

## 2026 Multifamily Housing Revenue Bond Rules

### §12.1. General.

(a) Authority. The rules in this chapter apply to the issuance of multifamily housing revenue bonds, notes, or other evidences of indebtedness (Bonds) by the Texas Department of Housing and Community Affairs (Department). The Department is authorized to issue Bonds, including Qualified 501(c)(3) Bonds and Taxable Bonds, pursuant to Tex. Gov't Code, Chapter 2306. Notwithstanding anything in this chapter to the contrary, Bonds which are issued to finance the Development of multifamily rental housing are subject to the applicable requirements of the laws of the State of Texas, including but not limited to Tex. Gov't Code, Chapters 1372 and 2306, and federal law pursuant to the requirements of Internal Revenue Code (Code), §§141 through 150, as applicable.

(b) General. The purpose of this chapter is to state the Department's requirements for issuing Bonds, the procedures for applying for Bonds and the regulatory and land use restrictions imposed upon Bond financed Developments. The 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 Chapter 11 of this title (relating to the Housing Tax Credit Program Qualified Allocation Plan) for the current program year. In general, the Applicant will be required to satisfy the eligibility and threshold requirements of the Qualified Allocation Plan (QAP) in effect at the time the Certificate of Reservation is issued by the Texas Bond Review Board (TBRB). If the applicable QAP contradicts rules set forth in this chapter, the applicable QAP will take precedence over the rules in this chapter except in an instance of a conflicting statutory requirement, which shall always take precedence. To the extent applicable to each specific Bond issuance, the Department's conduit multifamily Bond transactions will be processed in accordance with 34 TAC Part 9, Chapter 181, Subchapter A (relating to Bond Review Board Rules) and Tex. Gov't Code, Chapter 1372.

(c) Costs of Issuance. The Applicant shall be responsible for payment of all costs related to the preparation and submission of the pre-application and Application, including but not limited to, 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 point during the 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.

(d) Waivers and Appeals. Requests for any permitted waivers of program rules must be made in accordance with §11.207 of this title (relating to Waiver of Rules). The process for appeals and grounds for appeals may be found under §1.7 of this title (relating to Appeals Process).

### §12.2. 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 through 150 of the Code, Chapter 10 of this title (relating to Uniform Multifamily Rules), and Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan).

- (1) Bond Trustee--A financial institution, usually a trust company or the trust department in a commercial bank, that holds collateral for the benefit of the holders of municipal securities. The Bond Trustee's obligations and responsibilities are set forth in the Indenture.
- (2) Institutional Buyer--Shall have the meaning prescribed under 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 as defined by 17 CFR §230.144(a), promulgated under the Securities Act of 1933, as amended.
- (3) Persons with Special Needs--Shall have the meaning prescribed under Tex. Gov't Code §2306.511.
- (4) Qualified 501(c)(3) Bonds--Any Bonds described by Section 145 of the Code to provide residential rental property.

### **§12.3. Bond Rating and Investment Letter.**

- (a) Bond Ratings. All publicly offered Bonds issued by the Department to finance Developments shall have a debt rating the equivalent of at least an "A" rating assigned to long-term obligations by Standard & Poor's Ratings Services, 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 Department's Board (Board), evidenced by a resolution authorizing the issuance of the credit enhanced Bonds.
- (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 investor letter acceptable to the Department. Subsequent purchasers of such Bonds must also be qualified as Institutional Buyers and must execute and deliver to the Department an investor letter in a form satisfactory 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 must carry a legend requiring any purchasers of the Bonds to be Institutional Buyers and sign and deliver to the Department an investor letter in a form acceptable to the Department.

### **§12.4. Pre-Application Process and Evaluation.**

(a) Pre-Inducement Questionnaire. Prior to the filing of a pre-application, including an application for Qualified 501(c)(3) Bonds, the Applicant shall submit the Pre-Inducement Questionnaire, in the form prescribed by the Department, so the Department can have a preliminary understanding of the proposed Development plan before a pre-application and corresponding fees are submitted. After reviewing the pre-inducement questionnaire, Department staff will follow-up with the Applicant to discuss the next steps in the process and may schedule a pre-inducement conference call. Prior to the submission of a pre-application, it is essential that the Department and Applicant communicate regarding the Department's objectives and policies in the development of affordable housing throughout the State using Bond financing. The acceptance of the questionnaire by the Department does not constitute a pre-application or Application and does not bind the Department to any formal action regarding an inducement resolution.

(b) Neighborhood Risk Factors. If the Development Site has any of the characteristics described in §11.101(a)(3)(D) of this title (relating to Neighborhood Risk Factors), the Applicant must disclose the presence of such characteristics to the Department. Disclosure may be done at time of pre-application and handled in connection with the inducement or it can be addressed at the time of Application submission. The Applicant understands that any determination made by staff or the Board at the time of bond inducement regarding Site eligibility based on the documentation presented, is preliminary in nature. Should additional information related to any of the Neighborhood Risk Factors become available while the Tax-Exempt Bond Development Application is under review, or the information by which the original determination was made changes in a way that could affect eligibility, then such information will be re-evaluated and presented to the Board.

(c) Pre-Application Process. An Applicant who intends to pursue Bond financing from the Department, including Qualified 501(c)(3) Bonds, shall submit a pre-application by the corresponding pre-application submission deadline, as set forth by the Department. The required pre-application fee as described in §12.10 of this chapter (relating to Fees) or §12.11 of this chapter (relating to Qualified 501(c)(3) Bonds), as applicable, must be submitted with the pre-application in order for the pre-application to be considered accepted by the Department. Department review at the time of the pre-application is limited and not all issues of eligibility, fulfillment of threshold requirements in connection with the full Application, and documentation submission requirements pursuant to Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan) are reviewed. The Department is not responsible for notifying an Applicant of potential areas of ineligibility or other deficiencies at the time of pre-application. If the Development meets the criteria as described in §12.5 of this chapter (relating to Pre-Application Threshold Requirements), the pre-application will be scored and ranked according to the applicable selection criteria as described in §12.6 of this chapter (relating to Pre-Application Scoring Criteria), recognizing that pre-applications for Qualified 501(c)(3) Bond financing will be scored and ranked separately from bond pre-applications associated with Housing Tax Credits. The selection criteria, as further described in §12.6 of this chapter, reflects a structure that gives priority consideration to specific criteria as outlined in Tex. Gov't Code, §2306.359, as well as other important criteria. To the extent applicable, should two or more pre-applications receive the same score, the Department will utilize the tie breaker factors in this paragraph, which will be considered in the order they are

presented herein, to determine which pre-application will receive preference in consideration of a Certificate of Reservation:

(1) To the pre-application that was on the waiting list with the TBRB but did not have an active Certificate of Reservation at the time of the TBRB lottery and achieved the maximum number of points under §12.6(12) of this chapter; and

(2) To the pre-application with the highest number of positive points achieved under §12.6(9) of this chapter.

(d) Inducement Resolution. After the pre-applications have been scored and ranked, the pre-application will be presented to the Board for consideration of an inducement resolution declaring the Department's initial intent to issue Bonds with respect to the Development. Approval of the inducement resolution does not guarantee final Board approval of the Bond Application. Department staff may recommend that the Board not approve an inducement resolution for a pre-application. Notwithstanding the foregoing, Department staff may, but is not required to, recommend that an inducement resolution be approved despite the presence of neighborhood risk factors, undesirable site features, or requirements that may necessitate a waiver, that have not fully been evaluated by staff at pre-application. The Applicant recognizes the risk involved in moving forward should this be the case and the Department assumes no responsibility or liability in that regard. Each Development is unique, and therefore, making the final determination to issue Bonds is often dependent on the issues presented at the time the full Application is considered by the Board.

#### **§12.5. Pre-Application Threshold Requirements.**

The threshold requirements of a pre-application include the criteria listed in paragraphs (1) - (7) of this section. As the Department reviews the pre-application the assumptions as reflected in Chapter 11, Subchapter D of this title (relating to Underwriting and Loan Policy) will be utilized, as applicable, even if not reflected by the Applicant in the pre-application. The threshold requirements of a pre-application include:

(1) Submission of the Multifamily Bond Pre-application as prescribed by the Department in the Multifamily Bond Pre-Application Procedures Manual;

(2) Completed Bond Review Board Residential Rental Attachment for the current program year; provided this paragraph shall not be required for Qualified 501(c)(3) Bonds;

(3) Site Control, evidenced by the documentation required under §11.204(10) of this title (relating to Required Documentation for Application Submission). The Site Control must be valid through the date of both the Board meeting at which the inducement resolution is considered and, if applicable, subsequent submission of the application to the TBRB. For Lottery applications, Site Control must meet the requirements of 34 TAC §190.3(b)(13) (relating to Filing Requirements for Applications for Reservation);

- (4) Boundary survey or plat clearly identifying the location and boundaries of the subject Property;
- (5) Organizational Chart showing the structure of the Development Owner and of any Developer and Guarantor, providing the names and ownership percentages of all Persons having an ownership interest in the Development Owner, Developer and Guarantor, as applicable, and completed List of Organizations form, as provided in the pre-application. The List of Organizations form must include all Persons identified on the organizational charts, and further identify which of those Persons listed exercise Control of the Development;
- (6) Evidence of Entity Registration or Reservation with the Texas Office of the Secretary of State; and
- (7) A certification, as provided in the pre-application, that the Applicant met the requirements and deadlines for public notifications as identified in §11.203 of this title (relating to Public Notifications (§2306.6705(9)). In general, notifications should not be older than three months prior to the date of Application submission. In addition, should the jurisdiction of the official holding any position or role described in §11.203 of this title change between the submission of a pre-application and the submission of an Application in a manner that results in the Development being within a new jurisdiction, Applicants are required to notify the new entity no later than the Full Application Delivery Date.

#### **§12.6. Pre-Application Scoring Criteria.**

This section identifies the scoring criteria used in evaluating and ranking pre-applications, including pre-applications requesting Qualified 501(c)(3) Bonds to the extent applicable. Any scoring items that require supplemental information to substantiate points must be submitted in the pre-application, as further outlined in the Multifamily Bond Pre-Application Procedures Manual. Applicants proposing multiple sites will be required to submit a separate pre-application for each Development Site, unless staff determines that one pre-application is more appropriate based on the specifics of the transaction. Each individual pre-application will be scored on its own merits and the final score will be determined based on an average of all of the individual scores. Ongoing requirements, as selected in the pre-application, will be reflected in the Bond Regulatory and Land Use Restriction Agreement and must be maintained throughout the State Restrictive Period, unless otherwise stated or required in such Agreement.

- (1) Income and Rent Levels of the Tenants. Pre-applications may qualify for up to ten (10 points) for this item.
  - (A) Priority 1 designation includes one of clauses (i) - (iii) of this subparagraph. (10 points)
    - (i) set aside 50% of Units rent capped at 50% AMGI and the remaining 50% of Units rent capped at 60% AMGI; or

(ii) set aside 15% of Units rent capped at 30% AMGI and the remaining 85% of Units rent capped at 60% AMGI; or

(iii) set aside 100% of Units rent capped at 60% AMGI for Developments located in a census tract with a median income that is higher than the median income of the county, MSA, or PMSA in which the census tract is located.

(B) Priority 2 designation requires the set aside of at least 80% of the Units rent capped at 60% AMGI (7 points).

(C) Priority 3 designation. Includes any qualified residential rental development. Market rate Units can be included under this priority (5 points).

(2) Cost of Development per Square Foot. (1 point) For this item, costs shall be defined as the Building Cost as represented in the Development Cost Schedule, as originally provided in the pre-application. This calculation does not include indirect construction costs or site work. Pre-applications that do not exceed \$160 per square foot of Net Rentable Area will receive one (1) point. Rehabilitation Developments will automatically receive this point.

(3) Unit Sizes. (6 points) The Development must meet the minimum requirements identified in this subparagraph to qualify for points. Points for this item will be automatically granted for Applications involving Rehabilitation (excluding Reconstruction).

(A) Five-hundred (500) square feet for an Efficiency Unit;

(B) Six-hundred (600) square feet for a one Bedroom Unit;

(C) Eight-hundred-fifty (850) square feet for a two Bedroom Unit;

(D) One-thousand-fifty (1,050) square feet for a three Bedroom Unit; and

(E) One-thousand, two-hundred-fifty (1,250) square feet for a four Bedroom Unit.

(4) Extended Affordability. A pre-application may qualify for up to three (3) points under this item.

(A) Development Owners that agree to extend the State Restrictive Period for a Development to a total of 40 years (3 points).

(B) Development Owners that agree to extend the State Restrictive Period for a Development to a total of 35 years (2 points).

(5) Unit and Development Construction Features. A pre-application may qualify for nine (9) points, as certified in the pre-application, for providing specific amenity and quality features in every Unit at no extra charge to the tenant. The amenities and corresponding point structure is provided in §11.101(b)(6)(B) of this title (relating to Unit, Development Construction, and Energy and Water Efficiency Features), which includes a minimum

number of points that must come from Energy and Water Efficiency Features. Applications involving scattered site Developments must have a specific amenity located within each Unit to count for points. Rehabilitation Developments will start with a base score of (5 points).

(6) Common Amenities. All Developments must provide at least the minimum threshold of points for common amenities based on the total number of Units in the Development as provided in subparagraphs (A) - (F) of this paragraph. An Applicant may choose to exceed the minimum number of points necessary based on Development size; however, the maximum number of points under this item which a Development may be awarded shall not exceed 22 points. The common amenities include those listed in §11.101(b)(5) of this title and must meet the requirements as stated therein.

- (A) Developments with 16 to 40 Units must qualify for (2 points);
- (B) Developments with 41 to 76 Units must qualify for (4 points);
- (C) Developments with 77 to 99 Units must qualify for (7 points);
- (D) Developments with 100 to 149 Units must qualify for (10 points);
- (E) Developments with 150 to 199 Units must qualify for (14 points); or
- (F) Developments with 200 or more Units must qualify for (18 points).

(7) Resident Supportive Services. A pre-application may qualify for up to ten (10) points for this item. By electing points, the Applicant certifies that the Development will provide supportive services, which are listed in §11.101(b)(7) of this title, appropriate for the residents and that there will be adequate space for the intended services. The Owner may change, from time to time, the services offered; however, the overall points as selected at pre-application must remain the same. Should the QAP in subsequent years provide different services than those listed in §11.101(b)(7)(A) - (E) of this title, the Development Owner may be allowed to select services as listed therein upon written consent from the Department and any services selected must be of similar value to the service it is intending to replace. The Development Owner will be required to substantiate such service(s) at the time of compliance monitoring, if requested by staff. The services provided should be those that will directly benefit the Target Population of the Development and be accessible to all. No fees may be charged to the residents for any of the services. Unless otherwise specified, services must be provided on-site or transportation to those off-site services identified on the list must be provided. The same service may not be used for more than one scoring item. These services are intended to be provided by a qualified and reputable provider in the specified industry such that the experience and background of the provider demonstrates sufficient knowledge to be providing the service. In general, on-site leasing staff or property maintenance staff would not be considered a qualified provider. Where applicable, the services must be documented by a written agreement with the provider. Unless otherwise noted in a particular clause, courses and services must be offered by an onsite instructor(s).

(A) The Development Owner shall provide resident services sufficient to substantiate ten (10) points; or

(B) The Development Owner shall provide resident services sufficient to substantiate eight (8) points.

(8) Underserved Area. An Application may qualify to receive up to four (4) points if the Development Site meets the criteria described in §11.9(c)(6)(A) - (E), or (H) of this title. The pre-application must include evidence that the Development Site meets this requirement. Regardless of the varying point options listed under §11.9(c)(6) of this title, the number of points attributed to this scoring item shall be four (4) points.

(9) Development Support/Opposition. (Maximum +24 to -24 points) Each letter will receive a maximum of +3 to -3 points and shall be received 10 business days prior to the Board's consideration of the pre-application. Letters must clearly state support or opposition to the specific Development. State Representatives or Senators as well as local elected officials must be in office when the pre-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. Neutral letters that do not specifically refer to the Development or do not explicitly state support will receive (zero points). A letter that does not directly express support but expresses it indirectly by inference (i.e., "the local jurisdiction supports the Development and I support the local jurisdiction") counts as a neutral letter except in the case of State elected officials. A letter from a State elected official that does not directly indicate support by the official, but expresses support on behalf of the official's constituents or community (i.e., "My constituents support the Development and I am relaying their support") counts as a support letter. A resolution specifically expressing support that is adopted by the applicable Governing Body will count as support under this scoring item for a maximum of 3 points.

(A) State Senator and State Representative of the districts whose boundaries include the proposed Development Site;

(B) Mayor of the municipality (if the Development is within a municipality or its extraterritorial jurisdiction);

(C) Elected member of the Governing Body of the municipality (if the Development is within a municipality or its extraterritorial jurisdiction) who represents the district in which the Development Site is located;

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

(E) Elected member of the Governing Body of the county who represents the district in which the Development Site is located;

(F) Superintendent of the school district in which the Development Site is located; and

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

(10) Preservation Initiative. (2 points) Preservation Developments, including 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 10 years may qualify for points under this item. Evidence must be submitted in the pre-application.

(11) Declared Disaster Areas. (7 points) A pre-application may receive points if the Development Site is located in an area declared a disaster area under Tex. Gov't Code §418.014 at the time of submission, or at any time within the two-year period preceding the date of submission.

(12) Waiting List. (5 points) A pre-application that is on the Department's waiting list with the TBRB and does not have an active Certificate of Reservation at the time of the Private Activity Bond Lottery may receive points under this item if participating in the Lottery for the upcoming program year. These points will be added by staff once all of the scores for Lottery applications have been finalized. A pre-application for Qualified 501(c)(3) Bonds is not eligible for these points.

(A) For pre-applications that participated in the prior year Private Activity Bond Lottery (5 points); or

(B) For pre-applications that had an Inducement Resolution adoption date of November of the prior calendar year through March of the current calendar year (3 points); or

(C) For pre-applications that had an Inducement Resolution adoption date of April through July of the current calendar year (1 point).

(13) Assisting Households with Children. (42(m)(1)(C)(vii)) A pre-application may receive one point under this item if at least 15% of the Units in the Development contain three or more bedrooms. The specific number of three or more bedrooms may change from pre-application to full Application, but the minimum percentage must still be met. Applications proposing Rehabilitation (excluding Reconstruction) and Elderly Developments will automatically receive this point.

(14) Sponsor Contribution. This scoring item is only applicable to pre-applications requesting an issuance of Qualified 501(c)(3) Bonds. A pre-application may qualify for up to ten (10) points for this item based on the amount of sponsor contribution as reflected in the pre-application. The contribution shall be in the form of cash or land contribution or other contribution acceptable to the Department. A contribution in the form of deferred developer fee will not qualify for points.

(A) A contribution of at least 10% will qualify for 10 points; or

(B) A contribution of at least 5% will qualify for 7 points.

## **§12.7. Full Application Process.**

(a) Application Submission. Once the inducement resolution has been approved by the Board, an Applicant who elects to proceed with submitting a full Application to the Department must submit the complete tax credit Application pursuant to §11.201 of this title (relating to Procedural Requirements for Application Submission). While a Certificate of Reservation is required under §11.201 of this title prior to submission of the complete tax credit Application, staff may allow the Application to be submitted prior to the issuance of a Certificate of Reservation depending on circumstances associated with the Development Site, structure of the transaction, volume cap environment, or other factors in the Department's sole discretion. An Applicant who intends to pursue Qualified 501(c)(3) Bond financing shall submit a full Application that complies with §12.11 of this chapter at least 90 days prior to the date by which consideration by the Board for the issuance of the bonds would occur.

(b) Eligibility Criteria. The Department will evaluate the Application for eligibility and threshold at the time of full Application pursuant to this Chapter and Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan), as applicable. If there are changes to the Application at any point prior to closing that have an adverse effect on the score and ranking order and that would have resulted in the pre-application being placed below another pre-application in the ranking, the Department may terminate the Application and withdraw the Certificate of Reservation from the 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 applicable requirements set forth in Chapter 11 of this title in addition to Tex. Gov't Code, Chapter 1372, the requirements of Tex. Gov't Code Chapter 2306, and the Code. The Applicant will also be required to select a Bond Trustee from the Department's approved list as published on its website.

(c) Bond Documents. Once the Application has been submitted and the Applicant has deposited funds to pay initial costs, the Department's bond counsel shall draft Bond documents.

(d) Public Hearings. The Department will hold a public hearing to receive comments pertaining to the Development and the issuance of the Bonds. A representative of the Applicant or member of the Development Team must be present at the public hearing and will be responsible for conducting a brief presentation on the proposed Development and providing handouts at the hearing that should include at minimum, a description of the Development, maximum rents and income restrictions. If the proposed Development is Rehabilitation, the presentation should include the proposed scope of work that is planned for the Development. The handouts must be submitted to the Department for review at least two days prior to the public hearing. Publication of all notices required for the public hearing shall be at the sole expense of the Applicant, as well as any facility rental fees or required deposits, if applicable.

(e) Approval of the Bonds. Subject to the timely receipt and approval of commitments for financing, an acceptable evaluation for eligibility, financial feasibility, the satisfactory negotiation of Bond documents, and the completion of a public hearing, the Board will consider the approval of the final Bond resolution relating to the issuance, substantially final

Bond documents and in the instance of privately placed Bonds, the pricing, terms and interest rate of the Bonds, or the formula thereof that is used to determine such factors. For Applications that include local funding, Department staff may choose to delay Board consideration of the Bond issuance until such time it has been confirmed that the amount or terms associated with such local funding will not change and remain consistent with what was represented in the Department's underwriting analysis.

(f) Local Permits. Prior to closing on the Bond financing, all necessary approvals, including building permits from local municipalities, counties, or other jurisdictions with authority over the Development Site must have been obtained or evidence that the permits are obtainable subject only to payment of certain fees. In instances where such permits will be not received prior to bond closing, the Department may, on a limited and case-by-case basis allow for the closing to occur, subject to receipt of confirmation, acceptable to the Department, by the lender and/or equity investor that they are comfortable proceeding with closing.

#### **§12.8. Refunding Application Process.**

(a) Application Submission. Owners who wish to refund or modify tax-exempt bonds, including Qualified 501(c)(3) Bonds, that were previously issued by the Department must submit to the Department a summary of the proposed refunding plan or modifications. To the extent such modifications constitute a re-issuance under state law the Applicant shall then be required to submit a refunding Application in the form prescribed by the Department pursuant to the Bond Refunding Application Procedures Manual.

(b) Bond Documents. Once the Department has received the refunding Application and the Applicant has deposited funds to pay initial costs, the Department's bond counsel will draft the necessary Bond documents.

(c) Public Hearings. Depending on the proposed modifications to existing Bond covenants a public hearing may be required. Such hearing must take place prior to obtaining Board approval and must meet the requirements pursuant to §12.7(d) of this chapter (relating to Full Application Process) regarding the presence of a member of the Development Team and providing a summary of proposed Development changes.

(d) Rule Applicability. Refunding Applications must meet the applicable requirements pursuant to Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan). At the time of the original award the Application would have been subject to eligibility and threshold requirements under the QAP in effect the year the Application was awarded. Therefore, it is anticipated the Refunding Application would not be subject to the site and development requirements and restrictions pursuant to §11.101 of this title (relating to Site and Development Requirements and Restrictions). The circumstances surrounding a refunding Application are unique to each Development; therefore, upon evaluation of the refunding Application, the Department is authorized to utilize its discretion in the applicability of the Department's rules as it deems appropriate.

## **§12.9. Occupancy Requirements.**

(a) **Filing and Term of Regulatory Agreement.** A Bond Regulatory and Land Use Restriction Agreement 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, including Qualified 501(c)(3) Bonds. Such Regulatory and Land Use Restriction Agreement shall include provisions relating to the Qualified Project Period, if applicable, and the State Restrictive Period, along with points claimed for other provisions that will be required to be monitored throughout the State Restrictive Period, and shall also include provisions relating to Persons with Special Needs. The minimum term of the Regulatory Agreement will be based on the criteria as described in paragraphs (1) - (3) of this subsection, as applicable:

- (1) 30 years, or such longer period as elected under §12.6(4) of this chapter (relating to Pre-Application Scoring Criteria), from the date the Development Owner takes legal possession of the Development;
- (2) The end of the remaining term of the existing federal government assistance pursuant to Tex. Gov't Code, §2306.185; or
- (3) The period required by the Code.

(b) **Federal Set Aside Requirements.**

(1) Developments which are financed from the proceeds of Private Activity Bonds, excluding Qualified 501(c)(3) Bonds, must be restricted under one of the two minimum set-asides as described in subparagraphs (A) and (B) of this paragraph. Regardless of an election that may be made under Section 42 of the Code relating to income averaging, a Development will be required under the Bond Regulatory and Land Use Restriction Agreement to meet one of the two minimum set-asides described in subparagraphs (A) and (B) of this paragraph. Any proposed market rate Units shall be limited to 140% of the area median income and be considered restricted units under the Bond Regulatory and Land Use Restriction Agreement for purposes of using Bond proceeds to construct such Units.

- (A) At least 20% of the Units within the Development 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 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, at the time of Application, indicate which of the two federal set-asides will apply to the Development and must also designate the selected priority for the Development in accordance with Tex. Gov't Code, §1372.0321. Units

intended to satisfy set-aside requirements must be distributed equally 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 minimum federal 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. However, should a tenant's income, as of the most recent determination thereof, exceed 140% of the applicable federal set-aside 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.

#### **§12.10. Fees.**

(a) The fees noted in subparagraphs (b) through (g) of this paragraph will be required as part of a Bond issuance by the Department, excluding Qualified 501(c)(3) Bond issuances.

(b) **Pre-Application Fees.** The Applicant is required to submit, at the time of pre-application, a pre-application fee of \$1,000, along with the fees noted on the Schedule of Fees posted on the Department's website specific to the Department's bond counsel and the Texas Bond Review Board (TBRB) pursuant to Tex. Gov't Code, §1372.006(a)). These fees cover the costs of pre-application review by the Department and its bond counsel and filing fees associated with application submission for the Certificate of Reservation to the TBRB.

(c) **Application Fees.** At the time of Application the Applicant is required to submit a tax credit application fee of \$30 per Unit based on the total number of Units and a bond application fee of \$20 per Unit based on the total number of Units. Such fees cover the costs associated with Application review and the Department's expenses in connection with providing financing for a Development. For Developments proposed to be structured as a portfolio the bond application fees may be reduced by the Executive Director to reflect the Department's projected costs.

(d) **Closing Fees.** The origination fee for Bonds, other than refunding Bonds, is equal to 50 basis points of the issued principal amount of the Bonds, unless otherwise modified by the Executive Director. The Applicant will also be required to pay at closing of the Bonds the first two years of the administration fee equal to 20 basis points of the issued principal amount of the Bonds, with the first year prorated based on the actual closing date, and a Bond compliance fee equal to \$25/Unit (excludes market rate Units as defined in the Regulatory Agreement). Such compliance fee shall be applied to the third year following closing.

(e) **Application and Issuance Fees for Refunding Applications.** For refunding an Application the application fee will be \$10,000 unless the refunding is not required to have a public hearing, in which case the fee will be \$5,000. The closing fee for refunding Bonds is equal to 25 basis points of the issued principal amount of the refunding Bonds. If applicable, administration and compliance fees due at closing may be prorated based on the current billing period of such fees. If additional volume cap is being requested other fees may be required as further

described in the Bond Refunding Applications Procedures Manual. Transactions previously issued that involved a financing structure that would constitute a re-issuance under state law, but do not fit under §12.8 of this chapter (relating to Refunding Application Process), will be required to pay a closing fee that shall not exceed 25 basis points of the re-issued principal amount of the bonds which may be reduced in the sole determination of the Department as commensurate with the review by staff in obtaining Board approval at the time of conversion.

(f) Ongoing Administration Fee. The annual administration fee is equal to 10 basis points of the outstanding bond amount at the inception of each payment period and is paid as long as the Bonds are outstanding.

(g) Ongoing Bond Compliance Fee. The Bond compliance monitoring fee is equal to \$25/Unit (excludes market rate Units as defined in the Regulatory Agreement), and is paid for the duration of the State Restrictive Period under the Regulatory Agreement, regardless of whether the Bonds have been paid off and are no longer outstanding. For Developments for which (1) the Department's Bonds are no longer outstanding and (2) new bonds or notes have been issued and delivered by the Department, the bond compliance monitoring fee may be reduced on a case-by-case basis at the discretion of Department staff.

### **§12.11 Qualified 501(c)(3) Bonds**

(a) General. The Department may issue Qualified 501(c)(3) Bonds under §145 of the Code to provide residential rental property. Such Bonds are not eligible for an allocation of Housing Tax Credits.

(b) Rule Applicability. Qualified 501(c)(3) Bond Developments shall meet the applicable requirements of Chapter 1 of this title (relating to Administration), Chapter 2 (relating to Enforcement), Chapter 10 (relating to Uniform Multifamily Rules), Chapter 11 Subchapter B of this title (except for §11.101(b)(3) (relating to Rehabilitation Costs), Chapter 11 Subchapter C of this title, and this Chapter (except for §12.9(b) (relating to Federal Set-Asides) and §12.10 (relating to Fees)).

(c) Maximum Amount to be Issued. The annual amount of Qualified 501(c)(3) Bonds to be issued shall be in accordance with Tex. Gov't Code §2306.358(b) pursuant to a Memorandum of Understanding with the Bond Review Board and further subject to §2306.358(a) whereby not more than 25% of the total annual issuance amount specified in the Memorandum of Understanding will be used for projects in any one metropolitan area and at least 15% of the total annual issuance amount specified in the Memorandum of Understanding is reserved for projects in rural areas, as both metropolitan and rural area is defined in the Memorandum of Understanding.

(d) Borrower Eligibility. A borrower must be an organization exempt from federal income tax by virtue of being described in §501(c)(3) of the Code. In addition to having a "determination letter" issued by the Internal Revenue Service confirming the borrower's Section 501(c)(3) status, an "unqualified" legal opinion from a practitioner experienced in tax-exempt organizations must be delivered in connection with a financing. The ownership of the multifamily Development financed with proceeds from Qualified 501(c)(3) Bonds must further the organization's exempt purposes, which shall include providing affordable housing

pursuant to standards promulgated by the Internal Revenue Service and the Safe Harbor for Relieving the Poor and Distressed under Revenue Procedure 96-32. The borrower or its nonprofit parent organization shall have at least five years in operation with demonstrated experience in affordable housing development and management and/or ownership of other similar projects. The Borrower must maintain its Section 501(c)(3) status while the bonds are outstanding. Borrower must be registered with the Texas Secretary of State throughout the term of the Regulatory Agreement.

(e) Minimum Set-Asides and Rent and Income Requirements (§2306.358). The federal Safe Harbor for Relieving the Poor and Distressed requires that at least 75% of the units must be at or below 80% of Area Median Gross Income. The state law requirements, as identified in subparagraphs (1) and (2) below, may alternatively be elected for a Development, regardless of whether New Construction or Rehabilitation. Units intended to satisfy set-aside requirements must be distributed proportionally throughout the Development.

(1) At least 60% of the units serve individuals and families at 80% of the Area Median Gross Income and below (§2306.358(c)(2)); AND

(A) At least 20% of the Units are both rent restricted and occupied by individuals whose income is 50% or less of the Area Median Gross Income, adjusted for family size; OR

(B) At least 40% of the Units are both rent restricted and occupied by individuals whose income is 60% or less of the Area Median Gross Income, adjusted for family size; AND

(2) 100% of the Units must be occupied by individuals whose income does not exceed 140% of the Area Median Gross Income such that all tenants are eligible tenants.

(f) Mandatory Development Amenities (§2306.187). The Development must include those amenities identified under §11.101(b)(4) of this title (relating to Mandatory Development Amenities).

(g) Accessibility Requirements. New Construction Developments shall be subject to 10 TAC §11.101(b)(8) (relating to Development Accessibility Requirements). Rehabilitation (excluding Reconstruction) Developments shall be exempt from 10 TAC §11.101(b)(8)(A) relating to compliance with Chapter 1, Subchapter B of this title and §11.101(b)(8)(D) relating to substantial alteration. Regarding applicability of 10 TAC §11.101(b)(8)(D), Rehabilitation (excluding Reconstruction) Developments shall not be required to achieve unit distribution of the 5% of the Units that must be mobility accessible or the 2% of the Units that must be accessible for the hearing and visually impaired, unless such distribution is required by another source in the transaction or other use agreement restricting the Development.

(h) Minimum Rehabilitation Costs. In the case of Rehabilitation Developments, a Scope and Cost Report or Capital Needs Assessment must be submitted. Any health and safety findings identified must be corrected as part of the acquisition and rehabilitation following closing, and a timeline of the repairs must be included in the Application. For deferred maintenance indicated in such report as needing to be remedied within the first three years, the

Department will require an adequate reserve account to be funded at closing. Alternatively, the Department may rely on reserve amounts required by the senior lender.

(i) Underwriting Standards (§2306.358(c)). In addition to meeting the requirements of §§141 through 150 of the Code, the borrower must demonstrate to the Department that the Development is carefully and conservatively underwritten to ensure that the project is well run, well maintained, financially viable, and will minimize the risk of the Borrower's default. Developments financed by Qualified 501(c)(3) Bonds shall generally be underwritten pursuant to §11.302 of the QAP, except that for Developments that do not have any other Department funding or an ongoing Department use agreement, in recognition of differences in financing structures, the Executive Director or authorized designee may approve minor deviations where consistent with prudent industry standards or senior lender requirements, provided they do not jeopardize the financial viability of the Development, are determined by Real Estate Analysis to be necessary to maintain financial feasibility, and if such deviation is requested as part of the application process.

(j) Fees. The fees noted in paragraphs (1) - (5) of this subsection will be required as part of a Qualified 501(c)(3) Bond issuance by the Department.

(1) Pre-Application/Inducement Fee. A pre-application fee of \$1,000 shall be submitted, payable to the Department and an Inducement Fee as noted on the Schedule of Fees posted on the Department's website specific to the Department's bond counsel. These fees cover the costs of pre-application review by the Department and its bond counsel. For Developments proposed to be structured as a portfolio, either or both fees may be reduced on a case-by-case basis at the discretion of the Executive Director.

(2) Application Fee. An application fee of \$20 per Unit based on the total number of Units must be submitted, with an allowable 10% discount off the calculated Application fee. For Developments proposed to be structured as a portfolio, the bond Application fee may be reduced by the Executive Director to reflect the Department's projected costs.

(3) Closing Fees. The origination fee shall be equal to 25 basis points of the issued principal amount of the Bonds, unless otherwise modified by the Executive Director. The Applicant will also be required to pay at closing of the Bonds the first two years of the administration fee equal to 20 basis points of the issued principal amount of the Bonds, with the first year prorated based on the actual closing date, and a Bond compliance fee equal to \$25 per Unit (excluding market rate Units as defined in the Regulatory Agreement). Such compliance fee shall be applied to the third year following closing.

(4) Ongoing Administration Fee. The annual administration fee is equal to 10 basis points of the outstanding bond amount at the inception of each payment period and is paid as long as the bonds are outstanding.

(5) Ongoing Bond Compliance Fee. The compliance monitoring fee is equal to \$25 per Unit (excluding market rate Units as defined in the Regulatory Agreement) and is paid for the duration of the State Restrictive Period under the Regulatory Agreement, regardless of whether the Bonds have been paid off and are no longer outstanding. For Developments for which (1) the Department's Bonds are no longer outstanding and (2) new bonds or notes have been issued and delivered by the Department, the bond compliance monitoring fee may be reduced on a case-by-case basis at the discretion of Department staff.

(6) Professional Fees. The Department engages outside firms to provide professional services with respect to its multifamily bond program. These firms include bond counsel, financial advisor and disclosure counsel. Applicants are encouraged to review the Department's Schedule of Fees on its website for more details regarding these fees.