requires proof of Notification. Evidence of proof of delivery is demonstrated by signed receipt for mail or courier delivery and confirmation of receipt by recipient for facsimile and electronic mail. Officials to be notified are those officials in office at the time the Pre-Application is submitted.
  - (i) Neighborhood Organizations on record with the state or county whose boundaries contain the proposed Development Site as identified in subparagraph (F)(iii) of this paragraph;
  - (ii) Superintendent of the school district containing the Development;
  - (iii) Presiding officer of the board of trustees of the school district containing the Development;
  - (iv) Mayor of any municipality containing the Development;
  - (v) All elected members of the governing body of any municipality containing the Development;

- (vi) Presiding officer of the governing body of the county containing the Development;
  - (vii) All elected members of the governing body of the county containing the Development;
  - (viii) State representative of the district containing the Development; and
  - (ix) State senator of the district containing the Development.
- (H) Each such notice must include, at a minimum, all of the following:
- (i) The Applicant's name, address, individual contact name and phone number;
  - (ii) The Development name, address, city and county;
  - (iii) A statement informing the entity or individual being notified that the Applicant is submitting a request for Private Activity Bonds and Housing Tax Credits with the Texas Department of Housing and Community Affairs;
  - (iv) Statement of whether the Development proposes New Construction or Rehabilitation;
  - (v) The type of Development being proposed (single family homes, duplex, apartments, townhomes, highrise etc.) and population being served (general, or elderly);
  - (vi) The approximate total number of Units and approximate total number of low-income Units;
  - (vii) The approximate percentage of Units serving each level of AMGI (e.g. 20% at 50% of AMGI, etc.) and the percentage of Units that are market rate;
  - (viii) The number of Units and proposed rents (less utility allowances) for the low-income Units and the number of Units and the proposed rents for any market rate Units. Rents to be provided are those that are effective at the time of the Pre-Application, which are subject to change as annual changes in the area median income occur; and
  - (ix) The expected completion date if credits and/or bonds are awarded.

(e) Pre-application Scoring Criteria.

- (1) Income and Rent Levels of the Tenants: Applications submitted as a Priority 1 will receive 10 points, Priority 2 will receive 7 points and Priority 3 will receive 5 points.
- (2) Cost of the Development by Square Foot: for this item, costs shall be defined as construction costs, including site work, direct hard costs, contingency, contractor profit, overhead and general requirements, as represented in the Development Cost Schedule. This calculation does not include indirect construction costs. The calculation will be costs per square foot of Net Rentable Area (NRA). Costs must be greater than or equal to \$85 per square foot for general population Developments and \$95 per square foot for elderly Developments (1 point) (Rehabilitations will automatically receive (1 point)).
- (3) Size of Units: The average size of all Units combined in the Development must be greater than or equal to 950 square foot for general and must be greater than or equal to 750 square foot for elderly (5 points). (Rehabilitations will automatically receive 5 points).
- (4) Period of Guaranteed Affordability for Low Income Tenants: Add ten (10) years of affordability after the extended use period for a total affordability period of forty (40) years (1 point).
- (5) Quality of the Units as referenced in §49.9(a)(4)(B) of this title (relating to Selection Criteria).
- (6) Common Amenities as referenced in §49.8(5)(A)(ii) of this title.
- (7) Tenant Services. (Tenant Services shall include only direct costs (tenant services contract amount, supplies for services, internet connections, initial cost of computer equipment, etc.). Indirect costs such as overhead and utility allocations may not be included);
  - (A) \$10 per Unit per month (10 points);
  - (B) \$7 per Unit per month (5 points);
  - (C) \$4 per Unit per month (3 points).
- (8) Development Support/Opposition. Maximum net points of +24 to -24. Each letter will receive a maximum of +3 to -3. All letters received by 5:00 PM, seven (7) business days prior to the date

of the Board meeting at which the Application will be considered for Applications submitted for waiting list and carryforward will be used in scoring. Letters must clearly state support or opposition to the specific Development. State Representatives or Senators as well as local elected officials to be considered are those in office at the time the Application is submitted and represent the district containing the proposed Development Site. Letters of support from State or local elected officials that do not represent the district containing the proposed Development Site will not qualify for points under this exhibit. Neutral letters, or letters that do not specifically refer to the Development, will receive neither positive nor negative points. A letter that does not directly express support but expresses it indirectly by inference, (i.e. a letter that says "the local jurisdiction supports the Development and I support the local jurisdiction" will be treated as a neutral letter).

- (A) Texas State Senator and Texas State Representative (maximum +3 to -3 points per official);
  - (B) Presiding officer of the governing body of any municipality containing the Development and the elected district member of the governing body of the municipality containing the Development (maximum +3 to -3 points per official);
  - (C) Presiding officer of the governing body of the county containing the Development and the elected district member of the governing body of the county containing the Development (if the site is not in a municipality, these points will be doubled) (maximum +3 to -3 points per official);
  - (D) Local School District Superintendent and Presiding Officer of the Board of Trustees for the School district containing the Development (maximum +3 to -3 points per official).
- (9) Proximity to Community Services/Amenities Community services/amenities within three (3) miles of the site. A map must be included identifying the Development Site and the location of services by name. If the services are not identified by name, points will not be awarded. All services must exist or, if under active construction post pad, by the date pre-application is submitted. The map must include either a three (3) mile radius ring or a scale. (Rehabilitation developments will receive 1.5 points for each item in subparagraphs (A) - (N) of this paragraph.)
- (A) Full service grocery store or supermarket (1 point);
  - (B) Pharmacy (1 point);
  - (C) Convenience store/mini-market (1 point);
  - (D) Department or Retail Merchandise Store (1 point);
  - (E) Bank/Credit Union (1 point);
  - (F) Restaurant (including fast food) (1 point);
  - (G) Indoor public recreation facilities, such as civic centers, community centers, and libraries, (1 point);
  - (H) Outdoor public recreation facilities, such as parks, golf courses, and swimming pools, (1 point);
  - (I) Fire/Police Station (1 point);
  - (J) Hospital/medical clinic (1 point);
  - (K) Medical offices (physician, dentistry, optometry) (1 point);
  - (L) Public Transportation (1/2 mile from site) (1 point);
  - (M) Public School (only one school required for point and only eligible with general population developments) (1 point);
  - (N) Senior Center (1 point);
- (10) Rehabilitation Developments will receive 30 points. This will include the demolition of old buildings and New Construction of the same number of units if allowed by local codes or less units to comply with local codes (not to exceed 252 total units).



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- (11) Preservation Developments will receive 10 points. This includes Rehabilitation proposals on properties which are nearing expiration of an existing affordability requirement within the next two years or for which there has been a rent restriction requirement in the past ten (10) years. Evidence must be provided.
- (12) Declared Disaster Areas. Applications will receive 7 points, if at the time the complete pre-application is submitted or at any time within the two-year period preceding the date of submission, the proposed Development Site is located in a declared Disaster Area. This includes federal, state and Governor declared disaster areas.
- (13) Developments in Census Tracts with No Other Existing Developments Supported by Tax Credits. Applications will receive 6 points if the proposed Development is located in a census tract in which there are no other existing Developments that were awarded housing tax credits in the last five (5) years and 3 points if there are no other existing developments that were awarded housing tax credits in the last three (3) years. The applicant must provide evidence of the census tract in which the Development is located. These Census Tracts are outlined in the 2011 Housing Tax Credit Site Demographic Characteristics Report.
- (14) Notary Public Services for Tenants. Applications will receive 1 point for this item. (§2306.6710(b)(3)) To receive this point, the Applicant must submit a certification that the Development will provide notary public services to the tenants during regular business hours at no cost to the tenant. This provision will be included in the Land Use Restriction Agreement and Regulatory Agreement.
- (f) Multiple Site Applications. For the purposes of scoring, applicants must submit the required information as outlined in the Pre-Application Submission Manual. Each individual property will be scored on its own merits and the final score will be determined based on an average of all of the individual scores.
- (g) Financing Commitments. After approval by the Board of the inducement resolution, and as part of the submission of a final application, the Applicant will be solely responsible for making appropriate arrangements with financial institutions which are to be involved with the issuance of the Bonds or the financing of the Development, and to begin the process of obtaining firm commitments for financing from each of the financial institutions involved.
- (h) Full Application. An Applicant who elects to proceed with submitting a final Application to the Department must submit the Volumes I and II of the Application, for Priority 1 and 2, prior to receipt of a Certificate of Reservation of allocation from the Texas Bond Review Board. For Priority 3 Applications the Volumes I and II must be submitted within fourteen (14) days of the Certificate of Reservation date from the Texas Bond Review Board. The Volume III of the Application and such supporting material as is required by the Department must be submitted at least sixty (60) days prior to the scheduled meeting of the Board at which the Development and the Bond issuance are to be considered, unless the Department directs the Applicant otherwise in writing. If the Applicant is applying for other Department funding then refer to the Rules for that program for Application submission requirements. The full Application must adhere to the Department's QAP in effect for the program year for which the Bond and Housing Tax Credit applications are submitted. The Department may determine that supporting materials listed in the full Application shall be provided subsequent to the final Application deadline in accordance with a schedule approved by the Department. Failure to provide any supporting materials in accordance with the approved schedule may be grounds for terminating the Application and returning the reservation to the Texas Bond Review Board.
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- (1) A Public Notification Sign shall be installed on the proposed Development site, regardless of Priority as described in §49.8(9)(B) of this title.
  - (2) Completed Uniform Application and Multifamily Rental Worksheets in the format required by the Department as posted to the Department's website.
- (i) Administrative Deficiencies. If an Application contains deficiencies which, in the determination of the Department staff, require clarification or correction of information submitted at the time of the Application, the Department staff may request clarification or correction of such Administrative Deficiencies as described in §49.7(a)(2)(B) of this title (relating to Application Process).
- (j) Eligibility Criteria. The Department, in addition to those items described in §49.4 of this title, will evaluate the Development for eligibility at the time of pre-application, and at the time of full Application. If there are changes to the Application that have an adverse affect on the score and ranking order and that would have resulted in the Application being placed below another Application in the ranking, the Department will terminate the Application and return the Certificate of Reservation to the Texas Bond Review Board (with the exception of changes to deferred developer's fees and support or opposition points). The Development and the Applicant must satisfy the conditions set out in paragraphs (1) and (2) of this subsection in order for a Development to be considered eligible:
- (1) The proposed Development must further meet the public purposes of the Department as identified in the Code.
  - (2) An application may include either the rehabilitation or new construction, or both the rehabilitation and new construction, of qualified residential rental facilities located at multiple sites and with respect to which 51% or more of the residential units are located:
    - (A) in a county with a population of less than 75,000; or
    - (B) in a county in which the median income is less than the median income for the state, provided that the units are located in that portion of the county that is not included in a metropolitan statistical area containing one or more projects that are proposed to be financed, in whole or in part, by an issuance of bonds. The number of sites may be reduced as needed without affecting their status as a project for purposes of the application, provided that the final application for a reservation contains at least two sites. (§1372.002, Texas Government Code)
- (k) Bond Documents. After receipt of the final Application, bond counsel for the Department shall draft Bond documents which conform to the state and federal laws and regulations which apply to the transaction.
- (l) Public Hearings; Board Decisions. For every Bond issuance, the Department will hold a public hearing in accordance with §147(f) of the Code, in order to receive comments from the public pertaining to the Development and the issuance of the Bonds. The Applicant or member of the Development team must be present and will be responsible for conducting a brief presentation on the proposed Development and providing handouts at the hearing that should contain at a minimum, a description of the Development, maximum rents and income restrictions. If the proposed Development is a Rehabilitation then the presentation should include the scope of work that will be done to the property. All handouts must be submitted to the Department for review at least two (2) days prior to the public hearing. Publication of all notices required for the public hearing shall be at the sole expense of the Applicant. The Board's decisions on approvals of proposed

Developments will consider all relevant matters. Any topics or matters, alone or in combination, may or may not determine the Board's decision. The Department's Board will consider the following topics in relation to the approval of a proposed Development:

- (1) The Developer market study;
- (2) The location;
- (3) The compliance history of the Developer;
- (4) The financial feasibility;
- (5) The appropriateness of the Development's size and configuration in relation to the housing needs of the community in which the Development is located;
- (6) The Development's proximity to other low-income housing Developments;
- (7) The availability of adequate public facilities and services;
- (8) The anticipated impact on local school districts;
- (9) Zoning and other land use considerations;
- (10) Any matter considered by the Board to be relevant to the approval decision and in furtherance of the Department's purposes; and
- (11) Other good cause as found by the Board.

(m) Approval of the Bonds.

- (1) Subject to the timely receipt and approval of commitments for financing, an acceptable evaluation for eligibility, the satisfactory negotiation of Bond documents, and the completion of a public hearing, the Board, upon presentation by the Department's staff, will consider the approval of the Bond issuance, final Bond documents and in the instance of privately placed Bonds, the pricing of the Bonds. The process for appeals and grounds for appeals may be found under §1.7 and §1.8 of this title. To the extent applicable to each specific bond issuance, the Department's conduit housing transactions will be processed in accordance with 34 TAC Part 9, Chapter 181, Subchapter A (relating to the Texas Bond Review Board rules) and Chapter 1372, Texas Government Code. The Bond issuance must receive an approving opinion from the Department's bond counsel with respect to the legality and validity of the Bonds and the security therefore, and in the case of tax-exempt Bonds, with respect to the excludability from gross income for federal income tax purposes of interest on the Bonds.
- (2) Alternative Dispute Resolution Policy. The Department encourages use of Alternative Dispute Resolution methods as outlined in §1.17 of this title.

(n) Local Permits. Prior to the closing of the Bonds, all necessary approvals, including building permits, from local municipalities, counties, or other jurisdictions with authority over the Development must have been obtained or evidence that the permits are obtainable subject only to payment of certain fees must be provided to the Department.

(o) Closing. If there are changes to the Application prior to closing that have an adverse effect on the score and ranking order that would have resulted in the Application being placed below another Application in the ranking, the Department will terminate the Application and return the reservation to the Texas Bond Review Board (with the exception of changes to deferred developer's fees and support or opposition points). Once all approvals have been obtained including final approval by the Board and Bond documents have been finalized to the respective parties' satisfaction, the Bond transaction will close. Any outstanding Housing Trust Fund Pre-Development loans for the proposed Development site must be paid in full at the time the bond transaction is closed. All Applicants are subject to §1.20(g) of this title (relating to Asset Resolution and Enforcement). Upon satisfaction of all conditions precedent to closing, the Department will issue

Bonds in exchange for payment thereof. The Department will then loan the proceeds of the Bonds to the Applicant and disbursements of the proceeds may begin.

#### §35.6.Regulatory and Land Use Restrictions.

- (a) Filing and Term of LURA. A Regulatory and Land Use Restriction Agreement or other similar instrument (the "LURA"), will be filed in the property records of the county in which the Development is located for each Development financed from the proceeds of Bonds issued by the Department. The term of the LURA will be the longer of thirty (30) years, from the date the Development Owner takes legal possession of the Development or until the end of the remaining term of the existing federal government assistance pursuant to §2306.185.
- (b) Development Occupancy. The LURA will specify occupancy restrictions for each Development based on the income of its tenants, and will restrict the rents that may be charged for Units occupied by tenants who satisfy the specified income requirements. Pursuant to §2306.269, Texas Government Code, the LURA will prohibit a Development Owner from excluding an individual or family from admission to the Development because the individual or family participates in the housing choice voucher program under Section 8, United States Housing Act of 1937 (the "Housing Act"), and from using a financial or minimum income standard for an individual or family participating in the voucher program that requires the individual or family to have a monthly income of more than two and one half (2.5) times the individual's or family's share of the total monthly rent payable to the Development Owner. Development occupancy requirements must be met on or prior to the date on which Bonds are issued unless the Development is under construction. Adequate substantiation that the occupancy requirements have been met, in the sole discretion of the Department, must be provided prior to closing. Occupancy requirements exclude Units for managers and maintenance personnel that are reasonably required by the Development.
- (c) Set Asides.
- (1) Developments which are financed from the proceeds of Private Activity Bonds or from the proceeds of Qualified §501(c)(3) Bonds must be restricted under one of the following two minimum set-asides:
- (A) at least 20% of the Units within the Development that are available for occupancy shall be occupied or held vacant and available for occupancy at all times by persons or families whose income does not exceed 50% of the area median income; or
- (B) at least 40% of the Units within the Development that are available for occupancy shall be occupied or held vacant and available for occupancy at all times by persons or families whose income does not exceed 60% of the area median income.
- (2) The Development Owner must designate at the time of Application which of the two set-asides will apply to the Development and must also designate the selected priority for the Development in accordance with §1372.0321, Texas Government Code. Units intended to satisfy set-aside requirements must be distributed evenly throughout the Development, and must include a reasonably proportionate amount of each type of Unit available in the Development.
- (3) No tenant qualifying under either of the set-asides shall be denied continued occupancy of a Unit in the Development because, after commencement of such occupancy, such tenant's income increases to exceed the qualifying limit; provided, however, that, should a tenant's income, as of the most recent determination thereof, exceed 140% of the then applicable income limit and such tenant constitutes a portion of the set-aside requirement of this section, then such tenant

shall only continue to qualify for so long as no Unit of comparable or smaller size is rented to a tenant that does not qualify as a Low-Income Tenant (Required federal set-aside requirements).

- (d) Global Income Requirement. All of the Units that are available for occupancy in Developments financed from the proceeds of Private Activity Bonds or from the proceeds of Qualified §501(c)(3) Bonds shall be occupied or held vacant (in the case of new construction) and available for occupancy at all times by persons or families whose income does not exceed 140% of the area median income for a four-person household.
- (e) Qualified §501(c)(3) Bonds. Developments which are financed from the proceeds of Qualified §501(c)(3) Bonds are further subject to the restriction that at least 75% of the Units within the Development that are available for occupancy shall be occupied (or, in the case of new construction, held vacant and available for occupancy until such time as initial lease-up is complete) at all times by individuals and families of Low Income (less than or equal to 80% of AMFI).
- (f) Taxable Bonds. The occupancy requirements for Developments financed from the issuance of taxable Bonds will be negotiated, considered and approved by the Department on a case by case basis.
- (g) Fair Housing. All Developments financed by the Department must comply with the Fair Housing Act which prohibits discrimination in the sale, rental, and financing of dwellings based on race, color, religion, sex, national origin, familial status, and disability. The Fair Housing Act also mandates specific design and construction requirements for multifamily housing built for first occupancy after March 13, 1991, in order to provide accessible housing for individuals with disabilities.
- (h) Tenant Services. Acceptable services include those found in §49.9(a)(9) of this title (relating to Selection Criteria).

#### §35.7.Fees.

- (a) Pre-Application Fees. The Applicant is required to submit, at the time of pre-application, the following fees: \$1,000 (payable to TDHCA), \$2,000 (payable to Vinson & Elkins, the Department's bond counsel) and \$5,000 (payable to the Texas Bond Review Board (BRB)). These fees cover the costs of pre-application review and filing fees to the BRB. The Department shall set fees to be paid by the Applicant in order to cover the costs of pre-application review, Application and Development review, the Department's expenses in connection with providing financing for a Development, and as required by law. (§1372.006(a), Texas Government Code).
- (b) Application and Issuance Fees. At the time of full application the Applicant is required to submit a tax credit application fee of \$30/unit and \$10,000 for the bond application fee (for multiple site Applications \$10,000 or \$30/unit, whichever is greater, for the bond application fee.) At the closing of the bonds the following fees are required: an issuance fee equal to 50 basis points (0.005) of the issued bond amount, administration fee equal to 20 basis points (0.002) and a Private Activity Bond compliance fee equal to \$25/unit and a tax credit compliance fee equal to \$40/unit. For refunding Applications the Application fee will be \$10,000 unless the refunding is not required to have a TEFRA public hearing, in which case the fee will be \$5,000.

- (c) Annual Administration, Portfolio Management and Compliance, and Asset Management Fees. The Department shall set ongoing fees to be paid by Development Owners to cover the Department's costs of administering the Bonds, portfolio management and compliance with the program requirements applicable to each Development and asset management applicable requirements.
- (1) Administration. The annual administration fee is paid in arrears and is equal to 10 basis points (0.001) of the outstanding bond amount beginning three years from the closing date. These fees are paid as long as the bonds are outstanding.
  - (2) Compliance Monitoring Fees. The annual tax credit compliance fee is paid in advance (for the duration of the compliance or affordability period) and is equal to \$40/unit beginning two years from the closing date on the bonds. The fee will be collected, retroactively if applicable, beginning with the first year of the credit period. The invoice must be paid prior to the issuance of form 8609. Subsequent anniversary dates on which the compliance monitoring fee payments are due shall be determined by the month the first building is placed in service. The Private Activity Bond compliance fee is paid in advance at closing (for as long as the bonds are outstanding) and is equal to \$25/unit beginning two years from the closing date on the bonds for payment to be applied to the third year following closing. Compliance monitoring fees may be adjusted from time to time by the Department.
  - (3) Asset Management. The asset management fee is paid in advance and is equal to \$25/unit beginning two years from the closing date on the bonds. This fee is based on voluntary participation in the asset management program. Those who elect to participate are encouraged to contact the Texas State Affordable Housing Corporation (TSAHC) for information on billing and services offered.

#### **§35.8. Waiver of Rules.**

Provided all requirements of the Act, the Code, and any other applicable law are met, the Board may waive any one or more of the Rules set forth in this chapter relating to the Multifamily Housing Revenue Bond Program in order to further the purposes and the policies of Chapter 2306, Texas Government Code; to encourage the acquisition, construction, reconstruction, or rehabilitation of a Development that would provide decent, safe, and sanitary housing, including, but not limited to, providing such housing in economically depressed or blighted areas, or providing housing designed and equipped for Persons with Special Needs; or for other good cause, as determined by the Board.

#### **§35.9. No Discrimination.**

The Department and its staff or agents, Applicants, Development Owners, and any participants in the Program shall not discriminate under this Program against any person or family on the basis of race, creed, national origin, age, religion, handicap, family status, or sex, or against persons or families on the basis of their having minor children, except that nothing herein shall be deemed to preclude a Development Owner from selecting tenants with Special Needs, or to preclude a Development Owner from selecting tenants based on income in renting Units to comply with the set asides under the provisions of this chapter.