

National Housing Trust Fund

State of Texas

2017 Allocation Plan

II. GRANTEE INFORMATION

State:

FY 2017 HTF Allocation Amount:

III. CONSOLIDATED PLAN REQUIREMENTS

Citizen Participation Plan

The consolidated plan regulation at § 91.115 requires the State to include HTF in its citizen participation plan. Essentially, before adopting a consolidated plan, the State is required to adopt a citizen participation plan that describes the process for providing and encouraging citizens to participate in the development of the consolidated plan, the amendments to the consolidated plan and the performance report (CAPERS). For the purposes of HTF, the State is required to make the following information available to the public:

- the amount of HTF assistance the State expects to receive,
- the range of activities the State may undertake, including the estimated amount that will benefit extremely low-income households, and
- the State’s plans to minimize displacement of persons and to assist any persons displaced.

If the State already conducted its citizen participation and included HTF in any citizen participation it performed for the other HUD formula grant programs, then the State does not need to conduct additional citizen participation for HTF. If the State has not yet conducted citizen participation or did not include HTF in the citizen participation it performed for other HUD formula grant programs, then it must conduct citizen participation to include HTF as part of its consolidated plan.

Consolidated Plan Screen(s) To Revise

The following screen in the eCon Planning Suite consolidated plan template in IDIS must be revised to include HTF.

- ES-05 / AP-05 Executive Summary:** § 91.320(b)- The Executive Summary includes seven narratives: (1) Introduction; (2) Summary of Objectives and Outcomes; (3) Evaluation of Past Performance; (4) Summary of the Citizen Participation and Consultation Process; (5) Summary of Public Comments; (6) Summary of Comments Not Accepted; (7) Summary.

- PR-15 Citizen Participation:** § 91.115 and § 91.300(c)- revise this screen to provide a summary of the citizen participation efforts made for HTF, including efforts to broaden public participation, a summary of citizen comments or views on the plan, and a written explanation of comments not accepted and the reasons why these comments were not accepted.

IV. STRATEGIC PLAN REQUIREMENTS

The State must amend the affordable housing section of the strategic plan to include specific objectives that describe proposed accomplishments the State hopes to achieve and must specify the number of extremely low-income families to which the State will provide affordable housing to (homeownership- § 93.302; rental- § 93.304) over a specific period of time. The State can complete this requirement by including HTF on the **SP-45 Goals screen**.

Note: Directions on how to amend a plan are included at the end of this document.

Reminder: 100 percent of FY 2017 HTF funds must benefit extremely low-income households; a minimum of 80 percent must be used for rental housing; up to 10 percent may be used for homeownership housing; up to 10 percent may be used for administrative costs.

Strategic Plan Screen(s) To Revise

In addition to updating the affordable housing section of the strategic plan, the following screens in the eCon Planning Suite consolidated plan template in IDIS must be revised to include HTF.

- SP-10 Geographic Priorities:** § 91.315(a)(1)- revise this screen to discuss how investments are allocated geographically.
- SP-25 Priority Needs:** § 91.315(a)(2)- revise this screen to indicate the general priorities for allocating investment of available resources among different needs.
- SP-30 Influence of Market Conditions:** § 93.315(b)- revise this screen to describe how the characteristics of the housing market influenced the State's decisions regarding allocation priorities among the types of housing assistance.
- SP-35 Anticipated Resources:** § 91.315(a)(4); § 91.320(c)(1) and (2)- revise this screen to identify the federal, state, local, and private resources expected to be available to the State to address priority needs and specific objectives identified in the strategic plan. Specifically, the State should add a program to this screen by selecting "Add" in the *Action* column. This will open the **SP-36 Add Anticipated Resource** screen. The State should select "Other" in the *Anticipated Resource* field and enter "Housing Trust

Fund” in the *Other Funding Source* field. The State should also select the “public - federal” radio button in the “Source” field and complete the rest of the fields on this screen for its HTF program.

- SP-45 Goals:** § 91.315(a)(4) and § 91.315 (b)(2)- revise this screen to summarize the State’s priorities and the specific goals it intends to initiate and/or complete within the term of the strategic plan. The State must also ensure its five year goals include any accomplishments due to HTF funds and must also enter the number of extremely low-income families to which the State will provide assistance with its HTF funds.

V. ANNUAL ACTION PLAN REQUIREMENTS

The State must include HTF in its annual action plan or amend the plan to include HTF information as required in § 93.320(k)(5). The action plan must include an HTF allocation plan that describes the distribution of HTF funds, and establishes the application requirements and selection criteria of applications submitted by eligible recipients that meet the State’s priority housing needs.

Annual Action Plan Screen(s) To Revise

The following screens in the eCon Planning Suite consolidated plan template in IDIS must be revised to include HTF.

- AP-15 Expected Resources:** § 91.320(c)(1) and (2)- revise this screen to provide a concise summary of the federal resources expected to be available. The HTF resources added to the **SP-35 Anticipated Resources** screen will carry over to this screen.
- AP-20 Annual Goals and Objectives:** § 91.320(c)(3) and (e)- revise this screen to summarize the specific goals the State intends to initiate and/or complete within the term of the program year. Any HTF related goals and objectives entered on the **SP-45 Goals** screen will carry over to this screen.
- AP-25 Allocation Priorities:** § 91.320(d)- revise this screen to describe the reasons for the State’s allocation priorities and how the proposed distribution of funds will address the priority needs and goals of the strategic plan.
- AP-30 Method of Distribution:** § 91.320(d) and (k5)- revise this screen to include a description of its method(s) for distribution for the “Other – Housing Trust Fund” selection based on the entry made on the **SP-35 Anticipated Resources** screen.
- AP-35 Projects:** § 91.220(d)- revise this screen to include consolidated plan/annual action plan projects that reflect the planned use of HTF funds each year.

- AP-50 Geographic Distribution:** § 91.320(f)- revise this screen to describe the geographic areas of the state in which it will direct assistance during the ensuing program year and provide rationale for its priorities in allocating investment geographically.
- AP-55 Affordable Housing:** § 91.320(g)- revise this screen to specify goals for the number of homeless, non-homeless, and special needs households to be provided affordable housing within the program year.
- AP-65 Homeless and Other Special Needs Activities:** § 91.320(h)- revise this screen to describe how HTF will help to address the State’s one-year goals and actions for reducing and ending homelessness, if applicable.
- AP-75 Barriers to Affordable Housing:** § 91.320(i)- revise this screen to describe how HTF will help with any actions the State’s will take during the next year to reduce barriers to affordable housing, if applicable.
- AP-85 Other Actions:** § 91.320(j)- revise this screen to describe how HTF will help with any actions the State will take during the next year to carry out the following strategies outlined in the consolidated plan:
 - Foster and maintain affordable housing;
 - Evaluate and reduce lead-based paint hazards;
 - Reduce the number of poverty-level families;
 - Develop institutional structure; and
 - Enhance coordination.

In addition, the State must identify obstacles to meeting underserved needs and propose actions to overcome those obstacles using HTF funds, if applicable.

VI. ALLOCATION PLAN REQUIREMENTS

The State is responsible for distributing HTF funds throughout the State according to its housing priority needs. In addition to revising the **AP- 30 Method of Distribution** screen in IDIS, the State must respond to the following questions.

Distribution of HTF funds

1. How will the State distribute its HTF funds (§ 91.320(k)(5))? Select all that apply:
 - Applications submitted by eligible recipients
 - Subgrantees that are State Agencies
 - Subgrantees that are HUD-CPD entitlement grantees

2. If distributing HTF funds through grants to subgrantees, describe the method for distributing HTF funds through grants to subgrantees and how those funds will be made available to state agencies and/or units of general local government. If not distributing funds through grants to subgrantees, enter "N/A".

3. If distributing HTF funds by selecting applications submitted by eligible recipients,
 - a. Describe the eligibility requirements for recipients of HTF funds (as defined in 24 CFR § 93.2). If not distributing funds by selecting applications submitted by eligible recipients, enter "N/A".

Multifamily Direct Loan Certification

I (We) hereby make application to the Texas Department of Housing and Community Affairs (the "Department") for an award of Multifamily Direct Loan funds, which may be composed of HOME Investment Partnerships Program ("HOME"), Tax Credit Assistance Program Repayment Funds "TCAP RF," Neighborhood Stabilization Program Round 1 Program Income ("NSP1 PI"), and/or National Housing Trust Fund ("NHTF"). The undersigned hereby acknowledges that an award by the Department does not warrant that the Development is deemed qualified to receive such award. I (We) agree that the Department or any of its directors, officers, employees, and agents will not be held responsible or liable for any representations made to the undersigned or its investors relating to the Multifamily Direct Loan; therefore, I (We) assume the risk of all damages, losses, costs, and expenses related thereto and agree to indemnify and save harmless the Department and any of its officers, employees, and agents against any and all claims, suits, losses, damages, costs, and expenses of any kind and of any nature that the Department may hereinafter suffer, incur, or pay arising out of its decision concerning this application for Multifamily Direct Loan funds or the use of information concerning the Multifamily Direct Loan.

On behalf of the Applicant and all affiliates of the Applicant (hereinafter "Applicant"), I (We) hereby certify that the Applicant is familiar with the state Rules, as published in 10 TAC Chapters 1, 2, 10, and 13, as well as Chapters 11 and 12 as applicable. I (We) hereby acknowledge that this Application is subject to disclosure under Chapter 552, Texas Government Code, the Texas Public Information Act, unless a valid exception exists.

I (We) acknowledge all representations, undertakings, and commitments made by Applicant in the application process for a Development, whether with respect to threshold criteria, selection criteria or otherwise, shall be deemed to be a condition to any Commitment Notice, Determination Notice, Award Letter and Loan Term Sheet, Loan Commitment or Contract for such Development, the violation of which shall be cause for cancellation of such Commitment Notice, Determination Notice, Award Letter and Loan Term Sheet, Loan Commitment or Contract by the Department and if concerning the ongoing features or operation of the Development, shall be enforceable even if not reflected in the Land Use Restriction Agreement (LURA) and Contract. All such representations are enforceable by the Department and the tenants of the Development, including but not limited to enforcement by administrative penalties for failure to perform, in accordance with the LURA and Contract.

I (We) certify I (We) have disclosed in the Application all instances in which the Developer or Principal of the Applicant has been removed by a lender, equity provider, or limited partners in the past ten years for its failure to perform obligations under loan documents or limited partnership agreements. I (We) understand that if the Department learns at a later date that a removal did take place as described and was not disclosed, the Application may be terminated and any award made will be rescinded.

I (We) agree the Department may, at its discretion, request additional information and/or documentation in its evaluation of this Application and is authorized but not obligated under this

2018 Multifamily Direct Loan Certification

document to conduct its own investigation regarding any information required requested and or provided in relation to the Application or the Development.

I (We) hereby assert that the information contained in this Application as required or deemed necessary by the materials governing the Multifamily Direct Loan are true and correct and that I (We) have undergone sufficient investigation to affirm the validity of the statements made and the Department may rely on any such statements.

Further, I (We) hereby assert that I (We) have read and understand all the information contained in the application. By signing this document, I (We) affirm that all statements made in this government document are true and correct under penalty of Chapter 37 of the Texas Penal Code titled Perjury and Other Falsification and subject to criminal penalties as defined by the State of Texas. TEX. PENAL CODE ANN. §37.01 et seq. (Vernon 2011).

I (We) understand and agree that if false information is provided in this Application which has the effect of increasing the Applicant's competitive advantage, the Department will disqualify the Applicant and may hold the Applicant ineligible to apply for Multifamily Direct Loan funds or until any issue of restitution is resolved.

If false information is discovered after the award of Multifamily Direct Loan funds, the Department may terminate the Applicant's written agreement and recapture all Multifamily Direct Loan funds expended.

I (We) shall not, in the provision of services, or in any other manner discriminate against any person on the basis of age, race, color, religion, sex, national origin, familial status, or disability. Verification of any of the information contained in this application may be obtained from any source named herein.

I (We) will at all times indemnify and hold the Department harmless against all losses, costs, damages, expenses, and liabilities of any nature directly or indirectly resulting from, arising out of or relating to the Department's acceptance, consideration, approval, or disapproval of this request and the issuance or non-issuance of Multifamily Direct Loan funds herewith.

I (We) have written below the name of the individual authorized to execute the Multifamily Direct Loan agreement and any and all future Multifamily Direct Loan commitments and contracts related to this application. If this individual is replaced by the organization, I (We) must inform the Department within 30 days of the person authorized to execute agreements, commitment and/or contracts on behalf of the Applicant.

I (We) certify that no person or entity that would benefit from the award of Multifamily Direct Loan funds has committed to providing a source of match.

I (We) certify that I (We) will meet, Texas Minimum Construction Standards, 2010 ADA Standards for Accessible Design, as well as the Fair Housing Accessibility Standards and Section 504 of the Rehabilitation Act of 1973 as further detailed in 10 TAC Chapter 1, Subchapter B. I (We) certify that the Development will meet all local building codes or standards that may apply as well as the Uniform Physical Conditions Standards in 24 CFR §5.705

2018 Multifamily Direct Loan Certification

If the Development is located within a jurisdiction that does not have building codes, I (We) will meet the most current International Building Code.

I (We) certify that if Department funds have a first lien position in the project for which assistance is being requested, assurance of completion of the development will be provided in the form of payment and performance bonds in the full amount of the construction contract, running to the Department as obligee, or equivalent guarantee in the sole determination of the Department.

I (We) certify that if refinancing is a component of the proposed development the Applicant must confirm that Multifamily Direct Loan funds will not be used to replace loans, grants or other financing by any other Federal program.

I (We) certify that if other federal or governmental assistance is used in the financing of this development I (We) will notify the Texas Department of Housing and Community Affairs.

I (We) certify that I (We) do not and will not knowingly employ an undocumented worker, where "undocumented worker" means an individual who, at the time of employment, is not lawfully admitted for permanent residence to the United States or authorized under law to be employed in that manner in the United States.

If, after receiving a public subsidy, I (We), am convicted of a violation under 8 U.S.C Section 1324a (f), I (We) shall repay the amount of the public subsidy with interest, at the rate and according to the other terms provided by an agreement under Texas Government Code Section 2264.053, not later than the 120th day after the date TDHCA notifies Name of Applicant of the violation.

Except for Applications for funds under a set-aside for TCAP RF only funds, on behalf of the Applicant, I (We) hereby certify that the Applicant is familiar with the provisions of the federal HOME Final Rule, as published in 24 CFR Part 92, and other related administrative rules and regulations and court rulings issued by the Federal government or State of Texas with respect to the HOME Investment Partnerships Program and all Developments eligible to receive HOME funds will comply with such rules during the application process and, in the event of award of HOME funds, for the duration of the proposed Development.

Except for Applications for funds under a set-aside for TCAP RF only funds, on behalf of the Applicant, I (We) hereby certify that the Applicant is familiar with the provisions of the interim Housing Trust Fund rule, as published in 24 CFR Part 93, and other related administrative rules and regulations and court rulings issued by the Federal government or State of Texas with respect to the NHTF and all Developments eligible to receive NHTF funds will comply with such rules during the application process and, in the event of award of NHTF funds, for the duration of the proposed Development

Lead Based Paint

I (We) certify that documentation of compliance with the Texas Environmental Lead Reduction Rules in 25 TAC Chapter 295, Subchapter I or 24 CFR Part 35 (Lead Safe Housing Rule), as applicable, will be

maintained in project files. I (We) understand that for Developments subject to 24 CFR Part 25, standard forms are available in the Federal Register , as indicated by the sources noted below.

- 1) Applicability 24 CFR §35.115 – A copy of a statement indicating that the property is covered by or exempt from Lead Safe Housing Rule.
 - a) If the property is exempt, the file should include the reason for the exemption and no further documentation is required.
 - b) if the property is covered by the Rule, the file should include the appropriate documentation to indicate basic compliance, as listed below:
 - i) Summary Paint Testing Report or Presumption Notice 24 CFR §35.930(a) – A copy of any report to indicate the presence of lead-based paint (LBP) for projects receiving up to \$5,000 per unit in rehabilitation assistance. If no testing was performed, then LBP is presumed to be on all disturbed surfaces;
 - ii) Notice of Evaluation 24 CFR §35.125(a) – A copy of a notice demonstrating that an evaluation summary was provided to residents following a lead-based-paint inspection, risk assessment or paint testing;
 - iii) Clearance Report 24 CFR §35.930(b) (3) – A report indicating a “clearance examination” was performed of the work site upon completion; and
 - iv) Notice of Hazard Reduction Completion 24 CFR §35.125(b) – Upon completion, a copy of a notice to show that a LBP remediation summary was provided to residents.

Threshold Certification

On behalf of the Applicant and all affiliates of the Applicant (hereinafter “Applicant”), I (We) hereby certify that the Applicant is familiar with the provisions and requirements of the Multifamily Direct Loan Notice of Funding Availability (NOFA) approved by the Department’s Governing Board on December 15, 2016, for which I (We) am applying.

I (We) understand that housing units subsidized by Multifamily Direct Loan funds must be affordable to low, very low or extremely low-income persons. I (We) understand that mixed income rental developments may only receive funds for units that meet the Multifamily Direct Loan affordability standards. I (We) understand that all Applications intended to serve persons with disabilities must adhere to the Department’s Integrated Housing Rule at 10 TAC §1.15.

I (We) understand that funds being used for Multifamily Developments must establish a reserve account consistent with §2306.186, Texas Government Code, and as further described in 10 TAC §10.404.

I (We) understand that, pursuant to 10 TAC §13.11(p), all contractors, consulting firms, Borrowers, Development Owners and Contract Administrators must sign and submit the appropriate documentation with each draw to attest that each request for payment of Multifamily Direct Loan funds is for the actual cost of providing a service and that the service does not violate any conflict of interest provisions in 24 CFR Part 92.

I (We) certify that I (We) am eligible to apply for funds or any other assistance from the Department. I (We) certify that all audits are current at the time of application. I (We) certify that any Audit Certification Forms have been submitted to the Department in a satisfactory format on or before the application deadline for funds or other assistance pursuant to 10 TAC §1.3(b). I (We) certify that, the Development will meet the broadband infrastructure requirements of 81 FR 92626, and that these costs are included in the Application.

All applicants applying under the 2018-1 Multifamily Direct Loan Notice of Funding Availability (NOFA) must read and initial after each of the following sections regarding federal cross cutting requirements in the boxes below.

HUD Section 3

I (We) hereby agree that the work to be performed in connection with any award of HOME or NHTF funds is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (“Section 3”). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing. I (We) agree to comply with HUD's regulations in 24 CFR Part 135, which implement Section 3. For more information about HUD Section 3, please reference the TDHCA website dedicated to Section 3 at: <http://www.tdhca.state.tx.us/program-services/hud-section-3/index.htm>

Environmental

I (We) understand that the environmental effects of each activity carried out with an award of HOME funds must be assessed in accordance with the provisions of National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. §4321 et seq.) and the related activities listed in HUD’s implementing regulations at 24 C.F.R. parts 50, 51, 55 and 58 (NEPA regulations). Each such activity must have an environmental review completed and support documentation prepared complying with the NEPA and NEPA regulations. **No loan may close or funds be committed to an activity before the completion of the environmental review process, including the requirements of 24 CFR Part 58, and the Department has provided written clearance.**

The Department as the Responsible Entity must ensure that environmental effects of the property are assessed in accordance with the provisions of the National Environmental Policy Act of 1969 and the related authorities listed in HUD’s implementing regulations at 24 CFR Parts 50 and 58.

2018 Multifamily Direct Loan Certification

I (We) certify that all parties involved in any aspect of the development process began the project with no intention of using Federal assistance.

I (We) certify that as of the date of the Multifamily Direct Loan application all project work, other than as allowed in 24 CFR. Part 58, has ceased.

I (We) understand that the environmental effects of each activity carried out with an award of NHTF funds must be assessed in accordance with the provisions of CPD Notice 16-14.

I (We) certify that I (we) have read and understand the requirements in 24 CFR §58.22 or CPD Notice 16-14, and I (we) understand **that acquisition of the site, even with non-HUD funds, prior to completion of the environmental review process will jeopardize any federal funding.**

I (We) certify that we will not engage in any choice limiting actions until the site has achieved Environmental Clearance as required in CPD Notice 16-14 or 24 CFR. Part 58, as applicable. **Choice-limiting activities include but are not limited to these examples:**

- Acquisition of land, except through the use of an option agreement, regardless of funding source;
- Closing on loans including loans for interim financing;
- Signing a construction contract.

Relocation and Anti-Displacement

Displacement of Existing Tenants

I (We) certify that that the work to be performed in connection with any award of federal funds is subject to Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (“URA”), as amended, and implementing regulations at 49 CFR Part 24. Consistent with the goals and objectives of activities assisted under the Act and HUD Handbook 1378 unless the Application is for funds under a TCAP only NOFA, the Applicant must prepare and submit the following to TDHCA with the Multifamily Uniform Application:

- 1) A detailed explanation of the reasons for displacement relocation;
- 2) A detailed plan of the relocation, including evidence of comparable replacement housing;
- 3) A copy of the General Information Notice (signed by the tenant or sent Certified Mail, return recipient requested) sent to all tenants on the Rent Roll listed with the Multifamily Direct Loan Application, and
- 4) Estimated costs and funding sources available to complete the permanent relocation.

Demolition and Conversion

2018 Multifamily Direct Loan Certification

I (We) certify that that the work to be performed in connection with any award of HOME funds is subject to 24 CFR Part 42 and Development Owner will replace all occupied and vacant occupiable low-income housing that is demolished or converted to a use other than low-income housing as a direct result of the project. All replacement housing will be provided within three (3) years after the commencement of the demolition or conversion. Before receiving a commitment of HOME funds for a project that will directly result in demolition or conversion, the project owner will make the information public in accordance with 24 CFR Part 42 and submit the information to TDHCA along with the following information in writing at application:

- 1) The location map, address, and number of dwelling units by bedroom size of lower income housing that will be demolished or converted to use other than as lower income housing as a direct result of the project;
- 2) A time schedule for the commencement and completion of the demolition and conversion;
- 3) To the extent known, the location, map, address, and number of dwelling units by bedroom size of the replacement housing that has been or will be provided;
- 4) The amount and source of funding and a time schedule for the provision of the replacement housing;
- 5) The basis for concluding that the replacement housing will remain lower income housing beyond the date of initial occupancy;
- 6) Information demonstrating that any proposed replacement of housing units with similar dwelling units (e.g. a 2-bedroom unit with two 1-bedroom units) or any proposed replacement of efficiency or SRO units with units of a different size is appropriate and consistent with the housing needs of the community; and
- 7) The name and title of the person or persons responsible for tracking the replacement of lower income housing and the name and title of the person responsible for providing relocation payments and other relocation assistance to any lower-income person displaced by the demolition of any housing or the conversion of lower-income housing to another use.

2018 Multifamily Direct Loan Certification

By: _____
Signature of Authorized Representative

Printed Name

Title

Date

THE STATE OF TEXAS §

§

COUNTY OF _____ §

I, the undersigned, a Notary Public in and for said County and State, do hereby certify that name is signed to the foregoing statement, and who is known to be one in the same, has acknowledged before me on this date, that being informed of the contents of this statement, executed the same voluntarily on the date same foregoing statement bears.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this ____ day of _____, _____

(Seal)

Notary Public Signature

Section VI. Allocation Plan Requirements

Question 3a: *Describe the eligibility requirements for recipients of HTF funds (as defined in 24 CFR § 93.2).*

The State of Texas will distribute FY 2017 Housing Trust Fund (“HTF”) Program funds by selecting applications submitted by eligible recipients as defined in §93.2 (definition of recipient) through the Application Submission Requirements, Ineligibility Criteria, Board Decisions, and Waiver of Rules for Applications provisions found in Chapter 10 of the Texas Administrative Code (“TAC”), Subchapter C (10 TAC §§10.201 through 10.207). The State of Texas will not limit recipients to a specific category such as nonprofits. Please see the table below for the requirements in §93.2 and the corresponding requirements found in state rules at 10 TAC Chapter 10.

Recipient requirements in §93.2	State Rules
<p>(1) Make acceptable assurances to the grantee that it will comply with the requirements of the HTF program during the entire period that begins upon selection of the recipient to receive HTF funds, and ending upon the conclusion of all HTF-funded activities</p> <p>(3) Demonstrate its familiarity with the requirements of other Federal, State, or local housing programs that may be used in conjunction with HTF funds to ensure compliance with all applicable requirements and regulations of such programs;</p>	<p>10 TAC §10.204. Required Documentation for Application Submission. The purpose of this section is to identify the documentation that is required at the time of Application submission, unless specifically indicated or otherwise required by Department rule. If any of the documentation indicated in this section is not resolved, clarified or corrected to the satisfaction of the Department through either original Application submission or the Administrative Deficiency process, the Application will be terminated. Unless stated otherwise, all documentation identified in this section must not be dated more than six (6) months prior to the close of the Application Acceptance Period or the date of Application submission as applicable to the program. The Application may include, or Department staff may request, documentation or verification of compliance with any requirements related to the eligibility of an Applicant, Application, Development Site, or Development.</p> <p>(1) Certification, Acknowledgement and Consent of Development Owner. A certification of the information in this subchapter as well as Subchapter B of this chapter must be executed by the Development Owner and address the specific requirements associated with the Development. The Person executing the certification is responsible for ensuring all individuals referenced therein are in compliance with the certification, that they have given it with all required authority and with actual knowledge of the matters certified.</p> <p>(A) The Development will adhere to the Texas Property Code relating to security devices and other applicable requirements for residential tenancies, and will adhere to local building codes or, if no local building codes are in place, then to the most recent version of the International Building Code.</p> <p>(B) This Application and all materials submitted to the Department constitute records of the Department subject to</p>

	<p>Tex. Gov't Code, Chapter 552, and the Texas Public Information Act.</p> <p>(C) All representations, undertakings and commitments made by Applicant in the Application process for Development assistance expressly constitute conditions to any Commitment, Determination Notice, Carryover Allocation, or Direct Loan Commitment for such Development which the Department may issue or award, and the violation of any such condition shall be sufficient cause for the cancellation and rescission of such Commitment, Determination Notice, Carryover Allocation, or Direct Loan Commitment by the Department. If any such representations, undertakings and commitments concern or relate to the ongoing features or operation of the Development, they shall each and all shall be enforceable even if not reflected in the Land Use Restriction Agreement. All such representations, undertakings and commitments are also enforceable by the Department and the tenants of the Development, including enforcement by administrative penalties for failure to perform, in accordance with the Land Use Restriction Agreement.</p> <p>(D) The Development Owner has read and understands the Department's fair housing educational materials posted on the Department's website as of the beginning of the Application Acceptance Period.</p> <p>(E) The Development Owner agrees to implement a plan to use Historically Underutilized Businesses (HUB) in the development process consistent with the Historically Underutilized Business Guidelines for contracting with the State of Texas. The Development Owner will be required to submit a report of the success of the plan as part of the cost certification documentation, in order to receive IRS Forms 8609 or, if the Development does not have Housing Tax Credits, release of retainage.</p> <p>(F) The Applicant will attempt to ensure that at least 30 percent of the construction and management businesses with which the Applicant contracts in connection with the Development are Minority Owned Businesses as further described in Tex. Gov't Code, §2306.6734.</p> <p>(G) The Development Owner will affirmatively market to veterans through direct marketing or contracts with veteran's organizations. The Development Owner will be required to identify how they will affirmatively market to veterans and report to the Department in the annual housing report on the results of the marketing efforts to veterans. Exceptions to this requirement must be approved by the Department.</p> <p>(H) The Development Owner will comply with any and all notices required by the Department.</p> <p>(I) If the Development has an existing LURA with the</p>
--	--

	<p>Department, the Development Owner will comply with the existing restrictions.</p> <p>(2) Applicant Eligibility Certification. A certification of the information in this subchapter as well as Subchapter B of this chapter must be executed by any individuals required to be listed on the organizational chart and also identified in subparagraphs (A) – (D) below. The certification must identify the various criteria relating to eligibility requirements associated with multifamily funding from the Department, including but not limited to the criteria identified under §10.202 of this chapter (relating to Ineligible Applicants and Applications).</p> <p>(A) for for-profit corporations, any officer authorized by the board of directors, regardless of title, to act on behalf of the corporation, including but not limited to the president, vice president, secretary, treasurer, and all other executive officers, and each stock holder having a 10 percent or more interest in the corporation, and any individual who has Control with respect to such stock holder; (B) for non-profit corporations or governmental instrumentalities (such as housing authorities), any officer authorized by the board, regardless of title, to act on behalf of the corporation, including but not limited to the president, vice president, secretary, treasurer, and all other executive officers, the Audit committee chair, the Board chair, and anyone identified as the Executive Director or equivalent;</p> <p>(C) for trusts, all beneficiaries that have the legal ability to Control the trust who are not just financial beneficiaries; and (D) for limited liability companies, all managers, managing members, members having a 10 percent or more interest in the limited liability company, any individual Controlling such members, or any officer authorized to act on behalf of the limited liability company.</p> <p>(3) Architect Certification Form. The certification, addressing all of the accessibility requirements, must be executed by the Development engineer, an accredited architect or Third Party accessibility specialist. (§2306.6722; §2306.6730)</p> <p>10 TAC §13.1 13.1 Purpose (a) Authority. The rules in this Chapter apply to the funds provided to Multifamily Developments through the Multifamily Direct Loan Program ("MFDL" or "Direct Loan Program") by the Texas Department of Housing and Community Affairs ("Department"). Notwithstanding anything in this Chapter to the contrary, loans and grants issued to finance the Development of multifamily rental</p>
--	--

<p>The following language has been proposed to be added to 13.1(b): The Applicant is also required to certify that it is familiar with any other federal, state, or local financing sources that it identifies in its Application.</p>	<p>housing are subject to the requirements of the laws of the State of Texas, including but not limited to Tex Gov't Code, Chapter 2306, and federal law pursuant to the requirements of Title II of the Cranston-Gonzalez National Affordable Housing Act and the implementing regulations 24 CFR Part 91, Part 92, and Part 93 as they may be applicable to a specific fund source. The Department is authorized to administer HOME funds pursuant to Tex Gov't Code §2306.111. Tex Gov't Code Chapter 2306, Subchapter I, Housing Finance Division: This Chapter is not applicable to the State Housing Trust Fund or Section 811.</p> <p>(b) General. This Chapter applies to an award of MFDL funds by the Department and establishes the general requirements associated with the application and award process for such funds. Applicants pursuing MFDL assistance from the Department are required to certify, among other things, that they have familiarized themselves with all applicable rules that govern that specific program including, but not limited to this Chapter, Chapter 1 (relating to Administration), Chapter 2 (relating to Enforcement), and Chapter 10 of this Title (relating to Uniform Multifamily Rules). Chapter 11 of this Title (relating to Housing Tax Credit Program Qualified Allocation Plan ("QAP")) and Chapter 12 of this Title (relating to Multifamily Housing Revenue Bond Rules) will apply if MFDL funds are layered with those other Department programs. Any conflict with rule of other programs or with federal regulations will be resolved on a case by case basis, that allows for compliance with all requirements. Conflicts that cannot be resolved may result in Application ineligibility.</p> <p>(c) Waivers. Requests for waivers of any program rules or requirements must be made in accordance with §10.207 of this title (relating to Waiver of Rules for Applications). In no instance will the Department consider waiver request that would violate federal program requirements or state or federal statute.</p>
<p>(2) Demonstrate the ability and financial capacity to undertake, comply, and manage the eligible activity;</p> <p>(4) Have demonstrated experience and capacity to conduct an eligible HTF activity as evidenced by its ability to:</p> <p>(i) Own, construct, or rehabilitate, and manage and operate an affordable multifamily rental housing development; or</p>	<p>10 TAC §13.5(d)(1) Applicants requesting MFDL as the only source of Department funds may meet the Experience Requirement under §10.204(6) of this Chapter or by providing evidence of the successful development, and operation for at least 5 years, of at least twice as many affordability restricted units as requested in the Application.</p> <p>10 TAC §10.204. Required Documentation for Application Submission.</p> <p>(6) Experience Requirement. Evidence that meets the criteria as stated in subparagraph (A) of this paragraph must be provided in the Application, unless an experience</p>

Housing Trust Fund: State of Texas – 2017 Allocation Plan

<p>(ii) Design, construct, or rehabilitate, and market affordable housing for homeownership.</p> <p>(iii) Provide forms of assistance, such as down payments, closing costs, or interest rate buydowns for purchasers.</p>	<p>certificate was issued by the Department in 2014, 2015 or 2016 which may be submitted as acceptable evidence of this requirement. Experience of multiple parties may not be aggregated to meet this requirement.</p> <p>(A) A natural Person, with control of the Development through placement in service, who is also a Principal of the Developer, Development Owner, or General Partner must establish that they have experience in the development and placement in service of 150 units or more. Acceptable documentation to meet this requirement shall include any of the items in clauses (i) - (ix) of this subparagraph:</p> <p>(i) American Institute of Architects (AIA) Document (A102) or (A103) 2007 - Standard Form of Agreement between Owner and Contractor;</p> <p>(ii) AIA Document G704--Certificate of Substantial Completion;</p> <p>(iii) AIA Document G702--Application and Certificate for Payment;</p> <p>(iv) Certificate of Occupancy;</p> <p>(v) IRS Form 8609 (only one per development is required);</p> <p>(vi) HUD Form 9822;</p> <p>(vii) Development agreements;</p> <p>(viii) Partnership agreements; or</p> <p>(ix) other documentation satisfactory to the Department verifying that a Principal of the Development Owner, General Partner, or Developer has the required experience.</p> <p>(B) The names on the forms and agreements in subparagraph (A)(i) - (ix) of this paragraph must reflect that the individual seeking to provide experience is a Principal of the Development Owner, General Partner, or Developer as listed in the Application. For purposes of this requirement any individual attempting to use the experience of another individual or entity must demonstrate they had the authority to act on their behalf that substantiates the minimum 150 unit requirement.</p> <p>(C) Experience may not be established for a Person who at any time within the preceding three years has been involved with affordable housing in another state in which the Person or Affiliate has been the subject of issued IRS Form 8823 citing noncompliance that has not been or is not being corrected with reasonable due diligence.</p> <p>(D) If a Principal is determined by the Department to not have the required experience, an acceptable replacement for that Principal must be identified prior to the date the award is made by the Board.</p> <p>(E) Notwithstanding the foregoing, no person may be used to establish such required experience if that Person or an Affiliate of that Person would not be eligible to be an</p>
--	--

	<p>Applicant themselves.</p> <p>(7) Financing Requirements.</p> <p>(A) Non-Department Debt Financing. Interim and permanent financing sufficient to fund the proposed Total Housing Development Cost less any other funds requested from the Department must be included in the Application. For any Development that is a part of a larger development plan on the same site, the Department may request and evaluate information related to the other components of the development plan in instances in which the financial viability of the Development is in whole or in part dependent upon the other portions of the development plan. Any local, state or federal financing identified in this section which restricts household incomes at any level that is lower than restrictions required pursuant to this chapter or elected in accordance with Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan) must be identified in the rent schedule and the local, state or federal income restrictions must include corresponding rent levels in accordance with §42(g) of the Code. The income and corresponding rent restrictions will be memorialized in a recorded LURA and monitored for compliance. Financing amounts must be consistent throughout the Application and acceptable documentation shall include those described in clauses (i) and (ii) of this subparagraph.</p> <p>(i) Financing is in place as evidenced by:</p> <p>(I) a valid and binding loan agreement; and</p> <p>(II) a valid recorded deed(s) of trust lien on the Development in the name of the Development Owner as grantor in favor of the party providing such financing and covered by a lender's policy of title insurance in their name;</p> <p>(ii) Term sheets for interim and permanent loans issued by a lending institution or mortgage company that is actively and regularly engaged in the business of lending money must:</p> <p>(I) have been signed by the lender;</p> <p>(II) be addressed to the Development Owner or Affiliate;</p> <p>(III) for a permanent loan, include a minimum loan term of fifteen (15) years with at least a thirty (30) year amortization;</p> <p>(IV) include either a committed and locked interest rate, or the currently projected interest rate and the mechanism for determining the interest rate;</p> <p>(V) include all required Guarantors, if known;</p> <p>(VI) include the principal amount of the loan;</p> <p>(VII) include an acknowledgement of the amounts and terms of all other anticipated sources of funds; and</p> <p>(VIII) include and address any other material terms and conditions applicable to the financing. The term sheet may be</p>
--	--

	<p>conditional upon the completion of specified due diligence by the lender and upon the award of tax credits, if applicable; or</p> <p>(iii) For Developments proposing to refinance an existing USDA Section 515 loan, a letter from the USDA confirming that it has been provided with the Preliminary Assessment Tool.</p> <p>(B) Gap Financing. Any anticipated federal, state, local or private gap financing, whether soft or hard debt, must be identified and described in the Application. Applicants must provide evidence that an application for such gap financing has been made. Acceptable documentation may include a letter from the funding entity confirming receipt of an application or a term sheet from the lending agency which clearly describes the amount and terms of the financing. Other Department funding requested with Housing Tax Credit Applications must be on a concurrent funding period with the Housing Tax Credit Application, and no term sheet is required for such a request. Permanent loans must include a minimum loan term of fifteen (15) years with at least a thirty (30) year amortization or for non-amortizing loan structures a term of not less than thirty (30) years. A term loan request must also comply with the applicable terms of the NOFA under which an Applicant is applying.</p> <p>(C) Owner Contributions. If the Development will be financed in part by a capital contribution by the General Partner, Managing General Partner, any other partner or investor that is not a partner providing the syndication equity, a guarantor or a Principal in an amount that exceeds 5 percent of the Total Housing Development Cost, a letter from a Third Party CPA must be submitted that verifies the capacity of the contributor to provide the capital from funds that are not otherwise committed or pledged. Additionally, a letter from the contributor's bank(s) or depository(ies) must be submitted confirming sufficient funds are readily available to the contributor. The contributor must certify that the funds are and will remain readily available at Commitment and until the required investment is completed. Regardless of the amount, all capital contributions other than syndication equity will be deemed to be a part of and therefore will be added to the Deferred Developer Fee for feasibility purposes under §10.302(i)(2) of this chapter (relating to Underwriting Rules and Guidelines) or where scoring is concerned, unless the Development is a Supportive Housing Development, the Development is not supported with Housing Tax Credits, or the ownership structure includes a nonprofit organization with a documented history of fundraising sufficient to support the development of affordable housing.</p>
--	---

	<p>(D) Equity Financing. (§2306.6705(2) and (3)) If applicable to the program, the Application must include a term sheet from a syndicator that, at a minimum, includes:</p> <ul style="list-style-type: none"> (i) an estimate of the amount of equity dollars expected to be raised for the Development; (ii) the amount of Housing Tax Credits requested for allocation to the Development Owner; (iii) pay-in schedules; (iv) anticipated developer fees paid during construction; (v) syndicator consulting fees and other syndication costs. No syndication costs should be included in the Eligible Basis; and (vi) include an acknowledgement of the amounts and terms of all other anticipated sources of funds. <p>(E) Financing Narrative. (§2306.6705(1)) A narrative must be submitted that describes all aspects of the complete financing plan for the Development, including but not limited to, the sources and uses of funds; construction, permanent and bridge loans, rents, operating subsidies, project-based assistance, and replacement reserves; and the status (dates and deadlines) for applications, approvals and closings, etc. associated with the commitments for all funding sources. For applicants requesting HOME funds, Match in the amount of at least 5 percent of the HOME funds requested must be documented with a letter from the anticipated provider of Match indicating the provider's willingness and ability to make a financial commitment should the Development receive an award of HOME funds. The information provided must be consistent with all other documentation in the Application.</p> <p>(8) Operating and Development Cost Documentation.</p> <p>(A) 15-year Pro forma. All Applications must include a 15-year pro forma estimate of operating expenses, in the form provided by the Department. Any "other" debt service included in the pro forma must include a description.</p> <p>(B) Utility Allowances. This exhibit, as provided in the Application, must be submitted along with documentation from the source of the utility allowance estimate used in completing the Rent Schedule provided in the Application. This exhibit must clearly indicate which utility costs are included in the estimate and must comply with the requirements of §10.614 of this chapter (relating to Utility Allowances), including deadlines for submission. Where the Applicant uses any method that requires Department review, documentation indicating that the requested method has been granted by the Department must be included in the Application.</p> <p>(C) Operating Expenses. This exhibit, as provided in the Application, must be submitted indicating the anticipated</p>
--	--

	<p>operating expenses associated with the Development. Any expenses noted as "other" in any of the categories must be identified. "Miscellaneous" or other nondescript designations are not acceptable.</p> <p>(D) Rent Schedule. This exhibit, as provided in the Application, must indicate the type of Unit designation based on the Unit's rent and income restrictions. The rent and utility limits available at the time the Application is submitted should be used to complete this exhibit. Gross rents cannot exceed the maximum rent limits unless documentation of project-based rental assistance is provided and rents are consistent with such assistance and applicable legal requirements. The unit mix and net rentable square footages must be consistent with the site plan and architectural drawings. For Units restricted in connection with Direct Loans, the restricted Units will generally be designated "floating" unless specifically disallowed under the program specific rules. For Applications that propose utilizing Direct Loan funds, at least 90 percent of the Units restricted in connection with the Direct Loan program must be available to households or families whose incomes do not exceed 60 percent of the Area Median Income.</p> <p>(E) Development Costs. This exhibit, as provided in the Application, must include the contact information for the person providing the cost estimate and must meet the requirements of clauses (i) and (ii) of this subparagraph.</p> <p>(i) Applicants must provide a detailed cost breakdown of projected Site Work costs (excluding site amenities), if any, prepared by a Third Party engineer or cost estimator. If Site Work costs (excluding site amenities) exceed \$15,000 per Unit and are included in Eligible Basis, a letter must be provided from a certified public accountant allocating which portions of those site costs should be included in Eligible Basis.</p> <p>(ii) If costs for Off-Site Construction are included in the budget as a line item, or embedded in the site acquisition contract, or referenced in the utility provider letters, then the Off-Site Cost Breakdown prepared by a Third Party engineer must be provided. The certification from a Third Party engineer must describe the necessity of the off-site improvements, including the relevant requirements of the local jurisdiction with authority over building codes. If any Off-Site Construction costs are included in Eligible Basis, a letter must be provided from a certified public accountant allocating which portions of those costs should be included in Eligible Basis. If off-site costs are included in Eligible Basis based on PLR 200916007, a statement of findings from a CPA must be provided which describes the facts relevant to the Development and affirmatively certifies that the fact</p>
--	---

	<p>pattern of the Development matches the fact pattern in PLR 200916007.</p> <p>(F) Rental Assistance/Subsidy. (§2306.6705(4)) If rental assistance, an operating subsidy, an annuity, or an interest rate reduction payment is proposed to exist or continue for the Development, any related contract or other agreement securing those funds or proof of application for such funds must be provided. Such documentation shall, at a minimum, identify the source and annual amount of the funds, the number of units receiving the funds, and the term and expiration date of the contract or other agreement.</p> <p>(G) Occupied Developments. The items identified in clauses (i) - (vi) of this subparagraph must be submitted with any Application where any structure on the Development Site is occupied at any time after the Application Acceptance Period begins or if the Application proposes the demolition of any housing occupied at any time after the Application Acceptance Period begins. If the current property owner is unwilling to provide the required documentation then a signed statement from the Applicant attesting to that fact must be submitted. If one or more of the items described in clauses (i) - (vi) of this subparagraph is not applicable based upon the type of occupied structures on the Development Site, the Applicant must provide an explanation of such non-applicability. Applicant must submit:</p> <p>(i) at least one of the items identified in subclauses (I) - (IV) of this clause:</p> <p>(I) historical monthly operating statements of the Existing Residential Development for twelve (12) consecutive months ending not more than three (3) months from the first day of the Application Acceptance Period;</p> <p>(II) the two (2) most recent consecutive annual operating statement summaries;</p> <p>(III) the most recent consecutive six (6) months of operating statements and the most recent available annual operating summary; or</p> <p>(IV) all monthly or annual operating summaries available; and</p> <p>(ii) a rent roll not more than six (6) months old as of the first day the Application Acceptance Period that discloses the terms and rate of the lease, rental rates offered at the date of the rent roll, Unit mix, and tenant names or vacancy;</p> <p>(iii) a written explanation of the process used to notify and consult with the tenants in preparing the Application;</p> <p>(§2306.6705(6))</p> <p>(iv) a relocation plan outlining relocation requirements and a budget with an identified funding source; (§2306.6705(6))</p> <p>(v) any documentation necessary for the Department to facilitate, or advise an Applicant with respect to or to ensure</p>
--	--

Housing Trust Fund: State of Texas – 2017 Allocation Plan

	compliance with the Uniform Relocation Act and any other relocation laws or regulations as may be applicable; and (vi) if applicable, evidence that the relocation plan has been submitted to all appropriate legal or governmental agencies or bodies. (§2306.6705(6))
--	---

- b. Describe the State's application requirements for eligible recipients to apply for HTF funds. If not distributing funds by selecting applications submitted by eligible recipients, enter "N/A".

Subchapter C

Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules for Applications

§10.201.Procedural Requirements for Application Submission. This subchapter establishes the procedural requirements for Application submission. Only one Application may be submitted for a Development Site in an Application Round. While the Application Acceptance Period is open or prior to the Application deadline, an Applicant may withdraw an Application and subsequently file a new Application utilizing the original pre-application fee (as applicable) that was paid as long as no substantive evaluation was performed by the Department and the re-submitted Application relates to the same Development Site, consistent with §11.9(e)(3) regarding pre-application Site changes. Applicants are subject to the schedule of fees as set forth in §10.901 of this chapter (relating to Fee Schedule). When providing a pre-application, Application or other materials to a state representative, local governmental body, Neighborhood Organization, or anyone else to secure support or approval that may affect the Applicant's competitive posture, an Applicant must disclose that in accordance with the Department's rules aspects of the Development may not yet have been determined or selected or may be subject to change, such as changes in the amenities ultimately selected and provided.

(1) General Requirements.

(A) An Applicant requesting funding from the Department must submit an Application in order to be considered for an award. An Application must be complete (including all required exhibits and supporting materials) and submitted by the required program deadline. If an Application, including the corresponding Application fee as described in §10.901 of this chapter, is not submitted to the Department on or before the applicable deadline, the Applicant will be deemed not to have made an Application; provided, however, that errors in the calculation of applicable fees may be cured via an Administrative Deficiency. The deficiency period for curing fee errors will be three business days and may not be extended. Failure to cure such an error timely will be grounds for termination.

(B) Applying for multifamily funds from the Department is a technical process that must be followed completely. As a result of the competitive nature of some funding sources, an Applicant should proceed on the assumption that deadlines are fixed and firm with respect to both date and time and cannot be waived except where authorized and for truly extraordinary circumstances, such as the occurrence of a significant natural disaster that makes timely adherence impossible. If an Applicant chooses to submit by delivering an item physically to the Department, it is the Applicant's responsibility to be within the Department's doors by the appointed deadline. Applicants are strongly encouraged to submit the required items well in advance of established deadlines. Applicants must ensure that all documents are legible, properly organized and tabbed, and that materials provided in digital media are fully readable by the Department. Department staff receiving an application may perform a cursory review to see if there

are any glaring problems. This is a cursory review and may not be relied upon as confirmation that the Application was complete or in proper form.

(C) The Applicant must upload a PDF copy and Excel copy of the complete Application to the Department's secure web transfer server. Each copy must be in a single file and individually bookmarked as further described in the Multifamily Programs Procedures Manual. Additional files required for Application submission (e.g., Third Party Reports) outside the Uniform Application must also be uploaded to the secure web transfer server. It is the responsibility of the Applicant to confirm the upload to the Department's secure web transfer server was successful and to do so in advance of the deadline. Where there are instances of computer problems, mystery glitches, etc. that prevents the Application from being received by the Department prior to the deadline the Application may be terminated.

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

(2) Filing of Application for Tax-Exempt Bond Developments. Applications may be submitted to the Department as described in subparagraphs (A) and (B) of this paragraph. Multiple site applications by the same Applicant for Tax-Exempt Bond Developments will be considered to be one Application as identified in Tex. Gov't Code, Chapter 1372. Applications will be required to satisfy the requirements of the Qualified Allocation Plan (QAP) and Uniform Multifamily Rules in place at the time the Application is received by the Department. Applications that receive a Traditional Carryforward designation after November 15 will not be accepted until after January 2 and will be subject to the QAP and Uniform Multifamily Rules in place at the time the Application is received by the Department.

(A) Lottery Applications. For Applicants participating in the TBRB lottery for private activity bond volume cap and whereby advance notice is given regarding a Certificate of Reservation, the Applicant must submit a Notice to Submit Lottery Application form to the Department no later than the Notice to Submit Lottery Application Delivery Date described in §10.4 of this chapter (relating to Program Dates). The complete Application, accompanied by the Application Fee described in §10.901 of this chapter must be submitted no later than the Applications Associated with Lottery Delivery Date described in §10.4 of this chapter.

(B) Waiting List Applications. Applications designated as Priority 1 or 2 by the TBRB and receiving advance notice of a Certificate of Reservation for private activity bond volume cap must submit Parts 1 - 4 of the Application and the Application Fee described in §10.901 of this chapter prior to the issuance of the Certificate of Reservation by the TBRB. The remaining parts of the Application must be submitted at least seventy-five (75) days prior to the Board meeting at which the decision to issue a

Determination Notice would be made. An Application designated as Priority 3 will not be accepted until after the issuer has induced the bonds, with such documentation included in the Application, and is subject to the following additional timeframes:

(i) The Applicant must submit to the Department confirmation that a Certificate of Reservation from the TBRB has been issued not more than thirty (30) days after the Application is received by the Department. The Department may, for good cause, administratively approve an extension for up to an additional thirty (30) days to submit confirmation the Certificate of Reservation has been issued. The Application will be terminated if the Certificate of Reservation is not received within the required timeframe;

(ii) The Department will require at least seventy-five (75) days to review an Application, unless Department staff can complete its evaluation in sufficient time for Board consideration. Applicants should be aware that unusual financing structures, portfolio transactions, and the need to resolve Administrative Deficiencies may require additional time to review and the prioritization of Applications will be subject to the review priority established in paragraph (6) of this subsection;

(iii) Department staff may choose to delay presentation to the Board in instances in which an Applicant is not reasonably expected to close within sixty (60) days of the issuance of a Determination Notice. Applications that receive Traditional Carryforward will be subject to closing within the same timeframe as would be typical of the Certificate of Reservation. This will be a condition of the award and reflected in the Determination Notice.

(3) Certification of Tax Exempt Bond Applications with New Docket Numbers. Applications that receive an affirmative Board Determination, but for which closing on the bonds does not occur prior to the Certificate of Reservation expiration date, and which subsequently have that docket number withdrawn from the TBRB, may have their Determination Notice reinstated. In the event that the Department's Board has not yet approved the Application, the Application will continue to be processed and ultimately provided to the Board for consideration. The Applicant would need to receive a new docket number from the TBRB and meet the requirements described in subparagraphs (A) - (C) of this paragraph:

(A) The Application must remain unchanged, which means that at a minimum, the following cannot have changed: Site Control, total number of Units, unit mix (bedroom sizes and income restrictions), design/site plan documents, financial structure including bond and Housing Tax Credit amounts, development costs, rent schedule, operating expenses, sources and uses, ad valorem tax exemption status, Target Population, scoring criteria (if TDHCA is bond issuer) or TBRB priority status including the effect on the inclusive capture rate. The entities involved in the Applicant entity and Developer cannot change; however, the certification can be submitted even if the lender, syndicator or issuer changes, as long as the financing structure and terms

remain unchanged. Notifications under §10.203 of this chapter (relating to Public Notifications (§2306.6705(9))) are not required to be reissued. A revised Determination Notice will be issued once notice of the assignment of a new docket number has been provided to the Department and the Department has confirmed that the capture rate and market demand remain acceptable. This certification must be submitted no later than thirty (30) calendar days after the date the TBRB issues the new docket number; or

(B) the new docket number may not be issued more than four (4) months from the date the original application was withdrawn from the TBRB. The new docket number must be from the same program year as the original docket number or, for Applications that receive a new docket number from the program year that is immediately succeeding the program year of the original docket number, the requirements in clauses (i) and (ii) of this subparagraph must be met:

(i) The Applicant must certify that the Development will meet all rules and requirements in effect at the time the new docket number is issued; and

(ii) The Department must determine that the changes in the rules applicable to the program(s) under which the Application was originally awarded are not of a material nature that would necessitate a new Application and that any new forms and clarifications to the Application are of a nature that can be resolved through the Administrative Deficiency process; or

(C) if there are changes to the Application as referenced in subparagraph (A) of this paragraph or if such changes in the rules pursuant to subparagraph (B)(ii) of this paragraph are of a material nature the Applicant will be required to submit a new Application in full, along with the applicable fees, to be reviewed and evaluated in its entirety for a new Determination Notice to be issued. If there is public opposition but the Application remains the same pursuant to subparagraph (A) of this paragraph, a new Application will not be required to be submitted; however, the Application must be presented before the Board for consideration of the re-issuance of the Determination Notice.

(4) Withdrawal of Application. An Applicant may withdraw an Application prior to or after receiving an award of funding by submitting to the Department written notice of the withdrawal.

(5) Evaluation Process. Priority Applications, which shall include those Applications believed likely to be competitive, will undergo a program review for compliance with submission requirements and selection criteria, as applicable. In general, Application reviews by the Department shall be prioritized based upon the likelihood that an Application will be competitive for an award based upon the set-aside, self score, received date, or other ranking factors. Thus, non-competitive or lower scoring Applications may never be reviewed. The Director of Multifamily Finance will identify those Applications that will receive a full program review based upon a reasonable assessment of each

Application's priority, but no Application with a competitive ranking shall be skipped or otherwise overlooked. This initial assessment may be a high level assessment, not a full assessment. Applications deemed to be priority Applications may change from time to time. The Real Estate Analysis division shall underwrite Applications that received a full program review and remain competitive to determine financial feasibility and an appropriate funding amount. In making this determination, the Department will use §10.302 of this chapter (relating to Underwriting Rules and Guidelines) and §10.307 of this chapter (relating to Direct Loan Requirements). The Department may have an external party perform all or part of the underwriting evaluation and components thereof to the extent it determines appropriate. The expense of any external underwriting shall be paid by the Applicant prior to the commencement of the aforementioned evaluation pursuant to §10.901(5) of this chapter (relating to Fee Schedule, Appeals and other Provisions). Applications will undergo a previous participation review in accordance with Chapter 1 Subchapter C of this title (relating to Previous Participation) and a Development Site may be evaluated by the Department or its agents through a physical site inspection or site visit, (which may include neighboring areas), independent of or concurrent with a site visit that may be performed in conjunction with §10.101(a)(3) (relating to Undesirable Neighborhood Characteristics). The Department will, from time to time during the review process, publish an application log which shall include the self-score and any scoring adjustments made by staff. The posting of such scores on the application log may trigger appeal rights and corresponding deadlines pursuant to Tex. Gov't. Code §2306.6715 and §10.902 of this chapter (relating to Appeals Process). The Department may also provide a courtesy scoring notice reflecting such score to the Applicant.

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

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

- (i) For Tax-Exempt Bond Developments, the issuance date of the Certificate of Reservation issued by the TBRB; and
- (ii) For all other Developments, the date the Application is received by the Department; and
- (iii) Notwithstanding the foregoing, after July 31 of the current program year, a Tax-Exempt Bond Development with a Certificate of Reservation from the TBRB will take precedence over any Housing Tax Credit Application from the current Application Round on the waiting list.

(B) General Review Priority. Review priority for Applications under various multifamily programs will be established based on Department staff's consideration of any

statutory timeframes associated with a program or Application in relation to the volume of Applications being processed. In general, those with statutory deadlines or more restrictive deadlines will be prioritized for review and processing ahead of those that are not subject to the same constraints. In general, any non-Competitive Housing Tax Credit Applications received during the competitive tax credit round that include a request to be placed on the May, June or July Board agendas will not be prioritized for review or underwriting due to the statutory constraints on the award and allocation of competitive tax credits. Applicants are advised to keep this in consideration when planning the submission of an Application and issuance of the Certificate of Reservation.

(7) Administrative Deficiency Process. The purpose of the Administrative Deficiency process is to allow an Applicant to provide clarification, correction, or non-material missing information to resolve inconsistencies in the original Application or to assist staff in evaluating the Application. Staff will request such information via a deficiency notice. Because the review of an Application occurs in several phases, deficiency notices may be issued during any of these phases. Staff will send the deficiency notice via an e-mail to the Applicant and one other contact party if identified by the Applicant in the Application. The time period for responding to a deficiency notice commences on the first business day following the deficiency notice date. Deficiency notices may be sent to an Applicant prior to or after the end of the Application Acceptance Period and may also be sent in response to reviews on post-award submissions. Responses are required to be submitted electronically as a PDF or multiple PDF files. A review of the response provided by the Applicant may reveal that issues initially identified as an Administrative Deficiency are actually determined to be beyond the scope of an Administrative Deficiency process, meaning that they in fact implicated matters of a material nature not susceptible to being resolved. Department staff may in good faith provide an Applicant confirmation that an Administrative Deficiency response has been received or that such response is satisfactory. Communications from staff that the response was satisfactory do not establish any entitlement to points, eligibility status, or to any presumption of having fulfilled any requirements. Final determinations regarding the sufficiency of documentation submitted to cure an Administrative Deficiency as well as the distinction between material and non-material missing information are reserved for the Director of Multifamily Finance, Executive Director, and Board.

(A) It is critical that the use of the Administrative Deficiency process not unduly slow the review process, and since the process is intended to clarify or correct matters or obtain non-material missing information (that should already be in existence), there is a reasonable expectation that a party responding to an Administrative Deficiency will be able to respond immediately. It is the responsibility of a person who receives an Administrative Deficiency to address the matter fully by the close of business on the date by which resolution must be complete and the Administrative Deficiency fully resolved. Merely submitting materials prior to that time places the responsibility on the responding party that if the materials do not fully resolve the matter there may be a point deduction or termination.

(B) Administrative Deficiencies for Competitive HTC Applications. Unless an extension has been timely requested and granted, if an Administrative Deficiency is not fully resolved to the satisfaction of the Department by 5:00 p.m. on the fifth business day following the date of the deficiency notice, then (5 points) shall be deducted from the selection criteria score for each additional day the deficiency remains unresolved. If Administrative Deficiencies are not resolved by 5:00 p.m. on the seventh business day following the date of the deficiency notice, then the Application shall be terminated, subject to appeal. An Applicant may not change or supplement any part of an Application in any manner after the filing deadline or while the Application is under consideration for an award, and may not add any set-asides, increase the requested credit amount, revise the Unit mix (both income levels and Bedroom mixes), or adjust their self-score except in response to a direct request from the Department to do so as a result of an Administrative Deficiency. (§2306.6708(b); §2306.6708) To the extent that the review of Administrative Deficiency documentation or the imposing of point reductions for late responses alters the score assigned to the Application, such score will be reflected in the updated application log published on the Department's website.

(C) Administrative Deficiencies for all other Applications or sources of funds. If Administrative Deficiencies are not resolved to the satisfaction of the Department by 5:00 p.m. on the fifth business day following the date of the deficiency notice, then an Administrative Deficiency Notice Late Fee of \$500 for each business day the deficiency remains unresolved will be assessed, and the Application will not be presented to the Board for consideration until all outstanding fees have been paid. Applications with unresolved deficiencies after 5:00 p.m. on the tenth day following the date of the deficiency notice will be terminated or suspended from further processing so long as the active Application does not impact the processing or underwriting of other Applications. The Applicant will be responsible for the payment of fees accrued pursuant to this paragraph regardless of any termination. Department staff may or may not assess an Administrative Deficiency Notice Late Fee for or terminate Applications for Tax-Exempt Bond or Direct Loan Developments during periods when private activity bond volume cap or Direct Loan funds are undersubscribed. Applicants should be prepared for additional time needed for completion of staff reviews as described in paragraph (2)(B) of this section.

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

(A) clarification of issues that Department staff would have difficulty identifying due to the omission of information that the Department may have access to only through

Applicant disclosure, such as a prior removal from a tax credit transaction or participation in a Development that is not identified in the previous participation portion of the Application; or

(B) technical correction of non-material information that would cause an Application deemed non-competitive to be deemed competitive and, therefore, subject to a staff review. For example, failure to mark the Nonprofit Set-Aside in an Application that otherwise included complete submission of documentation for participation in the Nonprofit Set-Aside.

(9) Challenges to Opposition. Any written statement from a Neighborhood Organization expressing opposition to an Application may be challenged if it is contrary to findings or determinations, including zoning determinations, of a municipality, county, school district, or other local Governmental Entity having jurisdiction or oversight over the finding or determination. If any such comment is challenged, the challenger must declare the basis for the challenge and submit such challenge by the Challenges to Neighborhood Organization Opposition Delivery Date as identified in §10.4 of this chapter and no later than May 1, 2017 for Competitive HTC Applications. The Neighborhood Organization expressing opposition will be given seven (7) calendar days to provide any information related to the issue of whether their assertions are contrary to the findings or determinations of a local Governmental Entity. All such materials and the analysis of the Department's staff will be provided to a fact finder, chosen by the Department, for review and a determination of the issue presented by this subsection. The fact finder will not make determinations as to the accuracy of the statements presented, but only with regard to whether the statements are contrary to findings or determinations of a local Governmental Entity. The fact finder's determination will be final and may not be waived or appealed.

§10.202. Ineligible Applicants and Applications. The purpose of this section is to identify those situations in which an Application or Applicant may be considered ineligible for Department funding and subsequently terminated. Such matters may be brought to the attention of staff by anyone, including members of the general public. If such ineligibility is raised by non-staff members it must be made in writing to the Executive Director and the Applicant and must cite the specific ineligible criteria under paragraph (1) of this section and provide factual evidence to support the claim. Any unsupported claim or claim determined to be untrue may be subject to all remedies available to the Department or Applicant. Staff will make enquiry as it deems appropriate and may send a notice to the Applicant and provide them the opportunity to explain how they believe they or their Application is eligible. Staff will present the matter to the Board, accompanied by staff's recommendation. The Board may take such action as it deems warranted by the facts presented, including any testimony that may be provided, either declining to take action, in which case the Applicant or Application, as applicable, remains eligible, or finding the Applicant is ineligible, or, for a matter relating to a specific Application, that that Application is ineligible. A Board finding of ineligibility is final. The items listed in this section include those requirements in §42 of the Code, Tex. Gov't Code, Chapter 2306, and other criteria considered important by the Department, and does not represent an exhaustive list of ineligibility criteria that may otherwise be identified in applicable rules or

a NOFA specific to the programmatic funding. One or more of the matters enumerated in paragraph (1) of this section may also serve as a basis for debarment, or the assessment of administrative penalties, and nothing herein shall limit the Department's ability to pursue any such matter.

(1) Applicants. An Applicant shall be considered ineligible if any of the criteria in subparagraphs (A) - (M) of this paragraph apply to those identified on the organizational chart for the Applicant, Developer and Guarantor. An Applicant is ineligible if the Applicant, Developer, or Guarantor:

(A) has been or is barred, suspended, or terminated from procurement in a state or Federal program, including listed in HUD's System for Award Management (SAM); (§2306.0504)

(B) has been convicted of a state or federal felony crime involving fraud, bribery, theft, misrepresentation of material fact, misappropriation of funds, or other similar criminal offenses within fifteen (15) years preceding the Application submission;

(C) is, at the time of Application, subject to an order in connection with an enforcement or disciplinary action under state or federal securities law or by the NASD; subject to a federal tax lien (other than a contested lien for which provision has been made); or the subject of a proceeding in which a Governmental Entity has issued an order to impose penalties, suspend funding, or take adverse action based on an allegation of financial misconduct or uncured violation of material laws, rules, or other legal requirements governing activities considered relevant by the Governmental Entity;

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

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

(F) has been found by the Board to be ineligible based on a previous participation review performed in accordance with Chapter 1 Subchapter C of this title;

(G) is delinquent in any loan, fee, or escrow payments to the Department in accordance with the terms of the loan, as amended, or is otherwise in default with any provisions of such loans;

(H) has failed to cure any past due fees owed to the Department within the time frame provided by notice from the Department and at least ten (10) days prior to the Board meeting at which the decision for an award is to be made;

(I) would be prohibited by a state or federal revolving door or other standard of conduct or conflict of interest statute, including Tex. Gov't Code, §2306.6733, or a provision of Tex. Gov't Code, Chapter 572, from participating in the Application in the manner and capacity they are participating;

(J) has, without prior approval from the Department, had previous Contracts or Commitments that have been partially or fully deobligated during the twelve (12) months prior to the submission of the Application, and through the date of final allocation due to a failure to meet contractual obligations, and the Person is on notice that such deobligation results in ineligibility under this chapter;

(K) has provided falsified documentation or made other intentional or negligent material misrepresentations or omissions in or in connection with an Application or Commitment for a Development.;

(L) was the owner or Affiliate of the owner of a Department assisted rental development for which the federal affordability requirements were prematurely terminated and the affordability requirements have not re-affirmed or Department funds repaid; or

(M) fails to disclose, in the Application, any Principal or any entity or Person in the Development ownership structure who was or is involved as a Principal in any other affordable housing transaction, that has terminated voluntarily or involuntarily within the past ten (10) years or plans to or is negotiating to terminate their relationship with any other affordable housing development. Failure to disclose is grounds for termination. The disclosure must identify the person or persons and development involved, the identity of each other development, and contact information for the other Principals of each such development, a narrative description of the facts and circumstances of the termination or proposed termination, and any appropriate supporting documents. An Application may be referred to the Board for termination based upon factors in the disclosure. Staff shall present a determination to the Board as to a person's fitness to be involved as a principal with respect to an Application using the factors described in clauses (i) – (v) of this subparagraph as considerations:

(i) The amount of resources in a development and the amount of the benefit received from the development;

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

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

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

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

(2) Applications. An Application shall be ineligible if any of the criteria in subparagraphs (A) - (C) of this paragraph apply to the Application:

(A) a violation of Tex. Gov't Code, §2306.1113, exists relating to Ex Parte Communication. An ex parte communication occurs when an Applicant or Person representing an Applicant initiates substantive contact (other than permitted social contact) with a board member, or vice versa, in a setting other than a duly posted and convened public meeting, in any manner not specifically permitted by Tex. Gov't Code, §2306.1113(b). Such action is prohibited. For Applicants seeking funding after initial awards have been made, such as waiting list Applicants, the ex parte communication prohibition remains in effect so long as the Application remains eligible for funding. The ex parte provision does not prohibit the Board from participating in social events at which a Person with whom communications are prohibited may, or will be present; provided that no matters related to any Application being considered by the Board may be discussed. An attempted but unsuccessful prohibited ex parte communication, such as a letter sent to one or more board members but not opened, may be cured by full disclosure in a public meeting, and the Board may reinstate the Application and establish appropriate consequences for cured actions, such as denial of the matters made the subject to the communication.

(B) the Application is submitted after the Application submission deadline (time or date); is missing multiple parts of the Application; or has a Material Deficiency; or

(C) for any Development utilizing Housing Tax Credits or Tax-Exempt Bonds:

(i) at the time of Application or at any time during the two-year period preceding the date the Application Round begins (or for Tax-Exempt Bond Developments any time during the two-year period preceding the date the Application is submitted to the Department), the Applicant or a Related Party is or has been a person covered by Tex. Gov't Code, §2306.6703(a)(1) or §2306.6733;

(ii) the Applicant proposes to replace in less than fifteen (15) years any private activity bond financing of the Development described by the Application, unless the exceptions in Tex. Gov't Code, §2306.6703(a)(2) of the are met.

§10.203. Public Notifications (§2306.6705(9)). A certification, as provided in the Application, that the Applicant met the requirements and deadlines identified in paragraphs (1) - (3) of this section must be submitted with the Application. For Applications utilizing Competitive Housing Tax Credits, notifications must not be older than three (3) months from the first day of the Application Acceptance Period. For Tax-Exempt Bond Developments notifications and proof thereof must not be older than three (3) months prior to the date Parts 5 and 6 of the Application are submitted, and for all other

Applications no older than three (3) months prior to the date the Application is submitted. If notifications were made in order to satisfy requirements of pre-application submission (if applicable to the program) for the same Application, then no additional notification is required at Application. However, re-notification is required by all Applicants who have submitted a change from pre-application to Application that reflects a total Unit increase of greater than 10 percent or a 5 percent increase in density (calculated as units per acre) as a result of a change in the size of the Development Site. In addition, should a change in elected official occur between the submission of a pre-application and the submission of an Application, Applicants are required to notify the newly elected (or appointed) official no later than the Full Application Delivery Date.

(1) Neighborhood Organization Notifications.

(A) The Applicant must identify and notify all Neighborhood Organizations on record with the county or the state as of 30 days prior to the Full Application Delivery Date and whose boundaries include the proposed Development Site. As used in this section, “on record with the state” means on record with the Secretary of State.

(B) The Applicant must list, in the certification form provided in the Application, all Neighborhood Organizations on record with the county or state as of 30 days prior to the Full Application Delivery Date and whose boundaries include the proposed Development Site as of the submission of the Application.

(2) Notification Recipients. No later than the date the Application is submitted, notification must be sent to all of the persons or entities identified in subparagraphs (A) - (H) of this paragraph. Developments located in an Extra Territorial Jurisdiction (ETJ) of a city are required to notify both city and county officials. The notifications may be sent by e-mail, fax or mail with return receipt requested or similar tracking mechanism in the format required in the Application Notification Template provided in the Application. Evidence of notification is required in the form of a certification provided in the Application. The Applicant is encouraged to retain proof of delivery in the event it is requested by the Department. Evidence of proof of delivery is demonstrated by a signed receipt for mail or courier delivery and confirmation of receipt by recipient for fax and e-mail. Officials to be notified are those officials in office at the time the Application is submitted. Note that between the time of pre-application (if made) and full Application, such officials may change and the boundaries of their jurisdictions may change. By way of example and not by way of limitation, events such as redistricting may cause changes which will necessitate additional notifications at full Application. Meetings and discussions do not constitute notification. Only a timely and compliant written notification to the correct person constitutes notification.

(A) Neighborhood Organizations on record with the state or county as of 30 days prior to the Full Application Delivery Date whose boundaries include the Development Site;

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

- (C) Presiding officer of the board of trustees of the school district in which the Development Site is located;
- (D) Mayor of the municipality (if the Development Site is within a municipality or its extraterritorial jurisdiction);
- (E) All elected members of the Governing Body of the municipality (if the Development Site is within a municipality or its extraterritorial jurisdiction);
- (F) Presiding officer of the Governing Body of the county in which the Development Site is located;
- (G) All elected members of the Governing Body of the county in which the Development Site is located; and
- (H) State Senator and State Representative of the districts whose boundaries include the Development Site.

(3) Contents of Notification.

(A) The notification must include, at a minimum, all information described in clauses (i) - (vi) of this subparagraph.

- (i) the Applicant's name, address, individual contact name, and phone number;
- (ii) the Development name, address, city and county;
- (iii) a statement indicating the program(s) to which the Applicant is applying with the Texas Department of Housing and Community Affairs;
- (iv) whether the Development proposes New Construction, Reconstruction, Adaptive Reuse or Rehabilitation;
- (v) the physical type of Development being proposed (e.g. single family homes, duplex, apartments, high-rise etc.); and
- (vi) the total number of Units proposed and total number of low-income Units proposed.

(B) The notification may not contain any false or misleading statements. Without limiting the generality of the foregoing, the notification may not create the impression that the proposed Development will serve a Target Population exclusively unless such targeting or preference is documented in the Application and is or will be in full compliance with all applicable state and federal laws, including state and federal fair housing laws.

§10.204. Required Documentation for Application Submission. The purpose of this section is to identify the documentation that is required at the time of Application submission, unless specifically indicated or otherwise required by Department rule. If any of the documentation indicated in this section is not resolved, clarified or corrected to the satisfaction of the Department through either original Application submission or the Administrative Deficiency process, the Application will be terminated. Unless stated

otherwise, all documentation identified in this section must not be dated more than six (6) months prior to the close of the Application Acceptance Period or the date of Application submission as applicable to the program. The Application may include, or Department staff may request, documentation or verification of compliance with any requirements related to the eligibility of an Applicant, Application, Development Site, or Development.

(1) Certification, Acknowledgement and Consent of Development Owner. A certification of the information in this subchapter as well as Subchapter B of this chapter must be executed by the Development Owner and address the specific requirements associated with the Development. The Person executing the certification is responsible for ensuring all individuals referenced therein are in compliance with the certification, that they have given it with all required authority and with actual knowledge of the matters certified.

(A) The Development will adhere to the Texas Property Code relating to security devices and other applicable requirements for residential tenancies, and will adhere to local building codes or, if no local building codes are in place, then to the most recent version of the International Building Code.

(B) This Application and all materials submitted to the Department constitute records of the Department subject to Tex. Gov't Code, Chapter 552, and the Texas Public Information Act.

(C) All representations, undertakings and commitments made by Applicant in the Application process for Development assistance expressly constitute conditions to any Commitment, Determination Notice, Carryover Allocation, or Direct Loan Commitment for such Development which the Department may issue or award, and the violation of any such condition shall be sufficient cause for the cancellation and rescission of such Commitment, Determination Notice, Carryover Allocation, or Direct Loan Commitment by the Department. If any such representations, undertakings and commitments concern or relate to the ongoing features or operation of the Development, they shall each and all shall be enforceable even if not reflected in the Land Use Restriction Agreement. All such representations, undertakings and commitments are also enforceable by the Department and the tenants of the Development, including enforcement by administrative penalties for failure to perform, in accordance with the Land Use Restriction Agreement.

(D) The Development Owner has read and understands the Department's fair housing educational materials posted on the Department's website as of the beginning of the Application Acceptance Period.

(E) The Development Owner agrees to implement a plan to use Historically Underutilized Businesses (HUB) in the development process consistent with the Historically Underutilized Business Guidelines for contracting with the State of Texas. The Development Owner will be required to submit a report of the success of the plan

as part of the cost certification documentation, in order to receive IRS Forms 8609 or, if the Development does not have Housing Tax Credits, release of retainage.

(F) The Applicant will attempt to ensure that at least 30 percent of the construction and management businesses with which the Applicant contracts in connection with the Development are Minority Owned Businesses as further described in Tex. Gov't Code, §2306.6734.

(G) The Development Owner will affirmatively market to veterans through direct marketing or contracts with veteran's organizations. The Development Owner will be required to identify how they will affirmatively market to veterans and report to the Department in the annual housing report on the results of the marketing efforts to veterans. Exceptions to this requirement must be approved by the Department.

(H) The Development Owner will comply with any and all notices required by the Department.

(I) If the Development has an existing LURA with the Department, the Development Owner will comply with the existing restrictions.

(2) Applicant Eligibility Certification. A certification of the information in this subchapter as well as Subchapter B of this chapter must be executed by any individuals required to be listed on the organizational chart and also identified in subparagraphs (A) – (D) below. The certification must identify the various criteria relating to eligibility requirements associated with multifamily funding from the Department, including but not limited to the criteria identified under §10.202 of this chapter (relating to Ineligible Applicants and Applications).

(A) for for-profit corporations, any officer authorized by the board of directors, regardless of title, to act on behalf of the corporation, including but not limited to the president, vice president, secretary, treasurer, and all other executive officers, and each stock holder having a 10 percent or more interest in the corporation, and any individual who has Control with respect to such stock holder;

(B) for non-profit corporations or governmental instrumentalities (such as housing authorities), any officer authorized by the board, regardless of title, to act on behalf of the corporation, including but not limited to the president, vice president, secretary, treasurer, and all other executive officers, the Audit committee chair, the Board chair, and anyone identified as the Executive Director or equivalent;

(C) for trusts, all beneficiaries that have the legal ability to Control the trust who are not just financial beneficiaries; and

(D) for limited liability companies, all managers, managing members, members having a 10 percent or more interest in the limited liability company, any individual Controlling

such members, or any officer authorized to act on behalf of the limited liability company.

(3) Architect Certification Form. The certification, addressing all of the accessibility requirements, must be executed by the Development engineer, an accredited architect or Third Party accessibility specialist. (§2306.6722; §2306.6730)

(4) Notice, Hearing, and Resolution for Tax-Exempt Bond Developments. In accordance with Tex. Gov't Code, §2306.67071, the following actions must take place with respect to the filing of an Application and any Department awards for a Tax-Exempt Bond Development.

(A) Prior to submission of an Application to the Department, an Applicant must provide notice of the intent to file the Application in accordance with §10.203 of this chapter (relating to Public Notifications (§2306.6705(9))).

(B) The Governing Body of a municipality must hold a hearing if the Development Site is located within a municipality or the extra territorial jurisdiction (ETJ) of a municipality. The Governing Body of a county must hold a hearing unless the Development Site is located within a municipality. For Development Sites located in an ETJ the county and municipality must hold hearings; however, the county and municipality may arrange for a joint hearing. The purpose of the hearing(s) must be to solicit public input concerning the Application or Development and the hearing(s) must provide the public with such an opportunity. The Applicant may be asked to substantively address the concerns of the public or local government officials.

(C) An Applicant must submit to the Department a resolution of no objection from the applicable Governing Body. Such resolution(s) must specifically identify the Development whether by legal description, address, Development name, Application number or other verifiable method. In providing a resolution, a municipality or county should consult its own staff and legal counsel as to whether such resolution will be consistent with Fair Housing laws as they may apply, including, as applicable, consistency with any FFAST form on file, any current Analysis of Impediments to Fair Housing Choice, or any current plans such as one year action plans or five year consolidated plans for HUD block grant funds such as HOME or CDBG funds. For an Application with a Development Site that is:

- (i) Within a municipality, the Applicant must submit a resolution from the Governing Body of that municipality;
- (ii) Within the extraterritorial jurisdiction (ETJ) of a municipality, the Applicant must submit both:
 - (I) a resolution from the Governing Body of that municipality; and
 - (II) a resolution from the Governing Body of the county; or
- (iii) Within a county and not within a municipality or the ETJ of a municipality, a resolution from the Governing Body of the county.

(D) For purposes of meeting the requirements of subparagraph (C) of this paragraph, the resolution(s) must be submitted no later than the Resolutions Delivery Date described in §10.4 of this chapter (relating to Program Dates). An acceptable, but not required, form of resolution may be obtained in the Multifamily Programs Procedures Manual. Applicants should ensure that the resolutions all have the appropriate references and certifications or the Application may be terminated. The resolution(s) must certify that:

- (i) Notice has been provided to the Governing Body in accordance with Tex. Gov't Code, §2306.67071(a) and subparagraph (A) of this paragraph;
- (ii) The Governing Body has had sufficient opportunity to obtain a response from the Applicant regarding any questions or concerns about the proposed Development;
- (iii) The Governing Body has held a hearing at which public comment may be made on the proposed Development in accordance with Tex. Gov't Code, §2306.67071(b) and subparagraph (B) of this paragraph; and
- (iv) After due consideration of the information provided by the Applicant and public comment, the Governing Body does not object to the proposed Application.

(5) Designation as Rural or Urban.

(A) Each Application must identify whether the Development Site is located in an Urban Area or Rural Area of a Uniform State Service Region. The Department shall make available a list of Places meeting the requirements of Tex. Gov't Code, §2306.004(28-a)(A) and (B), for designation as a Rural Area and those that are an Urban Area in the Site Demographics Characteristics Report. Some Places are municipalities. For any Development Site located in the ETJ of a municipality and not in a Place, the Application shall have the Rural Area or Urban Area designation of the municipality whose ETJ within which the Development Site is located. For any Development Site not located within the boundaries of a Place or the ETJ of a municipality, the applicable designation is that of the closest Place.

(B) Certain areas located within the boundaries of a primary metropolitan statistical area or a metropolitan statistical area can request a Rural designation from the Department for purposes of receiving an allocation Housing Tax Credits (§2306.6740). In order to apply for such a designation, a letter must be submitted from a duly authorized official of the political subdivision or census designated place addressing the factors outlined in clauses (i) – (vi) of this subparagraph. Photographs and other supporting documentation are strongly encouraged. In order for the area to be designated Rural by the Department for the 2017 Application Round, such requests must be made no later than December 16, 2016. If staff is able to confirm the findings outlined in the request, the Rural designation will be granted without further action and will remain in effect until such time that the population as described in clause (i) of this subparagraph exceeds 25,000. In the event that staff is unable to confirm the

information contained in the request, the Applicant will be given an opportunity to supplement their case. If, after receiving any supplemental information, staff still cannot confirm the rural nature of the Application, a recommendation for denial will be presented to the Board.

(i) The population of the political subdivision or census designated place does not exceed 25,000;

(ii) The characteristics of the political subdivision or census designated place and how those differ from the characteristics of the area(s) with which it shares a contiguous boundary;

(iii) The percentage of the total border of the political subdivision or census designated place that is contiguous with other political subdivisions or census designated places designated as urban. For purposes of this assessment, less than fifty percent contiguity with urban designated places is presumptively rural in nature;

(iv) The political subdivision or census designated place contains a significant number of unimproved roads or relies on unimproved roads to connect it to other places;

(v) The political subdivision or census designated place lacks major amenities commonly associated with urban or suburban areas; and

(vi) The boundaries of the political subdivision or census designated place contain, or are surrounded by, significant areas of undeveloped or agricultural land. For purposes of this assessment, significant being more than one-third of the total surface area of political subdivision/census designated place, or a minimum of 1,000 acres immediately contiguous to the border.

(6) Experience Requirement. Evidence that meets the criteria as stated in subparagraph (A) of this paragraph must be provided in the Application, unless an experience certificate was issued by the Department in 2014, 2015 or 2016 which may be submitted as acceptable evidence of this requirement. Experience of multiple parties may not be aggregated to meet this requirement.

(A) A natural Person, with control of the Development through placement in service, who is also a Principal of the Developer, Development Owner, or General Partner must establish that they have experience in the development and placement in service of 150 units or more. Acceptable documentation to meet this requirement shall include any of the items in clauses (i) - (ix) of this subparagraph:

(i) American Institute of Architects (AIA) Document (A102) or (A103) 2007 - Standard Form of Agreement between Owner and Contractor;

(ii) AIA Document G704--Certificate of Substantial Completion;

- (iii) AIA Document G702--Application and Certificate for Payment;
- (iv) Certificate of Occupancy;
- (v) IRS Form 8609 (only one per development is required);
- (vi) HUD Form 9822;
- (vii) Development agreements;
- (viii) Partnership agreements; or
- (ix) other documentation satisfactory to the Department verifying that a Principal of the Development Owner, General Partner, or Developer has the required experience.

(B) The names on the forms and agreements in subparagraph (A)(i) - (ix) of this paragraph must reflect that the individual seeking to provide experience is a Principal of the Development Owner, General Partner, or Developer as listed in the Application. For purposes of this requirement any individual attempting to use the experience of another individual or entity must demonstrate they had the authority to act on their behalf that substantiates the minimum 150 unit requirement.

(C) Experience may not be established for a Person who at any time within the preceding three years has been involved with affordable housing in another state in which the Person or Affiliate has been the subject of issued IRS Form 8823 citing non-compliance that has not been or is not being corrected with reasonable due diligence.

(D) If a Principal is determined by the Department to not have the required experience, an acceptable replacement for that Principal must be identified prior to the date the award is made by the Board.

(E) Notwithstanding the foregoing, no person may be used to establish such required experience if that Person or an Affiliate of that Person would not be eligible to be an Applicant themselves.

(7) Financing Requirements.

(A) Non-Department Debt Financing. Interim and permanent financing sufficient to fund the proposed Total Housing Development Cost less any other funds requested from the Department must be included in the Application. For any Development that is a part of a larger development plan on the same site, the Department may request and evaluate information related to the other components of the development plan in instances in which the financial viability of the Development is in whole or in part dependent upon the other portions of the development plan. Any local, state or federal financing identified in this section which restricts household incomes at any level that is lower than restrictions required pursuant to this chapter or elected in accordance with Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation

Plan) must be identified in the rent schedule and the local, state or federal income restrictions must include corresponding rent levels in accordance with §42(g) of the Code. The income and corresponding rent restrictions will be memorialized in a recorded LURA and monitored for compliance. Financing amounts must be consistent throughout the Application and acceptable documentation shall include those described in clauses (i) and (ii) of this subparagraph.

(i) Financing is in place as evidenced by:

(I) a valid and binding loan agreement; and

(II) a valid recorded deed(s) of trust lien on the Development in the name of the Development Owner as grantor in favor of the party providing such financing and covered by a lender's policy of title insurance in their name;

(ii) Term sheets for interim and permanent loans issued by a lending institution or mortgage company that is actively and regularly engaged in the business of lending money must:

(I) have been signed by the lender;

(II) be addressed to the Development Owner or Affiliate;

(III) for a permanent loan, include a minimum loan term of fifteen (15) years with at least a thirty (30) year amortization;

(IV) include either a committed and locked interest rate, or the currently projected interest rate and the mechanism for determining the interest rate;

(V) include all required Guarantors, if known;

(VI) include the principal amount of the loan;

(VII) include an acknowledgement of the amounts and terms of all other anticipated sources of funds; and

(VIII) include and address any other material terms and conditions applicable to the financing. The term sheet may be conditional upon the completion of specified due diligence by the lender and upon the award of tax credits, if applicable; or

(iii) For Developments proposing to refinance an existing USDA Section 515 loan, a letter from the USDA confirming that it has been provided with the Preliminary Assessment Tool.

(B) Gap Financing. Any anticipated federal, state, local or private gap financing, whether soft or hard debt, must be identified and described in the Application. Applicants must provide evidence that an application for such gap financing has been made. Acceptable documentation may include a letter from the funding entity confirming receipt of an application or a term sheet from the lending agency which clearly describes the amount and terms of the financing. Other Department funding requested with Housing Tax Credit Applications must be on a concurrent funding period with the Housing Tax Credit Application, and no term sheet is required for such a request. Permanent loans

must include a minimum loan term of fifteen (15) years with at least a thirty (30) year amortization or for non-amortizing loan structures a term of not less than thirty (30) years. A term loan request must also comply with the applicable terms of the NOFA under which an Applicant is applying.

(C) Owner Contributions. If the Development will be financed in part by a capital contribution by the General Partner, Managing General Partner, any other partner or investor that is not a partner providing the syndication equity, a guarantor or a Principal in an amount that exceeds 5 percent of the Total Housing Development Cost, a letter from a Third Party CPA must be submitted that verifies the capacity of the contributor to provide the capital from funds that are not otherwise committed or pledged. Additionally, a letter from the contributor's bank(s) or depository(ies) must be submitted confirming sufficient funds are readily available to the contributor. The contributor must certify that the funds are and will remain readily available at Commitment and until the required investment is completed. Regardless of the amount, all capital contributions other than syndication equity will be deemed to be a part of and therefore will be added to the Deferred Developer Fee for feasibility purposes under §10.302(i)(2) of this chapter (relating to Underwriting Rules and Guidelines) or where scoring is concerned, unless the Development is a Supportive Housing Development, the Development is not supported with Housing Tax Credits, or the ownership structure includes a nonprofit organization with a documented history of fundraising sufficient to support the development of affordable housing.

(D) Equity Financing. (§2306.6705(2) and (3)) If applicable to the program, the Application must include a term sheet from a syndicator that, at a minimum, includes:

- (i) an estimate of the amount of equity dollars expected to be raised for the Development;
- (ii) the amount of Housing Tax Credits requested for allocation to the Development Owner;
- (iii) pay-in schedules;
- (iv) anticipated developer fees paid during construction;
- (v) syndicator consulting fees and other syndication costs. No syndication costs should be included in the Eligible Basis; and
- (vi) include an acknowledgement of the amounts and terms of all other anticipated sources of funds.

(E) Financing Narrative. (§2306.6705(1)) A narrative must be submitted that describes all aspects of the complete financing plan for the Development, including but not limited to, the sources and uses of funds; construction, permanent and bridge loans, rents, operating subsidies, project-based assistance, and replacement reserves; and the status (dates and deadlines) for applications, approvals and closings, etc. associated with the commitments for all funding sources. For applicants requesting HOME funds, Match in the amount of at least 5 percent of the HOME funds requested must be documented

with a letter from the anticipated provider of Match indicating the provider's willingness and ability to make a financial commitment should the Development receive an award of HOME funds. The information provided must be consistent with all other documentation in the Application.

(8) Operating and Development Cost Documentation.

(A) 15-year Pro forma. All Applications must include a 15-year pro forma estimate of operating expenses, in the form provided by the Department. Any "other" debt service included in the pro forma must include a description.

(B) Utility Allowances. This exhibit, as provided in the Application, must be submitted along with documentation from the source of the utility allowance estimate used in completing the Rent Schedule provided in the Application. This exhibit must clearly indicate which utility costs are included in the estimate and must comply with the requirements of §10.614 of this chapter (relating to Utility Allowances), including deadlines for submission. Where the Applicant uses any method that requires Department review, documentation indicating that the requested method has been granted by the Department must be included in the Application.

(C) Operating Expenses. This exhibit, as provided in the Application, must be submitted indicating the anticipated operating expenses associated with the Development. Any expenses noted as "other" in any of the categories must be identified. "Miscellaneous" or other nondescript designations are not acceptable.

(D) Rent Schedule. This exhibit, as provided in the Application, must indicate the type of Unit designation based on the Unit's rent and income restrictions. The rent and utility limits available at the time the Application is submitted should be used to complete this exhibit. Gross rents cannot exceed the maximum rent limits unless documentation of project-based rental assistance is provided and rents are consistent with such assistance and applicable legal requirements. The unit mix and net rentable square footages must be consistent with the site plan and architectural drawings. For Units restricted in connection with Direct Loans, the restricted Units will generally be designated "floating" unless specifically disallowed under the program specific rules. For Applications that propose utilizing Direct Loan funds, at least 90 percent of the Units restricted in connection with the Direct Loan program must be available to households or families whose incomes do not exceed 60 percent of the Area Median Income.

(E) Development Costs. This exhibit, as provided in the Application, must include the contact information for the person providing the cost estimate and must meet the requirements of clauses (i) and (ii) of this subparagraph.

(i) Applicants must provide a detailed cost breakdown of projected Site Work costs (excluding site amenities), if any, prepared by a Third Party engineer or cost estimator. If Site Work costs (excluding site amenities) exceed \$15,000 per Unit and

are included in Eligible Basis, a letter must be provided from a certified public accountant allocating which portions of those site costs should be included in Eligible Basis.

(ii) If costs for Off-Site Construction are included in the budget as a line item, or embedded in the site acquisition contract, or referenced in the utility provider letters, then the Off-Site Cost Breakdown prepared by a Third Party engineer must be provided. The certification from a Third Party engineer must describe the necessity of the off-site improvements, including the relevant requirements of the local jurisdiction with authority over building codes. If any Off-Site Construction costs are included in Eligible Basis, a letter must be provided from a certified public accountant allocating which portions of those costs should be included in Eligible Basis. If off-site costs are included in Eligible Basis based on PLR 200916007, a statement of findings from a CPA must be provided which describes the facts relevant to the Development and affirmatively certifies that the fact pattern of the Development matches the fact pattern in PLR 200916007.

(F) Rental Assistance/Subsidy. (§2306.6705(4)) If rental assistance, an operating subsidy, an annuity, or an interest rate reduction payment is proposed to exist or continue for the Development, any related contract or other agreement securing those funds or proof of application for such funds must be provided. Such documentation shall, at a minimum, identify the source and annual amount of the funds, the number of units receiving the funds, and the term and expiration date of the contract or other agreement.

(G) Occupied Developments. The items identified in clauses (i) - (vi) of this subparagraph must be submitted with any Application where any structure on the Development Site is occupied at any time after the Application Acceptance Period begins or if the Application proposes the demolition of any housing occupied at any time after the Application Acceptance Period begins. If the current property owner is unwilling to provide the required documentation then a signed statement from the Applicant attesting to that fact must be submitted. If one or more of the items described in clauses (i) - (vi) of this subparagraph is not applicable based upon the type of occupied structures on the Development Site, the Applicant must provide an explanation of such non-applicability. Applicant must submit:

(i) at least one of the items identified in subclauses (I) - (IV) of this clause:

(I) historical monthly operating statements of the Existing Residential Development for twelve (12) consecutive months ending not more than three (3) months from the first day of the Application Acceptance Period;

(II) the two (2) most recent consecutive annual operating statement summaries;

(III) the most recent consecutive six (6) months of operating statements and the most recent available annual operating summary; or

(IV) all monthly or annual operating summaries available; and

- (ii) a rent roll not more than six (6) months old as of the first day the Application Acceptance Period that discloses the terms and rate of the lease, rental rates offered at the date of the rent roll, Unit mix, and tenant names or vacancy;
- (iii) a written explanation of the process used to notify and consult with the tenants in preparing the Application; (§2306.6705(6))
- (iv) a relocation plan outlining relocation requirements and a budget with an identified funding source; (§2306.6705(6))
- (v) any documentation necessary for the Department to facilitate, or advise an Applicant with respect to or to ensure compliance with the Uniform Relocation Act and any other relocation laws or regulations as may be applicable; and
- (vi) if applicable, evidence that the relocation plan has been submitted to all appropriate legal or governmental agencies or bodies. (§2306.6705(6))

(9) Architectural Drawings. All Applications must include the items identified in subparagraphs (A) - (D) of this paragraph, unless specifically stated otherwise, and must be consistent with all applicable exhibits throughout the Application. The drawings must have a legible scale and show the dimensions of each perimeter wall and floor heights.

(A) For all New Construction, Reconstruction and Adaptive Reuse Developments a site plan is submitted that includes the items identified in clauses (i) - (v) of this subparagraph and for all Rehabilitation Developments, the site plan includes the items identified in clauses (i) - (ix) of this subparagraph:

- (i) includes a unit and building type table matrix that is consistent with the Rent Schedule and Building/Unit Configuration forms provided in the Application;
- (ii) identifies all residential and common buildings;
- (iii) clearly delineates the flood plain boundary lines and shows all easements;
- (iv) if applicable, indicates possible placement of detention/retention pond(s);
- (v) indicates the location and number of the parking spaces;
- (vi) indicates the location and number of the accessible parking spaces;
- (vii) describes, if applicable, how flood mitigation or any other required mitigation will be accomplished;
- (viii) delineates compliant accessible routes; and
- (ix) indicates the distribution of accessible Units.

(B) Building floor plans must be submitted for each building type. Applications for Rehabilitation (excluding Reconstruction) are not required to submit building floor plans unless the floor plan changes. Applications for Adaptive Reuse are only required to include building plans delineating each Unit by number and type. Building floor plans must include square footage calculations for balconies, breezeways, corridors and any other areas not included in net rentable area;

(C) Unit floor plans for each type of Unit must be included in the Application and must include the square footage for each type of Unit. Applications for Adaptive Reuse are only required to include Unit floor plans for each distinct typical Unit type such as one-bedroom, two-bedroom and for all Unit types that vary in Net Rentable Area by 10 percent from the typical Unit; and

(D) Elevations must be submitted for each side of each building type (or include a statement that all other sides are of similar composition as the front) and include a percentage estimate of the exterior composition and proposed roof pitch. Applications for Rehabilitation and Adaptive Reuse may submit photographs if the Unit configurations are not being altered and post-renovation drawings must be submitted if Unit configurations are proposed to be altered.

(10) Site Control.

(A) Evidence that the Development Owner has Site Control must be submitted. If the evidence is not in the name of the Development Owner, then an Affiliate of the Development Owner must have Site Control that allows for an ability to assign the Site Control to the Development Owner. All of the sellers of the proposed Property for the thirty-six (36) months prior to the first day of the Application Acceptance Period and their relationship, if any, to members of the Development Team must be identified at the time of Application. The Department may request documentation at any time after submission of an Application of the Development Owner's ability to compel title of any affiliated property acquisition(s) and the Development Owner must be able to promptly provide such documentation or the Application, award, or Commitment may be terminated. The Department acknowledges and understands that the Property may have one or more encumbrances at the time of Application submission and the Department will take into account whether any such encumbrance is reasonable within the legal and financial ability of the Development Owner to address without delaying development on the timeline contemplated in the Application. Tax-Exempt Bond Lottery Applications must have Site Control valid through December 1 of the prior program year with the option to extend through March 1 of the current program year.

(B) In order to establish Site Control, one of the items described in clauses (i) - (iii) of this subparagraph must be provided. In the case of land donations, Applicants must demonstrate that the entity donating the land has Site Control as evidenced through one of the items described in clauses (i) - (iii) of this subparagraph or other documentation acceptable to the Department.

(i) a recorded warranty deed vesting indefeasible title in the Development Owner or, if transferrable to the Development Owner, an Affiliate of the Owner, with corresponding executed settlement statement (or functional equivalent for an existing lease with at least forty-five (45) years remaining); or

(ii) a contract or option for lease with a minimum term of forty-five (45) years that includes a price; address and/or legal description; proof of consideration in the form specified in the contract; and expiration date; or

(iii) a contract for sale or an option to purchase that includes a price; address and/or legal description; proof of consideration in the form specified in the contract; and expiration date;

(C) If the acquisition can be characterized as an identity of interest transaction, as described in §10.302 of this chapter, then the documentation as further described therein must be submitted in addition to that of subparagraph (B) of this paragraph.

(11) Zoning. (§2306.6705(5)) Acceptable evidence of zoning for all Developments must include one of subparagraphs (A) - (D) of this paragraph. In instances where annexation of a Development Site occurs while the Application is under review, the Applicant must submit evidence of appropriate zoning with the Commitment or Determination Notice.

(A) No Zoning Ordinance in Effect. The Application must include a letter from a local government official with appropriate jurisdiction stating that the Development is located within the boundaries of a political subdivision that has no zoning.

(B) Zoning Ordinance in Effect. The Application must include a letter from a local government official with appropriate jurisdiction stating the Development is permitted under the provisions of the zoning ordinance that applies to the location of the Development.

(C) Requesting a Zoning Change. The Application must include evidence in the form of a letter from a local government official with jurisdiction over zoning matters that the Applicant or Affiliate has made formal application for a required zoning change and that the jurisdiction has received a release whereby the applicant for the zoning change has agreed to hold the political subdivision and all other parties harmless in the event the appropriate zoning is not granted. Documentation of final approval of appropriate zoning must be submitted to the Department with the Commitment or Determination Notice.

(D) Zoning for Rehabilitation Developments. In an area with zoning, the Application must include documentation of current zoning. If the Property is currently conforming but with an overlay that would make it a non-conforming use as presently zoned, the Application must include a letter from a local government official with appropriate jurisdiction which addresses the items in clauses (i) - (v) of this subparagraph:

- (i) a detailed narrative of the nature of non-conformance;
- (ii) the applicable destruction threshold;
- (iii) that it will allow the non-conformance;
- (iv) Owner's rights to reconstruct in the event of damage; and

(v) penalties for noncompliance.

(12) Title Commitment/Policy. A title commitment or title policy must be submitted that includes a legal description that is consistent with the Site Control. If the title commitment or policy is dated more than six (6) months prior to the beginning of the Application Acceptance Period, then a letter from the title company indicating that nothing further has transpired during the six-month period on the commitment or policy must be submitted.

(A) The title commitment must list the name of the Development Owner as the proposed insured and lists the seller or lessor as the current owner of the Development Site.

(B) The title policy must show that the ownership (or leasehold) of the Development Site is vested in the name of the Development Owner.

(13) Ownership Structure and Previous Participation.

(A) Organizational Charts. A chart must be submitted that clearly illustrates the complete organizational structure of the final proposed Development Owner and of any Developer and Guarantor, identifying all Principals thereof and providing the names and ownership percentages of all Persons having an ownership interest in the Development Owner, Developer and Guarantor, as applicable, whether directly or through one or more subsidiaries. Nonprofit entities, public housing authorities, publicly traded corporations, individual board members, and executive directors must be included in this exhibit and trusts must list all beneficiaries that have the legal ability to control or direct activities of the trust and are not just financial beneficiaries.

(B) Previous Participation. Evidence must be submitted that each entity shown on the organizational chart described in subparagraph (A) of this paragraph that the Development Owner and each Affiliate (with an ownership interest in the Development), including entities and individuals (unless excluded under 10 TAC Chapter 1, Subchapter C) has provided a copy of the completed previous participation information to the Department. Individual Principals of such entities identified on the organizational chart must provide the previous participation information, unless excluded from such requirement pursuant to Chapter 1 Subchapter C of this title. In addition, any Person (regardless of any Ownership interest or lack thereof) receiving more than 10 percent of the Developer Fee is also required to submit this information. The information must include a list of all developments that are, or were, previously under ownership or Control of the Applicant and/or each Principal, including any Person providing the required experience. All participation in any Department funded or monitored activity, including non-housing activities, as well as Housing Tax Credit developments or other programs administered by other states using state or federal programs must be disclosed. The individuals providing previous participation information will authorize the parties overseeing such assistance to release compliance histories to the Department.

(14) Nonprofit Ownership. Applications that involve a §501(c)(3) or (4) nonprofit General Partner or Owner shall submit the documentation identified in subparagraph (A) or (B) of this paragraph as applicable.

(A) Competitive HTC Applications. Applications for Competitive Housing Tax Credits involving a §501(c)(3) or (4) nonprofit General Partner and which meet the Nonprofit Set-Aside requirements, must submit all of the documents described in this subparagraph and indicate the nonprofit status on the carryover documentation and IRS Forms 8609. (§2306.6706) Applications that include an affirmative election to not be treated under the set-aside and a certification that they do not expect to receive a benefit in the allocation of tax credits as a result of being affiliated with a nonprofit only need to submit the documentation in subparagraph (B) of this paragraph.

- (i) An IRS determination letter which states that the nonprofit organization has been determined by the Internal Revenue Service to be tax-exempt under §501(c)(3) or (4) of the Code;
- (ii) The Nonprofit Participation exhibit as provided in the Application, including a list of the names and contact information for all board members, directors, and officers;
- (iii) A Third Party legal opinion stating:
 - (I) that the nonprofit organization is not affiliated with or Controlled by a for-profit organization and the basis for that opinion;
 - (II) that the nonprofit organization is eligible, as further described, for a Housing Credit Allocation from the Nonprofit Set-Aside pursuant to §42(h)(5) of the Code and the basis for that opinion;
 - (III) that one of the exempt purposes of the nonprofit organization is to provide low-income housing;
 - (IV) that the nonprofit organization prohibits a member of its board of directors, other than a chief staff member serving concurrently as a member of the board, from receiving material compensation for service on the board;
 - (V) that the Qualified Nonprofit Development will have the nonprofit entity or its nonprofit Affiliate or subsidiary be the Developer or co-Developer as evidenced in the development agreement;
 - (VI) that the nonprofit organization has the ability to do business as a nonprofit in Texas;
- (iv) a copy of the nonprofit organization's most recent financial statement as prepared by a Certified Public Accountant; and
- (v) evidence in the form of a certification that a majority of the members of the nonprofit organization's board of directors principally reside:
 - (I) in this state, if the Development is located in a Rural Area; or

(II) not more than ninety (90) miles from the Development, if the Development is not located in a Rural Area.

(B) All Other Applications. Applications that involve a §501(c)(3) or (4) nonprofit General Partner or Owner must submit an IRS determination letter which states that the nonprofit organization has been determined by the Internal Revenue Service to be tax-exempt under §501(c)(3) or (4) of the Code; and the Nonprofit Participation exhibit as provided in the Application. If the Application involves a nonprofit that is not exempt from taxation under §501(c)(3) or (4) of the Code, then they must disclose in the Application the basis of their nonprofit status.

(15) Site Design and Development Feasibility Report. This report, compiled by the Applicant or Third Party Consultant, and prepared in accordance with this paragraph, which reviews site conditions and development requirements of the Development and Development Site, is required for any New Construction or Reconstruction Development.

(A) Executive Summary as a narrative overview of the Development in sufficient detail that would help a reviewer of the Application better understand the site, the site plan, off site requirements (including discussion of any seller contributions or reimbursements), any other unique development requirements, and their impact on Site Work and Off Site Construction costs. The summary should contain a general statement regarding the level of due diligence that has been done relating to site development (including discussions with local government development offices). Additionally, the overview should contain a summary of zoning requirements, subdivision requirements, property identification number(s) and millage rates for all taxing jurisdictions, development ordinances, fire department requirements, site ingress and egress requirements, building codes, and local design requirements impacting the Development (include website links but do not attach copies of ordinances). Careful focus and attention should be made regarding any atypical items materially impacting costs or the successful and timely execution of the Development plan.

(B) Survey or current plat as defined by the Texas Society of Professional Surveyors in their Manual of Practice for Land Surveying in Texas (Category 1A - Land Title Survey or Category 1B - Standard Land Boundary Survey). Surveys may not be older than twelve (12) months from the beginning of the Application Acceptance Period. Plats must include evidence that it has been recorded with the appropriate local entity and that, as of the date of submission, it is the most current plat. Applications proposing noncontiguous single family scattered sites are not required to submit surveys or plats at Application, but this information may be requested during the Real Estate Analysis review.

(C) Preliminary site plan prepared by the civil engineer with a statement that the plan materially adheres to all applicable zoning, site development, and building code ordinances. The site plan must identify all structures, site amenities, parking spaces

(include handicap spaces and ramps) and driveways, topography (using either existing seller topographic survey or U.S. Geological Survey (USGS)/other database topography), site drainage and detention, water and waste water utility tie-ins, general placement of retaining walls, set-back requirements, and any other typical or locally required items. Off-site improvements required for utilities, detention, access or other requirement must be shown on the site plan or ancillary drawings.

(D) Architect or civil engineer prepared statement describing the entitlement, site development permitting process and timing, building permitting process and timing, and an itemization specific to the Development of total anticipated impact, site development permit, building permit, and other required fees.

(16) Section 811 Project Rental Assistance Program. All Competitive HTC Applications, Direct Loan only Applications and Tax-Exempt Bond Development Applications that are layered with Direct Loan funds must meet the requirements of subparagraphs (A) or (B) of this paragraph. Applications that are unable meet the requirements of subparagraphs (A) or (B) must certify to that effect in the Application.

(A) Applicants must apply for and obtain a determination by the Department that an Existing Development is approved to participate in the Department's Section 811 Project Rental Assistance Program ("Section 811 PRA Program"). The approved Existing Development must commit at least the lower of 10 units or 10% of the total number of Units in the Development to the Section 811 PRA Program unless the Integrated Housing Rule (10 TAC §1.15) or Section 811 PRA Program guidelines (§PRA.305) or other requirements limit the proposed Development to fewer than 10 Units. An approved Existing Development may be used to satisfy the requirements of this paragraph in more than one Housing Tax Credit or other Multifamily Housing program Application, as long as at the time of Carryover, Award Letter or Determination Notice, as applicable, the minimum number of Units as stated above are provided for each Development awarded housing tax credits or Direct Loan funds. Once an Applicant submits their Application, Applicants may not withdraw their commitment to satisfy the threshold criteria of this subparagraph, although an Applicant may request to utilize a different approved Existing Development than the one submitted in association with the awarded Application to satisfy this criteria. Existing Developments that are included in an Application that does not receive an award are not obligated to participate in the Section 811 PRA Program. An Applicant may be exempt from having to provide 811 units in an Existing Development if approval from either their lender or investor cannot be obtained and documentation to that effect is submitted in the Application, but they would be required to provide such Units through subparagraph (B) of this paragraph.

(B) Applicants that cannot meet the requirements of subparagraph (A) of this paragraph must submit evidence of such through a self-certification that the Applicant and any Affiliate do not have an ownership interest in or control of any Existing Development that would meet the criteria outlined in the Section 811 PRA Program Request for Applications, and if applicable, by submitting a copy of any rejection letter(s) that have been provided in response to the Request for Applications. In such cases, the Applicant is able to satisfy the

threshold requirement of this paragraph through this subparagraph (B). Applications must meet all of the requirements in clauses (i) – (v) of this subparagraph. Applicants must commit at least the lower of 10 Units or 10% of the total number of Units in the Development for which the Application(s) has been submitted for participation in the Section 811 PRA Program unless the Integrated Housing Rule (10 TAC §1.15) or Section 811 PRA Program guidelines or other requirements limit the proposed Development to fewer than 10 Units. Once elected in the Application(s), Applicants may not withdraw their commitment to have the proposed Development participate in the Section 811 PRA Program unless the Department determines that the Development cannot meet all of the Section 811 PRA Program criteria or the Applicant chooses to request an amendment by Carryover, Award Letter, or subsequent to the issuance of the Determination Notice but prior to closing (for Tax-Exempt Bond Developments), or to place the Units on an Approved Existing Development. If the Applicant or an Affiliate obtain an ownership interest in an Approved Existing Development, the Applicant can submit an Amendment request authorizing that the Application satisfies this criteria under subparagraph (A), not subparagraph (B). Such an Amendment request will be considered a non-material change that has not been implemented, and Applicants will not be subject to the amendment fee required under §10.901(13) (relating to Fee Schedule, Appeals and other Provisions).

(i) The Development must not be an ineligible Elderly Development;

(ii) Unless the Development is also proposing to use any federal funding, the Development must not be originally constructed before 1978;

(iii) The Development must have Units available to be committed to the Section 811 PRA Program in the Development, meaning that those Units do not have any other sources of project-based rental assistance within 6 months of receiving Section 811 PRA Program assistance, not have an existing use restriction for Extremely Low-income households, and the Units do not have an existing restriction for Persons with Disabilities;

(iv) The Development Site must be located in one of the following areas: Austin-Round Rock MSA, Brownsville-Harlingen MSA, Corpus Christi MSA; Dallas-Fort Worth-Arlington MSA; El Paso MSA; Houston-The Woodlands-Sugar Land MSA; McAllen-Edinburg-Mission MSA; or San Antonio-New Braunfels MSA; and

(v) No new construction activities or projects shall be located in the mapped 500-year floodplain or in the 100-year floodplain according to FEMA's Flood Insurance Rate Maps (FIRM). Rehabilitation Developments that have previously received HUD funding or obtained HUD insurance do not have to follow sections (i) – (iii) of this subparagraph. Existing structures may be assisted in these areas, except for sites located in coastal high hazard areas (V Zones) or regulatory floodways, but must meet the following requirements:

(I) The existing structures must be flood-proofed or must have the lowest habitable floor and utilities elevated above both the 500-year floodplain and the 100-year floodplain.

(II) The project must have an early warning system and evacuation plan that includes evacuation routing to areas outside of the applicable floodplains.

(III) Project structures in the 100-year floodplain must obtain flood insurance under the National Insurance Program. No activities or projects located within the 100-year floodplain may be assisted in a community that is not participating in or has been suspended from the National Flood Insurance Program.

§10.205. Required Third Party Reports. The Environmental Site Assessment, Property Condition Assessment, Appraisal (if applicable), and the Market Analysis must be submitted no later than the Third Party Report Delivery Date as identified in §10.4 of this chapter (relating to Program Dates). For Competitive HTC Applications, the Environmental Site Assessment, Property Condition Assessment, Appraisal (if applicable), and the Primary Market Area map (with definition based on census tracts, and site coordinates in decimal degrees, area of PMA in square miles, and list of census tracts included) must be submitted no later than the Full Application Delivery Date as identified in §11.2 of this title (relating to Program Calendar for Competitive Housing Tax Credits) and the Market Analysis must be submitted no later than the Market Analysis Delivery Date as identified in §11.2 of this title. For Competitive HTC Applications, if the reports, in their entirety, are not received by the deadline, the Application will be terminated. An electronic copy of the report in the format of a single file containing all information and exhibits clearly labeled with the report type, Development name and Development location are required. All Third Party reports must be prepared in accordance with Subchapter D of this chapter (relating to Underwriting and Loan Policy). The Department may request additional information from the report provider or revisions to the report as needed. In instances of non-response by the report provider, the Department may substitute in-house analysis. The Department is not bound by any opinions expressed in the report.

(1) Environmental Site Assessment. This report, required for all Developments and prepared in accordance with the requirements of §10.305 of this chapter (relating to Environmental Site Assessment Rules and Guidelines), must not be dated more than twelve (12) months prior to the first day of the Application Acceptance Period. If this timeframe is exceeded, then a letter or updated report must be submitted, dated not more than three (3) months prior to the first day of the Application Acceptance Period from the Person or organization which prepared the initial assessment confirming that the site has been re-inspected and reaffirming the conclusions of the initial report or identifying the changes since the initial report.

(A) Developments funded by USDA will not be required to supply this information; however, it is the Applicant's responsibility to ensure that the Development is maintained in compliance with all state and federal environmental hazard requirements.

(B) If the report includes a recommendation that an additional assessment be performed, then a statement from the Applicant must be submitted with the

Application indicating those additional assessments and recommendations will be performed prior to closing. If the assessments require further mitigating recommendations, then evidence indicating the mitigating recommendations have been carried out must be submitted at cost certification.

(2) Market Analysis. The Market Analysis, required for all Developments and prepared in accordance with the requirements of §10.303 of this chapter (relating to Market Analysis Rules and Guidelines), must not be dated more than six (6) months prior to the first day of the Application Acceptance Period. If the report is older than six (6) months, but not more than twelve (12) months prior to the first day of the Application Acceptance Period, the Qualified Market Analyst that prepared the report may provide a statement that reaffirms the findings of the original Market Analysis. The statement may not be dated more than six (6) months prior to the first day of the Application Acceptance Period and must be accompanied by the original Market Analysis.

(A) The report must be prepared by a disinterested Qualified Market Analyst approved by the Department in accordance with the approval process outlined in §10.303 of this chapter;

(B) Applications in the USDA Set-Aside proposing Rehabilitation with residential structures at or above 80 percent occupancy at the time of Application submission, the appraisal, required for Rehabilitation Developments and Identity of Interest transactions prepared in accordance with §10.304 of this chapter (relating to Appraisal Rules and Guidelines), will satisfy the requirement for a Market Analysis; however, the Department may request additional information as needed. (§2306.67055; §42(m)(1)(A)(iii))

(C) It is the responsibility of the Applicant to ensure that this analysis forms a sufficient basis for the Applicant to be able to use the information obtained to ensure that the Development will comply with fair housing laws.

(3) Property Condition Assessment (PCA). This report, required for Rehabilitation (excluding Reconstruction) and Adaptive Reuse Developments and prepared in accordance with the requirements of §10.306 of this chapter (relating to Property Condition Assessment Guidelines), must not be dated more than six (6) months prior to the first day of the Application Acceptance Period. If the report is older than six (6) months, but not more than twelve (12) months prior to the first day of the Application Acceptance Period, the report provider may provide a statement that reaffirms the findings of the original PCA. The statement may not be dated more than six (6) months prior to the first day of the Application Acceptance Period and must be accompanied by the original PCA. For Developments which require a capital needs assessment from USDA the capital needs assessment may be substituted and may be more than six (6) months old, as long as USDA has confirmed in writing that the existing capital needs assessment is still acceptable and it meets the requirements of §10.306 of this chapter. All Rehabilitation Developments financed with Direct Loans must also submit a capital needs assessment estimating the useful life of each major system. This assessment must include a comparison between the

local building code and the International Existing Building Code of the International Code Council.

(4) Appraisal. This report, required for all Rehabilitation Developments and prepared in accordance with the requirements of §10.304 of this chapter, is required for any Application claiming any portion of the building acquisition in Eligible Basis, and Identity of Interest transactions pursuant to Subchapter D of this chapter, must not be dated more than six (6) months prior to the first day of the Application Acceptance Period. For Developments that require an appraisal from USDA, the appraisal may be more than six (6) months old, as long as USDA has confirmed in writing that the existing appraisal is still acceptable.

§10.206. Board Decisions (§§2306.6725(c); 2306.6731; and 42(m)(1)(A)(iv)). The Board's decisions regarding awards shall be based upon the Department's and the Board's evaluation of the proposed Developments' consistency with, and fulfillment of, the criteria and requirements set forth in this chapter, Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan) and other applicable Department rules and other applicable state, federal and local legal requirements, whether established in statute, rule, ordinance, published binding policy, official finding, or court order. The Board shall document the reasons for each Application's selection, including any discretionary factors used in making its determination, including good cause, and the reasons for any decision that conflicts with the recommendations made by Department staff. Good cause includes the Board's decision to apply discretionary factors where authorized. The Department reserves the right to reduce the amount of funds requested in an Application, condition the award recommendation or terminate the Application based on the Applicant's inability to demonstrate compliance with program requirements.

§10.207. Waiver of Rules for Applications.

(a) General Waiver Process. This waiver section, unless otherwise specified, is applicable to Subchapter A of this chapter (relating to General Information and Definitions), Subchapter B of this chapter (relating to Site and Development Requirements and Restrictions), Subchapter C of this chapter (relating to Application Submission Requirements, Ineligibility Criteria, Board Decisions, and Waiver of Rules for Applications), Subchapter D of this chapter (relating to Underwriting and Loan Policy), Subchapter E of this chapter (relating to Post Award and Asset Management Requirements), Subchapter F of this chapter (relating to Compliance Monitoring) Subchapter G of this chapter (relating to Fee Schedule, Appeals, and Other Provisions), Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan), Chapter 12 of this title (relating to Multifamily Housing Revenue Bond Rules), and Chapter 13 (relating to Multifamily Direct Loan Program Rules). An Applicant may request a waiver in writing at or prior to the submission of the pre-application (if applicable) or the Application or subsequent to an award. Waiver requests on Competitive HTC Applications will not be accepted between submission of the Application and any award for the Application. Staff may identify and initiate a waiver request as part of another Board action request. Where appropriate, the Applicant is encouraged to submit with the requested waiver any plans for mitigation or

alternative solutions. Any such request for waiver must be specific to the unique facts and circumstances of an actual proposed Development and must be submitted to the Department in the format required in the Multifamily Programs Procedures Manual. Any waiver, if granted, shall apply solely to the Application and shall not constitute a general modification or waiver of the rule involved. Waiver requests that are limited to Development design and construction elements not specifically required in Tex. Gov't Code, Chapter 2306 must meet the requirements of paragraph (1) of this subsection. All other waiver requests must meet the requirements of paragraph (2) of this subsection.

(1) The waiver request must establish good cause for the Board to grant the waiver which may include limitations of local building or zoning codes, limitations of existing building structural elements for Adaptive Reuse or Rehabilitation (excluding Reconstruction) Developments, required amenities or design elements in buildings designated as historic structures that would conflict with retaining the historic nature of the building(s), or provisions of the design element or amenity that would not benefit the tenants due to limitations of the existing layout or design of the units for Adaptive Reuse or Rehabilitation (excluding Reconstruction) Developments. Staff may recommend the Board's approval for such a waiver if the Executive Director finds that the Applicant has established good cause for the waiver. A recommendation for a waiver may be subject to the Applicant's provision of alternative design elements or amenities of a similar nature or that serve a similar purpose. Waiver requests for items that were elected to meet scoring criteria or where the Applicant was provided a menu of options to meet the requirement will not be considered under this paragraph.

(2) The waiver request must establish how it is necessary to address circumstances beyond the Applicant's control and how, if the waiver is not granted, the Department will not fulfill some specific requirement of law. In this regard, the policies and purposes articulated in Tex. Gov't Code, §§2306.001, 2306.002, 2306.359, and 2306.6701, are general in nature and apply to the role of the Department and its programs, including the Housing Tax Credit program.

(b) Waivers Granted by the Board. The Board, in its discretion, may waive any one or more of the rules in Subchapters A through G of this chapter, Chapter 11, Chapter 12 and Chapter 13, except no waiver shall be granted to provide directly or implicitly any forward commitments or any waiver that is prohibited by statute (i.e., statutory requirements may not be waived). The Board, in its discretion, may grant a waiver that is in response to a natural, federally declared disaster that occurs after the adoption of the multifamily rules to the extent authorized by a governor declared disaster proclamation suspending regulatory requirements.

Multifamily Direct Loan Rule

13.1 Purpose

(a) Authority. The rules in this Chapter apply to the funds provided to Multifamily Developments through the Multifamily Direct Loan Program ("MFDL" or "Direct Loan Program") by the Texas Department of Housing and Community Affairs ("Department"). Notwithstanding anything in this Chapter to the contrary, loans and grants issued to finance the Development of multifamily rental housing are subject to the requirements of the laws of the State of Texas, including but not limited to Tex. Gov't Code, Chapter 2306, and federal law pursuant to the requirements of Title II of the Cranston-Gonzalez National Affordable Housing Act and the implementing regulations 24 CFR Part 91, Part 92, and Part 93, as they may be applicable to a specific fund source. The Department is authorized to administer HOME funds pursuant to Tex Gov't Code, §2306.111. Tex Gov't Code Chapter 2306, Subchapter I, Housing Finance Division: This Chapter is not applicable to the State Housing Trust Fund or Section 811.

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

(c) Waivers. Requests for waivers of any program rules or requirements must be made in accordance with §10.207 of this title (relating to Waiver of Rules for Applications) and as limited by the rules in this Chapter. In no instance will the Department consider a waiver request that would violate federal program requirements or state or federal statute.

13.2 Definitions

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

(a) *Choice limiting activity*: any transfer of title that occurs prior to a Development obtaining environmental clearance after an application for federal funds (HOME and NHTF) has been submitted. Choice limiting activities may also include closing on loans including loans for interim financing, signing of a contract, and commencing construction. All applicants for MFDL funds, regardless of whether or not the Development Site is in a Participating Jurisdiction, must include the following language in the purchase contract or site control agreement:

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

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

(c) *Encumbered Funds or Revenue*: funding or revenue that has a state or federal program designation and must be allocated in accordance with such statute or regulation. (*e.g.* HOME Program income must be re-allocated as HOME funding and therefore would be encumbered as such.)

(d) *Matching contribution (Match)*: a contribution to a proposed Development from nonfederal sources that may be in the form of one or more of the following:

- (1) Cash contribution (grant), except for cash contributions made by investor limited partner in a tax credit transaction or owner equity (including deferred developer fee)
- (2) Reduced fees or donated labor from certain eligible contractors, subcontractors, architects, attorneys, engineers, excluding any contributions from a party related to the Developer or Owner
- (3) Net present value of yield foregone from a below market interest rate loan

(4) Waived or reduced fees from cities or counties not related to the Applicant in connection with the proposed development

(5) Donated land or land sold below market value, as evidenced by a third party appraisal, from an unrelated party

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

13.3 General Loan Requirements

(a) Direct Loan funds may be made available through a Notice of Funding Availability ("NOFA") or other similar governing document that includes the basic Application and funding requirements. MFDL funds may be used to directly assist distressed developments previously funded by the Department when approved by specific action of the Department's Governing Board ("Board").

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

(c) Direct Loan funds may be used for the acquisition, new construction, reconstruction, or rehabilitation of affordable housing with suitable amenities, including real property acquisition, site improvements, conversion, demolition, or operating cost reserves, all subject to HUD guidance. Other expenses, such as financing costs, relocation expenses of any displaced persons, families, businesses, or organizations may be included.

(d) While all costs associated with the Development and known by the sponsor must be disclosed as part of the Application, costs ineligible for reimbursement with Direct Loan funds in accordance with 24 CFR Part 91, Part 92, Part 93, and 2 CFR Part 200, as federally required or identified in the NOFA include but are not limited to:

(1) Offsite costs

(2) Stored Materials

- (3) Site Amenities
- (4) Detached Community Buildings
- (5) Carports and/or garages
- (6) Parking garages
- (7) Commercial Space costs
- (8) Reserve accounts not related to NHTF
- (9) TDHCA fees
- (10) Delinquent fees, taxes, or charges
- (11) Costs incurred more than 24 months prior to the effective date of the Direct Loan Contract unless the Application is awarded TCAP Loan Repayment funds.
- (12) Other costs limited by Award or NOFA, or as established by the Board

13.4 Set-asides, Regional Allocation, and Priorities

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

(1) Fixed Set-Asides:

- (A) Supportive Housing/Soft Repayment Set-Aside. The Supportive Housing/Soft Repayment ("SH/SR") Set-aside will be limited by the unencumbered interest revenue generated by multifamily loan payments and any amount under the NHTF allocation received by the Department and not otherwise programmed. The SH/SR set-aside is reserved for developments that are not able to support amortizing debt due to higher

costs for supportive services or extremely low income and rent restrictions. Soft repayment loans may be provided with deferred payable, deferred forgivable or cash flow terms. Applicants seeking to qualify under this set-aside must propose Developments that meet either:

(i) the Supportive Housing requirements in 10 TAC §10.3(a) in the Uniform Multifamily Rules including the other underwriting consideration for Supportive Housing Developments , 10 TAC §10.302(g)(3) of the Underwriting and Loan Policy; or

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

(I) All units assisted with MFDL funds must be available for and have rents no higher than households earning 30% AMI or less.

(II) Any units assisted with MFDL funds may not also be receiving project-based rental assistance, other than MFDL funds.

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

(B) CHDO Set-aside. A portion of the Department's annual HOME allocation, equal to at least 15%, will be set aside for eligible Community Housing Development Organizations ("CHDO") meeting the requirements of the definition of Community Housing Development Organization found in 24 CFR §92.2 and above. Applicants under the CHDO Set-Aside must be proposing to develop housing in Development Sites located outside Participating Jurisdictions unless the award is made within a Persons with Disabilities ("PWD") set-aside. CHDO funds are typically available as fully-repayable amortizing debt consistent with §13.4 of this Chapter relating to debt structure policy. In instances where an application submitted under the CHDO Set-Aside also qualifies under the SH/SR Set-Aside, CHDO funds may be structured in accordance with the SH/SR Set-Aside requirements. A CHDO operating expenses grant may be awarded in conjunction with an award of MFDL funds under the CHDO set-aside.

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

(2) Flexible Set-Asides:

- (A) 4% and Bond Layered. The 4% and Bond Layered set-aside is reserved for applications meeting all MFDL requirements that are layered with 4% Housing Tax Credits and Private Bond funds that do not meet the definition of CHDO.
- (B) Persons with Disabilities ("PWD"). The PWD set-aside is reserved for developments restricting units for tenants who meet the requirements of Tex. Gov't Code §2306.111(c)(2). MFDL funds will be awarded in a NOFA for the PWD set-aside only to the extent sufficient funds are available to award to at least one Application within a Participating Jurisdiction under Tex. Gov't Code §2306.111(c)(1).
- (C) 9% Layered. The 9% Layered set-aside is reserved for applications meeting all MFDL requirements that are layered with 9% Housing Tax Credits, and do not meet the definition of CHDO. Awards under this set-aside are dependent on the concurrent award of a 9% HTC allocation.
- (D) Additional set-asides may be developed, subject to Board approval, to meet the requirements of specific funds sources, or to address Department priorities.

(b) *Regional Allocation.* All funds in the annual NOFA will be initially allocated to regions and potentially subregions based on a Regional Allocation Formula ("RAF") within the set-asides. The RAF methodology may differ by fund source. HOME funds will be allocated in accordance with Tex. Gov't Code Chapter 2306. The end date for the RAF will be identified in the NOFA, but in no instance shall it be less than 30 days from the date a link to the NOFA is published in the *Texas Register*.

(1) After expiration of the RAF, funds collapse but may still be available within set-asides as identified in the NOFA but for an additional period not less than 15 days. All Applications received prior to these first two collapse period deadlines will continue to hold their priority unless they are withdrawn, terminated, or funded.

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

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

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

(1) Priority 1: Applications not layered with 2017 9% HTC that are received prior to the 2017 9% HTC Application deadline as described in 10 TAC §11.2 Program Calendar for Competitive Housing Tax Credits. Priority 1 applications will be prioritized on a first come first served basis within their respective set-aside and subregion or region. If the RAF has collapsed, applications will be reviewed on a first-come first served basis within their set-aside.

(2) Priority 2: Applications layered with 2017 9% HTC will be prioritized based on their recommendation status for an HTC allocation. All Priority 2 applications will be deemed received on the Market Analysis Delivery Date as described in 10 TAC §11.2 Program Calendar. In order for an MFDL application layered with 2017 9% HTC to be considered complete, Applications for both programs must be timely received. Priority 2 applications will be recommended for approval at the same meeting when the Board approves the 2017 9% HTC allocations. Applications that will be recommended for 2017 9% HTC and are tied for MFDL under the scoring criteria will be further prioritized for funding based upon the scoring, tiebreaker and award criteria in 10 TAC Chapter 11 (the "QAP").

(3) Priority 3: Applications that are received after the 2017 9% HTC Application deadline on a first come first served basis for any remaining funds until the final deadline identified in the annual NOFA.

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

13.5 Award Process

(a) Notice of Funding Availability ("NOFA"). All MFDL funds from the annual allocation will be distributed through a NOFA that provides the specific collapse dates and deadlines as well as set-

aside and RAF amounts applicable to the MFDL program, along with Application information. Other funds may be distributed by NOFA or through other method approved by the Board. Set-aside, RAF, and total funding amounts may increase or decrease in accordance with the provisions herein without further Board action as long as the NOFA itself did not require Board action.

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

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

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

(1) Applicants requesting MFDL as the only source of Department funds may meet the Experience Requirement under §10.204(6) of this Chapter or by providing evidence of the successful development, and operation for at least 5 years, of at least twice as many affordability restricted units as requested in the Application.

(2) Applications for Developments previously awarded Department funds under any program, or where construction has already started or been completed, regardless of fund source and are not proposing acquisition and rehabilitation, except distressed Developments under §13.3(a), must be found eligible by the Board. The Board may find other applicants eligible for good cause such as Developments assisted by the Department that have encountered adverse factors beyond their control that could materially impair their ability to provide the affordable housing. An application that requires a finding of

eligibility by the Board must identify that fact in their application so that the staff may present the matter to the Board for an eligibility determination. A finding of eligibility under this section does not guarantee an award. In general, these applications will not be funded with HOME or NHTF funds.

(A) Requests for eligibility determinations under this paragraph must be received with the Application, so that staff may present the matter to the Board for an eligibility determination, and will not be considered more than 30 calendar days prior to the first Application acceptance date published in the NOFA.

(B) Criteria for the Board to consider would include (i) - (iii) of this subparagraph:

(i) evidence of circumstances beyond the Applicant's control which could not have been prevented by timely start of construction; or

(ii) Force Majeure events; and

(iii) evidence that no further exceptional conditions exist that will delay or cause further cost increases

13.6 Scoring Criteria.

The criteria identified in subsections (a) - (e) of this section will be used in the evaluation and ranking of applications to the extent that other applications were received on the same date *and* within the same set-aside and prioritization. There is no rounding of numbers in this section, unless rounding is explicitly indicated for that particular calculation or criteria. The scoring items used to calculate the score for a 9% HTC layered application will be utilized for scoring for an MFDL Application, and evaluated in the same manner except as specified below. All scoring items derived from the QAP will have the same value for MFDL scoring:

(a) Applicants eligible for points under 10 TAC §11.9(c)(4) related to the Opportunity Index (7 points)

(b) Tenant Services. Applicants eligible for points under 10 TAC §11.9(c)(3)(A) related to Tenant Services (9 points) Applicants eligible for points under 10 TAC §11.9(c)(3)(B) related to Tenant Services (1 point)

(c) Underserved Area. Applicants eligible for points under 10 TAC §11.9(c)(6) related to Underserved Area (up to 5 points)

(d) Subsidy per Unit. An application that caps the per unit subsidy limit (inclusive of match) for all Direct Loan units regardless of unit size at:

(1) \$100,000 per MFDL unit (4 points).

- (2) \$80,000 per MFDL unit (8 points).
- (3) \$60,000 per MFDL unit (10 points).

(e) Rent Levels of Tenants. An Application may qualify to receive up to thirteen (13) points for placing the following rent and income restrictions on the proposed Development for the entire Affordability Period. These Units may not be restricted to 30 percent or less of AMGI by another fund source.

- (1) At least 20 percent of all low-income Units at 30 percent or less of AMGI (13 points);
- (2) At least 10 percent of all low-income Units at 30 percent or less of AMGI or, for a Development located in a Rural Area, 7.5 percent of all low-income Units at 30 percent or less of AMGI (12 points); or
- (3) At least 5 percent of all low-income Units at 30 percent or less of AMGI (7 points).

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

13.7 Maximum Funding Requests

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

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

13.8 Loan Structure and Underwriting Requirements

(a) Except for awards made under the SR/SH set-aside, all Multifamily Direct Loans awarded will be underwritten as fully repayable (must pay) at not less than the Discount window primary credit rate published by the Federal Reserve (<https://www.federalreserve.gov/releases/h15/#fn2>) on the date of publication of the NOFA,

plus 200 basis points and a 30 year amortization with a term that matches the term of any superior loans (within 6 months) at the time of application. If the Department determines that the Development does not support this structure, the Department may recommend an alternative that makes the development feasible under all applicable sections of 10 TAC §10.300 related to Underwriting Policy, and §13.8(c). The interest rate, amortization period, and term for the loan will be fixed by the Board at Award.

(b) Any material changes to the total development cost and/or other sources of funds from the publication of the initial Underwriting Report to the time of loan closing must be reevaluated by Real Estate Analysis staff and may cause changes to principal amount and/or repayment structure for the Multifamily Direct Loan such that the Department is able to mitigate any increased risk. Where such risk is not adequately mitigated, the award may be terminated or reconsidered as amended by the Board.

(c) Direct Loans through the Department must adhere to the following criteria as identified in paragraphs (1) - (6) of this subsection:

(1) The term for permanent loans shall be no less than fifteen (15) years and no greater than forty (40) years and the amortization schedule shall be thirty (30) years. The Department's loan must mature at the same time or within six (6) months of the shortest term of any senior debt so long as neither exceeds forty (40) years and six (6) months.

(2) Amortized loans shall be structured with a regular monthly payment beginning on the first day of the 25th full month following the actual date of loan closing and continuing for the loan term. If the first lien mortgage is a federally insured HUD or FHA mortgage or if a surplus cash flow structure is required for a loan from the SH/SR set-aside, the Department may approve a loan structure with annual payments payable from surplus cash flow provided that the debt coverage ratio, inclusive of the loan, continues to meet the requirements in this subchapter.

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

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

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

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

(5) If the Direct Loan is the only source of Department funding for the Development, the Development Owner must provide equity in an amount not less than 20 percent of Total Housing Development Costs and must provide an "as completed" appraisal pursuant to 10 TAC §10.304 which results in total repayable loan to value of not greater than 80%.

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

13.9 Construction Standards

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

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

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

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

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

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

13.10 Development and Unit Requirements

(a) The bedroom/bathroom/amenities and square footages for Direct Loan Units must be comparable to the bedroom/bathroom/amenities and square footages for the total number of Units in the Development based on the amount of Direct Loan funds requested, inclusive of Match, as a percentage of total Direct Loan eligible costs. As a result of this requirement, the Department will always use the Proration Method as the Cost Allocation Method in accordance with CPD Notice 16-15 except as described in (b) of this section. Additionally, the amount of Direct Loan funds requested inclusive of Match cannot exceed the per-unit subsidy limit. For example, in a 20 Unit Development composed of 6 1-bedroom, 10 2-bedroom, and 4 3-bedroom units, where the Direct Loan funds requested is \$1,000,000, the Match being provided is \$100,000, and the total Direct Loan-eligible project costs are \$4,400,000, 25 percent of each unit type must be a Direct Loan Unit (\$1,100,000 Direct divided by \$4,400,000). In the example below, the square footages are the same for each unit that has the same number of bedrooms and all fractional units are rounded up to require the next whole number of MFDL Units.

Bedrooms	Total Units	Direct Loan Percentage	Minimum # of Direct Loan Units	Number of Direct Loan Units After Rounding Up
1br	6	25%	1.5	2
2br	10	25%	2.5	3
3br	4	25%	1	1
TOTAL	20			7

In this example, even though the amount of Direct Loan funds (inclusive of Match) as a percentage of total Direct Loan-eligible costs (25 percent) would result in a minimum 5 units if the percentage was applied on a total unit basis, the 25 percent must be applied to each unit type with partial Units rounded up to the next whole number, resulting in 2 additional units for a total of 7 Direct Loan Units. Please see CPD Notice 16-15 for further guidance.

(b) All Direct Loan Units must float throughout the Development unless the Development also contains public housing units that will receive Operating Fund or Capital Fund assistance under Section 9 of the 1937 Act as defined in 24 CFR §5.100. Floating Direct Loan units may only float among the Units as described in the Direct Loan Contract and Direct Loan Land Use Restriction Agreement (“LURA”), or as specifically approved in writing by the Department.

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

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

13.11 Post-Award Requirements

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

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

(c) Direct Loan awardees must obtain environmental clearance (if applicable) and meet all requirements for commitment of funds within 180 days after award. Direct Loan awardees that commit any choice limiting activities prior to obtaining environmental clearance may lead to termination of the Direct Loan award.

(d) Direct Loan awardees must execute a Contract within nine (9) months of the Board approval date.

(e) Loan closing must occur and construction must begin no later than six (6) months from the effective date of a Contract.

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

(g) Construction must be completed, as reflected by the development's certificate(s) of occupancy and Certificate of Substantial Completion (AIA Form G704), and a final development inspection

request must be submitted to the Department within 18 months of the actual loan closing date, with the repayment period beginning on the first day of the 25th month following the actual date of loan closing. The final development inspection letter will verify committed amenities have been provided and confirm compliance with all applicable accessibility requirements

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

(i) Extensions to any of the above benchmarks may only be made for good cause and approved by the Department if construction is timely started;

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

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

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

(m) Closing Deadline:

Awards will be made subject to hard closing deadlines established at the time of award by the Board subject to the conditions in §13.8(a), which may only be extended by additional Board action on the basis of delays caused by circumstances outside the control of the applicant. An extension will not be available if an Applicant has:

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

(A) finalizing all equity and debt financing or

(B) the environmental review process; or

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

(n) Loan Closing: In preparation for closing any Direct Loan, the Development Owner must submit the items described in paragraphs (1) - (7) of this subsection:

(1) Documentation of the prior closing or concurrent closing with all sources of funds necessary for the long-term financial feasibility of the Development.

(2) Due diligence determined by the Department to be prudent and necessary to meet the Department's rules and to secure the interests of the Department.

(3) Where the Department will have a first lien position and the Applicant provides personal guarantees from all principals and documentation that closing on other sources is reasonably expected to occur within three (3) months, the Executive Director or authorized designee may approve a closing to move forward without the closing on other sources. The Executive Director as the authorized designee of the Department must require a personal guarantee, in form and substance acceptable to the Department, from a Principal of the Development Owner for the interim period;

(4) When Department funds have a first lien position, assurance of completion of the Development in the form of payment and performance bonds in the full amount of the construction contract or equivalent guarantee in the sole determination of the Department is required. Such assurance of completion will run to the Department as obligee. Development Owners utilizing the USDA §515 program are exempt from this requirement but must meet the alternative requirements set forth by USDA;

(5) Documentation required for closing includes, but is not limited to:

(A) Draft Owner/General Contractor agreement and draft Owner/Architect agreement prior to closing with final executed copies required by the day of closing;

(B) survey of the Property that includes a certification to the Department, Development Owner, Title Company, and other lenders;

(C) plans and specifications for review by the Department's inspection staff. Inspection staff will issue a plan review letter that will assist in preparation for the development's final inspection;

(D) if layered with Housing Tax Credits, a fully executed limited partnership agreement between the General Partner and the tax credit investor entity (may be provided concurrent with closing);

(E) final Development information, including but not limited to a final development cost schedule, sources and uses, operating *proforma*, annual operating expenses, cost categories for the Direct Loan funds, updated written financial commitments

or term sheets and any additional financing exhibits that have changed since the time of application.

(F) If the changes to the budget or sources of funds reflect material changes to the transaction approved by the Board, documentation to ensure that the Development continues to meet the requirements of this chapter must be provided and material changes to the application must be approved by the Board. Material changes include but are not limited to any increase in debt payment for superior lien loans and a greater than a 10 percent change in any of the following:

(i) Total Housing Development Costs

(ii) deferred developer fee amount

(iii) superior loan amount(s);

(6) if required by the fund source, prior to Contract Execution, the Development Owner must provide verification of:

(A) environmental clearance;

(B) Site and Neighborhood clearance;

(C) documentation necessary to show compliance with the Uniform Relocation Assistance and Property Act and any other relocation requirements that may apply; and

(D) any other documentation that is necessary or prudent to meet program requirements or state or federal law in the sole determination of the Department.

(7) The Direct Loan Contract as executed, which will be drafted by counsel for the Department. No changes proposed by the Developer or Developer's counsel will be accepted unless approved by the Department's Legal Division.

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

(1) Loan closing documents include but are not limited to a promissory note, deed of trust, construction loan agreement (if the proceeds of the loan are to be used for construction), LURA, Architect and/or licensed engineer certification of understanding to complete environmental mitigation if such mitigation is identified in HUD's environmental clearance or the Real Estate Analysis Division (REA) and assignment and security instruments whereby the Developer, the Development Owner, and/or any Affiliates (if applicable) grants the Department their respective right, title, and interest in and to other

collateral, including without limitation the Owner/Architect agreement and the Owner/General Contractor agreement, to secure the payment and performance of the Development Owner's obligations under the loan documents.

(2) Repayment provisions will require repayment on a per unit basis for units that have not been rented to eligible households within eighteen (18) months of the final Direct Loan draw; termination and repayment of the Direct Loan award in full will be required for any development that is not completed within four (4) years of the date of Direct Loan Contract execution.

(3) Loan terms and conditions may vary based on the type of Development, and the set-aside under which the award was made.

(p) Disbursement of Funds . The Borrower must comply with the requirements in paragraphs (1) - (9) of this subsection in order to receive a disbursement of funds to reimburse eligible costs incurred. Submission of documentation related to the Borrower's compliance with these requirements may be required with a request for disbursement:

(1) All requests for disbursement must be submitted through the Department's Housing Contract System, using the MFDL draw workbook or such other format as the Department may require.

(2) Documentation of the total construction costs incurred and costs incurred since the last disbursement of funds must be submitted. Such documentation must be signed by the General Contractor and certified by the Development architect and is generally in the form of an AIA Form G702 or G703; (3) Disbursement requests must include a down-date endorsement to the Direct Loan (mortgagee) title policy or Nothing Further Certificate that includes a title search through the date of the Architect's signature on AIA form G702. For release of retainage the down-date endorsement to the Direct Loan title policy or Nothing Further Certificate must be dated at least thirty (30) calendar days after the date of the construction completion as certified on the Certificate of Substantial Completion (AIA Form G704) with \$0 as the work remaining to be completed. Disbursement requests for acquisition and closing costs, or requests for soft costs only, are exempt from this requirement;

(3) At least 50 percent of the funds will be withheld from the initial disbursement of loan funds to allow for periodic disbursements

(4) The initial draw request for the development must be entered into the Department's Housing Contract System no later than ten business days prior to the one year anniversary of the effective date of the Direct Loan Contract;

(5) Up to 75 percent of Direct Loan funds may be drawn before providing evidence of Match. Thereafter, the Borrower must provide evidence of Match being credited to the Development prior to release of the final 25 percent of funds.

(6) Developer fee disbursement shall be conditioned upon:

(A) for Developments in which the loan is secured by a first lien deed of trust against the Property, 75 percent shall be disbursed in accordance with percent of construction completed. 75 percent of the total allowable fee will be multiplied by the percent completion, as documented by the construction contract and as may be verified by an inspection by the Department. The remaining 25 percent shall be disbursed at the time of release of retainage; or

(B) for Developments in which the loan is not secured by a first lien deed of trust or the Development is also utilizing Housing Tax Credits, developer fees will not be reimbursed by the Department except as follows. If all other lenders and syndicator in a Housing Tax Credit development (if applicable) provide written confirmation that they do not have an existing or planned agreement to govern the disbursement of developer fees and expect that Department funds shall be used to fund developer fees developer fees shall be reimbursed in the same manner as described in subparagraph (A) of this paragraph; and

(C) the Department may reasonably withhold any disbursement if it is determined that the Development is not progressing as necessary to meet the benchmarks for the timely completion of construction of the Development as set forth in the loan documents, or that cost overruns have put the Development Owner's ability to repay its Direct Loan or complete the construction at risk in accordance with the terms of the loan documents and within budget. If disbursement has been withheld under this subsection, the Development Owner must provide evidence to the satisfaction of the Department that the Development will be timely completed and occupied in order to continue receiving funds. If Disbursement is withheld for any reason, disbursement of any remaining developer fee will be made only after construction of the Development has been completed, and all requirements for expenditure and occupancy have been met;

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

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

(9) Following fifty percent construction completion, any funds will be released in accordance with the percentage of construction completion, not to exceed ninety percent of award, at which point funds will be held as retainage until the final draw request. Retainage will be held until all of the items described in subparagraphs (A) - (G) of this paragraph are received:

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

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

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

(D) For developments subject to the Davis-Bacon Act, evidence from the Senior Labor Standards Specialist that the final wage compliance report was received and approved;

(E) Receipt of Certificates of Occupancy;

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

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

13.12 Amendments to Direct Loan Terms.

The Executive Director or authorized designee may approve amendments to loan terms prior to closing as described in paragraphs (1) - (7) of this section. Board approval is necessary for any other changes prior to closing.

- (1) extensions of up to 6 months to the loan closing date specified in §13.8(a)(4) of this Chapter. An Applicant must document good cause, which may include constraints in arranging a multiple-source closing;
- (2) changes to the loan maturity date to accommodate the requirements of other lenders or to maintain parity of term;
- (3) extensions of up to 12 months for the construction completion or loan conversion date based on documentation that the extension is necessary to complete construction and that there is good cause for the extension. Such a request will generally not be approved prior to initial loan closing;
- (4) changes to the loan amortization or interest rate that cause the annual repayment amount to decrease less than 20 percent or any changes to the amortization or interest rate that increases the annual repayment amount;
- (5) decreases in the Direct Loan amount, provided the decrease does not jeopardize the financial viability of the Development. Increases will generally not be approved unless the Applicant competes for the additional funding under an open NOFA; and
- (6) changes to other loan terms or requirements as necessary to facilitate the loan closing without exposing the Department to undue financial risk.
- (7) An Applicant may request a change to the terms of a loan. Except for an award of funds to a Development that has had a *Force Majeure* event (and such an event necessitates an immediate change to the loan), such changes for federal awards will only be processed after the Development is reported to the federal oversight entity as completed. Requests for changes to the loan post closing will be processed as loan modifications and may require additional approval by the Department's Asset Management Division. Post closing loan modifications requiring changes in the Department's loan terms, lien priority, or amounts (other than in the event of a payoff) will generally only be considered as part of a Department or Asset Management Division work out arrangement or other condition intended to mitigate financial risk to the Department, and will not require additional Executive Director or Board approval except where the amendment request was not allowed under the NOFA, or where the post closing change could have been anticipated prior to closing as determined by staff.

- c. Describe the selection criteria that the State will use to select applications submitted by eligible recipients. If not distributing funds by selecting applications submitted by eligible recipients, enter "N/A".

- d. Describe the State's required priority for funding based on geographic diversity (as defined by the State in the consolidated plan). If not distributing funds by selecting applications submitted by eligible recipients, enter "N/A".

Housing Trust Fund
State of Texas
2017 Allocation Plan
Regional Allocation Formula

Region	ELI Households	ELI Renter Households	Sum of Need Variables	Allocation percentage	Regional Allocation
1	38,848	25,764	64,612	3%	\$ 266,540
2	23,829	13,655	37,484	2%	\$ 154,630
3	305,610	208,540	514,150	27%	\$ 2,120,990
4	48,485	26,410	74,895	4%	\$ 308,960
5	37,360	21,465	58,825	3%	\$ 242,667
6	287,090	189,995	477,085	25%	\$ 1,968,088
7	88,980	63,820	152,800	8%	\$ 630,336
8	53,125	36,695	89,820	5%	\$ 370,529
9	101,525	65,730	167,255	9%	\$ 689,966
10	33,495	20,730	54,225	3%	\$ 223,691
11	94,135	52,155	146,290	8%	\$ 603,481
12	21,502	11,854	33,356	2%	\$ 137,601
13	38,064	23,844	61,908	3%	\$ 255,385
Total	1,172,048	760,657	1,932,705	100%	\$ 7,972,864

- e. Describe the State's required priority for funding based on the applicant's ability to obligate HTF funds and undertake eligible activities in a timely manner. If not distributing funds by selecting applications submitted by eligible recipients, enter "N/A".

- f. Describe the State's required priority for funding based on the extent to which the rental project has Federal, State, or local project-based rental assistance so that rents are affordable to extremely low-income families. If not distributing funds by selecting applications submitted by eligible recipients, enter "N/A".

Subchapter D – Underwriting and Loan Policy

§10.301. General Provisions.

(a) **Purpose.** This Subchapter applies to the underwriting, Market Analysis, appraisal, Environmental Site Assessment, Property Condition Assessment, and Direct Loan standards employed by the Department. This Subchapter provides rules for the underwriting review of an affordable housing Development's financial feasibility and economic viability that ensures the most efficient allocation of resources while promoting and preserving the public interest in ensuring the long-term health of the Department's portfolio. In addition, this Subchapter guides staff in making recommendations to the Executive Award and Review Advisory Committee (the "Committee"), Executive Director, and the Board to help ensure procedural consistency in the determination of Development feasibility (Texas Government Code, §§2306.081(c), 2306.185, and 2306.6710(d)). Due to the unique characteristics of each Development, the interpretation of the rules and guidelines described in this Subchapter is subject to the discretion of the Department and final determination by the Board.

(b) **Appeals.** Certain programs contain express appeal options. Where not indicated, §10.902 of this chapter (relating to Appeals Process (§2306.0321; §2306.6715)) includes general appeal procedures. In addition, the Department encourages the use of Alternative Dispute Resolution ("ADR") methods, as outlined in §10.904 of this chapter (relating to Alternative Dispute Resolution (ADR) Policy).

§10.302. Underwriting Rules and Guidelines.

(a) **General Provisions.** Pursuant to Texas Government Code, §2306.148 and §2306.185(b), the Board is authorized to adopt underwriting standards as set forth in this section. Furthermore for Housing Credit Allocation, §42(m)(2) of the Internal Revenue Code of 1986 (the "Code"), requires the tax credits allocated to a Development not to exceed the amount necessary to assure feasibility. The rules adopted pursuant to the Texas Government Code and the Code are developed to result in a Credit Underwriting Analysis Report ("Report") used by the Board in decision making with the goal of assisting as many Texans as possible by providing no more financing than necessary based on an independent analysis of Development feasibility. The Report generated in no way guarantees or purports to warrant the actual performance, feasibility, or viability of the Development.

(b) **Report Contents.** The Report provides a synopsis and reconciliation of the Application information submitted by the Applicant. For the purpose of this Subchapter the term Application includes additional documentation submitted after the initial award of funds that is relevant to any subsequent reevaluation. The Report contents will be based upon information that is provided in accordance with and within the timeframes set forth in the current Qualified Allocation Plan ("QAP") (10 TAC Chapter 11) or a Notice of Funds Availability ("NOFA"), as applicable, and the Uniform Multifamily Rules (10 TAC Chapter 10, Subchapters A – E and G).

(c) **Recommendations in the Report.** The conclusion of the Report includes a recommended award of funds or Housing Credit Allocation Amount and states any feasibility or other conditions to be placed on the award. The award amount is based on the lesser of the following:

- (1) **Program Limit Method.** For Housing Credit Allocations, this method is based upon calculation of Eligible Basis after applying all cost verification measures and program limits as described in this section. The Applicable Percentage used is defined in §10.3 of this chapter (relating to Definitions). For Department programs other than Housing Tax Credits, this method is based upon calculation of the funding limit in current program rules or NOFA at the time of underwriting.
- (2) **Gap Method.** This method evaluates the amount of funds needed to fill the gap created by Total Housing Development Cost less total non-Department-sourced funds or Housing Tax Credits. In making this determination, the Underwriter resizes any anticipated deferred developer fee downward (but not less than zero) before reducing the amount of Department funds or Housing Tax Credits. In the case of Housing Tax Credits, the syndication proceeds needed to fill the gap in permanent funds are divided by the syndication rate to determine the amount of Housing Tax Credits. In making this determination and based upon specific conditions set forth in the Report, the Underwriter may assume adjustments to the financing structure (including treatment of cash flow loans as if fully amortizing over its term) or make adjustments to any Department financing, such that the cumulative Debt Coverage Ratio ("DCR") conforms to the standards

described in this section. For Housing Tax Credit Developments at cost certification, timing adjusters may be considered as a reduction to equity proceeds for this purpose. Timing adjusters must be consistent with and documented in the original partnership agreement (at admission of the equity partner) but relating to causes outside of the Developer's or Owner's control. The equity partner must provide a calculation of the amount of the adjuster to be used by the Underwriter.

- (3) **The Amount Requested.** The amount of funds that is requested by the Applicant. For Housing Tax Credit Developments (exclusive of Tax-Exempt Bond Developments) this amount is limited to the amount requested in the original Application documentation.

(d) **Operating Feasibility.** The operating feasibility of a Development funded by the Department is tested by analyzing its Net Operating Income ("NOI") to determine the Development's ability to pay debt service and meet other financial obligations throughout the Affordability Period. NOI is determined by subtracting operating expenses, including replacement reserves and taxes, from rental and other income sources.

- (1) **Income.** In determining the first year stabilized pro forma, the Underwriter evaluates the reasonableness of the Applicant's income pro forma by determining the appropriate rental rate per unit based on subsidy contracts, program limitations including but not limited to utility allowances, actual rents supported by rent rolls and Market Rents and other market conditions. Miscellaneous income, vacancy and collection loss limits as set forth in subparagraphs (B) and (C) of this paragraph, respectively, are used unless well-documented support is provided and independently verified by the Underwriter.

(A) **Rental Income.** The Underwriter will review the Applicant's proposed rent schedule and determine if it is consistent with the representations made throughout the Application. The Underwriter will independently calculate a Pro Forma Rent for comparison to the Applicant's estimate in the Application.

- (i) **Market Rents.** The Underwriter will use the Market Analyst's conclusion of Market Rent if reasonably justified and supported by the attribute adjustment matrix of Comparable Units as described in §10.303 of this chapter (relating to Market Analysis Rules and Guidelines). Independently determined Market Rents by the Underwriter may be used based on rent information gained from direct contact with comparable properties, whether or not used by the Market Analyst and other market data sources. For a Development that contains less than 15% unrestricted units, the Underwriter will limit the Pro Forma Rents to the lesser of Market Rent or the Gross Program Rent at 60% AMI. As an alternative, if the Applicant submits market rents that are up to 30% higher than the 60% AMI gross rent and the Applicant submits an investor commissioned market study with the application, the Underwriter has the discretion to use the market rents supported by the investor commissioned market study in consideration of the independently determined rents. The Applicant must also provide a statement by the investor indicating that they have reviewed the market study and agree with its conclusions.
- (ii) **Gross Program Rent.** The Underwriter will use the Gross Program Rents for the year that is most current at the time the underwriting begins. When underwriting for a simultaneously funded competitive round, all Applications are underwritten with the Gross Program Rents for the same year. If Gross Program Rents are adjusted by the Department after the close of the Application Acceptance Period, but prior to publication of the Report, the Underwriter may adjust the Effective Gross Income ("EGI") to account for any increase or decrease in Gross Program Rents for the purposes of determining the reasonableness of the Applicant's EGI.
- (iii) **Contract Rents.** The Underwriter will review rental assistance contracts to determine the Contract Rents currently applicable to the Development. Documentation supporting the likelihood of continued rental assistance is also reviewed. The Underwriter will take into consideration the Applicant's intent to request a Contract Rent increase. At the discretion of the Underwriter, the Applicant's proposed rents may be used as the Pro Forma Rent, with the recommendations of the Report conditioned upon receipt of final approval of such an increase.
- (iv) **Utility Allowances.** The Utility Allowances used in underwriting must be in compliance with all applicable federal guidance, and §10.614 of Subchapter F of this Chapter relating to Utility Allowances. Utility allowances must be calculated for individually metered tenant paid utilities.
- (v) **Net Program Rents.** Gross Program Rent less Utility Allowance.
- (vi) **Actual Rents for existing Developments** will be reviewed as supported by a current rent roll. For Unstabilized Developments, actual rents will be based on the most recent units leased with occupancy and leasing velocity considered. Actual rents may be adjusted by the Underwriter to reflect lease-up concessions and other market considerations.

- (vii) **Collected Rent.** Represents the monthly rent amount collected for each Unit Type. For rent-assisted units, the Contract Rent is used. In absence of a Contract Rent, the lesser of the Net Program Rent, Market Rent or actual rent is used.
- (B) **Miscellaneous Income.** All ancillary fees and miscellaneous secondary income, including, but not limited to late fees, storage fees, laundry income, interest on deposits, carport and garage rent, washer and dryer rent, telecommunications fees, and other miscellaneous income, are anticipated to be included in a \$5 to \$20 per Unit per month range. Exceptions may be made at the discretion of the Underwriter and must be supported by either the normalized operating history of the Development or other existing comparable properties within the same market area.
- (i) The Applicant must show that a tenant will not be required to pay the additional fee or charge as a condition of renting a Unit and must show that the tenant has a reasonable alternative.
 - (ii) The Applicant's operating expense schedule should reflect an itemized offsetting line-item associated with miscellaneous income derived from pass-through utility payments, pass-through water, sewer and trash payments, and cable fees.
 - (iii) Collection rates of exceptional fee items will generally be heavily discounted.
 - (iv) If an additional fee is charged for the optional use of an amenity, any cost associated with the construction, acquisition, or development of the hard assets needed to produce the additional fee for such amenity must be excluded from Eligible Basis.
- (C) **Vacancy and Collection Loss.** The Underwriter generally uses a normalized vacancy rate of 7.5 percent (5 percent vacancy plus 2.5 percent for collection loss). The Underwriter may use other assumptions based on conditions in the immediate market area. 100 percent project-based rental subsidy developments and other well documented cases may be underwritten at a combined 5 percent at the discretion of the Underwriter if the immediate market area's historical performance reflected in the Market Analysis is consistently higher than a 95 percent occupancy rate.
- (D) **Effective Gross Income ("EGI").** EGI is the total of Collected Rent for all units plus Miscellaneous Income less Vacancy and Collection Loss. If the Applicant's pro forma EGI is within 5 percent of the EGI independently calculated by the Underwriter, the Applicant's EGI is characterized as reasonable in the Report; however, for purposes of calculating the underwritten DCR the Underwriter's pro forma will be used unless the Applicant's pro forma meets the requirements of paragraph (3) of this subsection.
- (2) **Expenses.** In determining the first year stabilized operating expense pro forma, the Underwriter evaluates the reasonableness of the Applicant's expense estimate based upon the characteristics of each Development, including the location, utility structure, type, the size and number of Units, and the Applicant's management plan. Historical, stabilized and certified financial statements of an existing Development or Third Party quotes specific to a Development will reflect the strongest data points to predict future performance. The Underwriter may review actual operations on the Applicant's other properties monitored by the Department, if any, or review the proposed management company's comparable properties. The Department's Database of properties located in the same market area or region as the proposed Development also provides data points; expense data from the Department's Database is available on the Department's website. Data from the Institute of Real Estate Management's ("IREM") most recent Conventional Apartments-Income/Expense Analysis book for the proposed Development's property type and specific location or region may be referenced. In some cases local or project-specific data such as PHA Utility Allowances and property tax rates are also given significant weight in determining the appropriate line item expense estimate. Estimates of utility savings from green building components, including on-site renewable energy, must be documented by an unrelated contractor or component vendor.
- (A) **General and Administrative Expense ("G&A")**--Accounting fees, legal fees, advertising and marketing expenses, office operation, supplies, and equipment expenses. G&A does not include partnership related expenses such as asset management, accounting or audit fees. Costs of tenant services are not included in G&A.
 - (B) **Management Fee.** Fee paid to the property management company to oversee the operation of the Property and is most often based upon a percentage of EGI as documented in an existing property management agreement or proposal. Typically, 5 percent of EGI is used, though higher percentages for rural transactions may be used. Percentages as low as 3 percent may be used if well documented.
 - (C) **Payroll Expense.** Compensation, insurance benefits, and payroll taxes for on-site office, leasing and maintenance staff. Payroll does not include Third-Party security or tenant services contracts. Staffing specific to tenant services, security or other staffing not related to customary property operations should be itemized and included in other expenses or tenant services expense.

- (D) **Repairs and Maintenance Expense.** Materials and supplies for the repairs and maintenance of the Development including Third-Party maintenance contracts. This line-item does not include costs that are customarily capitalized that would result from major replacements or renovations.
 - (E) **Utilities Expense.** Gas and electric energy expenses paid by the Development. Estimates of utility savings from green building components, including on-site renewable energy, must be documented by an unrelated contractor or component vendor.
 - (F) **Water, Sewer, and Trash Expense (“WST”).** Includes all water, sewer and trash expenses paid by the Development.
 - (G) **Insurance Expense.** Cost of Insurance coverage for the buildings, contents, and general liability, but not health or workman's compensation insurance.
 - (H) **Property Tax.** Includes real property and personal property taxes but not payroll taxes.
 - (i) An assessed value will be calculated based on the capitalization rate published by the county taxing authority. If the county taxing authority does not publish a capitalization rate, a capitalization rate of 10 percent or a comparable assessed value may be used.
 - (ii) If the Applicant proposes a property tax exemption or PILOT agreement the Applicant must provide documentation in accordance with §10.402(d). At the underwriter’s discretion, such documentation may be required prior to Commitment if deemed necessary.
 - (I) **Replacement Reserves.** Periodic deposits to a reserve account to pay for the future replacement or major repair of building systems and components (generally items considered capitalized costs).The Underwriter will use a minimum reserve of \$250 per Unit for New Construction and Reconstruction Developments and \$300 per Unit for all other Developments. The Underwriter may require an amount above \$300 for the Development based on information provided in the Property Condition Assessment (“PCA”). The Applicant's assumption for reserves may be adjusted by the Underwriter if the amount provided by the Applicant is insufficient to fund capital needs as documented by the PCA during the first fifteen (15) years of the long term pro forma. Higher reserves may be used if documented by a primary lender or syndicator.
 - (J) **Other Operating Expenses.** The Underwriter will include other reasonable, customary and documented property-level operating expenses such as audit fees, security expense, telecommunication expenses (tenant reimbursements must be reflected in EGI) and TDHCA’s compliance fees. This category does not include depreciation, interest expense, lender or syndicator's asset management fees, or other ongoing partnership fees.
 - (K) **Tenant Services.** Tenant services are not included as an operating expense or included in the DCR calculation unless:
 - (i) There is a documented financial obligation on behalf of the Owner with a unit of state or local government to provide tenant supportive services at a specified dollar amount. The financial obligation must be identified by the permanent lender in their term sheet and the dollar amount of the financial obligation must be included in the DCR calculation on the permanent lender’s 15-year pro forma at Application. At cost certification and as a minimum, the estimated expenses underwritten at Application will be included in the DCR calculation regardless if actually incurred; or,
 - (ii) The Applicant demonstrates a history of providing comparable supportive services and expenses at existing affiliated properties within the local area. Except for Supportive Housing Developments, the estimated expense of supportive services must be identified by the permanent lender in their term sheet and included in the DCR calculation on the 15-year pro forma. At cost certification and as a minimum, the estimated expenses underwritten at Application will be included in the DCR calculation regardless if actually incurred;
 - (iii) On-site staffing or pro ration of staffing for coordination of services only, not provision of services, can be included as a supportive services expense without permanent lender documentation.
 - (L) **Total Operating Expenses.** The total of expense items described above. If the Applicant’s total expense estimate is within 5 percent of the final total expense figure calculated by the Underwriter, the Applicant’s figure is characterized as reasonable in the Report; however, for purposes of calculating DCR, the Underwriter's independent calculation will be used unless the Applicant's first year stabilized pro forma meets the requirements of paragraph (3) of this subsection.
- (3) **Net Operating Income (“NOI”).** The difference between the EGI and total operating expenses. If the Applicant’s first year stabilized NOI figure is within 5 percent of the NOI calculated by the Underwriter, the Applicant's NOI is characterized as reasonable in the Report; however, for purposes of calculating the first year stabilized pro forma DCR, the Underwriter’s calculation of NOI will be used unless the Applicant's first year

stabilized EGI, total operating expenses, and NOI are each within 5 percent of the Underwriter's estimates. For Housing Tax Credit Developments at cost certification, actual NOI will be used as adjusted for stabilization of rents and extraordinary lease-up expenses. Permanent lender and equity partner stabilization requirements documented in the loan and partnership agreements will be considered in determining the appropriate adjustments and the NOI used by the Underwriter.

- (4) **Debt Coverage Ratio.** DCR is calculated by dividing NOI by the sum of scheduled loan principal and interest payments for all permanent debt sources of funds. If executed loan documents do not exist, loan terms including principal and/or interest payments are calculated based on the terms indicated in the most current term sheet(s). Otherwise, actual terms indicated in the executed loan documents will be used. Term sheet(s) must indicate the DCR required by the lender for initial underwriting as well as for stabilization purposes. Unusual or non-traditional financing structures may also be considered.
- (A) **Interest Rate.** The rate documented in the term sheet(s) or loan document(s) will be used for debt service calculations. Term sheets indicating a variable interest rate must provide a breakdown of the rate index and any component rates comprising an all-in interest rate. The term sheet(s) must state the lender's underwriting interest rate assumption, or the Applicant must submit a separate statement from the lender with an estimate of the interest rate as of the date of such statement. At initial underwriting, the Underwriter may adjust the underwritten interest rate assumption based on market data collected on similarly structured transactions or rate index history. Private Mortgage Insurance premiums and similar fees are not included in the interest rate but calculated on outstanding principal balance and added to the total debt service payment.
- (B) **Amortization Period.** For purposes of calculating DCR, the permanent lender's amortization period will be used if not less than thirty (30) years and not more than forty (40) years. Up to fifty (50) years may be used for federally sourced or insured loans. For permanent lender debt with amortization periods less than thirty (30) years, thirty (30) years will be used. For permanent lender debt with amortization periods greater than forty (40) years, forty (40) years will be used. For non-Housing Tax Credit transactions a lesser amortization period may be used if the Department's funds are fully amortized over the same period as the primary senior debt.
- (C) **Repayment Period.** For purposes of projecting the DCR over a thirty (30) year period for developments with permanent financing structures with balloon payments in less than thirty (30) years, the Underwriter will carry forward debt service based on a full amortization at the interest rate stated in the term sheet(s).
- (D) **Acceptable Debt Coverage Ratio Range.** Except as set forth in clauses (i) or (ii) of this subparagraph, the acceptable first year stabilized pro forma DCR for all priority or foreclosable lien financing plus the Department's proposed financing must be between a minimum of 1.15 and a maximum of 1.35 (maximum of 1.50 for Housing Tax Credit Developments at cost certification).
- (i) If the DCR is less than the minimum, the recommendations of the Report may be based on an assumed reduction to debt service and the Underwriter will make adjustments to the assumed financing structure in the order presented in subclauses (I) - (III) of this clause subject to a Direct Loan NOFA and program rules:
- (I) a reduction to the principal amount of a Direct Loan, or in the case where no repayable Developer Fee remains available for deferral and the Direct Loan is necessary to balance the sources and uses, a reduction to the interest rate or an increase in the amortization period for Direct Loans;
 - (II) a reclassification of Direct Loans to reflect grants,
 - (III) a reduction in the permanent loan amount for non-Department funded loans based upon the rates and terms in the permanent loan term sheet(s) as long as they are within the ranges in subparagraphs (A) and (B) of this paragraph.
- (ii) If the DCR is greater than the maximum, the recommendations of the Report may be based on an assumed increase to debt service and the Underwriter will make adjustments to the assumed financing structure in the order presented in subclauses (I) - (III) of this clause subject to a Direct Loan NOFA and program rules:
- (I) reclassification of Department funded grants to reflect loans;
 - (II) an increase in the interest rate or a decrease in the amortization period for Direct Loans;
 - (III) an increase in the permanent loan amount for non-Department funded loans based upon the rates and terms in the permanent loan term sheet as long as they are within the ranges in subparagraphs (A) and (B) of this paragraph.

- (iii) For Housing Tax Credit Developments, a reduction in the recommended Housing Credit Allocation Amount may be made based on the Gap Method described in subsection (c)(2) of this section as a result of an increased debt assumption, if any.
 - (iv) The Underwriter may limit total debt service that is senior to a Direct Loan to produce an acceptable DCR on the Direct Loan.
- (5) **Long Term Pro forma.** The Underwriter will create a 30-year operating pro forma using the following:
- (A) The Underwriter's or Applicant's first year stabilized pro forma as determined by paragraph (3) of this subsection.
 - (B) A 2 percent annual growth factor is utilized for income and a 3 percent annual growth factor is utilized for operating expenses except for management fees that are calculated based on a percentage of each year's EGI.
 - (C) Adjustments may be made to the long term pro forma if satisfactory support documentation is provided by the Applicant or as independently determined by the Underwriter.

(e) **Total Housing Development Costs.** The Department's estimate of the Total Housing Development Cost will be based on the Applicant's development cost schedule to the extent that costs can be verified to a reasonable degree of certainty with documentation from the Applicant and tools available to the Underwriter. For New Construction Developments, the Underwriter's total cost estimate will be used unless the Applicant's Total Housing Development Cost is within 5 percent of the Underwriter's estimate. The Department's estimate of the Total Housing Development Cost for Rehabilitation Developments will be based in accordance with the estimated cost provided in the PCA for the scope of work as defined by the Applicant and §10.306(a)(5) of this chapter (relating to PCA Guidelines). If the Applicant's cost estimate is utilized and the Applicant's line item costs are inconsistent with documentation provided in the Application or program rules, the Underwriter may make adjustments to the Applicant's Total Housing Development Cost.

- (1) **Acquisition Costs.** The underwritten acquisition cost is verified with Site Control document(s) for the Property.
- (A) **Excess Land Acquisition.** In cases where more land is to be acquired (by the Applicant or a Related Party) than will be utilized as the Development Site and the remainder acreage is not accessible for use by tenants or dedicated as permanent and maintained green space, the value ascribed to the proposed Development Site will be prorated based on acreage from the total cost reflected in the Site Control document(s). An appraisal containing segregated values for the total acreage, the acreage for the Development Site and the remainder acreage, or tax assessment value may be used by the Underwriter in making a proration determination based on relative value; however, the Underwriter will not utilize a prorated value greater than the total amount in the Site Control document(s).
 - (B) **Identity of Interest Acquisitions.**
 - (i) An acquisition will be considered an identity of interest transaction when the seller is an Affiliate of, a Related Party to, any owner at any level of the Development Team or a Related Party lender; and
 - (I) is the current owner in whole or in part of the Property; or
 - (II) has or had within the prior 36 months, legal or beneficial ownership of the property or any portion thereof or interest therein prior to the first day of the Application Acceptance Period.
 - (ii) In all identity of interest transactions the Applicant is required to provide:
 - (I) the original acquisition cost evidenced by an executed settlement statement or, if a settlement statement is not available, the original asset value listed in the most current financial statement for the identity of interest owner; and
 - (II) if the original acquisition cost evidenced by subclause (I) of this clause is less than the acquisition cost stated in the application:
 - (-a-) an appraisal that meets the requirements of §10.304 of this chapter (relating to Appraisal Rules and Guidelines); and
 - (-b-) any other verifiable costs of owning, holding, or improving the Property, excluding seller financing, that when added to the value from subclause (I) of this clause justifies the Applicant's proposed acquisition amount.
- (-1-) For land-only transactions, documentation of owning, holding or improving costs since the original acquisition date may include property

taxes, interest expense to unrelated Third Party lender(s), capitalized costs of any physical improvements, the cost of zoning, platting, and any off-site costs to provide utilities or improve access to the Property. All allowable holding and improvement costs must directly benefit the proposed Development by a reduction to hard or soft costs. Additionally, an annual return of 10 percent may be applied to the original capital investment and documented holding and improvement costs; this return will be applied from the date the applicable cost is incurred until the date of the Department's Board meeting at which the Grant, Direct Loan and/or Housing Credit Allocation will be considered.

(-2-) For transactions which include existing buildings that will be rehabilitated or otherwise retained as part of the Development, documentation of owning, holding, or improving costs since the original acquisition date may include capitalized costs of improvements to the Property, and in the case of USDA financed Developments the cost of exit taxes not to exceed an amount necessary to allow the sellers to be made whole in the original and subsequent investment in the Property and avoid foreclosure. Additionally, an annual return of 10 percent may be applied to the original capital investment and documented holding and improvement costs; this return will be applied from the date the applicable cost was incurred until the date of the Department's Board meeting at which the Grant, Direct Loan and/or Housing Credit Allocation will be considered. For any period of time during which the existing buildings are occupied or otherwise producing revenue, holding costs may not include capitalized costs, operating expenses, including, but not limited to, property taxes and interest expense.

(iii) In no instance will the acquisition cost utilized by the Underwriter exceed the lesser of the original acquisition cost evidenced by clause (ii)(I) of this subparagraph plus costs identified in clause (ii)(II)(-b-) of this subparagraph, or if applicable the "as-is" value conclusion evidenced by clause (ii)(II)(-a-) of this subparagraph. Acquisition cost is limited to appraised land value for transactions which include existing buildings that will be demolished. The resulting acquisition cost will be referred to as the "Adjusted Acquisition Cost."

(C) **Eligible Basis on Acquisition of Buildings.** Building acquisition cost will be included in the underwritten Eligible Basis if the Applicant provided an appraisal that meets the Department's Appraisal Rules and Guidelines as described in §10.304 of this chapter. The underwritten eligible building cost will be the lowest of the values determined based on clauses (i) - (iii) of this subparagraph:

- (i) the Applicant's stated eligible building acquisition cost;
- (ii) the total acquisition cost reflected in the Site Control document(s), or the Adjusted Acquisition Cost (as defined in subparagraph (B)(iii) of this paragraph), prorated using the relative land and building values indicated by the applicable appraised value;
- (iii) total acquisition cost reflected in the Site Control document(s), or the Adjusted Acquisition Cost (as defined in subparagraph (B)(iii) of this paragraph), less the appraised "as-vacant" land value; or
- (iv) the Underwriter will use the value that best corresponds to the circumstances presently affecting the Development that will continue to affect the Development after transfer to the new owner in determining the building value. These circumstances include but are not limited to operating subsidies, rental assistance and/or property tax exemptions. Any value of existing favorable financing will be attributed prorata to the land and buildings.

(2) **Off-Site Costs.** The Underwriter will only consider costs of Off-Site Construction that are well documented and certified to by a Third Party engineer on the required Application forms with supporting documentation.

(3) **Site Work Costs.** The Underwriter will only consider costs of Site Work that are well documented and certified to by a Third Party engineer on the required Application forms with supporting documentation.

(4) **Building Costs.**

(A) **New Construction and Reconstruction.** The Underwriter will use the Marshall and Swift Residential Cost Handbook, other comparable published Third-Party cost estimating data sources, historical final cost certifications of previous Housing Tax Credit developments and other acceptable cost data available

to the Underwriter to estimate Building Cost. Generally, the "Average Quality" multiple, townhouse, or single family costs, as appropriate, from the Marshall and Swift Residential Cost Handbook or other comparable published Third-Party data source, will be used based upon details provided in the Application and particularly building plans and elevations. The Underwriter will consider amenities, specifications and development types not included in the Average Quality standard. The Underwriter may consider a sales tax exemption for nonprofit General Contractors.

- (B) **Rehabilitation and Adaptive Reuse.**
- (i) The Applicant must provide a detailed narrative description of the scope of work for the proposed rehabilitation.
 - (ii) The Underwriter will use cost data provided on the PCA Cost Schedule Supplement.
- (5) **Contingency.** Total contingency, including any soft cost contingency, will be limited to a maximum of 7 percent of Building Cost plus Site Work and off-sites for New Construction and Reconstruction Developments, and 10 percent of Building Cost plus Site Work and off-sites for Rehabilitation and Adaptive Reuse Developments. For Housing Tax Credit Developments, the percentage is applied to the sum of the eligible Building Cost, eligible Site Work costs and eligible off-site costs in calculating the eligible contingency cost.
- (6) **General Contractor Fee.** General Contractor fees include general requirements, contractor overhead, and contractor profit. General requirements include, but are not limited to, on-site supervision or construction management, off-site supervision and overhead, jobsite security, equipment rental, storage, temporary utilities, and other indirect costs. General Contractor fees are limited to a total of 14 percent on Developments with Hard Costs of \$3 million or greater, the lesser of \$420,000 or 16 percent on Developments with Hard Costs less than \$3 million and greater than \$2 million, and the lesser of \$320,000 or 18 percent on Developments with Hard Costs at \$2 million or less. For tax credit Developments, the percentages are applied to the sum of the Eligible Hard Costs in calculating the eligible contractor fees. For Developments also receiving financing from USDA, the combination of builder's general requirements, builder's overhead, and builder's profit should not exceed the lower of TDHCA or USDA requirements. Additional fees for ineligible costs will be limited to the same percentage of ineligible Hard Costs but will not be included in Eligible Basis.
- (7) **Developer Fee.**
- (A) For Housing Tax Credit Developments, the Developer Fee included in Eligible Basis cannot exceed 15 percent of the project's eligible costs, less Developer fees, for Developments proposing fifty (50) Units or more and 20 percent of the project's eligible costs, less Developer fees, for Developments proposing forty-nine (49) Units or less. For Public Housing Authority Developments for conversion under the HUD Rental Assistance Demonstration ("RAD") program that will be financed using tax-exempt mortgage revenue bonds, the Developer Fee cannot exceed 20 percent of the project's eligible cost less Developer Fee.
 - (B) Any additional Developer fee claimed for ineligible costs will be limited to the same percentage but applied only to ineligible Hard Costs (15 percent for Developments with fifty (50) or more Units, or 20 percent for Developments with forty-nine (49) or fewer Units). Any Developer fee above this limit will be excluded from Total Housing Development Costs. All fees to Affiliates and/or Related Parties for work or guarantees determined by the Underwriter to be typically completed or provided by the Developer or Principal(s) of the Developer will be considered part of Developer fee.
 - (C) In the case of a transaction requesting acquisition Housing Tax Credits:
 - (i) the allocation of eligible Developer fee in calculating Rehabilitation/New Construction Housing Tax Credits will not exceed 15 percent of the Rehabilitation/New Construction eligible costs less Developer fees for Developments proposing fifty (50) Units or more and 20 percent of the Rehabilitation/New Construction eligible costs less Developer fees for Developments proposing forty-nine (49) Units or less; and
 - (ii) no Developer fee attributable to an identity of interest acquisition of the Development will be included.
 - (D) Eligible Developer fee is multiplied by the appropriate Applicable Percentage depending whether it is attributable to acquisition or rehabilitation basis.
 - (E) For non-Housing Tax Credit developments, the percentage can be up to 15 percent, but is based upon Total Housing Development Cost less the sum of the fee itself, land costs, the costs of permanent financing, excessive construction period financing described in paragraph (8) of this subsection, reserves, and any identity of interest acquisition cost.
- (8) **Financing Costs.** All fees required by the construction lender, permanent lender and equity partner must be indicated in the term sheets. Eligible construction period interest is limited to the lesser of actual eligible

construction period interest, or the interest on one (1) year's fully drawn construction period loan funds at the construction period interest rate indicated in the term sheet(s). For tax-exempt bond transactions up to twenty four (24) months of interest may be included. Any excess over this amount will not be included in Eligible Basis. Construction period interest on Related Party construction loans is only included in Eligible Basis with documentation satisfactory to the Underwriter that the loan will be at a market interest rate, fees and loan terms and the Related Party lender can demonstrate that it is routinely engaged in construction financing to unrelated parties.

- (9) **Reserves.** Except for the underwriting of a Housing Tax Credit Development at cost certification, the Underwriter will utilize the amount described in the Applicant's project cost schedule if it is within the range of two (2) to six (6) months of stabilized operating expenses plus debt service. Alternatively, the Underwriter may consider a greater amount proposed by the first lien lender or syndicator if the detail for such greater amount is found by the Underwriter to be both reasonable and well documented. Reserves do not include capitalized asset management fees, guaranty reserves, tenant services reserves or other similar costs. Lease up reserves, exclusive of initial start-up costs, funding of other reserves and interim interest, may be considered with documentation showing sizing assumptions acceptable to the Underwriter. In no instance at initial underwriting will total reserves exceed twelve (12) months of stabilized operating expenses plus debt service (and only for USDA or HUD financed rehabilitation transactions the initial deposits to replacement reserves and transferred replacement reserves for USDA or HUD financed rehabilitation transactions). Pursuant to §10.404(c) and for the underwriting of a Housing Tax Credit Development at cost certification, operating reserves that will be maintained for a minimum period of five years and documented in the Owner's partnership agreement and/or the permanent lender's loan documents will be included as a development cost.
- (10) **Soft Costs.** Eligible soft costs are generally costs that can be capitalized in the basis of the Development for tax purposes. The Underwriter will evaluate and apply the allocation of these soft costs in accordance with the Department's prevailing interpretation of the Code. Generally the Applicant's costs are used however the Underwriter will use comparative data to determine the reasonableness of all soft costs.
- (11) **Additional Tenant Amenities.** For Housing Tax Credit Developments and after submission of the cost certification package, the Underwriter may consider costs of additional building and site amenities (suitable for the tenant population being served) proposed by the Owner in an amount not to exceed 1.5% of the originally underwritten Hard Costs. The additional amenities may be included in the LURA.
- (12) **Special Reserve Account.** For Housing Tax Credit Developments at cost certification, the Underwriter may include a deposit of up to \$2,500 per Unit into a Special Reserve Account [pursuant to §10.404(d)] as a Development Cost.

(f) Development Team Capacity and Development Plan.

- (1) The Underwriter will evaluate and report on the overall capacity of the Development Team by reviewing aspects, including but not limited to those identified in subparagraphs (A) - (D) of this paragraph:
 - (A) personal credit reports for development sponsors, Developer fee recipients and those individuals anticipated to provide guarantee(s) in cases when warranted. The Underwriter may evaluate the credit report and identify any bankruptcy, state or federal tax liens or other relevant credit risks for compliance with eligibility and debarment requirements in this chapter;
 - (B) quality of construction, Rehabilitation, and ongoing maintenance of previously awarded housing developments by review of construction inspection reports, compliance on-site visits, findings of UPCS violations and other information available to the Underwriter;
 - (C) for Housing Tax Credit Developments, repeated or ongoing failure to timely submit cost certifications, requests for and clearance of final inspections, and timely response to deficiencies in the cost certification process;
 - (D) adherence to obligations on existing or prior Department funded developments with respect to program rules and documentation.
- (2) While all components of the development plan may technically meet the other individual requirements of this section, a confluence of serious concerns and unmitigated risks identified during the underwriting process may result in an Application being referred to the Committee by the Director of Real Estate Analysis. The Committee will review any recommendation made under this subsection to deny an Application for a Grant, Direct Loan and/or Housing Credit Allocation prior to completion of the Report and posting to the Department's website.

(g) **Other Underwriting Considerations.** The Underwriter will evaluate additional feasibility elements as described in paragraphs (1) - (3) of this subsection.

- (1) **Floodplains.** The Underwriter evaluates the site plan, floodplain map, survey and other information provided to determine if any of the buildings, drives, or parking areas reside within the 100-year floodplain. If such a determination is made by the Underwriter, the Report will include a condition that:
 - (A) the Applicant must pursue and receive a Letter of Map Amendment ("LOMA") or Letter of Map Revision ("LOMR-F"); or
 - (B) the Applicant must identify the cost of flood insurance for the buildings and for the tenant's contents for buildings within the 100-year floodplain and certify that the flood insurance will be obtained; and
 - (C) the Development must be proposed to be designed to comply with the QAP, NOFA and applicable Federal requirements.
- (2) **Proximity to Other Developments.** The Underwriter will identify in the Report any developments funded or known and anticipated to be eligible for funding within one linear mile of the subject. Distance is measured in a straight line from nearest boundary point to nearest boundary point.
- (3) **Supportive Housing.** The unique development and operating characteristics of Supportive Housing Developments may require special consideration in these areas:
 - (A) **Operating Income.** The extremely-low-income tenant population typically targeted by a Supportive Housing Development may include deep-skewing of rents to well below the 50 percent AMGI level or other maximum rent limits established by the Department. The Underwriter should utilize the Applicant's proposed rents in the Report as long as such rents are at or below the maximum rent limit proposed for the units and equal to any project based rental subsidy rent to be utilized for the Development;
 - (B) **Operating Expenses.** A Supportive Housing Development may have significantly higher expenses for payroll, management fee, security, resident support services, or other items than typical affordable housing developments. The Underwriter will rely heavily upon the historical operating expenses of other Supportive Housing Developments affiliated with the Applicant or otherwise available to the Underwriter. Expense estimates must be categorized as outlined in subsection (d)(2) of this section;
 - (C) **DCR and Long Term Feasibility.** Supportive Housing Developments may be exempted from the DCR requirements of subsection (d)(4)(D) of this section if the Development is anticipated to operate without conventional or "must-pay" debt. Applicants must provide evidence of sufficient financial resources to offset any projected 15-year cumulative negative Cash Flow. Such evidence will be evaluated by the Underwriter on a case-by-case basis to satisfy the Department's long term feasibility requirements and may take the form of one or a combination of: executed subsidy commitment(s); set-aside of Applicant's financial resources to be substantiated by current financial statements evidencing sufficient resources; and/or proof of annual fundraising success sufficient to fill anticipated operating losses. If either a set aside of financial resources or annual fundraising are used to evidence the long term feasibility of a Supportive Housing Development, a resolution from the Applicant's governing board must be provided confirming their irrevocable commitment to the provision of these funds and activities; and/or
 - (D) **Total Housing Development Costs.** For Supportive Housing Developments designed with only Efficiency Units, the Underwriter may use "Average Quality" dormitory costs, or costs of other appropriate design styles from the Marshall & Swift Valuation Service, with adjustments for amenities and/or quality as evidenced in the Application, as a base cost in evaluating the reasonableness of the Applicant's Building Cost estimate for New Construction Developments.

(h) **Work Out Development.** Developments that are underwritten subsequent to Board approval in order to refinance or gain relief from restrictions may be considered infeasible based on the guidelines in this section, but may be characterized as "the best available option" or "acceptable available option" depending on the circumstances and subject to the discretion of the Underwriter as long as the option analyzed and recommended is more likely to achieve a better financial outcome for the property and the Department than the status quo.

(i) **Feasibility Conclusion.** An infeasible Development will not be recommended for a Grant, Direct Loan or Housing Credit Allocation unless the Underwriter can determine an alternative structure and/or conditions the recommendations of the Report upon receipt of documentation supporting an alternative structure. A Development will be characterized as infeasible if paragraph (1) or (2) of this subsection applies. The Development will be

characterized as infeasible if one or more of paragraphs (3) - (5) of this subsection applies unless paragraph (6)(B) of this subsection also applies.

- (1) **Gross Capture Rate and Individual Unit Capture Rate.** The method for determining capture rates for a Development is defined in §10.303 of this chapter. The Underwriter will independently verify all components and conclusions of the capture rates and may, at their discretion, use independently acquired demographic data to calculate demand and may make a determination of the capture rates based upon an analysis of the Sub-market. The Development:
 - (A) is characterized as an Elderly Development and the Gross Capture Rate exceeds 10 percent for the total proposed Units; or
 - (B) is outside a Rural Area and targets the general population, and the Gross Capture Rate exceeds 10 percent for the total proposed Units; or
 - (C) is in a Rural Area and targets the general population, and the Gross Capture Rate exceeds 30 percent; or
 - (D) is Supportive Housing and the Gross Capture Rate exceeds 30 percent; or,
 - (E) has an Individual Unit Capture Rate for any Unit Type greater than 75 percent.
 - (F) Developments meeting the requirements of subparagraph (A), (B), (C), (D) or (E) of this paragraph may avoid being characterized as infeasible if clause (i) or (ii) of this subparagraph apply.
 - (i) Replacement Housing. The proposed Development is comprised of affordable housing which replaces previously existing affordable housing within the Primary Market Area as defined in §10.303 of this chapter on a Unit for Unit basis, and gives the displaced tenants of the previously existing affordable housing a leasing preference.
 - (ii) Existing Housing. The proposed Development is comprised of existing affordable housing, whether defined by an existing land use and rent restriction agreement or if the subject rents are at or below 50% AMI rents, which is at least 50 percent occupied and gives displaced existing tenants a leasing preference as stated in a relocation plan.
- (2) **Deferred Developer Fee.** Applicants requesting an allocation of tax credits where the estimated deferred Developer Fee, based on the underwritten capitalization structure, is not repayable from Cash Flow within the first fifteen (15) years of the long term pro forma as described in subsection (d)(5) of this section.
- (3) **Pro Forma Rent.** The Pro Forma Rent for Units with rents restricted at 60 percent of AMGI is less than the Net Program Rent for Units with rents restricted at or below 50 percent of AMGI unless the Applicant accepts the Underwriter's recommendation, if any, that all restricted units have rents and incomes restricted at or below the 50 percent of AMGI level.
- (4) **Initial Feasibility.**
 - (A) Except when underwritten at cost certification, the first year stabilized pro forma operating expense divided by the first year stabilized pro forma Effective Gross Income is greater than 68 percent for Rural Developments 36 Units or less and 65 percent for all other Developments.
 - (B) The first year DCR is below 1.15 (1.00 for USDA Developments).
- (5) **Long Term Feasibility.** The Long Term Pro forma at any time during years two through fifteen, as defined in subsection (d)(5) of this section, reflects:
 - (A) a Debt Coverage Ratio below 1.15; or,
 - (B) negative cash flow (throughout the term of a Direct Loan).
- (6) **Exceptions.** The infeasibility conclusions may be excepted when:
 - (A) Waived by the Executive Director of the Department or by the Committee if documentation is submitted by the Applicant to support unique circumstances that would provide mitigation.
 - (B) Developments not meeting the requirements of one or more of paragraphs (3), (4)(A) or (5) of this subsection will be re-characterized as feasible if one or more of clauses (i) - (v) of this subparagraph apply. A Development financed with a Direct Loan will not be re-characterized as feasible with respect to (5)(B).
 - (i) The Development will receive Project-based Section 8 Rental Assistance or the HUD Rental Assistance Demonstration Program for at least 50 percent of the Units and a firm commitment, with terms including Contract Rent and number of Units, is submitted at Application.
 - (ii) The Development will receive rental assistance for at least 50 percent of the Units in association with USDA financing.
 - (iii) The Development will be characterized as public housing as defined by HUD for at least 50 percent of the Units.

- (iv) The Development will be characterized as Supportive Housing for at least 50 percent of the Units and evidence of adequate financial support for the long term viability of the Development is provided.
- (v) The Development has other long term project based restrictions on rents for at least 50 percent of the Units that allow rents to increase based upon expenses and the Applicant's proposed rents are at least 10 percent lower than both the Net Program Rent and Market Rent.

§10.303. Market Analysis Rules and Guidelines.

(a) **General Provision.** A Market Analysis prepared for the Department must evaluate the need for decent, safe, and sanitary housing at rental rates or sales prices that eligible tenants can afford. The analysis must determine the feasibility of the subject Property rental rates or sales price and state conclusions as to the impact of the Property with respect to the determined housing needs. The Market Analysis must include a statement that the report preparer has read and understood the requirements of this section.

(b) **Self-Contained.** A Market Analysis prepared for the Department must allow the reader to understand the market data presented, the analysis of the data, and the conclusions derived from such data. All data presented should reflect the most current information available and the report must provide a parenthetical (in-text) citation or footnote describing the data source. The analysis must clearly lead the reader to the same or similar conclusions reached by the Market Analyst. All steps leading to a calculated figure must be presented in the body of the report.

(c) **Market Analyst Qualifications.** A Market Analysis submitted to the Department must be prepared and certified by an approved Qualified Market Analyst. (§2306.67055) The Department will maintain an approved Market Analyst list based on the guidelines set forth in paragraphs (1) - (3) of this subsection.

- (1) The approved Qualified Market Analyst list will be updated and published annually on or about October 1st. If not listed as an approved Qualified Market Analyst by the Department, a Market Analyst may request approval by submitting items in subparagraphs (A) - (F) of this paragraph at least thirty (30) days prior to the first day of the competitive tax credit Application Acceptance Period or thirty (30) days prior to submission of any other application for funding for which the Market Analyst must be approved.
 - (A) Franchise Tax Account Status from the Texas Comptroller of Public Accounts (not applicable for sole proprietorships).
 - (B) A current organization chart or list reflecting all members of the firm who may author or sign the Market Analysis. A firm with multiple offices or locations must indicate all members expected to be providing Market Analysis.
 - (C) Resumes for all members of the firm or subcontractors who may author or sign the Market Analysis.
 - (D) General information regarding the firm's experience including references, the number of previous similar assignments and timeframes in which previous assignments were completed.
 - (E) Certification from an authorized representative of the firm that the services to be provided will conform to the Department's Market Analysis Rules and Guidelines, as described in this section, in effect for the Application Round in which each Market Analysis is submitted.
 - (F) A sample Market Analysis that conforms to the Department's Market Analysis Rules and Guidelines, as described in this section, in effect for the year in which the sample Market Analysis is submitted.

An already approved Qualified Market Analyst will remain on the list so long as at least one (1) Market Analysis has been submitted to the Department in the previous 12 months or items (A),(B),(C) and (E) are submitted prior to October 1st. Otherwise, the Market Analyst will automatically be removed from the list.

- (2) During the underwriting process each Market Analysis will be reviewed and any discrepancies with the rules and guidelines set forth in this section may be identified and require timely correction. Subsequent to the completion of the Application Round and as time permits, staff or a review appraiser will re-review a sample set of submitted market analyses to ensure that the Department's Market Analysis Rules and Guidelines are met. If it is found that a Market Analyst has not conformed to the Department's Market Analysis Rules and Guidelines, as certified to, the Market Analyst will be notified of the discrepancies in the Market Analysis and will be removed from the approved Qualified Market Analyst list.
 - (A) In and of itself, removal from the list of approved Market Analysts will not invalidate a Market Analysis commissioned prior to the removal date and at least ninety (90) days prior to the first day of the applicable Application Acceptance Period.

- (B) To be reinstated as an approved Qualified Market Analyst, the Market Analyst must amend the previous report to remove all discrepancies or submit a new sample Market Analysis that conforms to the Department's Market Analysis Rules and Guidelines, as described in this section, in effect for the year in which the updated or new sample Market Analysis is submitted.
- (3) The list of approved Qualified Market Analysts will be posted on the Department's web site no later than November 1st.

(d) **Market Analysis Contents.** A Market Analysis for a rental Development prepared for the Department must be organized in a format that follows a logical progression and must include, at minimum, items addressed in paragraphs (1) - (13) of this subsection.

- (1) **Title Page.** Include Property address or location, effective date of analysis, date report completed, name and address of person authorizing report, and name and address of Market Analyst.
- (2) **Letter of Transmittal.** The date of the letter must be the date the report was completed. Include Property address or location, description of Property, statement as to purpose and scope of analysis, reference to accompanying Market Analysis report with effective date of analysis and summary of conclusions, date of Property inspection, name of persons inspecting subject Property, and signatures of all Market Analysts authorized to work on the assignment. Include a statement that the report preparer has read and understood the requirements of this section.
- (3) **Table of Contents.** Number the exhibits included with the report for easy reference.
- (4) **Market Analysis Summary.** Include the Department's Market Analysis Summary exhibit.
- (5) **Assumptions and Limiting Conditions.** Include a description of all assumptions, both general and specific, made by the Market Analyst concerning the Property.
- (6) **Identification of the Property.** Provide a statement to acquaint the reader with the Development. Such information includes street address, tax assessor's parcel number(s), and Development characteristics.
- (7) **Statement of Ownership.** Disclose the current owners of record and provide a three (3) year history of ownership for the subject Property.
- (8) **Secondary Market Area.** A geographic area from which the Development may draw limited demand in addition to the PMA. A SMA is not required, but may be defined at the discretion of the Market Analyst to support identified demand. All of the Market Analyst's conclusions specific to the subject Development must be based on only one SMA definition. The entire PMA, as described in this paragraph, must be contained within the SMA boundaries. The Market Analyst must adhere to the methodology described in this paragraph when determining the Secondary Market Area. (§2306.67055)
 - (A) The SMA will be defined by the Market Analyst with:
 - (i) geographic size based on a base year population of no more than 250,000 people inclusive of the PMA; and
 - (ii) boundaries based on U.S. census tracts.
 - (B) The Market Analyst's definition of the SMA must include:
 - (i) a detailed narrative specific to the SMA explaining;
 - (I) how the boundaries of the SMA were determined with respect to census tracts chosen and factors for including or excluding certain census tracts in proximity to the Development;
 - (II) whether a more logical market area within the SMA exists but is not definable by census tracts and how this subsection of the SMA supports the rationale for the defined SMA, and also explains how the SMA relates to the PMA in terms of its qualitative and quantitative aspects;
 - (III) what are the specific attributes of the Development's location within the SMA that would draw prospective tenants currently residing in other areas of the SMA to relocate to the Development;
 - (IV) what are the specific attributes, if known, of the Development itself that would draw prospective tenants currently residing in other areas of the SMA to relocate to the Development; and
 - (V) other housing issues in general, if pertinent.
 - (ii) a complete demographic report for the defined SMA; and

- (iii) a scaled distance map indicating the SMA boundaries showing relevant U.S. census tracts with complete 11-digit identification numbers in numerical order with labels as well as the location of the subject Development and all comparable Developments.
- (9) **Primary Market Area.** A limited geographic area from which the Development is expected to draw most of its demand. The size and shape of the PMA should be reflective of proximity to employment centers, services and amenities and contain the most significant areas from which to draw demand. All of the Market Analyst's conclusions specific to the subject Development must be based on only one PMA definition. The Market Analyst must adhere to the methodology described in this paragraph when determining the market area. (§2306.67055)
- (A) The PMA will be defined by the Market Analyst as:
 - (i) geographic size based on a base year population no larger than necessary to provide sufficient demand but no more than 100,000 people;
 - (ii) boundaries based on U.S. census tracts; and
 - (iii) the population of the PMA may exceed 100,000 if the amount over the limit is contained within a single census tract.
 - (B) The Market Analyst's definition of the PMA must include:
 - (i) a detailed narrative specific to the PMA explaining:
 - (I) how the boundaries of the PMA were determined with respect to census tracts chosen and factors for including or excluding certain census tracts in proximity to the Development;
 - (II) whether a more logical market area within the PMA exists but is not definable by census tracts and how this subsection of the PMA supports the rationale for the defined PMA ;
 - (III) what are the specific attributes of the Development's location within the PMA that would draw prospective tenants currently residing in other areas of the PMA to relocate to the Development;
 - (IV) what are the specific attributes, if known, of the Development itself that would draw prospective tenants currently residing in other areas of the PMA to relocate to the Development; and
 - (V) other housing issues in general, if pertinent.
 - (ii) a complete demographic report for the defined PMA;
 - (iii) a scaled distance map indicating the PMA boundaries showing relevant U.S. census tracts with complete 11-digit identification numbers in numerical order with labels as well as the location of the subject Development and all comparable Developments. The map must indicate the total square miles of PMA; and,
 - (iv) a proximity table indicating distance from the Development to employment centers, medical facilities, schools, entertainment and any other amenities relevant to the potential residents and include drive time estimates.
 - (C) **Comparable Units.** Identify developments in the PMA with Comparable Units. In PMAs lacking sufficient rent comparables, it may be necessary for the Market Analyst to collect data from markets with similar characteristics and make quantifiable and qualitative location adjustments. Provide a data sheet for each comparable development consisting of:
 - (i) development name;
 - (ii) address;
 - (iii) year of construction and year of Rehabilitation, if applicable;
 - (iv) property condition;
 - (v) Target Population;
 - (vi) unit mix specifying number of Bedrooms, number of baths, Net Rentable Area; and
 - (I) monthly rent and Utility Allowance; or
 - (II) sales price with terms, marketing period and date of sale;
 - (vii) description of concessions;
 - (viii) list of unit amenities;
 - (ix) utility structure;
 - (x) list of common amenities;
 - (xi) narrative comparison of its proximity to employment centers and services relative to targeted tenant population of the subject property; and,
 - (xii) for rental developments only, the occupancy and turnover.

(10) **Market Information.**

- (A) For each of the defined market areas, identify the number of units for each of the categories in clauses (i) - (vi) of this subparagraph; the data must be clearly labeled as relating to either the PMA or the SMA, if applicable:
- (i) total housing;
 - (ii) all multi-family rental developments, including unrestricted developments, whether existing or proposed;
 - (iii) Affordable housing;
 - (iv) Comparable Units;
 - (v) Unstabilized Comparable Units; and
 - (vi) proposed Comparable Units.
- (B) **Occupancy.** The occupancy rate indicated in the Market Analysis may be used to support both the overall demand conclusion for the proposed Development and the vacancy rate assumption used in underwriting the Development described in §10.302(d)(1)(C) of this chapter (relating to Underwriting Rules and Guidelines). State the overall physical occupancy rate for the proposed housing tenure (renter or owner) within the defined market areas by:
- (i) number of Bedrooms;
 - (ii) quality of construction (class);
 - (iii) Target Population; and
 - (iv) Comparable Units.
- (C) **Absorption.** State the absorption trends by quality of construction (class) and absorption rates for Comparable Units.
- (D) **Demographic Reports.**
- (i) All demographic reports must include population and household data for a five (5) year period with the year of Application submission as the base year;
 - (ii) All demographic reports must provide sufficient data to enable calculation of income-eligible, age-, size-, and tenure-appropriate household populations;
 - (iii) For Developments targeting seniors, all demographic reports must provide a detailed breakdown of households by age and by income; and
 - (iv) A complete copy of all demographic reports relied upon for the demand analysis, including the reference index that indicates the census tracts on which the report is based.
- (E) **Demand.** Provide a comprehensive evaluation of the need for the proposed housing for the Development as a whole and each Unit type by number of Bedrooms proposed and rent restriction category within the defined market areas using the most current census and demographic data available. A complete demand and capture rate analysis is required in every Market Study, regardless of the current occupancy level of an existing Development.
- (i) **Demographics.** The Market Analyst should use demographic data specific to the characteristics of the households that will be living in the proposed Development. For example, the Market Analyst should use demographic data specific to elderly population for an Elderly Development, if available, and should avoid making adjustments from more general demographic data. If adjustment rates are used based on more general data for any of the criteria described in subclauses (I) - (V) of this clause, they should be clearly identified and documented as to their source in the report.
 - (I) **Population.** Provide population and household figures, supported by actual demographics, for a five (5) year period with the year of Application submission as the base year.
 - (II) **Target.** If applicable, adjust the household projections for the elderly population targeted by the proposed Development.
 - (III) **Household Size-Appropriate.** Adjust the household projections or target household projections, as applicable, for the appropriate household size for the proposed Unit type by number of Bedrooms proposed and rent restriction category based on 1.5 persons per Bedroom (round up).
 - (IV) **Income Eligible.** Adjust the household size appropriate projections for income eligibility based on the income bands for the proposed Unit Type by number of Bedrooms proposed and rent restriction category with:

- (-a-) the lower end of each income band calculated based on the lowest gross rent proposed divided by 35 percent for the general population and 50 percent for elderly households; and
 - (-b-) the upper end of each income band equal to the applicable gross median income limit for the largest appropriate household size based on 1.5 persons per Bedroom (round up) or one person for Efficiency Units.
 - (V) Tenure-Appropriate. Adjust the income-eligible household projections for tenure (renter or owner). If tenure appropriate income eligible target household data is available, a tenure appropriate adjustment is not necessary.
- (ii) **Gross Demand.** Gross Demand is defined as the sum of Potential Demand from the PMA, Demand from Other Sources, and Potential Demand from a Secondary Market Area (SMA) to the extent that SMA demand does not exceed 25 percent of Gross Demand.
- (iii) **Potential Demand.** Potential Demand is defined as the number of income-eligible, age-, size-, and tenure-appropriate target households in the designated market area at the proposed placed in service date.
 - (I) Maximum eligible income is equal to the applicable gross median income limit for the largest appropriate household size based on 1.5 persons per Bedroom (round up) or one person for Efficiency Units.
 - (II) For Developments targeting the general population:
 - (-a-) minimum eligible income is based on a 35 percent rent to income ratio;
 - (-b-) appropriate household size is defined as 1.5 persons per Bedroom (rounded up); and
 - (-c-) the tenure-appropriate population for a rental Development is limited to the population of renter households.
 - (III) For Developments consisting solely of single family residences on separate lots with all Units having three (3) or more Bedrooms:
 - (-a-) minimum eligible income is based on a 35 percent rent to income ratio;
 - (-b-) appropriate household size is defined as 1.5 persons per Bedroom (rounded up); and
 - (-c-) Gross Demand includes both renter and owner households.
 - (IV) Elderly Developments or Supportive Housing:
 - (-a-) minimum eligible income is based on a 50 percent rent to income ratio; and
 - (-b-) Gross Demand includes all household sizes and both renter and owner households.
- (iv) **Demand from Secondary Market Area:**
 - (I) Potential Demand from an SMA should be calculated in the same way as Potential Demand from the PMA;
 - (II) Potential Demand from an SMA may be included in Gross Demand to the extent that SMA demand does not exceed 25 percent of Gross Demand; and
 - (III) the supply of proposed and unstabilized Comparable Units in the SMA must be included in the calculation of the capture rate at the same proportion that Potential Demand from the SMA is included in Gross Demand.
- (v) **Demand from Other Sources:**
 - (I) the source of additional demand and the methodology used to calculate the additional demand must be clearly stated;
 - (II) consideration of Demand from Other Sources is at the discretion of the Underwriter;
 - (III) Demand from Other Sources must be limited to households that are not included in Potential Demand; and
 - (IV) if households with Section 8 vouchers are identified as a source of demand, the Market Study must include:
 - (-a-) documentation of the number of vouchers administered by the local Housing Authority; and
 - (-b-) a complete demographic report for the area in which the vouchers are distributed.

- (F) **Employment.** Provide a comprehensive analysis of employment trends and forecasts in the Primary Market Area. Analysis must discuss existing or planned employment opportunities with qualifying income ranges.
- (11) **Conclusions.** Include a comprehensive evaluation of the subject Property, separately addressing each housing type and specific population to be served by the Development in terms of items in subparagraphs (A) - (I) of this paragraph. All conclusions must be consistent with the data and analysis presented throughout the Market Analysis.
- (A) **Unit Mix.** Provide a best possible unit mix conclusion based on the occupancy rates by Bedroom type within the PMA and target, income-eligible, size-appropriate and tenure-appropriate household demand by unit type and income type within the PMA.
- (B) **Rents.** Provide a separate Market Rent conclusion for each proposed Unit Type by number of Bedrooms and rent restriction category. Conclusions of Market Rent below the maximum Net Program Rent limit must be well documented as the conclusions may impact the feasibility of the Development under §10.302(i) of this chapter. In support of the Market Rent conclusions, provide a separate attribute adjustment matrix for each proposed Unit Type by number of Bedrooms and rental restriction category.
- (i) The Department recommends use of HUD Form 92273.
 - (ii) A minimum of three developments must be represented on each attribute adjustment matrix.
 - (iii) Adjustments for concessions must be included, if applicable.
 - (iv) Adjustments for proximity and drive times to employment centers and services narrated in the Comparable Unit description must be included.
 - (v) Total adjustments in excess of 15 percent must be supported with additional narrative.
 - (vi) Total adjustments in excess of 25 percent indicate the Units are not comparable for the purposes of determining Market Rent conclusions.
- (C) **Effective Gross Income.** Provide rental income, secondary income, and vacancy and collection loss projections for the subject derived independent of the Applicant's estimates.
- (D) **Demand:**
- (i) state the Gross Demand for each Unit Type by number of Bedrooms proposed and rent restriction category (*e.g.* one-Bedroom Units restricted at 50 percent of AMGI; two-Bedroom Units restricted at 60 percent of AMGI); and
 - (ii) state the Gross Demand for the proposed Development as a whole. If some households are eligible for more than one Unit Type due to overlapping eligible ranges for income or household size, Gross Demand should be adjusted to avoid including households more than once.
- (E) **Relevant Supply.** The Relevant Supply of proposed and unstabilized Comparable Units includes:
- (i) the proposed subject Units;
 - (ii) Comparable Units in an Application with priority over the subject pursuant to §10.201(6) of this chapter.
 - (iii) Comparable Units in previously approved but Unstabilized Developments in the PMA; and
 - (iv) Comparable Units in previously approved but Unstabilized Developments in the SMA, in the same proportion as the proportion of Potential Demand from the SMA that is included in Gross Demand.
- (F) **Gross Capture Rate.** The Gross Capture Rate is defined as the Relevant Supply divided by the Gross Demand. Refer to §10.302(i) of this chapter for feasibility criteria.
- (G) **Individual Unit Capture Rate.** For each Unit Type by number of Bedrooms and rent restriction categories, the individual unit capture rate is defined as the Relevant Supply of proposed and unstabilized Comparable Units divided by the eligible demand for that Unit. [Some households are eligible for multiple Unit Types. In order to calculate individual unit capture rates, the Underwriter will make assumptions such that each household is included in the capture rate for only one Unit Type.]
- (H) **Absorption.** Project an absorption period for the subject Development to achieve Breakeven Occupancy. State the absorption rate.
- (I) **Market Impact.** Provide an assessment of the impact the subject Development, as completed, will have on existing Developments supported by Housing Tax Credits in the Primary Market. (§2306.67055)
- (12) **Photographs.** Provide labeled color photographs of the subject Property, the neighborhood, street scenes, and comparables. An aerial photograph is desirable but not mandatory.
- (13) **Appendices.** Any Third Party reports including demographics relied upon by the Market Analyst must be provided in appendix form. A list of works cited including personal communications also must be provided, and the Modern Language Association (MLA) format is suggested.

(14) **Qualifications.** Current Franchise Tax Account Status from the Texas Comptroller of Public Accounts (not applicable for sole proprietorships) and any changes to items listed in §10.303(c)(1)(B) and (C) of this chapter.

(e) The Department reserves the right to require the Market Analyst to address such other issues as may be relevant to the Department's evaluation of the need for the subject Development and the provisions of the particular program guidelines.

(f) In the event that the PMA for a subject Development overlaps the PMA's of other proposed or unstabilized comparable Developments, the Underwriter may perform an extended Sub-Market analysis considering the combined PMA's and all proposed and unstabilized Units in the extended Sub-Market Area; the Gross Capture Rate from such an extended Sub-Market Area analysis may be used as the basis for a feasibility conclusion.

(g) All Applicants shall acknowledge, by virtue of filing an Application, that the Department shall not be bound by any such opinion or Market Analysis, and may substitute its own analysis and underwriting conclusions for those submitted by the Market Analyst.

§10.304. Appraisal Rules and Guidelines.

(a) **General Provision.** An appraisal prepared for the Department must conform to the Uniform Standards of Professional Appraisal Practice (USPAP) as adopted by the Appraisal Standards Board of the Appraisal Foundation. The appraisal must include a statement that the report preparer has read and understood the requirements of this section.

(b) **Self-Contained.** An appraisal prepared for the Department must describe sufficient and adequate data and analyses to support the final opinion of value. The final value(s) must be reasonable, based on the information included. Any Third Party reports relied upon by the appraiser must be verified by the appraiser as to the validity of the data and the conclusions.

(c) **Appraiser Qualifications.** The qualifications of each appraiser are determined on a case-by-case basis by the Director of Real Estate Analysis or review appraiser, based upon the quality of the report itself and the experience and educational background of the appraiser. At minimum, a qualified appraiser must be appropriately certified or licensed by the Texas Appraiser Licensing and Certification Board.

(d) **Appraisal Contents.** An appraisal prepared for the Department must be organized in a format that follows a logical progression. In addition to the contents described in USPAP Standards Rule 2, the appraisal must include items addressed in paragraphs (1) - (12) of this subsection.

- (1) **Title Page.** Include a statement identifying the Department as the client, acknowledging that the Department is granted full authority to rely on the findings of the report, and name and address of person authorizing report.
- (2) **Letter of Transmittal.** Include reference to accompanying appraisal report, reference to all person(s) that provided significant assistance in the preparation of the report, date of report, effective date of appraisal, date of property inspection, name of person(s) inspecting the property, tax assessor's parcel number(s) of the site, estimate of marketing period, and signatures of all appraisers authorized to work on the assignment including the appraiser who inspected the property. Include a statement indicating the report preparer has read and understood the requirements of this section.
- (3) **Table of Contents.** Number the exhibits included with the report for easy reference.
- (4) **Disclosure of Competency.** Include appraiser's qualifications, detailing education and experience.
- (5) **Statement of Ownership of the Subject Property.** Discuss all prior sales of the subject Property which occurred within the past three (3) years. Any pending agreements of sale, options to buy, or listing of the subject Property must be disclosed in the appraisal report.
- (6) **Property Rights Appraised.** Include a statement as to the property rights (e.g., fee simple interest, leased fee interest, leasehold, etc.) being considered. The appropriate interest must be defined in terms of current appraisal terminology with the source cited.

- (7) **Site/Improvement Description.** Discuss the site characteristics including subparagraphs (A) - (E) of this paragraph.
- (A) **Physical Site Characteristics.** Describe dimensions, size (square footage, acreage, etc.), shape, topography, corner influence, frontage, access, ingress-egress, etc. associated with the Development Site. Include a plat map and/or survey.
 - (B) **Floodplain.** Discuss floodplain (including flood map panel number) and include a floodplain map with the subject Property clearly identified.
 - (C) **Zoning.** Report the current zoning and description of the zoning restrictions and/or deed restrictions, where applicable, and type of Development permitted. Any probability of change in zoning should be discussed. A statement as to whether or not the improvements conform to the current zoning should be included. A statement addressing whether or not the improvements could be rebuilt if damaged or destroyed, should be included. If current zoning is not consistent with the highest and best use, and zoning changes are reasonable to expect, time and expense associated with the proposed zoning change should be considered and documented. A zoning map should be included.
 - (D) **Description of Improvements.** Provide a thorough description and analysis of the improvements including size (Net Rentable Area, gross building area, etc.), number of stories, number of buildings, type/quality of construction, condition, actual age, effective age, exterior and interior amenities, items of deferred maintenance, energy efficiency measures, etc. All applicable forms of depreciation should be addressed along with the remaining economic life.
 - (E) **Environmental Hazards.** It is recognized appraisers are not experts in such matters and the impact of such deficiencies may not be quantified; however, the report should disclose any potential environmental hazards (such as discolored vegetation, oil residue, asbestos-containing materials, lead-based paint etc.) noted during the inspection.
- (8) **Highest and Best Use.** Market Analysis and feasibility study is required as part of the highest and best use. The highest and best use analysis should consider paragraph (7)(A) - (E) of this subsection as well as a supply and demand analysis.
- (A) The appraisal must inform the reader of any positive or negative market trends which could influence the value of the appraised Property. Detailed data must be included to support the appraiser's estimate of stabilized income, absorption, and occupancy.
 - (B) The highest and best use section must contain a separate analysis "as if vacant" and "as improved" (or "as proposed to be improved/renovated"). All four elements (legally permissible, physically possible, feasible, and maximally productive) must be considered.
- (9) **Appraisal Process.** It is mandatory that all three approaches, Cost Approach, Sales Comparison Approach and Income Approach, are considered in valuing the Property. If an approach is not applicable to a particular property an adequate explanation must be provided. A land value estimate must be provided if the Cost Approach is not applicable.
- (A) **Cost Approach.** This approach should give a clear and concise estimate of the cost to construct the subject improvements. The source(s) of the cost data should be reported.
 - (i) Cost comparables are desirable; however, alternative cost information may be obtained from Marshall & Swift Valuation Service or similar publications. The section, class, page, etc. should be referenced. All soft costs and entrepreneurial profit must be addressed and documented.
 - (ii) All applicable forms of depreciation must be discussed and analyzed. Such discussion must be consistent with the description of the improvements.
 - (iii) The land value estimate should include a sufficient number of sales which are current, comparable, and similar to the subject in terms of highest and best use. Comparable sales information should include address, legal description, tax assessor's parcel number(s), sales price, date of sale, grantor, grantee, three (3) year sales history, and adequate description of property transferred. The final value estimate should fall within the adjusted and unadjusted value ranges. Consideration and appropriate cash equivalent adjustments to the comparable sales price for subclauses (I) - (VII) of this clause should be made when applicable.
 - (I) Property rights conveyed.
 - (II) Financing terms.
 - (III) Conditions of sale.
 - (IV) Location.
 - (V) Highest and best use.
 - (VI) Physical characteristics (e.g., topography, size, shape, etc.).

- (VII) Other characteristics (e.g., existing/proposed entitlements, special assessments, etc.).
- (B) **Sales Comparison Approach.** This section should contain an adequate number of sales to provide the reader with a description of the current market conditions concerning this property type. Sales data should be recent and specific for the property type being appraised. The sales must be confirmed with buyer, seller, or an individual knowledgeable of the transaction.
- (i) Sales information should include address, legal description, tax assessor's parcel number(s), sales price, financing considerations and adjustment for cash equivalency, date of sale, recordation of the instrument, parties to the transaction, three (3) year sale history, complete description of the Property and property rights conveyed, and discussion of marketing time. A scaled distance map clearly identifying the subject and the comparable sales must be included.
 - (ii) The method(s) used in the Sales Comparison Approach must be reflective of actual market activity and market participants.
 - (I) **Sale Price/Unit of Comparison.** The analysis of the sale comparables must identify, relate, and evaluate the individual adjustments applicable for property rights, terms of sale, conditions of sale, market conditions, and physical features. Sufficient narrative must be included to permit the reader to understand the direction and magnitude of the individual adjustments, as well as a unit of comparison value indicator for each comparable.
 - (II) **Net Operating Income/Unit of Comparison.** The Net Operating Income statistics or the comparables must be calculated in the same manner. It should be disclosed if reserves for replacement have been included in this method of analysis. At least one other method should accompany this method of analysis.
- (C) **Income Approach.** This section must contain an analysis of both the actual historical and projected income and expense aspects of the subject Property.
- (i) **Market Rent Estimate/Comparable Rental Analysis.** This section of the report should include an adequate number of actual market transactions to inform the reader of current market conditions concerning rental Units. The comparables must indicate current research for this specific property type. The comparables must be confirmed with the landlord, tenant or agent and individual data sheets must be included. The individual data sheets should include property address, lease terms, description of the property (e.g., Unit Type, unit size, unit mix, interior amenities, exterior amenities, etc.), physical characteristics of the property, and location of the comparables. Analysis of the Market Rents should be sufficiently detailed to permit the reader to understand the appraiser's logic and rationale. Adjustment for lease rights, condition of the lease, location, physical characteristics of the property, etc. must be considered.
 - (ii) **Comparison of Market Rent to Contract Rent.** Actual income for the subject along with the owner's current budget projections must be reported, summarized, and analyzed. If such data is unavailable, a statement to this effect is required and appropriate assumptions and limiting conditions should be made. The Contract Rents should be compared to the market-derived rents. A determination should be made as to whether the Contract Rents are below, equal to, or in excess of market rates. If there is a difference, its impact on value must be qualified.
 - (iii) **Vacancy/Collection Loss.** Historical occupancy data and current occupancy level for the subject should be reported and compared to occupancy data from the rental comparables and overall occupancy data for the subject's Primary Market.
 - (iv) **Expense Analysis.** Actual expenses for the subject, along with the owner's projected budget, must be reported, summarized, and analyzed. If such data is unavailable, a statement to this effect is required and appropriate assumptions and limiting conditions should be made. Historical expenses should be compared to comparables expenses of similar property types or published survey data (such as IREM, BOMA, etc.). Any expense differences should be reconciled. Include historical data regarding the subject's assessment and tax rates and a statement as to whether or not any delinquent taxes exist.
 - (v) **Capitalization.** The appraiser should present the capitalization method(s) reflective of the subject market and explain the omission of any method not considered in the report.
 - (I) **Direct Capitalization.** The primary method of deriving an overall rate is through market extraction. If a band of investment or mortgage equity technique is utilized, the assumptions must be fully disclosed and discussed.
 - (II) **Yield Capitalization (Discounted Cash Flow Analysis).** This method of analysis should include a detailed and supportive discussion of the projected holding/investment period,

income and income growth projections, occupancy projections, expense and expense growth projections, reversionary value and support for the discount rate.

- (10) **Value Estimates.** Reconciliation of final value estimates is required. The Underwriter may request additional valuation information based on unique existing circumstances that are relevant for deriving the market value of the Property.
- (A) All appraisals shall contain a separate estimate of the "as vacant" market value of the underlying land, based upon current sales comparables. The appraiser should consider the fee simple or leased fee interest as appropriate.
 - (B) For existing Developments with any project-based rental assistance that will remain with the property after the acquisition, the appraisal must include an "as-is as-currently-restricted value". For public housing converting to project-based rental assistance, the appraiser must provide a value based on the future restricted rents. The value used in the analysis may be based on the unrestricted market rents if supported by an appraisal. The Department may require that the appraisal be reviewed by a third-party appraiser acceptable to the Department but selected by the applicant. Use of the restricted rents by the appraiser will not require an appraisal review. Regardless of the rents used in the valuation, the appraiser must consider any other on-going restrictions that will remain in place even if not affecting rents. If the rental assistance has an impact on the value, such as use of a lower capitalization rate due to the lower risk associated with rental rates and/or occupancy rates on project-based developments, this must be fully explained and supported to the satisfaction of the Underwriter.
 - (C) For existing Developments with rent restrictions, the appraisal must include the "as-is as-restricted" value. In particular, the value must be based on the proposed restricted rents when deriving the value based on the income approach.
 - (D) For all other existing Developments, the appraisal must include the "as-is" value.
 - (E) For any Development with favorable financing (generally below market debt) that will remain in place and transfer to the new owner, the appraisal must include a separate value for the existing favorable financing with supporting information.
 - (F) If required the appraiser must include a separate assessment of personal property, furniture, fixtures, and equipment ("FF&E") and/or intangible items. If personal property, FF&E, or intangible items are not part of the transaction or value estimate, a statement to such effect should be included.
- (11) **Marketing Time.** Given property characteristics and current market conditions, the appraiser(s) should employ a reasonable marketing period. The report should detail existing market conditions and assumptions considered relevant.
- (12) **Photographs.** Provide good quality color photographs of the subject Property (front, rear, and side elevations, on-site amenities, interior of typical Units if available). Photographs should be properly labeled. Photographs of the neighborhood, street scenes, and comparables should be included. An aerial photograph is desirable but not mandatory.

(e) **Additional Appraisal Concerns.** The appraiser(s) must be aware of the Department program rules and guidelines and the appraisal must include analysis of any impact to the subject's value.

§10.305. Environmental Site Assessment Rules and Guidelines.

(a) **General Provisions.** The Environmental Site Assessments (ESA) prepared for the Department must be conducted and reported in conformity with the standards of the American Society for Testing and Materials ("ASTM"). The initial report must conform with the Standard Practice for Environmental Site Assessments: Phase I Assessment Process (ASTM Standard Designation: E1527- 13 or any subsequent standards as published). Any subsequent reports should also conform to ASTM standards and such other recognized industry standards as a reasonable person would deem relevant in view of the Property's anticipated use for human habitation. The ESA shall be conducted by a Third Party environmental professional at the expense of the Applicant, and addressed to the Department as a User of the report (as defined by ASTM standards). Copies of reports provided to the Department which were commissioned by other financial institutions must either address Texas Department of Housing and Community Affairs as a co-recipient of the report or letters from both the provider and the recipient of the report may be submitted extending reliance on the report to the Department. The ESA report must also include a statement that the person or company preparing the ESA report will not materially benefit from the Development in any other way than receiving a fee for performing the ESA, and that the fee is in no way contingent upon the outcome of the assessment. The ESA report must contain a statement indicating the report preparer has read and understood the requirements of this section.

(b) In addition to ASTM requirements, the report must:

- (1) state if a noise study is recommended for a property in accordance with current HUD guidelines and identify its proximity to industrial zones, major highways, active rail lines, civil and military airfields, or other potential sources of excessive noise;
- (2) provide a copy of a current survey, if available, or other drawing of the site reflecting the boundaries and adjacent streets, all improvements on the site, and any items of concern described in the body of the ESA or identified during the physical inspection;
- (3) provide a copy of the current FEMA Flood Insurance Rate Map showing the panel number and encompassing the site with the site boundaries precisely identified and superimposed on the map;
- (4) if the subject Development Site includes any improvements or debris from pre-existing improvements, state if testing for Lead Based Paint and/or asbestos containing materials would be required pursuant to local, state, and federal laws, or recommended due to any other consideration;
- (5) state if testing for lead in the drinking water would be required pursuant to local, state, and federal laws, or recommended due to any other consideration such as the age of pipes and solder in existing improvements. For buildings constructed prior to 1980, a report on the quality of the local water supply does not satisfy this requirement;
- (6) assess the potential for the presence of Radon on the Property, and recommend specific testing if necessary;
- (7) identify and assess the presence of oil, gas or chemical pipelines, processing facilities, storage facilities or other potentially hazardous explosive activities on-site or in the general area of the site that could potentially adversely impact the Development. Location of these items must be shown on a drawing or map in relation to the Development Site and all existing or future improvements. The drawing must depict any blast zones (in accordance with HUD guidelines) and include HUD blast zone calculations; and
- (8) include a vapor encroachment screening in accordance with Vapor Intrusion E2600-10.

(c) If the report recommends further studies or establishes that environmental hazards currently exist on the Property, or are originating off-site, but would nonetheless affect the Property, the Development Owner must act on such a recommendation, or provide a plan for either the abatement or elimination of the hazard. Evidence of action or a plan for the abatement or elimination of the hazard must be presented upon Application submittal.

(d) For Developments in programs that allow a waiver of the Phase I ESA such as a USDA funded Development, the Development Owners are hereby notified that it is their responsibility to ensure that the Development is maintained in compliance with all state and federal environmental hazard requirements.

(e) Those Developments which have or are to receive first lien financing from HUD may submit HUD's environmental assessment report, provided that it conforms to the requirements of this section.

§10.306. Property Condition Assessment Guidelines.

(a) **General Provisions.** The objective of the Property Condition Assessment (PCA) for Rehabilitation Developments is to provide cost estimates for repairs and replacements, and new construction of additional buildings or amenities, which are: immediately necessary repairs and replacements; improvements proposed by the Applicant as outlined in a scope of work narrative submitted by the Applicant to the PCA provider that is consistent with the scope of work provided in the Application; and expected to be required throughout the term of the Affordability Period and not less than thirty (30) years. The PCA prepared for the Department should be conducted and reported in conformity with the American Society for Testing and Materials "Standard Guide for Property Condition Assessments. Baseline Property Condition Assessment Process (ASTM Standard Designation: E 2018") except as provided for in subsections (b) and (c) of this section. The PCA report must contain a statement indicating the report preparer has read and understood the requirements of this section. The PCA must include the Department's PCA Cost Schedule Supplement which details all Rehabilitation costs and projected repairs and replacements through at least thirty (30) years. The PCA must also include discussion and analysis of:

- (1) **Useful Life Estimates.** For each system and component of the property the PCA should assess the condition of the system or component, and estimate its remaining useful life, citing the basis or the source from which such estimate is derived;

- (2) **Code Compliance.** The PCA should review and document any known violations of any applicable federal, state, or local codes. In developing the cost estimates specified herein, it is the responsibility of the Applicant to ensure that the PCA adequately considers any and all applicable federal, state, and local laws and regulations which may govern any work performed to the subject Property. For transactions with Direct Loan funding from the Department, the PCA provider must also evaluate cost estimates to meet the International Existing Building Code and other property standards;
- (3) **Program Rules.** The PCA should assess the extent to which any systems or components must be modified, repaired, or replaced in order to comply with any specific requirements of the housing program under which the Development is proposed to be financed, the Department's Uniform Physical Condition Standards, and any scoring criteria for which the Applicant may claim points;
- (4) **Accessibility Requirements.** The PCA report must include an analysis of compliance with the Department's accessibility requirements pursuant to Chapter 1, Subchapter B and Section 10.101 (B)(8) and include the specific scope of work and costs needed to ensure that the Development will meet these requirements upon Rehabilitation (including conversion and Adaptive Reuse).
- (5) **Reconciliation of Scope of Work and Costs.** The PCA report must include the Department's PCA Cost Schedule Supplement with the signature of the PCA provider; the costs presented on the PCA Cost Schedule Supplement are expected to be consistent with both the scope of work and immediate costs identified in the body of the PCA report, and with the Applicant's scope of work and Hard Costs as presented on the Applicant's development cost schedule; any significant variation between the costs listed on the PCA Cost Schedule Supplement and the costs listed in the body of the PCA report or on the Applicant's development cost schedule must be reconciled in a narrative analysis from the PCA provider; and
- (6) **Cost Estimates for Repair and Replacement.** It is the responsibility of the Applicant to ensure that the PCA provider is apprised of all development activities associated with the proposed transaction and consistency of the total immediately necessary and proposed repair and replacement cost estimates with the Total Housing Development Cost schedule and scope of work submitted as an exhibit of the Application.
 - (A) **Immediately Necessary Repairs and Replacement.** Systems or components which are expected to have a remaining useful life of less than one (1) year, which are found to be in violation of any applicable codes, which must be modified, repaired or replaced in order to satisfy program rules, or which are otherwise in a state of deferred maintenance or pose health and safety hazards should be considered immediately necessary repair and replacement. The PCA must provide a separate estimate of the costs associated with the repair, replacement, or maintenance of each system or component which is identified as being an immediate need, citing the basis or the source from which such cost estimate is derived.
 - (B) **Proposed Repair, Replacement, or New Construction.** If the development plan calls for additional repair, replacement, or New Construction above and beyond the immediate repair and replacement described in subparagraph (A) of this paragraph, such items must be identified and the nature or source of obsolescence or improvement to the operations of the Property discussed. The PCA must provide a separate estimate of the costs associated with the repair, replacement, or new construction which is identified as being above and beyond the immediate need, citing the basis or the source from which such cost estimate is derived.
 - (C) **Reconciliation of Costs.** The combined costs described in subparagraphs (A) and (B) of this paragraph should be consistent with the Hard Costs presented on the Applicant's development cost schedule.
 - (D) **Expected Repair and Replacement Over Time.** The term during which the PCA should estimate the cost of expected repair and replacement over time must equal the lesser of thirty (30) years or the longest term of any land use or regulatory restrictions which are, or will be, associated with the provision of housing on the Property. The PCA must estimate the periodic costs which are expected to arise for repairing or replacing each system or component or the property, based on the estimated remaining useful life of such system or component as described in paragraph (1) of this subsection adjusted for completion of repair and replacement immediately necessary and proposed as described in subparagraphs (A) and (B) of this paragraph. The PCA must include a separate table of the estimated long term costs which identifies in each line the individual component of the property being examined, and in each column the year during the term in which the costs are estimated to be incurred and no less than thirty (30) years. The estimated costs for future years should be given in both present dollar values and anticipated future dollar values assuming a reasonable inflation factor of not less than 2.5 percent per annum.

(b) Any costs not identified and discussed in the PCA as part of subsection (a)(4), (5)(A) and (5)(B) of this section will not be included in the underwritten Total Development Cost in the Report.

(c) If a copy of such standards or a sample report have been provided for the Department's review, if such standards are widely used, and if all other criteria and requirements described in this section are satisfied, the Department will also accept copies of reports commissioned or required by the primary lender for a proposed transaction, which have been prepared in accordance with:

- (1) Fannie Mae's criteria for Physical Needs Assessments;
- (2) Federal Housing Administration's criteria for Project Capital Needs Assessments;
- (3) Freddie Mac's guidelines for Engineering and Property Condition Reports;
- (4) USDA guidelines for Capital Needs Assessment.

(d) The Department may consider for acceptance reports prepared according to other standards which are not specifically named in subsection (b) of this section, if a copy of such standards or a sample report have been provided for the Department's review, if such standards are widely used, and if all other criteria and requirements described in this section are satisfied.

(e) The PCA shall be conducted by a Third Party at the expense of the Applicant, and addressed to Texas Department of Housing and Community Affairs as the client. Copies of reports provided to the Department which were commissioned by other financial institutions should address Texas Department of Housing and Community Affairs as a co-recipient of the report, or letters from both the provider and the recipient of the report should be submitted extending reliance on the report to Texas Department of Housing and Community Affairs. The PCA report should also include a statement that the person or company preparing the PCA report will not materially benefit from the Development in any other way than receiving a fee for performing the PCA. The PCA report must contain a statement indicating the report preparer has read and understood the requirements of this section.

- g. Describe the State's required priority for funding based on the financial feasibility of the project beyond the required 30-year period. If not distributing funds by selecting applications submitted by eligible recipients, enter "N/A".

- h. Describe the State's required priority for funding based on the merits of the application in meeting the priority housing needs of the State (such as housing that is accessible to transit or employment centers, housing that includes green building and sustainable development features, or housing that serves special needs populations). If not distributing funds by selecting applications submitted by eligible recipients, enter "N/A".

- i. Describe the State's required priority for funding based on the extent to which the application makes use of non-federal funding sources. If not distributing funds by selecting applications submitted by eligible recipients, enter "N/A".

4. Does the State's application require the applicant to include a description of the eligible activities to be conducted with HTF funds? If not distributing funds by selecting applications submitted by eligible recipients, select "N/A".

Yes No N/A

5. Does the State's application require that each eligible recipient certify that housing units assisted with HTF funds will comply with HTF requirements? If not distributing funds by selecting applications submitted by eligible recipients, select "N/A".

Yes No N/A

6. **Performance Goals and Benchmarks- § 91.320(k)(5)(iii)**

The State has met the requirement to provide for performance goals and benchmarks against which the State will measure its progress, consistent with the State's goals established under 24 CFR 91.315(b)(2), by including HTF in its housing goals in the housing table on the SP-45 Goals and AP-20 Annual Goals and Objectives screens.

Yes No

7. **Maximum Per-unit Development Subsidy Amount-** § 91.320(k)(5) and § 93.300(a)

Enter or attach the State's maximum per-unit development subsidy limits for housing assisted with HTF funds.

The limits must be adjusted for the number of bedrooms and the geographic location of the project. The limits must also be reasonable and based on actual costs of developing non-luxury housing in the area.

If the State will use existing limits developed for other federal programs such as the Low Income Housing Tax Credit (LIHTC) per unit cost limits, HOME's maximum per-unit subsidy amounts, and/or Public Housing Development Cost Limits (TDCs), it must include a description of how the HTF maximum per-unit development subsidy limits were established or a description of how existing limits developed for another program and being adopted for HTF meet the HTF requirements specified above.

Section VI. Allocation Plan Requirements

Question 7: Maximum Per-Unit Development Subsidy Limits:

The State of Texas adopted the Basic Statutory Mortgage Limits for Calendar Year 2015 and the Annual Base City High Cost Percentage and High Cost Area Revisions for 2015 memo dated November 15, 2015, as the limits that will be used for HTF. The attached limits do not vary based on geographic location in Texas since the limits were approved by HUD for use throughout the state. They will be used statewide for ease of use both for applicants and TDHCA staff.

After reviewing the costs per unit on 39 projects that have received HOME funds – as both the only source of Department funding and as a gap financing source on 9% and 4% Housing Tax Credit-layered projects – over the past several years, the Department has found the following:

	Total Cost Per Unit (total development costs divided by total number of units)	HOME Cost Per HOME Unit (HOME funds invested divided by number of HOME units)
Urban New Construction Average	\$155,381	\$83,680
Rural New Construction Average	\$148,907	\$94,195

These projects were subject to Section 234 Condominium Housing Limits (formerly 221d3 Maximum Per Unit Subsidy Limits) with the applicable base city high cost percentages applied.

Given this fact, Texas will **not** establish its own maximum limitations on the total amount of NHTF funds that can be invested on a per-unit basis for the development of nonluxury housing. Texas will use the Section 234 Condominium Housing Limits with the applicable base high cost percentage applied for NHTF – as illustrated in the tables below – in the same way that these limits are used for HOME funds. Utilizing the same per-unit subsidy limits across all of the Department’s Multifamily Direct Loan funding sources (HOME, NHTF, and TCAP Repayment Funds) will allow for an easier application and review process that will preserve the Department’s ability to award funds based on what is available rather than prescribe a funding source at the time of application. Additionally, these per-unit subsidy limits accurately reflect what the Department has observed in the market regarding construction costs; no area of the state seems immune from the increasing construction costs.

Bdrm Size	Section 234 (elevator) limits	HCP (FTW HUB)	HOME Max Per-Unit Subsidy Limit
0	\$ 58,787	215%	\$ 126,392
1	\$ 67,391	215%	\$ 144,891
2	\$ 81,947	215%	\$ 176,186
3	\$ 106,013	215%	\$ 227,928
4+	\$ 116,369	215%	\$ 250,193

accordance with the agency's procedures. If the agency has received and acted upon or will act upon a SAVE verification and you do not believe the response is correct, you may make an InfoPass appointment for an in-person interview at a local USCIS office. Detailed information on how to make corrections, make an appointment, or submit a written request to correct records under the Freedom of Information Act can be found on the SAVE Web site at <http://www.uscis.gov/save>, then by choosing "For Benefits Applicants" from the menu on the left, selecting "Save Resources," followed by "SAVE Fact Sheet for Benefit Applicants."

[FR Doc. 2017-10749 Filed 5-23-17; 8:45 am]

BILLING CODE 9111-97-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-6011-N-01]

Annual Indexing of Basic Statutory Mortgage; Limits for Multifamily Housing Programs

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: In accordance with Section 206A of the National Housing Act, HUD has adjusted the Basic Statutory Mortgage Limits for Multifamily Housing Programs for Calendar Year 2016.

DATES: Effective January 1, 2016.

FOR FURTHER INFORMATION CONTACT: Daniel J. Sullivan, Acting Director, Office of Multifamily Development, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410-8000, telephone (202) 402-6130 (this is not a toll-free number). Hearing or speech-impaired individuals may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877-8339.

SUPPLEMENTARY INFORMATION: The FHA Down Payment Simplification Act of 2002 (Pub. L. 107-326, approved December 4, 2002) amended the National Housing Act by adding a new Section 206A (12 U.S.C. 1712a). Under Section 206A, the following are affected:

- I. Section 207(c)(3)(A) (12 U.S.C. 1713(c)(3)(A));
- II. Section 213(b)(2)(A) (12 U.S.C. 1715e(b)(2)(A));
- III. Section 220(d)(3)(B)(iii)(I) (12 U.S.C. 1715k(d)(3)(B)(iii)(I));
- IV. Section 221(d)(4)(ii)(I) (12 U.S.C.

- 17151(d)(4)(ii)(I));
- V. Section 231(c)(2)(A) (12 U.S.C. 1715v(c)(2)(A)); and
- VI. Section 234(e)(3)(A) (12 U.S.C. 1715y(e)(3)(A)).

The Dollar Amounts in these sections are the base per unit statutory limits for FHA's multifamily mortgage programs collectively referred to as the 'Dollar Amounts,' they are adjusted annually (commencing in 2004) on the effective date of the Consumer Financial Protection Bureau's adjustment of the \$400 figure in the Home Ownership and Equity Protection Act of 1994 (HOEPA) (Pub. L. 103-325, approved September 23, 1994). The adjustment of the Dollar Amounts shall be calculated using the percentage change in the Consumer Price Index for All Urban Consumers (CPI-U) as applied by the Bureau of Consumer Financial Protection for purposes of the above-described HOEPA adjustment.

HUD has been notified of the percentage change in the CPI-U used for the HOEPA adjustment and the effective date of the HOEPA adjustment. The percentage change in the CPI-U is 0.7% and the effective date of the HOEPA adjustment is January 1, 2016. The Dollar Amounts have been adjusted correspondingly and have an effective date of January 1, 2016.

The adjusted Dollar Amounts for Calendar Year 2016 are shown below:

Basic Statutory Mortgage Limits for Calendar Year 2016

Multifamily Loan Programs

Section 207—Multifamily Housing

Section 207 Pursuant to Section 223(f)—Purchase or Refinance Housing

Section 220—Housing in Urban Renewal Areas

Bedrooms	Non-elevator	Elevator
0	\$50,515	\$58,921
1	55,958	65,286
2	66,841	80,053
3	82,386	100,263
4+	93,270	113,369

Section 213—Cooperatives

Bedrooms	Non-elevator	Elevator
0	\$54,745	\$58,291
1	63,122	66,042
2	76,127	80,307
3	97,443	103,892
4+	108,558	114,044

Section 234—Condominium Housing

Bedrooms	Non-elevator	Elevator
0	\$55,862	\$58,787

Bedrooms	Non-elevator	Elevator
1	64,410	67,391
2	77,680	81,947
3	99,433	106,013
4+	110,772	116,369

Section 221(d)(4)—Moderate Income Housing

Bedrooms	Non-elevator	Elevator
0	\$50,273	\$54,305
1	57,068	62,255
2	68,981	75,702
3	86,582	97,932
4+	97,836	107,501

Section 231—Housing for the Elderly

Bedrooms	Non-elevator	Elevator
0	\$47,797	\$54,305
1	53,433	62,255
2	63,808	75,702
3	76,789	97,932
4+	90,278	107,501

Section 207—Manufactured Home Parks Per Space—\$23,191

Dated: May 17, 2017.

Genger Charles,
General Deputy, Assistant Secretary for Housing.

[FR Doc. 2017-10558 Filed 5-23-17; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140-0013]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Application for Tax-Exempt Transfer of Firearm and Registration to Special Occupational Taxpayer, ATF Form 3 (5320.3)

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection was previously published in the **Federal Register** on March 14, 2017, allowing for a 60-day comment period.



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-8000

OFFICE OF HOUSING

Date: January 11, 2017

MORTGAGEE LETTER 2017-02

TO: ALL FHA APPROVED MULTIFAMILY MORTGAGEES

SUBJECT: Annual Base City High Cost Percentage and High Cost Area Revisions
for 2016

Maximum mortgage amounts were revised by the Consolidated Appropriations Act, 2008 (Public Law 110-161, approved December 26, 2007) (FY 2008 Appropriations Act). Section 221 of the General Provisions of Title II of Division K of the FY 2008 Appropriations Act revises the statutory exceptions to maximum mortgage amounts for the FHA Multifamily Housing Programs, listed in Section 221 of the FY 2008 Appropriations Act, by (1) substituting 170 percent for the 140 percent exception of any geographical area, and (2) substituting 215 percent for 170 percent as the maximum exception allowed for a specific project. Accordingly, the statutory revision allows the Secretary to grant exceptions to maximum mortgage limits for certain Multifamily Housing Programs by (1) up to 170 percent, (equivalent to a 270 percent multiplier) in geographical areas where cost levels so require or (2) up to 170 percent, or 215 percent in High Cost Areas, (equivalent to a 315 percent multiplier) where necessary on a project-by-project basis.

The law does not determine which areas are to be considered “High Cost Areas.” Accordingly, the Office of Multifamily Production has developed a list of High Cost Areas for 2016. The threshold for a High Cost Area has been set for all areas (Special Limit Areas excepted) with a “calculated” High Cost Percentage (HCP) of 281.70 or greater, but because of the statutory cap of 170 percent or 270 percent multiplier, some localities have a higher HCP but still have the 270 percent multiplier.

The attached designated Annual Base City High Cost Percentages and High Cost Areas are effective January 1, 2016 and for transactions with firm commitments issued prior to the publication of the High Cost Percentages and Area Revisions for calendar year 2017.

SPECIAL LIMIT AREAS

Guam, the U.S. Virgin Islands, and the states of Alaska and Hawaii are Special Limit areas. Care should be taken to ensure that the appropriate limits are used for corresponding programs. The HCP for Special Limit Areas is 405 percent.

Paperwork Reduction Act

There are no information collection requirements in this Mortgagee Letter, and therefore the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) does not apply. In accordance with the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

Attachment

Edward L. Golding
Principal Deputy Assistant Secretary for Housing

**FHA Multifamily Statutory Mortgage Programs
Base Percentages for High Cost Areas – Effective January 2016**

Atlanta GA – Southeast Regional Office 252% Birmingham AL 221% Little Rock AR 212% Jacksonville FL* 243% Key West FL 270% Miami FL 253% Tampa FL 265% Louisville KY 239% Jackson MS 212% Greensboro NC 244% San Juan PR 270% Columbia SC 237% Knoxville TN 226% Memphis TN 220% Nashville TN 223% US Virgin Islands** 405%	Ft. Worth TX – Southwest Regional Office 215% Dallas TX 209% Houston TX 209% Lubbock TX 192% San Antonio TX 212% Little Rock AR 242% Des Moines IA 233% Topeka KS 218% New Orleans, LA 221% Shreveport LA 270% Kansas City MO* 270% St. Louis MO 224% Omaha NB 233% Oklahoma City OK 226% Tulsa OK	San Francisco CA – Western Regional Office 270% Los Angeles CA 270% Sacramento CA 270% San Diego CA 270% Santa Ana CA 270% Anchorage AK** 405% Phoenix AZ 248% Denver CO* 270% Boise ID 270% Honolulu HI** 405% Helena MT 250% Fargo ND 249% Las Vegas NV 270% Portland OR 270% Salt Lake City UT 261% Seattle WA 270% Spokane WA 270% Casper WY 262%
Chicago IL – Midwest Regional Office 270% Springfield IL 270% Indianapolis IN 248% Detroit MI* 270% Grand Rapids MI 243% Minneapolis MN* 270% Cincinnati OH 248% Cleveland OH 270% Columbus OH 248% Milwaukee WI 270%	New York NY – Northeast Regional Office 270% Albany NY 270% Buffalo NY 270% Hartford CT 270% Washington DC 270% Wilmington DE 270% Boston MA* 270% Bangor ME 270% Baltimore MD* 270% Manchester NH 270% Camden NJ 270% Newark NJ 270% Philadelphia PA 270% Pittsburg PA 270% Providence RI 270% Richmond VA 270% Burlington VT 270% Charleston WV 270%	<p align="center">Satellite Office - *</p> <p align="center">Special Limit- **</p> <p>Note: Offices with a “calculated” HCP of 281.70 (before the statutory cap of 270) or higher are designated “High Cost Areas” and are shaded. The Multifamily for Tomorrow (MFT) Transformation has been completed, so this Housing Notice reflects the MFT changes with respect to the new organizational structure.</p>

Internal HUD Distribution:						
Chron : 6134		H : Golding				
HTEA T. Bernaciak						
HT : Jayachdran						
H : Golrick						
Identification Lines: J:\HMIP\HTDT TECHNICAL SUPPORT DIVISION\Stats and HCPs\HCF 2016						
2016-HTDP-HQ-						
Correspondence Code HTEA	Originator T. Bernaciak	Concurrence D. Sullivan	Concurrence M. Kudlowitz	Concurrence Jayachandran	Concurrence G. Charles	Concurrence J. Golrick
Name						
Date						

Official Record Copy

U.S. Department of Housing and Urban Development
Previous edition is obsolete.

form HUD-713.1 (02/03)

Andrew Sinnott

From: Melendez, Ellen M [Ellen.M.Melendez@hud.gov]
Sent: Thursday, July 20, 2017 3:28 PM
To: Andrew Sinnott
Cc: Marni Holloway; Megan Sylvester; Jensen, Gerald R
Subject: FW: HUD Publishes New 2016 Limits for HOME Maximum Per-Unit Subsidies

From: Henley, Shirley J
Sent: Wednesday, July 05, 2017 10:59 AM

Subject: FW: HUD Publishes New 2016 Limits for HOME Maximum Per-Unit Subsidies

Good Morning

To follow-up with the 2016 Limits for HOME Maximum Per-Unit Subsidies, the Field Office has the option of using the higher of either the Hub's High Cost Percentages (HCP) for the entire field office jurisdiction, or individual PJ's HCP, when they are included in the base HCP list. The Fort Worth HUB's HCP is 215% for all PJ's in the Fort Worth Field Office jurisdiction.

The following are the new HOME max per-unit subsidy limit calculations, effective May 24, 2017.

This information needs to be provided to all HOME PJ's.

Please distribute to your HOME points-of-contact and ask them to forward the information to their PJ's.

Bdrm Size	Section 234 (elevator) limits	HCP (FTW HUB)	HOME Max Per-Unit Subsidy Limit
0	\$ 58,787	215%	\$ 126,392
1	\$ 67,391	215%	\$ 144,891
2	\$ 81,947	215%	\$ 176,186
3	\$ 106,013	215%	\$ 227,928
4+	\$ 116,369	215%	\$ 250,193

Effective May 24, 2017

Is this email not displaying correctly? [View it in your browser.](#)

HUD Publishes New 2016 Limits for HOME Maximum Per-Unit Subsidies

In accordance with Section 206A of the National Housing Act, HUD has adjusted the basic statutory mortgage limits for Multifamily Housing Programs for calendar year 2016. These limits are effective for the HOME Investment Partnerships Program (HOME) on May 24, 2017, until such date that the basic statutory mortgage limits for Multifamily Housing Programs for calendar year 2017 are published in the Federal Register.

[View the 2016 Section 234 limits and guidance on the HOME maximum per-unit subsidy limits.](#)

Due to the discontinuation of the Section 221(d)(3) mortgage insurance program, alternate maximum per-unit subsidy limits must be used for the HOME program. HUD is required to undertake rulemaking to establish new maximum per-unit subsidy limits for the HOME Program because it is no longer updating and publishing limits for the Section 221(d)(3) mortgage insurance program.

Until a new rule can be published, HUD published [CPD Notice 15-003: Interim Policy on Maximum Per-Unit Subsidy Limits for the HOME Program](#) establishing an interim policy that Field Office staff and participating jurisdictions (PJs) must follow directing PJs to use the Section 234-Condominium Housing basic mortgage limits, for elevator-type projects, as an alternative to the Section 221(d)(3) limits in order to determine the maximum amount of HOME funds a PJ may invest on a per-unit basis in HOME-assisted housing projects. This interim policy remains in effect until the effective date of the new final rule provisions, amending the existing provisions of 24 CFR 92.250(a).

HUD has also issued [HOMEfires - Vol. 12 No. 1, May 2015: Guidance on Using the Base City High Cost Percentages to Determine the Maximum Per-Unit Subsidy Limits for HOME](#). The HOMEfires provides guidance on if a PJ that is not listed on the published list of "Base City High Cost Percentages" to use the high-cost percentage of its HUD Multifamily Hub to determine the maximum per-unit subsidy limits for HOME.

Andrew Sinnott

From: Melendez, Ellen M [Ellen.M.Melendez@hud.gov]
Sent: Thursday, July 20, 2017 3:27 PM
To: Andrew Sinnott
Cc: Marni Holloway; Megan Sylvester; Jensen, Gerald R
Subject: RE: Maximum Per Unit Subsidy Limits for the State of Texas (PJ)

Hi Andrew,

You should have been notified about the revised max per-unit subsidy limits earlier this month - I will forward it to you. We went with 215% for the entire field office jurisdiction

Ellen

From: Andrew Sinnott [<mailto:andrew.sinnott@tdhca.state.tx.us>]
Sent: Thursday, July 20, 2017 2:49 PM
To: Melendez, Ellen M <Ellen.M.Melendez@hud.gov>
Cc: Marni Holloway <marni.holloway@tdhca.state.tx.us>; Megan Sylvester <megan.sylvester@tdhca.state.tx.us>; Jensen, Gerald R <Gerald.R.Jensen@hud.gov>
Subject: RE: Maximum Per Unit Subsidy Limits for the State of Texas (PJ)

Hi Ellen,

We received a link to [HOMEfires Vol. 12 No. 1 \(Revised July 2016\)](#) last week. Is this HOMEfire the approval that we need to move forward with using the High Cost Percentage for the Fort Worth HUB (215%) for the newly effective 234 condo limits on statewide basis?

Thanks,

Andrew Sinnott

Multifamily Loan Programs Administrator
512.475.0538

Any person receiving guidance from TDHCA staff should be mindful that, as set forth in 10 TAC Section 11.1(b), there are important limitations and caveats (Also see 10 TAC §10.2(b)).

From: Andrew Sinnott
Sent: Tuesday, June 27, 2017 2:13 PM
To: 'Melendez, Ellen M'
Cc: Marni Holloway; Megan Sylvester; Jensen, Gerald R
Subject: RE: Maximum Per Unit Subsidy Limits for the State of Texas (PJ)

Okay – thanks for the update.

Andrew Sinnott

Multifamily Loan Programs Administrator
512.475.0538

Any person receiving guidance from TDHCA staff should be mindful that, as set forth in 10 TAC Section 11.1(b), there are important limitations and caveats (Also see 10 TAC §10.2(b)).

From: Melendez, Ellen M [<mailto:Ellen.M.Melendez@hud.gov>]
Sent: Tuesday, June 27, 2017 1:16 PM
To: Andrew Sinnott

8. Rehabilitation Standards - § 91.320(k)(5)(iv) and § 93.301(b)

The State must establish rehabilitation standards for all HTF-assisted housing rehabilitation activities that set forth the requirements that the housing must meet upon project completion. The State's description of its standards must be in sufficient detail to determine the required rehabilitation work including methods and materials. The standards may refer to applicable codes or they may establish requirements that exceed the minimum requirements of the codes. At a minimum, the rehabilitation standards must address:

- Health and safety;
- Major systems;
- Lead-Based Paint;
- Accessibility;
- Disaster Mitigation;
- State and local Codes, Ordinances, and Zoning Requirements;
- Inspectable Areas and Observable Deficiencies from HUD's Uniform Physical Condition Standards identified by HUD as applicable to HTF-assisted housing; and
- Capital Needs Assessments (if applicable).

Enter or attach the State's rehabilitation standards. If the State will not use HTF funds for rehabilitation of housing, enter "N/A".

9. Resale or Recapture Guidelines- § 91.320(k)(5)(v) and § 93.304(f)

If the State intends to use HTF funds to assist first-time homebuyers, it must set forth the guidelines for resale or recapture and obtain HUD specific, written approval, as required in § 93.304(f). Approval of the consolidated plan or annual action plan under § 91.500 or the failure to disapprove the consolidated plan or annual action plan does not satisfy the requirement for specific HUD approval for resale or recapture guidelines.

Enter or attach a description of the guidelines that will be used for resale or recapture of HTF funds when used to assist first-time homebuyers. If the State will not use HTF funds to assist first-time homebuyers, enter "N/A".

10. HTF Affordable Homeownership Limits- § 91.320(k)(5)(vi) and § 93.305

If the State intends to use HTF funds for homebuyer assistance and does not use the HTF affordable homeownership limits for the area provided by HUD, it must determine 95 percent of the median area purchase price and set forth the information in accordance with §93.305. If the State will not use HTF funds to assist first-time homebuyers, enter “N/A”.

- The State will use the HUD issued affordable homeownership limits.
- The State has determined its own affordable homeownership limits using the methodology described in § 93.305(a)(2) and the limits are attached.
- N/A

11. State Limited Beneficiaries or Preferences- § 91.320(k)(5)(vii)

Describe how the State will limit the beneficiaries or give preferences to a particular segment of the extremely low- or very low-income population to serve unmet needs identified in its consolidated plan or annual action plan. If the State will not limit the beneficiaries or give preferences to a particular segment of the extremely low- or very low-income population, enter “N/A”.

Any limitation or preference must not violate nondiscrimination requirements in § 93.350, and the State must not limit or give preferences to students. The State may permit rental housing owners to limit tenants or give a preference in accordance with § 93.303(d)(3) only if such limitation or preference is described in the action plan.

12. Refinancing of Existing Debt- § 91.320(k)(5)(viii) and § 93.201(b)

Enter or attach the State's refinancing guidelines below. The guidelines describe the conditions under which the State will refinance existing debt. The State's refinancing guidelines must, at minimum, demonstrate that rehabilitation is the primary eligible activity and ensure that this requirement is met by establishing a minimum level of rehabilitation per unit or a required ratio between rehabilitation and refinancing. If the State will not refinance existing debt, enter "N/A".

VII. GRANTEE CERTIFICATIONS

In addition to submitting an HTF allocation plan, the State must submit all the required certifications identified at § 91.225 (for new action plans). If the State is amending the action plan to include HTF, it must resubmit the following certification to include HTF:

- Consistency with plan- The jurisdiction must submit a certification that the housing activities to be undertaken with CDBG, HOME, ESG, and HOPWA funds are consistent with the strategic plan. Where the HOPWA funds are to be received by a city that is the most populous unit of general local government in an EMSA, it must obtain and keep on file certifications of consistency from the authorized public officials for each other locality in the EMSA in which housing assistance is provided. HTF must be included in this certification.

VIII. REQUIRED FORMS

In addition to submitting an HTF allocation plan, the State must submit and/or complete the following standard form for its HTF program.

- Standard form- 424: [Application for Federal Assistance](#) (§ 91.320(a))

IX. RESOURCES

The following resources should be referenced before developing and submitting the HTF allocation plan.

HTF Resources

- HTF website- www.hudexchange.info/htf
- HTF [Interim Rule](#)
- Notice CPD-17-05 [Guidance for HTF Grantees on Fiscal Year 2017 Housing Trust Fund \(HTF\) Allocation Plans](#)
- HTF [FAQs](#)
 - o HTF Maximum Per-Unit Development Subsidy Amounts
 - o HTF Rehabilitation Standards
- HTF Webcast on [Overview of the HTF program](#)
- HTF Webinar on [Developing HTF Allocation Plans](#)
- HTF [Formula Allocation](#)