



Texas Department of Housing and Community Affairs
 P.O. Box 13941, Austin, TX 78711-3941 Phone: 512.475.3340 Fax: 512.475.0764

2001 Low Income Housing Tax Credit Program Qualified Allocation Plan and Rules

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§50.1. Scope.

(a) Purpose. The Rules in this chapter apply to the allocation by the Texas Department of Housing and Community Affairs (the Department) of certain low income housing tax credits authorized by applicable federal income tax laws. The Internal Revenue Code of 1986, §42, as amended, provides for credits against federal income taxes for owners of qualified low income rental housing Projects. That section provides for the allocation of the available tax credit amount by state housing credit agencies. Pursuant to Executive Order AWR-91-4 (June 17, 1991), the Department was authorized to make housing credit allocations for the State of Texas. As required by the Internal Revenue Code, §42(m)(1), the Department developed a Qualified Allocation Plan (QAP) which is set forth in §50.3 through §50.9 of this title. Sections in this chapter establish procedures for applying for and obtaining an allocation of the low income housing tax credit, along with ensuring that the proper threshold criteria, selection criteria, priorities and preferences are followed in making such allocations.

(b) Allocation Goals. It shall be the goal of this Department and the Board, through these provisions, to encourage diversity through broad geographic allocation of tax credits within the state and to promote maximum utilization of the available tax credit amount. The criteria utilized to realize this goal is described in §50.7(b) of this title. Such criteria shall be implemented to ensure that the tax credits are allocated to owners of Projects that will serve the Department's public policy objectives and federal requirements to provide housing to persons and families of very low and low income.

(c) Utilization of Historically Underutilized Businesses. It is the policy of the Department to encourage the use of Historically Underutilized Businesses (HUBs) in the tax credit program as developers, general partners and members of a development team. In response to this policy, all Applicants are required to make a good faith effort to ensure maximum HUB participation in the program. The Department will require the Applicant to identify the HUBs that will be used in the development and/or continuous operation of the Project. The Department will also request information pertaining to the use of HUBs in the actual development of the Project at the time of final allocation of tax credits, pursuant to §50.9(f) of this title.

(d) The Rural Development services of the United States Department of Agriculture serving the state of Texas (TxRD-USDA) Memorandum of Understanding (MOU). Although not mandated to do so, the Department developed a MOU with the TxRD-USDA to assure maximum utilization and optimum geographic distribution of tax credits in rural areas. This MOU seeks to achieve increased sharing of information, reduction of processing procedures, and fulfillment of project compliance requirements involving existing, rehabilitated, and new construction housing projects financed by TxRD-USDA.

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(e) Memorandum of Understanding (MOU) with the United States Department of Housing and Urban Development (HUD) regarding the 911 Subsidiary Layering Review. The Department and HUD shall enter into a MOU regarding the Subsidy Layering Review of the sources and uses of funds in projects receiving tax credits and HUD Housing Assistance.

§50.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Ad Hoc Tax Credit Committee - That Committee comprised of members of the Board of the Department charged with the direct oversight of the Low Income Housing Tax Credit Program, also referred to as the "Committee."

(2) Affiliate - An individual, corporation, partnership, joint venture, limited liability company, trust, estate, association, cooperative or other organization or entity of any nature whatsoever that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with any other Person, and specifically shall include parents or subsidiaries.

(3) Agreement and Election Statement - A document in which the Project Owner elects, irrevocably, to fix the applicable credit percentage with respect to a building or buildings, as that in effect for the month in which the Department and the Project Owner enter into a binding agreement as to the housing credit dollar amount to be allocated to such building or buildings.

(4) Applicable Percentage - The percentage used to determine the amount of the low income housing tax credit, as defined more fully in the Code, §42(b). The Applicable Percentage in the Application will be calculated using the formula provided in the Application Submission Procedures Manual.

(5) Applicant - Any Person and any Affiliate of such Person, corporation, a partnership, joint venture, association, or other that submits an Application to the Department requesting a tax credit allocation pursuant to the Rules and the QAP. The Applicant is also the Project Owner unless the Applicant transfers or assigns its interest in the Project (which assignment can only occur with the consent of the Department). Each Project Owner, and each of the Project Owner's successors in interest, shall be obligated to carry out the commitments made to the Department by the Applicant.

(6) Application - An Application in the form prescribed by the Department, including any required exhibits or other supporting materials, filed with the Department by a Project Owner requesting a Housing Tax Credit Allocation from the State Housing Credit Ceiling or a Determination Notice.

(7) Application Acceptance Period - That period of time during which Applications for either a Housing Credit Allocation from the State Housing Credit Ceiling or a Determination Notice for Tax Exempt Bond Projects may be submitted to the Department as more fully described in §50.12 of this title.

(8) Application Round - The period beginning with the start of the Application Acceptance Period and lasting until such time as all available credits from the State Housing Credit Ceiling (as stipulated by the Department) are allocated, provided that the Application Round not extend beyond the last day of the calendar year.

(9) Application Submission Procedures Manual - The manual produced and amended from time to time by the Department which sets forth procedures, forms, and guidelines for the filing of Applications for low income housing tax credits.

(10) Area Median Gross Income (AMGI) - The tenant income requirements pursuant to the qualified low income housing project requirements of the Code, §42(g).

(11) Applicable Fraction - The fraction used to determine the Qualified Basis of the qualified low income building, which is the smaller of the Unit fraction or the floor space fraction, as defined more fully in the Code, §42(c)(1).

(12) Beneficial Owner - A "Beneficial Owner" means:

(A) Any Person who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise has or shares;

(i) voting power which includes the power to vote, or to direct the voting as any other Person or the securities thereof; and/or

(ii) investment power which includes the power to dispose, or direct the disposition of, any Person or the securities thereof.

(B) Any Person who, directly or indirectly, creates or uses a trust, proxy, power of attorney, pooling arrangement or any other contract, arrangement or device with the purpose or effect of divesting such Person of Beneficial Ownership (as defined herein) of a security or preventing the vesting of such Beneficial Ownership as part of a plan or scheme to evade inclusion within the definitional terms contained herein; and

(C) Any Person who has the right to acquire Beneficial Ownership during the Compliance Period, including but not limited to any right to acquire any such Beneficial Ownership;

(i) through the exercise of any option warrant or right,

(ii) through the conversion of a security,

(iii) pursuant to the power to revoke a trust, discretionary account or similar arrangement, or

(iv) pursuant to the automatic termination of a trust, discretionary account, or similar arrangement.

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(D) Provided, however, that any Person who acquires a security or power specified in clauses (i), (ii) or (iii) of subparagraph (C) of this paragraph, with the purpose or effect of changing or influencing the control of any other Person, or in connection with or as a participant in any transaction having such purpose or effect, immediately upon such acquisition is deemed to be the Beneficial Owner of the securities which may be acquired through the exercise or conversion of such security or power. Any securities not outstanding which are subject to options, warrants, rights or conversion privileges as deemed to be outstanding for the purpose of computing the percentage of outstanding securities of the class owned by such Person but are not deemed to be outstanding for the purpose of computing the percentage of the class by any other Person.

(13) Board - The governing Board of Directors of the Department.

(14) Carryover Allocation - An allocation of current year tax credit authority by the Department pursuant to the provisions of the Code, §42(h)(1)(E) and Treasury Regulations, §1.42-6.

(15) Carryover Allocation Document - A document issued by the Department to a Project Owner pursuant to §50.4(i) of this title.

(16) Carryover Allocation Procedures Manual - The manual produced and amended from time to time by the Department which sets forth procedures, forms, and guidelines for filing Carryover Allocation requests.

(17) Code - The Internal Revenue Code of 1986, as amended from time to time, together with any applicable regulations, rules, rulings, revenue procedures, information statements or other official pronouncements issued thereunder by the United States Department of the Treasury or the Internal Revenue Service.

(18) Commitment Notice - A notice issued by the Department to a Project Owner pursuant to §50.4(h) of this title and also referred to as the "commitment."

(19) Compliance Period - With respect to a building, the period of 15 taxable years, beginning with the first taxable year of the Credit Period pursuant to the Code, §42(i)(1).

(20) Control - (including the terms "controlling," "controlled by", and/or "under common control with") the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of any Person, whether through the ownership of voting securities, by contract or otherwise, including specifically ownership of more than 50% of the general partner interest in a limited partnership, or designation as a managing general partner or the managing member of a limited liability company.

(21) Cost Certification Procedures Manual - The manual produced and amended from time to time by the Department which sets forth procedures, forms, and guidelines for filing requests for IRS Form(s) 8609 for Projects placed in service under the Low Income Housing Tax Credit Program.

(22) Credit Period - With respect to a building within a Project, the period of ten taxable years beginning with the taxable year the building is placed in service or, at the election of the Project Owner, the succeeding taxable year, as more fully defined in the Code, §42(f)(1).

(23) Department - The Texas Department of Housing and Community Affairs, a public and official governmental Department of the State of Texas created and organized under the Texas Department of Housing and Community Affairs Act, Texas Government Code, Chapter 2306 and Texas Civil Statutes, Article 4413(501) as amended by the 73rd Legislature, Chapter 725 and 141.

(24) Determination Notice - A notice issued by the Department to the Owner of a Tax Exempt Bond Project which states that the Project may be eligible to claim low income housing tax credits without receiving an allocation of credits from the State Housing Credit Ceiling because it satisfies the requirements of this QAP; sets forth conditions which must be met by the Project before the Department will issue the IRS Form(s) 8609 to the Project Owner; and specifies the amount of tax credits necessary for the financial feasibility of the Project and its viability as a qualified low income housing project throughout the Credit Period.

(25) Development Team - All Persons or Affiliates thereof which play(s) a material role in the development, construction, rehabilitation, management and/or continuing operation of the subject Property, which will include any consultant(s) hired by the Applicant for the purpose of the filing of an Application for low income housing tax credits with the Department.

(26) Eligible Basis - With respect to a building within a Project, the building's Eligible Basis as defined in the Code, §42(d).

(27) Extended Low Income Housing Commitment - An agreement between the Department, the Project Owner and all successors in interest to the Project Owner concerning the extended low income housing use of buildings within the Project throughout the extended use period as provided in the Code, §42(h)(6). The Extended Low Income Housing Commitment with respect to a Project is expressed in the LURA applicable to the Project.

(28) General Contractor - One who contracts for the construction, or rehabilitation of an entire building or Project, rather than a portion of the work. The General Contractor hires subcontractors, such as plumbing contractors, electrical contractors, etc., coordinates all work, and is responsible for payment to the said subcontractors. This party may also be referred to as the "contractor."

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(29) General Projects - Any project which is not a Qualified Nonprofit Project or is not under consideration in the Rural/Prison or Elderly set-asides as such terms are defined by the Department.

(30) General Pool - The pool of credits that have been returned or recovered from prior years' allocations or the current year's Commitment Notices after the Board has made its initial allocation of the current year's available credit ceiling. General pool credits will be used to fund Applications on the waiting list without regard to set-aside except for the 10% Nonprofit Set-Aside allocation required under §42(h)(5) of the Code.

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

(32) Highrise Urban Infill Project – a project comprised of three or more stories that is located within a Central Business District or its immediate environs or in inner-city neighborhoods characterized by documented higher than average land costs and higher density. For projects with more than three stories, an elevator must be included in the construction of the Project.

(33) Historically Underutilized Businesses - Pursuant to Texas Civil Statutes, Article 601b, §§1.02, 1.03, and 1.04, entitled State Purchasing and General Services Act which is codified at Chapter 2161, Texas Government Code, entitled Historically Underutilized Businesses, a business created for the purpose of making a profit in the form of a corporation, partnership or joint venture which is at least 51% owned, or a sole proprietorship which is 100% owned by a person or persons who have been historically underutilized due to their identification as a member of a certain group. The following are the groups which will be considered pursuant to this definition:

(A) African Americans - persons having origins in any of the Black racial groups of Africa;

(B) Hispanic Americans - persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

(C) Asian-Pacific Americans - persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, Philippines, Samoa, Guam, U.S. Trust Territories of the Pacific and the Northern Marianas;

(D) Native Americans - persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians; or

(E) Women - includes all women of any ethnicity.

(34) Housing Credit Agency - A Governmental Entity charged with the responsibility of allocating low income housing tax credits pursuant to the Code, §42. For the purposes of these Rules, the Department is the sole "Housing Credit Agency" of the State of Texas.

(35) Housing Credit Allocation - An allocation by the Department to a Project Owner of low income housing tax credit in accordance with §50.9 of this title.

(36) Housing Credit Allocation Amount - With respect to a Project or a building within a Project, that amount the Department determines to be necessary for the financial feasibility of the Project and its viability as a qualified low income housing Project throughout the Compliance Period and allocates to the Project.

(37) HUD - The United States Department of Housing and Urban Development, or its successor.

(38) Ineligible Building Types - Those buildings or facilities which are ineligible, pursuant to this QAP, for funding under the tax credit program as follows:

(A) Hospitals, nursing homes, trailer parks and dormitories (or other buildings that will be predominantly occupied by Students) or other facilities which are usually classified as transient housing (other than certain specific types of transitional housing for the homeless and single room occupancy units, as provided in the Code, §§42(i)(3)(B)(iii) and (iv) are not eligible. However, hospitals, nursing homes or dormitories are eligible for credits if the project involves the conversion of the building to a non-transient multifamily residential development.

(B) Single family detached housing, duplexes, and triplexes shall not be included in tax credit developments. The only exceptions to this definition are:

(i) Any project comprised of single family detached homes, duplexes or triplexes, located on contiguous property under common ownership, management and Control or dispersed within an existing residential subdivision and satisfying either of the requirements listed in subclauses (I) and (II) of this clause shall not be considered to include an Ineligible Building Type:

(I) Projects with 36 units or less that are located within a city or county with a population of not more than 20,000 or 50,000, respectively; or

(II) Projects receiving a financial contribution from the local governing entity in an amount equal to or exceeding ten percent of the construction hard costs. The financial contribution can be either a capital contribution, in-kind services to the Project, or a combination of capital contribution and in-kind services. The in-kind services must be above and beyond services typically provided to similar developments.

(ii) An existing Rural Project that is federally assisted within the meaning of §42(d)(6)(B) of the Code and is under common ownership, management and Control shall not be considered to include an Ineligible Building Type. For qualifying federally assisted Rural Projects, construction cannot include the construction of new residential units. Rural Projects purchased from HUD will qualify as federally assisted.

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(39) IRS - The Internal Revenue Service, or its successor.

(40) Land Use Restriction Agreement (LURA) - An agreement between the Department, the Project Owner and all successors in interest in the Project Owner which encumbers the Project with respect to provisions stipulated in the Code, §42, and this chapter (relating to Low Income Housing Tax Credit Qualified Allocation Plan and Rules), and the Texas Government Code, Chapter 2306 as may be amended from time to time. The LURA includes an Extended Low Income Housing Commitment.

(41) Material Deficiencies - The absence of information or documents from the Application which are essential for the complete review and scoring of the project and which remain uncorrected after notification of the Applicant as further described in subparagraphs (A) and (B) of this paragraph.

(A) If an Application contains deficiencies which, in the determination of the Department staff, are either administrative in nature or are caused by the need for clarification of information submitted at the time of the Application, the Department staff shall request correction of such deficiencies. The Department staff shall provide this request in the form of a facsimile and a telephone call to the Applicant advising that such a request has been transmitted. Potential Material Deficiencies which may be corrected include, but are not limited to, incorrect calculation of the project's unit mix, gross and net rentable areas or the submission of exhibits that contain incomplete or conflicting information. If such deficiencies are not corrected to the satisfaction of the Department within three business days of the deficiency notice date, then five points shall be deducted from the Selection Criteria score for each additional day the deficiency remains uncorrected. If such deficiencies are not corrected within five business days from the deficiency notice date, then the Application shall be terminated. The time period for responding to a deficiency notice begins at the start of the 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. The correction of Material Deficiencies may not include changes in the Development Team, the Project Configuration, or any other matters affecting the evaluation of the Application under §50.7 of this title.

(B) Deficiencies caused by the omission of Threshold Criteria documentation specifically required by §50.7(d) of this title shall automatically be considered Material Deficiencies and shall be cause for termination. These items are not eligible to be remedied pursuant to subparagraph (A) of this paragraph.

(42) Material Non-Compliance - A property will be classified by the Department as being in material non-compliance status so long as the non-compliance score for such property is equal to or exceeds 30 points in accordance with the methodology and point system set forth in the Application Submission Procedures Manual.

(43) Person - Means, without limitation, any natural person, corporation, partnership, limited partnership, joint venture, limited liability company, trust, estate, association, cooperative, government, political subdivision, agency or instrumentality or other organization of any nature whatsoever and shall include any group of Persons acting in concert toward a common goal.

(44) Persons with Disabilities - A person who:

(A) has a physical, mental or emotional impairment that;

(i) is expected to be of a long, continued and indefinite duration,

(ii) substantially impedes his or her ability to live independently, and

(iii) is of such a nature that the ability could be improved by more suitable housing conditions, or

(B) has a developmental disability, as defined in Section 102(7) of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6001-6007).

(45) Preservation Project - A Project involving the rehabilitation of currently occupied low-income housing developments continuing to receive funds from a federal or state program that prove eligibility by providing evidence that the projects will no longer serve low income families as supported by a market study and that:

(A) currently has rent or income restrictions and is eligible for conversion to market rate housing within the next three years; or

(B) is in danger of being lost as affordable housing due to the need for substantial rehabilitation.

(46) Prison Community - A city or town which is located outside of a Metropolitan Statistical Area (MSA) or Primary Metropolitan Statistical Area (PMSA) and was awarded a state prison as set forth in the Reference Manual.

(47) Project - A low income rental housing Property the owner of which represents that it is or will be a qualified low income housing Project within the meaning of the Code, §42(g). With regards to this definition, the "Project" is that Property which is the basis for the Application for low income housing tax credits.

(48) Project Consultant - Any Person (without ownership interest in the Project) who provides professional services relating to the filing of an Application, Carryover Allocation Document, and/or cost certification documents.

(49) Project Owner - Any Person or Affiliate thereof that owns or proposes to develop the Project or expects to acquire Control of the Project pursuant to a purchase contract satisfactory to the Department.

(50) Property - The real estate and all improvements thereon which are the subject of the Application (including all items of personal property affixed or related thereto), whether currently existing or proposed to be built thereon in connection with the Application.

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(51) Qualified Allocation Plan (QAP) - An allocation plan executed by the Governor of the State of Texas which sets forth the threshold criteria, selection criteria, priorities, preferences, and compliance and monitoring as provided in the Code, §42(m)(1) and as further provided in §50.3 through §50.9 of this title.

(52) Qualified Basis - With respect to a building within a Project, the building's Eligible Basis multiplied by the Applicable Fraction, within the meaning of the Code, §42(c)(1).

(53) Qualified Census Tract - Any census tract which is so designated by the Secretary of HUD and, for the most recent year for which census data are available on household income in such tract, either in which 50% or more of the households have an income which is less than 60% of the area median family income for such year or which has a poverty rate of at least 25%.

(54) Qualified Elderly Project – A Project which meets the requirements of the federal Fair Housing Act and is:

(A) intended for, and solely occupied by, Persons 62 years of age or older; or

(B) intended and operated for occupancy by at least one person 55 years of age or older per Unit, where at least 80% of the total housing Units are occupied by at least one person who is 55 years of age or older; and where the Project Owner publishes and adheres to policies and procedures which demonstrate an intent by the owner and manager to provide housing for persons 55 years of age or older.

(55) Qualified Market Analyst - A real estate appraiser certified or licensed by the Texas Appraiser or Licensing and Certification Board or a real estate consultant or other professional currently active in the subject property's market area who demonstrates competency, expertise, and the ability to render a high quality written report. The individual's experience and educational background will provide the general basis for determining competency as a Market Analyst. Such determination will be at the sole discretion of the Department. The Qualified Market Analyst must not be related to or an Affiliate of the Project Owner, Project Consultant, or the CPA which provides documentation required for the Carryover Allocation Procedures Manual or Cost Certification Procedures Manual.

(56) Qualified Nonprofit Organization - An organization that is described in the Code, §501(c)(3) or (4), as these cited provisions may be amended from time to time, that is exempt from federal income taxation under the Code, §501(a), that is not Affiliated with or Controlled by a for profit organization, and includes as one of its exempt purposes the fostering of low income housing within the meaning of the Code, §42(h)(5)(C).

(57) Qualified Nonprofit Project - A Project in which a Qualified Nonprofit Organization (directly or through a partnership or wholly-owned subsidiary) holds an ownership interest and materially participates (within the meaning of the Code, §469(h), as may be amended from time to time) in its development and operation throughout the Compliance Period.

(58) Real Estate Owned (REO) Projects - Any existing Residential Development that is owned or that is being sold by an insured depository institution in default, or by a receiver or conservator of such an institution, or is a property owned by HUD, Federal National Mortgage Association (Fannie Mae), Federal Home Loan Mortgage Corporation (Freddie Mac), federally chartered bank, savings bank, savings and loan association, Federal Home Loan Bank or a federally approved mortgage company or any other federal agency.

(59) Reference Manual - That certain manual, and any amendments thereto, produced by the Department which sets forth reference material pertaining to the Low Income Housing Tax Credit Program.

(60) Residential Development - Any Project that is comprised of at least one "Unit" as such term is defined in paragraph (73) of this subsection.

(61) Rules - The Department's low income housing tax credit Rules as presented in this title excluding §§50.3 through 50.9 of this title.

(62) Rural Project - A Project located within an area which:

(A) is situated outside the boundaries of a PMSA or MSA; or

(B) is situated within the boundaries of a PMSA or MSA if the area has a population of not more than 20,000. If the area shares legal boundaries with another urbanized area, then the combined population of the areas cannot exceed 20,000; or

(C) is located in an area that is eligible for funding by TxRD-USDA, and for which the Applicant applies for tax credits under the Rural Set Aside.

(63) Selection Criteria - Criteria used to determine housing priorities of the State under the Low Income Housing Tax Credit Program as specifically defined in §50.7(e) of this title.

(64) Special Housing Project - Any Project developed specifically for Special Housing Need Groups, including mental health/mental retardation Projects, group homes, housing for the homeless, transitional housing, elderly Projects, congregate care facilities, projects for persons with HIV/AIDS, or as otherwise defined in the State Consolidated Plan.

(65) State Housing Credit Ceiling - The limitation imposed by the Code, §42(h), on the aggregate amount of housing credit allocations that may be made by the Department during any calendar year, as determined from time to time by the Department in accordance with the Code, §42(h)(3).

(66) Student - Per the Code §42(I)(3)(D), "A unit shall not fail to be treated as a low-income unit merely because it is occupied:

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(A) by an individual who is:

(i) a student and receiving assistance under title IV of the Social Security Act (42 U.S.C. §§ 601 et seq.), or

(ii) enrolled in a job training program receiving assistance under the Job Training Partnership Act (29 USCS §§ 1501 et seq., generally; for full classification, consult USCS Tables volumes) or under other similar Federal, State, or local laws, or

(B) entirely by full-time students if such students are:

(i) single parents and their children and such parents and children are not dependents (as defined in section 152) of another individual, or

(ii) married and file a joint return.”

(67) Sustaining Occupancy - The figure at which occupancy income is equal to all operating expenses and mandatory debt service requirements for a Project.

(68) Tax Exempt Bond Project - A Project which receives a portion of its financing from the proceeds of Tax Exempt bonds which are subject to the state volume cap as described in the Code, §42(h)(4)(B).

(69) Threshold Criteria - Criteria used to determine the Project's qualifications which are the minimum level of acceptability for consideration under the Low Income Housing Tax Credit Program as defined in §50.7(d) of this title.

(70) Total Housing Development Cost - The total of all costs incurred or to be incurred by the Project Owner in acquiring, constructing, rehabilitating and financing a Project, as determined by the Department based on the information contained in the Applicant's Application. Such costs include reserves and any expenses attributable to commercial areas. Costs associated with the sale or use of tax credits to raise equity capital shall also be included in the Total Housing Development Cost. Such costs include but are not limited to syndication and partnership organization costs and fees, filing fees, broker commissions, related attorney and accounting fees, appraisal, engineering, and the environmental site assessment. Projects which include commercial space must allocate the relative portion of all applicable expenses to the commercial space and exclude the same from Total Housing Development Costs. To determine the difference between the Project's total sources of financing and the total Project costs to be filled with the proceeds of the credit, the Department will not deduct the amount of financing associated with the commercial use from the Project's sources of funds, unless such financing specifically identifies in its terms that it is being provided for the commercial use.

(71) Town Home - Each Town Home living unit is one of a group of no less than four units that are adjoined by common walls. Town Homes shall not have more than two walls in common with adjacent units. Town Homes shall not have other units above or below another unit. Town Homes shall not share a common back wall. Town Homes shall have individual exterior entries.

(72) TxRD-USDA - The Rural Development (RD) services of the United States Department of Agriculture (USDA) serving the State of Texas (formerly known as TxFmHA) or its successor.

(73) Unit - Any residential rental unit in a Project consisting of an accommodation containing separate and complete physical facilities and fixtures for living, sleeping, eating, cooking and sanitation. The term "Unit" may also include a single room occupancy housing unit used on a non-transient basis so long as separate facilities exist as above described.

§50.3. State Housing Credit Ceiling.

(a) The Department shall determine the State Housing Credit Ceiling for each calendar year as provided in the Code, §42(h)(3)(C).

(b) The Department shall publish each such determination in the Texas Register within 30 days after notification by the Internal Revenue Service.

(c) The aggregate amount of Housing Credit Allocations made by the Department during any calendar year shall not exceed the State Housing Credit Ceiling for such year as provided in the Code, §42. Housing Credit Allocations made to Tax Exempt Bond Developments are not included in the State Housing Credit Ceiling.

§50.4. Application Submission; Unacceptable Applications; Availability of Application; Confidential Information; Required Application Notifications and Receipt of Public Comment; Board Recommendations; Board Decisions; Commitment Notices and Determination Notices; Waiting List; Agreements and Election Statement; Cost Certification and Carryover Filings; LURA.

(a) Application Submission. Any Applicant requesting a Housing Credit Allocation or a Determination Notice must submit an Application to the Department during the Application Acceptance Period. Only one Application may be submitted for each site. While the Application Acceptance Period is open, Applicants may withdraw their Application and subsequently file a new Application along with the required Application fee. The Department is authorized to request the Applicant to provide additional information it deems relevant to clarify information contained in the Application or to submit documentation for items it considers to be a deficiency.

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(b) Unacceptable Applications. Applications involving Ineligible Building Types will not be considered for allocation of tax credits under this QAP and the Rules. Applications that show Material Deficiencies (which are not corrected within the applicable correction period) will be terminated, and the Applicant may only re-apply if the Application Acceptance Period is still open. An Application that does not fulfill the requirements of this Qualified Allocation Plan and Rules and the current Application Submission Procedures Manual will be deemed not to have been timely filed and the Department shall not be deemed to have accepted the Application.

(c) Availability of Application. Applications for tax credits are public information and are available upon request after the Application Acceptance Period closes. Exhibits to an Application will not be available for public disclosure until after the Board approves the Allocation of tax credits, in accordance with the Texas Public Information Act of the Government Code Chapter 552.

(d) Confidential Information. An Applicant shall mark each Exhibit or a portion thereof that the Applicant considers confidential as to trade secrets or commercial or financial information, in which the Applicant desires not to be disclosed in accordance with Texas Public Information Act. A request for such information shall be processed in accordance with 552.305 of the Government Code.

(e) Required Application Notifications and Receipt of Public Comment.

(1) Approximately 15 business days prior to the opening of the Application Acceptance Period, the Department shall publish a Pre-Application Notification Submission Log on its web site. Such log shall contain the: Project name, address, city, zip code, household type and the estimated number of total units, program units, and credit request amount for those Applicants that provide this information per §50.7(e)(8)(A) of this title.

(2) Within approximately 15 business days of the close of the Application Acceptance Period, the Department shall:

(A) publish an Application submission log on its web site. Such log shall contain the Project's name, address, set-aside, number of units, requested credits, requested selection criteria score and the owner contact name and phone number.

(B) give notice of a proposed Project in writing to the:

(i) mayor or other equivalent chief executive officer of the municipality, if the Project or a part thereof is located in a municipality; otherwise the Department shall notify the chief executive officer of the county in which the Project or a part thereof is located, to advise such individual that the Project or a part thereof will be located in his/her jurisdiction and request any comments which such individual may have concerning such Project. If the local municipal authority expresses opposition to the Project, the Department will give consideration to the objections raised and will visit the proposed site or Project within 30 days of notification.

(ii) state representative and state senator representing the area where a project would be located. The state representative or senator may hold a community meeting at which the Department shall provide appropriate representation.

(3) The Department shall hold at least three public hearings in metropolitan areas across the state to gather comment on the submitted Applications.

(4) Approximately forty days prior to the date of the Board Meeting at which the issuance of Commitment Notices or Determination Notices shall be discussed, the Department will notify each Applicant of the receipt of any opposition received by the Department relating to his or her project at that time.

(5) A summary of comments received by the Department on specific Applications shall be part of the documents required to be reviewed by the Board under this subsection if it is received 15 business days prior to the date of the Board Meeting at which the issuance of Commitment Notices or Determination Notices shall be discussed. If comments are received by the Department after this deadline, then they may be reviewed at the discretion of the Board.

(6) Notice of Selection Criteria Scoring. When all Applications have been scored, the Department shall publish the results of the scoring on its web site.

(f) Board Recommendations. After eligible Applications have been evaluated, ranked and underwritten in accordance with the QAP and the Rules, the Department staff shall make its recommendations to the Committee and the Board. Such recommendation and supporting documentation shall be made in advance of the meeting at which the issuance of Commitment Notices or Determination Notices shall be discussed. The recommendations to the Board will include a list of all submitted Applications which enumerates the reason(s) for the Project's proposed selection or denial, including all evaluation factors provided in §50.7(b) of this title that were used in making this determination.

(1) A Commitment Notice shall not be issued with respect to any Project where the cost for the total development, acquisition, construction or rehabilitation exceeds the limitations established from time to time by the Department and the Board as more specifically provided in the Application Submission Procedures Manual, unless the Department staff make a recommendation to the Board based on the need to fulfill the goals of the Program as expressed in this QAP and Rules, and the Board accepts the recommendation. The Department's recommendation to the Board shall be clearly documented.

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(2) The Department will reduce the Applicant's estimate of developer's and/or Contractor fees in instances where these exceed the fee limits determined by the Department and provided for within the Application Submission Procedures Manual. In the instance where the Contractor is an Affiliate of the Project Owner and both parties are claiming fees, Contractor's overhead, profit, and general requirements, the Department will reduce the total fees estimated to a level that does not exceed the fee limits. Further, the Department shall deny or reduce the amount of low income housing tax credits on any portion of costs which it deems excessive or unreasonable. The Department also may require bids in support of the costs proposed by any Applicant.

(g) Board's Decisions. The Board's decisions shall be based upon its evaluation of the Project's consistency with the criteria and requirements set forth in the QAP and the Rules. In making a determination to allocate tax credits, the Department staff and Board shall be authorized not to rely solely on the number of points scored by an Applicant. They shall in addition, be entitled to take into account, as appropriate, the evaluation factors described in §50.7(b) of this title. If the Board disapproves or fails to act upon the Application, the Department shall issue to the Project Owner a written notice stating the reason(s) for the Board's disapproval or failure to act.

(h) Commitment Notices and Determination Notices. If the Board approves the Application, the Department will:

(1) if the Application is for a Housing Credit Allocation, issue a Commitment Notice to the Project Owner which shall:

(A) confirm that the Board has approved the Application; and

(B) state the Department's commitment to make a Housing Credit Allocation to the Applicant in a specified amount, subject to the feasibility determination described at §50.9(b) of this title, compliance by the Project Owner with the remaining requirements of this chapter, and any other conditions set forth therein by the Department. This commitment shall expire on the date specified therein unless the Project Owner indicates acceptance of the commitment by executing the Commitment Notice or Determination Notice, pays the required fee specified in §50.11 of this title, and satisfies any other conditions set forth therein by the Department. A Project Owner may request an extension of the Commitment Notice expiration date by submitting extension request and associated extension fee as described in §50.11(h) of this title. In no event shall the expiration date of a Commitment Notice be extended beyond the last business day of the applicable calendar year.

(2) if the Application is with respect to a Tax Exempt Bond Project, issue a Determination Notice to the Project Owner which shall:

(A) confirm the Board's determination that the Project satisfies the requirements of this QAP; and

(B) state the Department's commitment to issue IRS Form(s) 8609 to the Applicant in a specified amount, subject to the requirements set forth at §50.7(h) of this title, compliance by the Project Owner with all applicable requirements of this chapter, and any other conditions set forth therein by the Department. The Determination Notice shall expire on the date specified therein unless the Project Owner indicates acceptance by executing the Determination Notice and paying the required fee specified in §50.11 of this title. The Determination Notice shall also expire unless the Project Owner satisfies any conditions set forth therein by the Department within the applicable time period.

(3) notify, in writing, the mayor or other equivalent chief executive officer of the municipality in which the Property is located informing him/her of the Board's issuance of a Commitment Notice or Determination Notice, as applicable.

(i) Waiting List. If the entire State Housing Credit Ceiling for the applicable calendar year has been committed or allocated in accordance with this chapter, the Department shall place all remaining Applications which have satisfied all Threshold Criteria on a waiting list. All such waiting list Applications will be weighed one against the other and a priority list shall be developed by the Department staff and approved by the Ad Hoc Tax Credit Committee. If at any time prior to the end of the Application Round, one or more Commitment Notices expire and a sufficient amount of the State Housing Credit Ceiling becomes available, the Department shall issue a Commitment Notice to Applications on the waiting list in order of priority subject to the amount of returned credits and the 10% Nonprofit Set-Aside allocation required under §42(h)(5) of the Code. In the event that the Department makes a Commitment Notice or offers a commitment within the last month of the calendar year, it will require immediate action by the Applicant to assure that an allocation or Carryover Allocation can be issued before the end of that same calendar year. At the end of each calendar year, all Applications which have not received a Commitment Notice shall be deemed terminated, unless the Department shall determine to retain or act upon such Applications as provided in §50.15 of this title. The Applicant may re-apply to the Department during the next Application Acceptance Period.

(j) Agreement and Election Statement. Together with or following the Project Owner's acceptance of the commitment or determination, the Project Owner may execute an Agreement and Election Statement, in the form prescribed by the Department, for the purpose of fixing the applicable credit percentage for the Project as that for the month in which the commitment was accepted (or the month the bonds were issued for Tax Exempt Bond Projects), as provided in the Code, §42(b)(2). For non Tax Exempt Bond Projects, the Agreement and Election Statement shall be executed by the Project Owner no later than five days after the end of the month in which the offer of commitment was accepted. Current Treasury Regulations, §1.42-8(a)(1)(v), suggest that in order to permit a Project Owner to make an effective election to

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fix the applicable credit percentage for a Project, the Commitment Notice must be executed by the Department and the Project Owner in the same month. The Department staff will cooperate with a Project Owner, as needed, to assure that the Commitment Notice can be so executed.

(k) Cost Certification or Carryover Filings. Projects that will be placed in service and request IRS Forms 8609 in the year the Commitment Notice was issued must submit the required Cost Certification documentation and compliance and monitoring fee to the Department by the second Friday in November of that same year. All other Projects which received a Commitment Notice, must submit the Carryover documentation to the Department no later than the second Friday in October of the year in which the Commitment Notice is issued. The Carryover Allocation must be properly completed and delivered to the Department as prescribed by the Carryover Allocation Procedures Manual.

(l) Land Use Restriction Agreement (LURA). Prior to the Department's issuance of the IRS Form 8609 declaring that the Project has been placed in service for purposes of the Code, §42, Project Owners must date, sign and acknowledge before a notary public a LURA and send the original to the Department for execution. The Project Owner shall then record said LURA, along with any and all exhibits attached thereto, in the real Property records of the county where the Project is located and return the original document, duly certified as to recordation by the appropriate county official, to the Department. If any liens (other than mechanics' or materialmen's liens) shall have been recorded against the Project and/or the Property prior to the recording of the LURA, the Project Owner shall obtain the subordination of the rights of any such lienholder, or other effective consent, to the survival of certain obligations contained in the LURA following the foreclosure of any such lien. Receipt of such certified recorded original LURA by the Department is required prior to issuance of IRS Form 8609. A representative of the Department shall physically inspect the Project for compliance with the Application and the representatives, warranties, covenants, agreements and undertakings contained therein before the IRS Form 8609 is issued, but in no event later than the end of the second calendar year following the year the last building in the project is placed in service. The Project Owner for Tax Exempt Bond Projects shall obtain a subordination agreement wherein the lien of the mortgage is subordinated to the LURA.

§50.5 Ineligible and Disqualified Applications

(a) An Application will be ineligible if a member of the Development Team has been or is:

(1) Barred, suspended, or terminated from procurement in a state or federal program or listed in the List of Parties Excluded from Federal Procurement or Non-Procurement Programs; or,

(2) convicted of, under indictment for, or on probation for a state or federal crime involving fraud, bribery, theft, misrepresentations of material facts, misappropriation of funds, or other similar criminal offenses; or,

(3) subject to enforcement action under state or federal securities law, or is the subject of an enforcement proceeding with any Governmental Entity unless such action has been concluded and no adverse action or finding (or entry into a consent order) has been taken with respect to such member.

(b) Additionally, the Department will disqualify an Application if it is determined by the Department that:

(1) fraudulent information, knowingly false documentation or other material misrepresentation has been provided in the Application or other information submitted to the Department. The aforementioned policy will apply at any stage of the evaluation or approval process; or,

(2) the Applicant or any Person, general partner, general contractor and their respective principals or Affiliates active in the ownership or control of other low income housing tax credit property in the state of Texas who received an allocation of tax credits in the 2000 Application Round but did not close the construction loan as required under the Carryover Allocation (including any extension period granted by the Committee) except for reasons beyond the control of the Applicant as determined by the Department; or,

(3) the Applicant or any Person, general partner, general contractor and their respective principals or Affiliates active in the ownership or control of other low income housing tax credit property has failed to place in service buildings or removed from service buildings for which credits were allocated (either Carryover Allocation or issuance of 8609s). The Department may consider the facts and circumstances on a case-by-case basis, including whether the credits were returned prior to the expiration date for re-issuance of the credits, in its sole determination of Applicant eligibility; or,

(4) the Applicant or any Person, general partner, general contractor and their respective principals or Affiliates active in the ownership or control of other low income rental housing property in the state of Texas funded by the Department that is in Material Non-Compliance with the LURA (or any other document containing an Extended Low Income Housing Commitment) or the program rules in effect for such property on the closing date of the Application Acceptance Period or upon the date of filing Volume I of the Application for a Tax Exempt Bond Project. The Department may take into consideration the representations of the Applicant regarding compliance violations described in §50.7(d)(5)(C) and (D) of this title; however, the records of the Department are controlling; or,

(5) the Applicant or any Person, general partner, general contractor and their respective principals or Affiliates active in the ownership or control of other low income rental housing tax credit property outside of the state of Texas has incidence of non-compliance with the LURA or the program rules in effect for such tax credit property as reported on

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Exhibits 105C and 105D and/or as determined by the state regulatory authority for such state and such non-compliance is determined to be Material Non-Compliance by the Department; or,

(6) the Project is located on a site that has been determined to be “unacceptable” by the Department staff; or

(7) the Applicant or any Person, general partner, general contractor and their respective principals or Affiliates active in the ownership or control of the proposed tax credit property, or person employed as a lobbyist or in another capacity on behalf of the Project, communicates with any Board member with respect to the Project during the period of time starting with the time an Application is submitted until the time the tax credits are approved by the Board.

§50.6. Regional Allocation Formula and Set-Asides.

(a) Regional Allocation Formula. As required by Section 2306.111 of the Texas Government Code, the Department will use a regional distribution formula to distribute credits from the State Housing Credit Ceiling. This formula will establish targeted tax credit amounts for each of the state service regions. Each region’s targeted tax credit amount will be published in the Texas Register and on the Department’s web site concurrently with the publication of the QAP. The formula will be published in the Application Submission Procedures Manual and may be amended from time to time by the Department.

(b) Set-Asides. The regional credit distribution amounts are additionally subject to the factors presented in paragraphs (1) through (6) of this subsection:

(1) At least 10% of the State Housing Credit Ceiling for each calendar year shall be allocated to Qualified Nonprofit Projects which meet the requirements of the Code, §42(h)(5). Qualified Nonprofit Organizations must have control of the Qualified Nonprofit Project applying for this set-aside.

(2) At least 15% of the State Housing Credit Ceiling for each calendar year shall be allocated to projects which meet the Rural Project definition. Of this 15% allocation, 25% will be set-aside for projects financed through Rural Development (TxRD-USDA). Projects financed through TxRD-USDA's 538 Guaranteed Rural Rental Housing Program will not be considered under the 25% portion. Should there not be sufficient qualified applications submitted for the TxRD-USDA set-aside, then the credits would revert to projects that meet the Rural Project definition. Rural Projects applying for greater than 76 Units will be ineligible for the Rural Set-Aside.

(3) At least 10% of the State Housing Credit Ceiling for each calendar year shall be allocated to Qualified Elderly Projects.

(4) At least 65% of the State Housing Credit Ceiling will be allocated to General Set-Aside.

(5) At least 10% of the State Housing Credit Ceiling will be allocated to Preservation Projects. Preservation Projects will not constitute an additional exclusive set-aside, however at least 10% of Projects allocated through the set-asides identified in paragraphs (1) through (4) of this subsection will also be Preservation Projects.

(6) The Department may redistribute the credits amongst the different regions and set asides depending on the quality of applications submitted as evaluated under the factors described in §50.7(b) of this title and the level of demand exhibited in the regions during the Allocation Round. However as described in paragraph (1) of this subsection, no more than 90% of the State's Housing Credit Ceiling for the calendar year may go to Projects which are not Qualified Nonprofit Projects. If credits will be transferred from a region which does not have enough qualified applications to meet its regional credit distribution amount, then those credits will be apportioned to the other regions based on their relative percentage of the total amount available for allocation. If forward commitments are approved by the Board, they shall be distributed with regard to the relative regional percentages established by the regional distribution formula.

50.7. Evaluation Process; Evaluation Factors; Tie Breaker Criteria; Threshold Criteria; Selection Criteria; Credit Amount; Limitations on the Size of Projects; Tax Exempt Bond Financed Projects; Adherence to Obligations.

(a) Evaluation Process. After eligible Applications have been evaluated, ranked and underwritten in accordance with this section of the QAP and the Rules, an application may be eligible for a recommendation to the Board as described in §50.4(d) of this title.

(1) Threshold Criteria Review. Applications will be initially evaluated against the Threshold Criteria. Applications not meeting Threshold Criteria will be terminated, unless the Department determines that the failure to meet the Threshold Criteria is the result of correctable deficiencies, in which event the Applicant shall be given an opportunity to correct such deficiencies. Applications not meeting Threshold Criteria will be returned to the Applicant without further review with a written notice to the effect that the Threshold Criteria have not been met. The Department shall not be responsible for the Applicant's failure to meet the Threshold Criteria, and any failure of the Department's staff to notify the Applicant of such inability to satisfy the Threshold Criteria shall not confer upon the Applicant any rights to which it would not otherwise be entitled.

(2) Selection Criteria Review. For an Application to be considered under the Selection Criteria, the Applicant must demonstrate that the Project meets all of the Threshold Criteria requirements set forth in subsection (d) of this section. Applications that satisfy the Threshold Criteria will then be ranked according to the points scored under the Selection Criteria in accordance with the Selection Criteria listed in subsection (e) of this section. Applications not scored

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by the Department's staff shall be deemed to have the points allocated through self-scoring by the Applicants until actually scored. This shall apply only for ranking purposes.

(3) Underwriting Evaluation. After the Application is scored under the Selection Criteria, the Department will determine to assign the Project for evaluation of financial feasibility by the Department's credit underwriting division based on the evaluation factors outlined in subsections (b)(2) through (b)(8) of this section. The reasons for recommending or not recommending a project for underwriting shall be documented by the Department. The Department may have an outside third party perform the underwriting evaluation to the extent it determines appropriate. The expense of any third party underwriting evaluation shall be paid by the Applicant prior to the commencement of the aforementioned evaluation.

(b) Evaluation Factors. The Department staff, Committee, and Board shall evaluate an Application for recommendation of a Commitment Notice or Determination Notice on the basis of additional factors beyond scoring criteria. These additional factors include the items described in paragraphs (1) through (8) of this subsection; provided, however, that Tax Exempt Bond Project Applications will be evaluated only under paragraphs (1), (3), (4), and (7) of this subsection.

(1) Project Feasibility. A determination by the Department, pursuant to §42 of the Code, that the amount of credits recommended for allocation to a project is necessary for the financial feasibility of the project and its long-term viability as a qualified low income housing property. In making this determination, the Department will take into account:

- (A) the project's total development costs;
- (B) actual or projected operating expenses and reserves for replacement;
- (C) project's sources of financing;
- (D) proceeds from the syndication of the tax credits;
- (E) the project's debt coverage ratio and break-even occupancy; and
- (F) the project's overall conformance with the Department's underwriting guidelines as stated in the

Application Submission Procedures Manual.

(2) Geographic Dispersion. The dispersion of credits within each region shall be evaluated under one or more of subparagraphs (A) through (D) of this paragraph:

- (A) number of tax credit and other affordable housing projects within a city and county and the number of units attributable to such projects;
- (B) population of a city and county in relation to the number of existing tax credit and affordable units created;
- (C) city and county population and employment growth trends; and
- (D) rental housing affordability trends.

(3) Concentration of Affordable Housing Developments. The concentration of tax credit developments and other affordable housing developments within specific markets and submarkets shall be evaluated under one or more of subparagraphs (A) through (D) of this paragraph.

- (A) occupancy levels projected for the proposed project and the occupancy level of existing projects;
- (B) market and submarket absorption levels;
- (C) the percentage of comparable affordable housing projects and units in the submarket; and
- (D) any other information (such as employer relocation) that could have an impact on the submarket.

(4) Site Conditions. Site conditions shall be evaluated through a physical site inspection by Department staff. Such inspection will evaluate the site based on the Site Evaluation form provided in the Application Submission Procedures Manual and provide a site evaluation of "Excellent," "Acceptable," "Poor" or "Unacceptable". The evaluations shall be based on condition of the surrounding neighborhood and proximity to retail, medical, recreational, and educational facilities, and employment centers. The site's visibility to prospective tenants and accessibility of the site via the existing transportation infrastructure and public transportation systems shall be considered. "Unacceptable" sites would include a non-mitigable environmental factor that would impact the health and safety of the residents.

(5) Experience of the Development Team. The Development Team's experience as it relates to the ability to successfully complete the Project will be considered, based on the prior development experience of members of the team.

(6) Housing Type. The type of housing provided may be considered in order to serve a broad segment of the population.

(7) Program's Goals and Consistency with Local Need. The Project's impact on the Low Income Housing Tax Credit Program's goals and objectives including, but not limited to, the project's inconsistency with local needs or its impact as part of a revitalization or preservation plan.

(8) Allocation to Multiple Entities. The goal of allocating credits among as many different entities as practicable without diminishing the quality of the housing that is built as required under the Texas General Appropriations Act applicable to the Department.

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(c) Tie Breaker Criteria. In the event that two or more Applications receive the same number of points in any given set-aside category and compare equally under the factors described in subsection (b) of this section, the Department will utilize the factors in paragraphs (1) through (6) of this subsection, in the order they are presented, to determine which Project will receive a preference in consideration for a tax credit commitment. As described by these paragraphs, preference will be given to projects which:

- (1) serve the lowest income tenants;
- (2) serve low income tenants for the longest period of time, in the form of a longer Compliance Period and/or extended low income use period (as set forth in the LURA);
- (3) is a Special Housing Project as defined in §50.2 of this title (relating to Definitions);
- (4) have substantial community support as evidenced by the commitment of local public funds toward the construction, rehabilitation and acquisition and subsequent rehabilitation of the Project;
- (5) provide for the most efficient usage of the low income housing tax credit on a per Unit basis; and
- (6) have a Unit composition provides the highest percentage of three bedrooms or greater sized Units.

(d) Threshold Criteria. The following Threshold Criteria listed in paragraphs (1) through (11) of this subsection are mandatory requirements at the time of Application submission:

(1) Exhibit 101. The “Design Certification Form” provided in the Application Submission Procedures Manual and supporting documents. This exhibit will provide:

(A) A description of the type of amenities proposed for the development. If fees in addition to rent are charged for amenities reserved for an individual tenant's use (i.e. covered parking, storage, etc.), then the amenity may not be included among those provided to complete this exhibit. Projects with more than 36 units must provide at least four of the amenities provided in clauses (i) through (x) of this subparagraph. Projects with 36 Units or less, Special Housing Projects and Preservation Projects must provide at least two of the amenities provided in clauses (i) through (x) of this subparagraph.

- (i) full perimeter fencing with controlled gate access;
- (ii) designated playground and equipment;
- (iii) community laundry room/laundry hook-up in Units;
- (iv) furnished community room;
- (v) recreation facilities;
- (vi) public telephone(s) available to tenants 24 hours a day;
- (vii) on-site day care, senior center, or community meals room;
- (viii) storage areas;
- (ix) computer facilities; or
- (x) covered parking.

(B) A certification that the Project will adhere to the Texas Property Code relating to security devices and other applicable requirements for residential tenancies.

(C) For up to 5% of all LIHTC restricted units, the Project Owner shall provide reasonable accommodation(s) or modification(s) on a one-time basis in conformance with ANSI A117.1-1986 construction standards as requested by the tenant with a disability. The Project Owner shall incur the related expense(s) for the reasonable accommodation(s) and/or modification(s). For properties that are designed as townhouse units, the Project Owner must include one bathroom and one bedroom on the ground level of all Units and meet Fair Housing standards. At the construction loan closing a certification from an accredited architect will be required stating that the Project was designed in conformance with these standards. A similar certification will also be required after the Project is completed.

(D) A certification that the Project will be built by a General Contractor that satisfies the requirements of the Seventy-fifth Legislature in House Bill 1 of the General Appropriation Act, Article VII, Rider 11(c). This bill requires that the General Contractor hired by the Project Owner or the Applicant, if the Applicant serves as General Contractor, must demonstrate a history of constructing similar types of housing without the use of federal tax credits.

(E) All of the architectural drawings identified in clauses (i) through (v) of this subparagraph. While full size design or construction documents are not required, the drawings must have a scale and/or show the dimensions.

(i) a site plan which:

(I) is consistent with the number of units specified in the “Rent Schedule” provided in the Application;

(II) identifies all residential, common buildings and proposed amenities; and

(III) clearly delineates the flood plain boundary lines and other easements shown in the site survey;

(ii) floor plans and elevations for each type of residential building;

(iii) floor plans and elevations for each type of common area building;

(iv) unit floor plans for each type of unit. The net rentable areas these unit floor plans represent should tie with those shown in the “Rent Schedule” provided in the application; and

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(v) elevations of residential and common area buildings which include a percentage estimate of the exterior composition, i.e. 50% brick, 50% siding.

(F) Rehabilitation Projects must submit photographs of the existing signage, typical building elevations and interiors, existing project amenities, and site work. These photos should clearly document the typical areas and building components which exemplify the need for rehabilitation.

(2) Exhibit 102. Evidence of the Project's development costs and corresponding credit request as described in subparagraphs (A) through (C) of this paragraph.

(A) All projects must submit the "Project Cost Schedule" provided in the Application Submission Procedures Manual. Rehabilitation developments must establish that the rehabilitation will be substantial and will involve at least \$6,000 per unit in direct hard costs.

(B) For projects located in a Qualified Census Tract (QCT) as defined by the Secretary of HUD and qualifying for a 30% increase in Eligible Basis, pursuant to the Code, §42(d)(5)(C), Applicants must submit a copy of the census map clearly showing that the proposed development is located within a QCT. Census tract numbers must be clearly marked on the map, and must be identical to the QCT number stated in the Department's Reference Manual.

(C) Rehabilitation Projects must also submit the "Proposed Work Write Up for Rehabilitation Projects" provided in the Application Submission Procedures Manual. This form must be prepared and certified by a third party registered architect, professional engineer or general Contractor.

(3) Exhibit 103. Evidence of readiness to proceed as evidenced by at least one of the items under each of subparagraphs (A) through (E) of this paragraph:

(A) Exhibit 103A. Evidence of site control in the name of the ownership entity, or entities which comprise the Applicant. If the evidence is not in the name of the Project Owner, then the documentation should reflect an expressed ability to transfer the rights to the Project Owner. One of the following items described in clauses (i) through (iii) of this subparagraph must be provided:

(i) a recorded warranty deed; or

(ii) a contract for sale or lease (the minimum term of the lease must be at least 45 years) which is valid for the entire period the development is under consideration for tax credits or at least 90 days, whichever is greater; or

(iii) an exclusive option to purchase which is valid for the entire period the development is under consideration for tax credits or at least 90 days, whichever is greater.

(B) Exhibit 103B. Evidence from the appropriate local municipal authority that satisfies one of clauses (i) through (iii) of this subparagraph:

(i) a letter stating that the property is appropriately zoned for the Project or that zoning is not required in that municipality;

(ii) if the property is not appropriately zoned, a letter confirming that a rezoning request has been filed. This letter should also provide a timeline for completion of the rezoning process. Any commitment of tax credits to the Applicant will be contingent upon proper rezoning prior to the Carryover Allocation.

(iii) In the case of a rehabilitation project, if the property is currently a non-conforming use as presently zoned, a letter which discuss the items in subclauses (I) through (IV) of this clause:

(I) a detailed narrative of the nature of non-conformance;

(II) the applicable destruction threshold;

(III) owner's rights to reconstruct in the event of damage; and

(IV) penalties for noncompliance.

(C) Exhibit 103C. Evidence of the availability of all necessary utilities/services to the development site. Necessary utilities include natural gas (if it will be utilized by the project), electric, trash, water, and sewer. Such evidence must be a letter or a monthly utility bill from the appropriate municipal/local service provider. If utilities are not already accessible, then the letter must clearly state: an estimated time frame for provision of the utilities, an estimate of the infrastructure cost, and an estimate of any portion of that cost that will be borne by the developer. Letters must be from an authorized individual representing the organization which actually provides the services. Such documentation should clearly indicate the address of the proposed site. If utilities are already accessible, then the documentation must not be older than 12 months from the first day of the Application Acceptance Period. If utilities are not already accessible (undeveloped areas), then the letter should not be older than three months from the first day of the Application Acceptance Period.

(D) Exhibit 103D. Evidence of permanent financing sufficient to fund the proposed Total Housing Development Cost less any other funds requested from the Department. Such evidence must be consistent with the sources and uses of funds represented in the Application and shall be provided in one or more of the following forms described in clauses (i) through (iv) of this subparagraph:

(i) bona fide permanent financing in place as evidenced by a valid and binding loan agreement and a deed(s) of trust in the name of the ownership entity which identifies the mortgagor as the Applicant or entities which comprise the general partner and/or expressly allows the transfer to the Proposed Project Owner; or,

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(ii) bona fide commitment or term sheet issued by a lending institution or mortgage company that is actively and regularly engaged in the business of lending money which is addressed to the ownership entity, or entities which comprise the Applicant and which has been executed and accepted by both parties (the term of the loan must be for a minimum of 15 years with at least a 30 year amortization). Such a commitment may be conditional upon the completion of due diligence by the lender; or,

(iii) any Federal, State or locally subsidized gap financing of soft debt must be identified at the time of application. At a minimum, evidence from the lending agency that an application for funding has been made and a term sheet which clearly describes the amount and terms of the funding must be submitted. While evidence of application for funding from another TDHCA program is not required (as these funds will be presented to the Board concurrently with the recommendation for tax credits), the Applicant must clearly indicate that such an application has been filed as required by the Application Submission Procedures Manual. If the necessary financing has not been committed by the applicable lending agency, the Commitment Notice, Housing Credit Allocation or Determination Notice, as the case may be, will be conditioned upon Applicant obtaining a commitment for the required financing by a date certain; or

(iv) if the development will be financed through Project Owner contributions, provide a letter from an independent CPA verifying the capacity of the Applicant to provide the proposed financing with funds that are not otherwise committed together with a letter from the Applicant's bank or banks confirming that sufficient funds are available to the Applicant.

(E) Exhibit 103E. A copy of the full legal description and either of the documents described in clauses (i) and (ii) of this subparagraph:

(i) a copy of the current title policy which shows that the ownership (or leasehold) of the land/Project is vested in the exact name of the Applicant, or entities which comprise the Applicant; or

(ii) a copy of a current title commitment with the proposed insured matching exactly the name of the Applicant or entities which comprise the Applicant and the title of the land/Project vested in the name of the exact name of the seller or lessor as indicated on the sales contract or lease, as applicable.

(4) Exhibit 104. Evidence of all of the notifications described in subparagraphs (A) through (D) of this paragraph. Such notices must be prepared in accordance with "Exhibit 104, Pre-Application Public Notifications" provided in the Application Submission Procedures Manual.

(A) Exhibit 104A. A copy of the public notice published in a widely circulated newspaper in the area in which the proposed development will be located. Such notice must run at least twice within a thirty day period or three times within a five day period. The notice should not run on holidays or weekends. Such notice must be published prior to the submission of the Application to the Department and can not be older than three months from the first day of the Application Acceptance Period. In communities located in close proximity to a larger metropolitan area and whose citizens may subscribe to a local newspaper as well as a widely circulated metropolitan newspaper, the notice should be published in both newspapers.

(B) Exhibit 104B. Evidence of notification of the local chief executive officer(s) (i.e., mayor and county judge), state senator, and state representative of the locality of the development. Evidence of such notification shall include a letter which at a minimum contains a copy of the public notice sent to the official and proof of delivery in the form of a certified mail receipt, overnight mail receipt, or confirmation letter from said official. Proof of notification should not be older than three months from the first day of the Application Acceptance Period.

(C) Exhibit 104C. If any of the units in the Project are occupied at the time of application, then the Applicant must post a copy of the public notice in a prominent location at the Project throughout the period of time the Application is under review by the Department. When the Department's public hearing schedule for comment on submitted applications becomes available, a copy of the schedule must also be posted until such hearings are completed. Compliance with these requirements shall be confirmed during the Department's site inspection.

(D) Exhibit 104D. Public Housing Waiting List. Evidence that the Project Owner has committed in writing to the local public housing authority (PHA) the availability of Units and that the Project Owner agrees to consider households on the PHA's waiting list as potential tenants and that the Property is available to Section 8 certificate or voucher holders. Evidence of this commitment must include a copy of the Project Owner's letter to the PHA and proof of delivery in the form of a certified mail receipt, overnight mail receipt, or confirmation letter from said PHA. Proof of notification should not be older than three months from the first day of the Application Acceptance Period. If no PHA is within the locality of the development, the Project Owner must utilize the nearest authority or office responsible for administering Section 8 programs.

(5) Exhibit 105. Evidence of the Project's ownership structure and the Applicant's previous experience as described in subparagraphs (A) through (F) of this paragraph.

(A) a chart which clearly illustrates the complete organizational structure of the Project Owner. This chart should provide the names and ownership percentages of Persons with an ownership interest in the development. The percentage ownership of all Persons in Control of these entities and sub-entities must also be clearly defined.

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(B) The Applicant, General Partner and all Persons in Control of these entities and sub-entities must also provide documentation of standing to include items found in clauses (i) and (ii) of this subparagraph.

(i) the following documentation as applicable under subclause (I) and (II) of this clause:

(I) For entities to be formed a fully executed copy of the statement of partnership or partnership agreement.

(II) For existing entities:

(-a-) a copy of the Certificate of Good Standing from the State Comptroller and a copy of the Certificate of Charter or Limited Partnership and Articles of Incorporation filed of record; or

(-b-) a recorded copy of the local DBA Certificate for non-incorporated or non-State Certified sub-entities.

(ii) the Applicant must provide evidence that the signor(s) of the Application have the authority to sign on behalf of the Applicant in the form of a corporate resolution or by-laws which indicate same from the sub-entity in Control of the Applicant.

(C) A copy of the completed and executed "Exhibit 105C, Previous Participation and Background Certification Form," which is provided in the Application Submission Procedures Manual. This form must be completed with respect to each Person owning an interest in the general partner (or if Applicant is to be a Limited Liability Company, the managing member) of the Applicant.

(D) Evidence that each Person owning an interest in the general partner (or if Applicant is to be a Limited Liability Company, the managing member) of the Applicant has sent "Exhibit 105D, National Previous Participation and Background Certification Form," to the appropriate Housing Credit Agency for each state in which they have developed or operated affordable housing. Evidence of such notification shall be a copy of the form sent to the agency and proof of delivery in the form of a certified mail receipt, overnight mail receipt, or confirmation letter from said agency.

(E) Submission of IRS Form 8821, Tax Information Authorization signed and executed on behalf of the Applicant for the release of tax information relating to non-disclosure or recapture issues.

(F) Evidence that the Project Owner's general partner, partner (or if Applicant is to be a Limited Liability Company, the managing member) General Contractor or their principals have a record of successfully constructing or developing residential units or comparable commercial property (i.e. dormitory and hotel/motel) in the capacity of owner, general partner, managing member or General Contractor. If the General Contractor's experience is being claimed for this exhibit, then the Project Owner must request the Department's approval prior to replacing the General Contractor. If rehabilitation experience is being claimed to qualify for an Application involving new construction, then the rehabilitation must have been substantial and involved at least \$6,000 of direct hard cost per unit.

(i) The term "successfully" is defined as acting in a capacity as the general contractor or developer of:

(I) at least 100 residential units or comparable commercial property; or

(II) at least 36 residential units or comparable commercial property if the project applying for credits is a Rural Project.

(ii) Evidence must be one of the following documents:

(I) A certification from the Department that the Person with the experience satisfies this exhibit. Applicants who have previously applied for a Tax Credit Allocation must request this certification at least twenty-one days prior to the beginning of the Application Acceptance Period. Applicants should ensure that the individual whose name is on the certification appears in the organizational chart provided in Exhibit 105A. If the certification is for the General Contractor, then this should be clearly indicated on the document.

(II) If the Department has not previously certified that the experience of the Project Owner, general partner, managing member or General Contractor qualifies for this exhibit, then one of the following documents must be submitted: American Institute of Architects (AIA) Document A111 - Standard Form of Agreement Between Owner & Contractor, AIA Document G704 - Certificate of Substantial Completion, IRS Form 8609, HUD Form 9822, development agreements, partnership agreements, or other appropriate documentation verifying that the general partner, General Contractor or their principals have the required experience. If submitting the IRS Form 8609, only one form per project is required. The evidence must clearly indicate:

(-a-) that the project has been completed (i.e. Development Agreements, Partnership Agreements, etc. must be accompanied by certificates of completion.);

(-b-) that the names on the forms and agreements tie back to the ownership entity, general partner, general contractor and their respective principals as listed in the Application; and

(-c-) the number of units completed or substantially completed.

(6) Exhibit 106. Evidence of the Project's projected income and operating expenses as described in subparagraphs (A) through (C) of this paragraph:

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(A) All developments must provide a 15-year proforma estimate of operating expenses and supporting documentation used to generate projections (excerpts from the market study, operating statements from comparable properties, etc).

(B) Applicant must provide 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. If there is more than one entity (Section 8 administrator, public housing authority) responsible for setting the utility allowance(s) in the area of the Project location, then the Utility Allowance selected must be the one which most closely reflects the actual utility costs in that project area. In this case, documentation from the local utility provider supporting the selection must be provided.

(C) Occupied projects undergoing rehabilitation must also submit both items described in clauses (i) and (ii) of the subparagraph. If the current property owner is unwilling to provide the required documentation, then a signed statement as to their unwillingness to do so is required.

(i) historical monthly operating statements of the subject development for 12 consecutive months ending not more than 45 days prior to the first day of the Application Acceptance Period. In lieu of the monthly operating statements, two annual operating statement summaries may be provided. If 12 months of operating statements or two annual operating summaries can not be obtained, then the monthly operating statements since the date of acquisition of the development and any other supporting documentation used to generate projections may be provided; and

(ii) a current rent roll that discloses the terms and rate of the lease, rental rates offered at the date of the rent roll, Unit mix, tenant names or vacancy, and dates of first occupancy and expiration of lease.

(7) Exhibit 107. All Applicants involving a nonprofit general partner regardless of the set-aside applied under must submit all of the documents described in subparagraph (A) through (E) of this paragraph which confirm that the Applicant is a Qualified Nonprofit Organization pursuant to Code, §42(h)(5)(C):

(A) an IRS determination letter which states that the Qualified Nonprofit Organization is a 501(c)(3) or (4) entity;

(B) if the Project involves a joint-venture between a Qualified Nonprofit Organization and a for-profit entity, an agreement which shows that the nonprofit organization will hold an ownership interest in and materially participate (within the meaning of the Code §469(h)) in the development and operation of the Project throughout the Compliance Period;

(C) a copy of the articles of incorporation of the nonprofit organization which specifically states that the fostering of affordable housing is one of the entity's exempt purposes;

(D) "Exhibit 107A, Nonprofit Participation Exhibit"; and

(E) Exhibit 107B, Attorney Opinion Letter for Nonprofit Organizations.

(8) Exhibit 108. Applicants applying for acquisition credits or affiliated with the seller must provide all of the documentation described in subparagraphs (A) through (C) of this paragraph. Applicants applying for acquisition credits must also provide the items described in subparagraphs (D) and (E) of this paragraph and as provided in the Application Submission Procedures Manual.

(A) an appraisal which complies with the Uniform Standards of Professional Appraisal Practice and the Department's Market Analysis and Appraisal Policy. This appraisal of the Property must separately state the as-is, pre-acquisition or transfer value of the land and the improvements where applicable;

(B) a valuation report from the county tax appraisal district;

(C) clear identification of the selling Persons or entities, and details of any relationship between the seller and the Applicant or any Affiliation with the Development Team, Qualified Market Analyst or any other professional or other consultant performing services with respect to the Project. If any such relationship exists, complete disclosure and documentation of the related party's original acquisition and holding costs since acquisition to justify the proposed sales price must also be provided;

(D) "Exhibit 108, Acquisition of Existing Buildings Form"; and

(E) "Exhibit 108, Attorney Opinion Letter for Projects Requesting Acquisition and Rehabilitation Credits."

(9) Exhibit 109. Evidence of the Applicant's financial status as provided by both documents described in subparagraphs (A) and (B) of this paragraph and as provided in the Application Submission Procedures Manual. Such evidence must be filed separately from the volume containing the Threshold Criteria and placed in a large envelope labeled as Exhibit 109, as instructed in the Application Submission Procedures Manual.

(A) Exhibit 109A. A Personal Financial and Credit Statement completed and signed by each Person with a general partner (or if Applicant is to be a Limited Liability Company, managing member) interest in the Applicant. Applicant's statement must not be older than 90 days from the first day of the Application Acceptance Period. If submitting partnership and corporate financials in addition to the individual statements, the certified financial statements should not be older than 12 months.

(B) Exhibit 109B. Authorization to Release Credit Information must be completed by all Persons with an ownership interest in the Applicant.

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(10) Exhibit 110. A Phase I Environmental Site Assessment (ESA) on the subject Property, dated not more than 12 months prior to the first day of the Application Acceptance Period. In the event that a Phase I Environmental Site Assessment on the Project is older than 12 months, the Project Owner must supply the Department with an update letter from the Person or organization which prepared the initial assessment; provided however, that the Department will not accept any Phase I Environmental Site Assessment which is more than 24 months old. The ESA must be prepared in accordance with the policies provided in the Application Submission Procedures Manual.

(11) Exhibit 111. A comprehensive Market Study prepared at the developer's expense by a disinterested Qualified Market Analyst in accordance with the Market Analysis and Appraisal Policy provided in the Application Submission Procedures Manual. The Market Study should be prepared for and addressed to the Department.

(A) The Department may determine from time to time that information not requested in the Third Party Market Study Standards will be relevant to the Department's evaluation of the need for the Project and the allocation of the requested Housing Credit Allocation Amount. The Department may request additional information from the Qualified Market Analyst to meet this need.

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

(e) Selection Criteria. All Applications will be ranked according to the Selection Criteria listed in paragraphs (1) through (8) of this subsection.

Exhibit 201, Development Location. Evidence that the subject Property is located within one of the geographical areas described in subparagraphs (A) through (E) of this paragraph. Areas qualifying under any one of the subparagraphs (A) through (E) of this paragraph will receive 7 points. A project may only receive points under one of the subparagraphs (A) through (E) of this paragraph:

(A) A project that is located in a city or county with no comparable existing LIHTC developments and is not within two miles of an existing tax credit development. Evidence will include a market study with a full review of tax credit units within the two mile radius. The term comparable for this exhibit means projects serving the same targeted population (ie., the elderly).

(B) A geographical area which is:

(i) a "Difficult Development Area" as specifically designated by the Secretary of HUD. These are areas which have high construction, land, and utility costs relative to area median family income; or

(ii) a Targeted Texas County (TTC) as designated by the Department in the Application Submission Procedures Manual;

(C) a designated state or federal empowerment/enterprise zone. Such developments must submit a letter and a map from a city/county official verifying that the proposed development is located within such a designated zone. Letter should be no older than 90 days from the first day of Application Acceptance Period; or

(D) a city-sponsored Tax Increment Financing Zone (TIF), Public Improvement District (PIDs), or other area or zone where a city or county has, through a local government initiative, specifically encouraged or channeled growth, neighborhood preservation or redevelopment. Significant incentives or benefits must be received from the local government which amount to at least 5% of the Total Development Costs. Such developments must submit all of the following documentation: a letter from a city/county official verifying that the proposed development is located within the city sponsored zone or district; a map from the city/county official which clearly delineates the boundaries of the district; and a certified copy of the appropriate resolution or documentation from the mayor, local city council, county judge, or county commissioners court which documents that the designated area was:

(i) created by the local city council/county commission,

(ii) targets a specific geographic area which was not created solely for the benefit of the Applicant, and

(iii) offers tangible and significant area-specific incentives or benefit over and above those normally provided by the city or county.

(E) Project is located in a QCT and contributes to a concerted community revitalization plan. To qualify for these points, the Project Owner, in addition to submitting Exhibit 102 (B), must also submit a letter from a city/county official which verifies that the development is located in a Qualified Census Tract, and provides a detailed description of the revitalization plan under way in the community, including how the project contributes to such concerted revitalization efforts.

(2) Housing Needs Characteristics.

(A) The proposed development is located in a county in which 10% or more of the households are below the poverty level as set forth in the Department's "County Data Elements Guide" incorporated into the Reference Manual. Utilize the percentages in clauses (i) through (iv) of this subparagraph to assess the appropriate score:

(i) 10% to 20% of households are below the poverty level (3 points);

(ii) 21% to 31% of households are below the poverty level (5 points);

(iii) 32% to 42% of households are below the poverty level (7 points); or

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(iv) 43% or more of households are below the poverty level (9 points).

(B) The proposed development is located in a county in which 20% or more of the rental units have a cost burden as set forth in the County Data Elements guide. Utilize the following percentages to assess the appropriate score:

(i) 20% to 30% of rental units have a cost burden (4 points);

(ii) 31% to 41% of rental units have a cost burden (6 points); or

(iii) 42% or more of rental units have a cost burden (8 points).

(3) Project Characteristics. Projects may receive points under as many of the following subparagraphs as are applicable.

(A) Exhibit 202. Evidence that the Project to be purchased qualifies as a federally assisted building within the meaning of the Code, §42(d)(6)(B), and is in danger of having the mortgage assigned to HUD, TxRD-USDA, or creating a claim on a federal mortgage insurance fund (such evidence must be a letter from the institution to which the development is in danger of being assigned); OR evidence that the Applicant is purchasing(ed) a Property owned by HUD, an insured depository institution in default, or a receiver or conservator of such an institution, or is an REO Property or other existing Property which is being rehabilitated as part of a community revitalization plan. Such evidence must be in the form of a binding contract to purchase from such federal or other entity as described in this subparagraph, closing statements, or recorded warranty deed. For an existing Project which is part of a community revitalization plan, documentation must include a letter from the city/county which verifies that the Project is part of a community revitalization plan and provides a detailed description of the contribution to the revitalization plan (5 points).

(B) Exhibit 203. Evidence that the Project is a low income building with mortgage prepayment eligibility as provided for in the Code, §42(d)(6)(C), or that the Project has an expiring Section 8 contract, which the owner is under no obligation to renew. Such evidence must be a copy of the HUD regulatory agreement and/or mortgage which does not preclude the current owner from prepaying the mortgage and a copy of the expiring Section 8 contract(s). Applicant shall also provide a statement as to its willingness to maintain low-income use restrictions for the period applicable to the type of HUD assistance involved, and the actions taken or required by it in order to assure that the HUD assistance will continue to be provided to the Project (8 points).

(C) Project provides Units for housing individuals with children. To qualify for these points, these Units must have no fewer than three bedrooms and at least 1000 square feet of net rentable area for three bedroom Units or 1200 square feet of net rentable area for four bedroom Units. Unless the building is served by an elevator, 3 or 4 bedroom Units located above the building's second floor will not qualify for these points. If the Project is a mixed-income development, only tax credit Units will be used in computing the percentage of qualified Units for this selection item.

(i) 15% of the Units in the development are three or four bedrooms (5 points); and

(ii) an additional point will be awarded for each additional 5% increment of Units that are three or four bedrooms up to 30% of the Units (a maximum of three points) (3 points).

(D) The Project will utilize at least four of the following energy saving devices in the construction of each tax credit Unit. The devices selected must be certified by the project architect as being included in the design of each tax credit Unit prior to the closing of the construction loan and in actual construction upon Cost Certification. (4 Points):

(i) ceiling fans in living room and each bedroom;

(ii) insulation of at least R-15 for walls and R-30 for ceilings;

(iii) roof radiant barrier;

(iv) gas heating system with an energy factor of 0.59;

(v) energy efficient air conditioning system with a 12 SEER or above rating;

(vi) a shading coefficient for windows of 0.4 provided in the form of solar screens; or dual pane insulating, low-e windows;

(vii) evaporative cooling system; or

(viii) utilization of appliances and residential light fixtures that qualify for the United States Environmental Protection Agency (EPA) and the United States Department of Energy's Energy Star Label. At a minimum, this shall include the installation of programmable thermostats, water heaters, refrigerators and dishwashers in each unit.

(E) The proposed development provides low density housing of no more than 20 Units per acre or as follows:

(i) 16 Units or less per acre (6 points); or

(ii) 17 to 20 Units per acre (4 points).

(F) The proposed development is designed as a multistory elderly development or a Highrise Urban Infill Project. Points are awarded as follows:

(i) 21 to 24 Units per acre (5 points); or

(ii) 25 to 28 Units per acre (3 points).

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(G) The Project is an existing Residential Development without maximum rent limitations or set-asides for affordable housing. If maximum rent limitations had existed previously, then the restrictions must have expired at least one year prior to the date of Application to the Department (8 points).

(H) The Project is a mixed-income development comprised of both market rate Units and qualified tax credit Units. To qualify for these points, the project must be located in a submarket where the average rents based on the number

of bedrooms for comparable market rate units are at least 10% higher on a per net rentable square foot basis than the maximum allowable rents under the Program. Additionally, the proposed rents for the market rate units in the project must be at least 5% higher on a per net rentable square foot basis than the maximum allowable rents under the Program. The Market Study required by subsection (d)(11) of this section must provide an analysis of these requirements for each bedroom type shown in proposed unit mix. Points will be awarded to Project's with a Unit based Applicable Fraction which is no greater than:

- (i) 60% (10 points); or,
- (ii) 75% (6 points); or,
- (iii) 85% (3 points).

(I) Exhibit 204. Evidence that the proposed historic Residential Development has received an historic property designation by a federal, state or local Governmental Entity. Such evidence must be in the form of a letter from the designating entity identifying the development by name and address and stating that the project is:

(i) listed in the National Register of Historic Places under the United States Department of the Interior in accordance with the National Historic Preservation Act of 1966;

(ii) located in a registered historic district and certified by the United States Department of the Interior as being of historic significance to that district;

(iii) identified in a city, county, or state historic preservation list; or

(iv) designated as a state landmark (6 points).

(J) Project Owner will set-aside Units for households with incomes at 50% or less of Area Median Gross Income (AMGI). The rents for these Units must not be higher than the allowable tax credit rents at the 50% AMGI level. The Project Owner will set aside Units at 50% AMGI and will maintain the percentage of such Units continuously over the compliance and extended use period as specified in the LURA. For the purposes of this subparagraph (maintaining the promised percentage of set aside 50% AMGI Units), if at re-certification the tenant's household income exceeds 140% of the 50% AMGI level, then the Unit remains a 50% AMGI Unit until the next available Unit of comparable or smaller size is designated to replace this Unit. Once the over 50% AMGI Unit is replaced, then the rent for the previously qualified 50% AMGI Unit may be increased over the LIHTC requirements. Rent increases, if any, should comply with lease provisions and local tenant-landlord laws. If the Project is a mixed-income development, only tax credit Units should be used in computing the percentage of qualified Units for this selection item. Utilize the percentages in clause (i) through (ii) of this subparagraph to assess the appropriate score.

(i) four points will be awarded for the first 10% of the Units in the development that are set-aside for tenants with incomes at 50% or less of AMGI (4 points);and

(ii) an additional point will be awarded for every 5% of additional Units set-aside for tenants with incomes at 50% or less of AMGI up to a maximum of eight points (8 points).

(K) The Project is comprised entirely of fourplexes and Town Homes. To qualify for these points the development must be on contiguous property under common ownership, management, and Control and must have a density of no more than 16 Units per acre. None of the residential buildings may share common roofs with other buildings. None of the residential buildings may have an exterior door that opens onto a breezeway or hallway that serves other units or buildings (5 points).

(L) Exhibit 205. For developments which involve rehabilitation of existing units, evidence that a majority of the development's residential Units are vacant and uninhabitable at the time the Application is submitted. Such evidence must be in the form of a letter and report from the local municipal authority citing substantial code violations. To qualify for these points, the Applicant or its Affiliates must not have owned a significant interest in, or have had Control of the Project during the period in which such Units were rendered uninhabitable (4 points).

(M) Exhibit 206. Evidence from the local municipal authority stating that the Project fulfills a need for additional affordable rental housing as evidenced in a local Consolidated Plan, Comprehensive Plan, other or local planning document. If the municipality does not have such a planning document, then a letter from the local municipal authority stating that there is no local plan and that the city supports the Project must be submitted (5 points).

(N) The Project consists of not more than 36 Units and is not a part of, or contiguous to, a larger Project. A Project may not receive points for this characteristic if it would otherwise qualify as a Rural Project (5 points).

(O) Exhibit 207. Evidence that the proposed Project is partially funded by a HOPE VI grant from HUD. The Project must have already received the commitment from HUD. Submission of a HOPE VI application to HUD does not

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qualify a Project for these points. Evidence shall include a copy of the commitment letter from HUD indicating the HOPE VI grant terms and grant award amount (5 points).

(4) Sponsor Characteristics. Projects may only receive points for one of the two criteria listed in subparagraphs (A) and (B) of this paragraph:

(A) EXHIBIT 208. Evidence that a HUB, as certified by the General Services Commission, is the Project Owner or Controls the Project Owner. With respect to the filing of an Application and the development, operation and ownership of a Project, the historically underutilized person or persons whose ownership interests comprise a majority of a corporation, partnership, joint venture or other business entity, must maintain this majority and must demonstrate regular, continuous, and substantial participation in the operation and management activities of the entity. Likewise, with regard to a sole proprietorship, the individual who comprises the sole proprietorship must demonstrate regular, continuous, and substantial participation in the development, operation and ownership of the Project. The Department shall, during and after the Application Round, monitor those individuals whose purported ownership interest(s) and participation form the basis upon which the designation of HUB is being claimed and may require the submission of additional documentation as required to verify said evidence. The Department's goal is to have substantive participation by those individuals whose purported ownership interest(s) and participation form the basis which the designation as a HUB is claimed. A determination by the Department that there has been a material misrepresentation as to such participation or that insufficient evidence has been provided to substantiate such participation will be final and points awarded for HUB participation will be withdrawn accordingly. The following documentation must be provided to qualify for these points:

(i) certification from the General Services Commission that the Person is a HUB; and

(ii) evidence of regular, continuous and substantial participation. This evidence shall include, but not be limited to, the agreement to personally guarantee the interim construction loan secured relative to the development of a Project (and to personally provide all other guarantees to the equity investor) by the person or persons whose purported ownership interest(s) and participation form the basis upon which the designation of a HUB is being claimed. Any such guarantee wherein an Affiliate, partner and or Beneficial Owner of the guarantor agrees to indemnify, in whole or in part, the guarantor from the liability arising from the guarantee, shall not constitute said evidence (3 points).

(B) Exhibit 209. Joint Ventures with Qualified Nonprofit Organizations. Evidence that the Project involves a joint venture between a forprofit organization and a Qualified Nonprofit Organization. The Qualified Nonprofit Organization must be materially participating in the Project as one of the General Partners, but is not required to have Control, to receive these points. However, projects without Control will not be eligible for the nonprofit set-aside. Such evidence must be in the form of an executed partnership agreement between the organizations participating in the joint venture. The partnership agreement must clearly identify the percentage interest of each organization.(3 points)

(5) Exhibit 210. Project Provides Supportive Services to Tenants. Evidence that the Project Owner has an executed agreement with a for profit organization or a tax-exempt entity for the provision of special supportive services for the tenants. The service provider must be an existing organization qualified by the Internal Revenue Service or other governmental entity. The provision of supportive services will be included in the LURA (up to 5 points, depending upon the services committed in accordance with subparagraph (B) of this paragraph).

(A) Both documents described in clauses (i) and (ii) of this subparagraph must be submitted for the service provider to be considered under this exhibit.

(i) A fully executed contract between the service provider and the Applicant that establishes that the services offered provide a benefit that would not be readily available to the tenants if they were not residing in the development.

(ii) A copy of the service provider's Articles of Incorporation or comparable chartering document.

(B) The supportive services contract will be evaluated using the criteria described in clauses (i) through (v) of this subparagraph. The contract must clearly state the:

(i) Cost of Services to the Project Owner. The cost shown in the contract must also be included in the Project's operating budget and proforma. The costs must be reasonable for the benefit derived by the tenants. Services for which the Project Owner does not pay, will not receive a point for this item (1 point).

(ii) Availability of Services - The services must be provided on site or with transportation provided to offsite locations. (1 point).

(iii) Duration of Contract - A commitment to provide the services for not less than five years or an option to renew the contract annually for not less than five years must be provided (1 point).

(iv) Experience of Service Provider - The Department will evaluate the experience of the organization as well as the professional and educational qualifications of the individuals delivering the services (1 point).

(v) Appropriateness - Services must be appropriate and provide a tangible benefit in enhancing the standard of living of a majority of low-income tenants (1 point).

(6) Tenant Populations With Special Housing Needs. Projects may receive points under as many of the subparagraphs as apply, in accordance with the terms of those subparagraphs.

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(A) This criterion applies to elderly Projects which provide significant facilities and services specifically designed to meet the physical and social needs of the residents. Significant services may include congregate dining facilities, social and recreation programs, continuing education, welfare information and counseling, referral services, transportation and recreation. Other attributes of such Projects include providing hand rails along steps and interior hallways, grab bars in bathrooms, routes that allow for barrier-free travel, lever type doorknobs and single lever faucets. All multistory buildings (two or more floors) must be served by an elevator. Individual Units shall not be multistory. Elderly Projects must not contain any Units with three or more bedrooms. Such a Project must conform to the Federal Fair Housing Act and must be a Project which meets the definition of Qualified Elderly Project (10 points).

(B) Exhibit 211. Evidence that the Project is designed solely for transitional housing for homeless persons on a non-transient basis, with supportive services designed to assist tenants in locating and retaining permanent housing. For the purpose of this exhibit, homeless persons are individuals or families that lack a fixed, regular, and adequate nighttime residence as more fully defined in 24 Code of Federal Regulations, §91.5, and as may be amended from time to time. All of the items described in clauses (i) through (v) of this subparagraph must be submitted:

- (i) a detailed narrative describing the type of proposed housing;
- (ii) a referral agreement with an established organization which provides services to the homeless;
- (iii) a marketing plan designed to attract qualified tenants and housing providers;
- (iv) a list of supportive services; and
- (v) adequate additional income source and executed guarantee to supplement any anticipated operating and funding gaps (15 points).

(7) Exhibit 212. Evidence that Project Owner agrees to provide a right of first refusal to purchase the Project upon or following the end of the Compliance Period for the minimum purchase price provided in, and in accordance with the requirements of, §42(i)(7) of the Code (the "Minimum Purchase Price"), to a Qualified Nonprofit Organization, the Department; and either an individual tenant with respect to a single family building; or a tenant cooperative, a resident management corporation in the Project or other association of tenants in the Project with respect to multifamily developments (together, in all such cases, including the tenants of a single family building, a "Tenant Organization"). Project Owner may qualify for these points by providing the right of first refusal in the following terms (5 points).

(A) Upon the earlier to occur of:

(i) the Project Owner's determination to sell the Project, or

(ii) the Project Owner's request to the Department, pursuant to §42(h)(6)(I) of the Code, to find a buyer who will purchase the Project pursuant to a "qualified contract" within the meaning of §42(h)(6)(F) of the Code, the Project Owner shall provide a notice of intent to sell the Project ("Notice of Intent") to the Department and to such other parties as the Department may direct at that time. If the Project Owner determines that it will sell the Project at the end of the Compliance Period, the Notice of Intent shall be given no later than two years prior to expiration of the Compliance Period. If the Project Owner determines that it will sell the Project at some point later than the end of the Compliance Period, the Notice of Intent shall be given no later than two years prior to date upon which the Project Owner intends to sell the Project.

(B) During the two years following the giving of Notice of Intent, the Sponsor may enter into an agreement to sell the Project only in accordance with a right of first refusal for sale at the Minimum Purchase Price with parties in the following order of priority:

(i) during the first six-month period after the Notice of Intent, only with a Qualified Nonprofit Organization that is also a community housing development organization, as defined for purposes of the federal HOME Investment Partnerships Program at 24 C.F.R. § 92.1 (a "CHDO") and is approved by the Department,

(ii) during the second six-month period after the Notice of Intent, only with a Qualified Nonprofit Organization or a Tenant Organization; and

(iii) during the second year after the Notice of Intent, only with the Department or with a Qualified Nonprofit Organization approved by the Department or a Tenant Organization approved by the Department.

(iv) If, during such two-year period, the Project Owner shall receive an offer to purchase the Project at the Minimum Purchase Price from one of the organizations designated in clauses (i), (ii), and (iii) of this subparagraph (within the period(s) appropriate to such organization), the Project Owner shall sell the Project at the Minimum Purchase Price to such organization. If, during such period, the Project Owner shall receive more than one offer to purchase the Project at the Minimum Purchase Price from one or more of the organizations designated in clauses (i), (ii), and (iii) of this subparagraph (within the period(s) appropriate to such organizations), the Project Owner shall sell the Project at the Minimum Purchase Price to whichever of such organizations it shall choose.

(C) After the later to occur of:

(i) the end of the Compliance Period; or

(ii) two years from delivery of a Notice of Intent,

the Project Owner may sell the Project without regard to any right of first refusal established by the LURA if no offer to purchase the Project at or above the Minimum Purchase Price has been made by a Qualified Nonprofit Organization, a

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Tenant Organization or the Department, or a period of 120 days has expired from the date of acceptance of all such offers as shall have been received without the sale having occurred, provided that the failure(s) to close within any such 120-day period shall not have been caused by the Project Owner or matters related to the title for the Project.

(D) At any time prior to the giving of the Notice of Intent, the Project Owner may enter into an agreement with one or more specific Qualified Nonprofit Organizations and/or Tenant Organizations to provide a right of first refusal to purchase the Project for the Minimum Purchase Price, but any such agreement shall only permit purchase of the Project by such organization in accordance with and subject to the priorities set forth in subparagraph (B) of this paragraph.

(E) The Department shall, at the request of the Project Owner, identify in the LURA a Qualified Nonprofit Organization or Tenant Organization which shall hold a limited priority in exercising a right of first refusal to purchase the Project at the Minimum Purchase Price, in accordance with and subject to the priorities set forth in subparagraph (B) of this paragraph.

(F) The Department shall have the right to enforce the Project Owner's obligation to sell the Project as herein contemplated by obtaining a power-of-attorney from the Project Owner to execute such a sale or by obtaining an order for specific performance of such obligation or by such other means or remedy as shall be, in the Department's discretion, appropriate.

(8) Bonus Points.

(A) Projects included on a list of proposed Applications submitted to the Department by the Applicant at least 20 business days prior to the beginning of the Application Acceptance Period shall receive two points. This list must include the following information about the proposed development(s): Project name, address, city, zip code, household type ("family", "elderly", or "transitional") and the estimated number of total units, program units, and credit request amount. (2 points).

(B) Applications received within the first ten working days of the Application Acceptance Period shall receive two points (2 points).

(f) Credit Amount.

(1) The Department shall issue tax credits only in the amount needed for the financial feasibility and viability of a Project throughout the Compliance Period. The issuance of tax credits or the determination of any allocation amount in no way represents or purports to warrant the feasibility or viability of the Project by the Department. The Department will limit the allocation of tax credits to no more than \$1.2 million per Project. The allocation of tax credits shall also be limited to not more than \$1.8 million per Applicant. These limitations will apply to all Affiliates of any Applicant, developer, Project Owner, general partner, sponsor or their Affiliates or related entities unless otherwise provided for by the Board. Tax Exempt Bond Project Applications are not subject to the per Project and per Applicant credit limitations, and Tax Exempt Bond Projects will not count towards the total limit on tax credits per Applicant.

(2) In making determinations with respect to the limitation the Department may take into account such factors as the percentage of interest held by a particular individual or any Affiliate thereof in a Project, the amount of fees or other compensations paid to a particular individual or any Affiliate thereof with respect to a Project, any other financial benefits, either directly or indirectly, through Beneficial Ownership received by a particular individual or any Affiliate thereof with respect to a Project. The limitation does not apply:

(A) to an entity which raises or provides equity for one or more Projects, solely with respect to its actions in raising or providing equity for such Projects (including syndication related activities as agent on behalf of investors);

(B) to the provision by an entity of "qualified commercial financing" within the meaning of the Code, §49(a)(1)(D)(ii) (without regard to the 80% limitation thereof);

(C) to a Qualified Nonprofit Organization or other not-for-profit entity, to the extent that the participation in a Project by such organization consists only of the provision of loan funds or grants; and

(D) to a Project Consultant with respect to the provision of consulting services.

(g) Limitations on the Size of Projects.

(1) The minimum Project size will be limited to 16 units unless otherwise provided for under the Ineligible Building Types definition.

(2) Rural Projects involving new construction will be limited to 76 Units unless the Market Study clearly documents that larger developments are consistent with the comparables in the community and that there is a significant demand for additional units. Rural Projects exceeding 76 Units based on the Market Study will be ineligible for the Rural Set-Aside. All other Projects involving new construction will be limited to 250 units. These maximum unit limitations also apply to those Projects which involve a combination of rehabilitation and new construction. Projects that consist solely of acquisition/rehabilitation or rehabilitation only may exceed the maximum unit restrictions. For those developments which are a second phase or are otherwise adjacent to an existing tax credit development unless such proposed development is being constructed to replace previously existing affordable multifamily units on its site, the combined Unit total for the developments may not exceed the maximum allowable project size, unless the first phase has been completed and stabilized for at least six months.

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(3) Tax Exempt Bond Projects will be limited to 280 Units.

(h) Tax Exempt Bond Financed Projects.

(1) Tax Exempt Bond Project Applications are also subject to evaluation under the QAP and Rules and the requirements and underwriting review criteria described in the Application Submission Procedures Manual. Such projects requesting a Determination Notice in the current calendar year must meet all Threshold Criteria requirements stipulated in subsection(d) of this section. Such projects which received a Determination Notice in a prior calendar year must meet all Threshold Criteria requirements stipulated in the QAP and Rules in effect for the calendar year in which the Determination Notice was issued; provided, however, that such projects shall comply with all procedural requirements for obtaining Department action in the current QAP and Rules; and such other requirements of the QAP and Rules as the Department determines applicable. Tax Exempt Bond Financed Projects are not subject to the Selection Criteria set forth in subsection (e) of this section and are not required to submit documentation relating thereto.

(2) Tax Exempt Bond Project Applications will be evaluated under the factors set forth at paragraphs (1), (3), (4) and (7) of subsection (b) of this section. With respect to paragraph (1) of subsection (b) of this section, Projects determined to be infeasible by the Department will not receive a Determination Notice. With respect to paragraph (3) of subsection (b) of this section, Projects determined by the Department to result in an excessive concentration of affordable housing developments within a particular market area will not receive a Determination Notice. With respect to paragraph (4) of subsection (b) of this section, Projects determined by the Department to be located on an "Unacceptable" site will not receive a Determination Notice. For purposes of paragraph (7) of subsection (b) of this section, Projects must demonstrate the Project's consistency with the bond issuer's consolidated plan or other similar planning document. Consistency with the local municipality's consolidated plan or similar planning document must also be demonstrated in those instances where the city or county has a consolidated plan.

(3) Tax Exempt Bond Projects may not include Ineligible Building Types unless the Department determines that it is in the best interests of the particular Project, its market area and the tax credit program to permit a particular building type to be included in the Project.

(4) Tax Exempt Bond Projects are subject to the requirements and restrictions set forth in §50.5 of this title.

(5) Tax Exempt Bond Project Applications are not subject to the limitations on amount of tax credits per Applicant or per Project set forth in paragraph (f)(1) of this subsection.

(6) Tax Exempt Bond Project Applications must provide an executed agreement with a qualified service provider for the provision of special supportive services that would otherwise not be available for the tenants. The provision of these services will be included in the LURA. Acceptable services as described in subparagraphs (A) through (C) of this paragraph include:

(A) the services must be in one of the following categories: child care, transportation, basic adult education, legal assistance, counseling services, GED preparation, English as a second language classes, vocational training, home buyer education, credit counseling, financial planning assistance or courses, health screening services, health and nutritional courses, youth programs, scholastic tutoring, social events and activities, community gardens or computer facilities; or

(B) any other program described under Title IV-A of the Social Security Act (42 U.S.C. §§ 601 et seq.) which enables children to be cared for in their homes or the homes of relatives; ends the dependence of needy families on government benefits by promoting job preparation, work and marriage; prevents and reduces the incidence of out-of-wedlock pregnancies; and encourages the formation and maintenance of two-parent families, or

(C) any other services approved in writing by the Issuer. The plan for tenant supportive services submitted for review and approval of the Issuer must contain a plan for coordination of services with state workforce development and welfare programs. The coordinated effort will vary depending upon the needs of the tenant profile at any given time as outlined in the plan.

(7) Code §42(m)(2)(D) required the bond issuer (if other than the Department) to make sure that a Tax Exempt Bond Project does not receive more tax credits than the amount needed for the financial feasibility and viability of a Project throughout the Compliance Period. Treasury Regulations prescribe the occasions upon which this determination must be made. In light of the requirement, issuers may either elect to underwrite the Project for this purpose in accordance with the QAP and the Department's underwriting guidelines; or delegate, by agreement, that function to the Department. If the issuer underwrites the Project, the Department will, nonetheless, review the underwriting report and may make such changes in the amount of credits which the Project may be allowed as are appropriate under the Department's guidelines. The Determination Notice issued by the Department and any subsequent IRS Form(s) 8609 will reflect the amount of tax credits for which the Project is determined to be eligible in accordance with this paragraph, and the amount of tax credits reflected in the IRS Form 8609 may be greater or less than the amount set forth in the Determination Notice, based upon the Department's and the bond issuer's determination as of each building's placement in service

(8) If the Department staff determines that all requirements of subsection (h) of this section have been met, the Ad Hoc Tax Credit Committee, without further action, shall authorize the Department to issue a Determination Notice to

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the Applicant that the Project satisfies the requirements of the QAP and Rules in accordance with the Code, §42(m)(1)(D).

(i) Adherence to Obligations. All representations, undertakings and commitments made by an Applicant in the applications process for a Project, whether with respect to Threshold Criteria, Selection Criteria or otherwise, shall be deemed to be a condition to any Commitment Notice, Determination Notice, or Carryover Allocation for such Project, the violation of which shall be cause for cancellation of such Commitment Notice, Determination Notice, or Carryover Allocation by the Department, and if concerning the ongoing features or operation of the Project, shall be reflected in the LURA. All such representations are enforceable by the Department, including enforcement by administrative penalties for

failure to perform as stated in the representation and enforcement by inclusion in deed restrictions to which the Department is a party.

§50.8. Compliance Monitoring.

(a) The Code, §42(m)(1)(B)(iii), requires the Department as the housing credit agency to include in its QAP a procedure that the Department will follow in monitoring Projects for noncompliance with the provisions of the Code, §42 and in notifying the IRS of such noncompliance of which the Department becomes aware. Such procedure is set out in this QAP and in the Owner's Compliance Manual prepared by the Department's Compliance Division, as amended from time to time. Such procedure only addresses forms and records that may be required by the Department to enable the Department to monitor a Project for violations of the Code and the LURA and to notify the IRS of any such non-compliance. This procedure does not address forms and other records that may be required of Project Owners by the IRS more generally, whether for purposes of filing annual returns or supporting Project Owner tax positions during an IRS audit.

(b) The Department will monitor compliance with all covenants made by the Project Owner in the Application and in the LURA, whether required by the Code, Treasury Regulations or other rulings of the IRS, or undertaken by the Project Owner in response to Department requirements or criteria.

(c) The Project Owner must keep records for each qualified low income building in the Project, showing on a monthly basis (with respect to the first year of a building's Credit Period and on an annual basis, thereafter):

(1) the total number of residential rental Units in the building (including the number of bedrooms and the size in square feet of each residential rental Unit);

(2) the percentage of residential rental Units in the building that are low income Units;

(3) the rent charged for each residential rental Unit in the building including, with respect to low income Units, documentation to support the utility allowance applicable to such Unit;

(4) the number of occupants in each low income Unit;

(5) the low income Unit vacancies in the building and information that shows when, and to whom, all available Units were rented;

(6) the annual income certification of each tenant of a low income Unit, in the form designated by the Department in the Compliance Manual, as may be modified from time to time;

(7) documentation to support each low income tenant's income certification, consistent with the verification procedures required by HUD under Section 8 of the United States Housing Act of 1937 ("Section 8"). In the case of a tenant receiving housing assistance payments under Section 8, the documentation requirement is satisfied if the public housing authority provides a statement to the Project Owner declaring that the tenant's income does not exceed the applicable income limit under the Code, §42(g) as described in the Compliance Manual;

(8) the Eligible Basis and Qualified Basis of the building at the end of the first year of the Credit Period;

(9) the character and use of the nonresidential portion of the building included in the building's Eligible Basis under the Code, §42(d), (e.g. whether tenant facilities are available on a comparable basis to all tenants; whether any fee is charged for use of the facilities; whether facilities are reasonably required by the Project); and

(10) any additional information as required by the Department.

(d) The Project Owner will deliver to the Department within 90 days after the end of each calendar year, the current financial statements, in form and content satisfactory to the Department, itemizing the income and expenses of the Project.

(e) Specifically, to evidence compliance with the requirements of the Code, Section 42(h)(6)(B)(iv) which requires that the LURA prohibit Project Owners of all tax credit projects placed in service after August 10, 1993 from refusing to lease to persons holding Section 8 vouchers or certificates because of their status as holders of such Section 8 voucher or certificate, Project Owners must:

(1) maintain a written management plan that is available for review upon request. Such management plan must state an intention of the Project Owner to comply with state and federal fair housing and anti-discrimination laws. Owners and managers of all tax credit Projects placed in service after August 10, 1993, are prohibited from having policies, practices, procedures and/or screening criteria which exclude applicants solely because they have a Section 8 voucher or

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certificate. Such management plan must also clearly state the objectives identified in subparagraphs (A) through (C) of this paragraph. Failure to have the required objectives set forth clearly in the management plan or failure to follow such required objectives in the operation of the Project will be treated by the Department as noncompliance with the LURA.

(A) prospective applicants who hold Section 8 vouchers or certificates are welcome to apply and will be provided the same consideration for occupancy as any other applicant;

(B) any minimum income requirements for Section 8 voucher and certificate holders will only be applied to the portion of the rent the prospective tenant would pay, provided, however, that if Section 8 pays 100% of the rent for the

Unit, the Project Owner may establish other reasonable minimum income requirements to ensure that the tenant has the financial resources to meet daily living expenses. Minimum income requirements for Section 8 voucher and certificate holders will not exceed 2.5 times the portion of rent the tenant pays; and

(C) all other screening criteria, including employment policies or procedures and other leasing criteria (such as rental history, credit history, criminal history, etc.) must be applied to applicants uniformly and in a manner consistent with the Texas and federal Fair Housing Acts and with Department and Code requirements;

(2) post Fair Housing logos and the Fair Housing poster in the leasing office;

(3) approve and distribute a written Affirmative Marketing Plan to the property management and on-site staff.

(4) communicate annually during the first quarter of each year in writing with the director of each Section 8 program which has jurisdiction within the geographic area where the Project is located. Such communication will include information on the unit characteristics and rents and will advise the administrating agency that the property accepts Section 8 vouchers and certificates and will treat referrals in a fair and equal manner. Copies of such correspondence must be available during on-site reviews conducted by the Department.

(f) Record retention provision. The Project Owner is required to retain the records described in subsection (c) of this section for at least six years after the due date (with extensions) for filing the federal income tax return for that year; however, the records for the first year of the Credit Period must be retained for at least six years beyond the due date (with extensions) for filing the federal income tax return for the last year of the Compliance Period of the building.

(g) Certification and Review.

(1) On or before February 1st of each year, the Department will send each Project Owner of a completed Project an Owner's Certification of Program Compliance (form provided by the Department) to be completed by the Owner and returned to the Department on or before the first day of March of each year in the Compliance Period. Any Project for which the certification is not received by the Department, is received past due, or is incomplete, improperly completed or not signed by the Project Owner, will be considered not in compliance with the provisions of §42 of the Code and reported to the IRS on Form 8823, Low Income Housing Credit Agencies Report of Non Compliance. The Owner Certification of Program Compliance shall cover the proceeding calendar year and shall include at a minimum the following statements of the Project Owner:

(A) the Project met the minimum set-aside test which was applicable to the Project;

(B) there was no change in the Applicable Fraction of any building in the Project, or that there was a change, and a description of the change;

(C) the owner has received an annual income certification from each low income tenant and documentation to support that certification;

(D) each low income Unit in the Project was rent-restricted under the Code, §42(g)(2) and Treasury Regulation §1.42-10 regarding utility allowances;

(E) all Units in the Project were for use by the general public including the requirement that no finding of discrimination under the Texas and federal Fair Housing Acts occurred for the Project;

(F) each building in the Project was suitable for occupancy, taking into account local health, safety, and building codes, and the state or local government unit responsible for making building code inspections did not issue a report of a violation for any building or low income Unit in the Project. If a violation report or notice was issued by the governmental unit, the Project Owner must attach either a statement summarizing the violation report or notice or a copy of the violation report or notice, and in addition, the Project Owner must state whether the violation has been corrected;

(G) either there was no change in the Eligible Basis (as defined in the Code, §42(d)) of any building in the Project, or that there has been a change, and the nature of the change;

(H) all tenant facilities included in the Eligible Basis under the Code, §42(d), of any building in the Project, such as swimming pools, other recreational facilities, and parking areas, were provided on a comparable basis without charge to all tenants in the building;

(I) if a low income Unit in the Project became vacant during the year, reasonable attempts were, or are being, made to rent that Unit or the next available Unit of comparable or smaller size to tenants having a qualifying income before any other Units in the Project were, or will be, rented to tenants not having a qualifying income;

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(J) if the income of tenants of a low income Unit in the Project increased above the limit allowed in the Code, §42(g)(2)(D)(ii), the next available Unit of comparable or smaller size in the Project was, or will be, rented to tenants having a qualifying income;

(K) a LURA including an Extended Low Income Housing Commitment as described in the Code, §42(h)(6)(B), was in effect for buildings subject to the Revenue Reconciliation Act of 1989, §7106(c)(1) (generally any building receiving an allocation after 1989), including the requirement under Code, §42(h)(6)(B)(iv) that a Project Owner cannot refuse to lease a Unit in the Project to an applicant because the applicant holds a voucher or certificate of eligibility under Section 8, and the Project Owner has not refused to lease a Unit to an applicant because of his or her status as a holder of a Section 8 voucher nor is the Project out of compliance with the provisions, including any special provisions, outlined in the Extended Low Income Housing Commitment;

(L) no change in the ownership of a Project has occurred during the reporting period;

(M) the Project Owner has not been notified by IRS that the Project is no longer "a qualified low income housing project" within the meaning of the Code, §42;

(N) the Project met all terms and conditions which were recorded in the LURA, or if no LURA was required to be recorded, the Project met all representations of the Project Owner in the Application for credits;

(O) if the Project Owner received its Housing Credit Allocation from the portion of the state ceiling set-aside for Projects involving Qualified Nonprofit Organizations under Code, §42(h)(5), a Qualified Nonprofit Organization owned an interest in and materially participated in the operation of the Project within the meaning of the Code, §469(h);

(P) all low income Units in the Project were used on a nontransient basis (except for transitional housing for the homeless provided under §42(i)(3)(B)(iii) of the Code or single-room-occupancy units rented on a month-by-month basis under §42(i)(3)(B)(iv) of the Code; and

(Q) no low income Units in the Project were occupied by households in which all members were Students.

(2) Review.

(A) The Department staff will review each Owner's Certification of Program Compliance for compliance with the requirements of the Code, §42.

(B) The Department will perform on-site inspections of all buildings in each low income housing Project by the end of the second calendar year following the year the last building in the Project is placed in service and, for at least 20% of the low income Units in each Project, inspect the Units and review the low income certifications, the documentation the Project Owner has received to support the certifications, the rent records for each low income tenant in those Units, and any additional information that the Department deems necessary.

(C) The Department will perform on site monitoring reviews (unless the Project is required to have fewer than ten low income Units) at least once every three years on low income housing Projects. A monitoring review will include an inspection of the income certification, the documentation the Project Owner has received to support that certification, the rent record for each low income tenant, and a property inspection including individual Units and any additional information that the Department deems necessary, for at least 20% of the low income Units in those Projects.

(D) The Department may, at the time and in the form designated by the Department, require the Project Owners to submit for compliance review, information on tenant income and rent for each low income Unit, and may require a Project Owner to submit for compliance review copies of the tenant files, including copies of the income certification, the documentation the Project Owner has received to support that certification and the rent record for any low income tenant.

(E) The Department will randomly select which low income Units and tenant records are to be inspected and reviewed by it. The Department may determine to review tenant records wherever they are stored, whether on-site or off-site. Units and tenant records to be inspected and reviewed will be selected in a manner that will not give Project Owners advance notice that a particular Unit and tenant records for a particular year will or will not be inspected or reviewed. However, the Department will give reasonable notice to the Project Owner that an on-site inspection or a tenant record review will occur, so that the Project Owner may notify tenants of the inspection or assemble tenant records for review.

(3) Exception. The Department may, at its discretion, enter into a Memorandum of Understanding with the TxRD-USDA, whereby the TxRD-USDA agrees to provide to the Department information concerning the income and rent of the tenants in buildings financed by the TxRD-USDA under its §515 program. Owners of such buildings may be excepted from the review procedures of subparagraph (B) or (C) of this paragraph or both; however, if the information provided by TxRD-USDA is not sufficient for the Department to make a determination that the income limitation and rent restrictions of the Code, §42(g)(1) and (2), are met, the Project Owner must provide the Department with additional information.

(h) Inspection provision. The Department retains the right to perform an on site inspection of any low income housing Project including all books and record pertaining thereto through either the end of the Compliance Period or the end of the period covered by any Extended Low Income Housing Commitment, whichever is later. An inspection under this subsection may be in addition to any review under paragraph (g)(2) of this section.

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(i) Notices to Owner. The Department will provide prompt written notice to the Project Owner if the Department does not receive the certification described in subsection (g)(1) of §50.8 of this title or discovers through audit, inspection, review or any other manner, that the Project is not in compliance with the provisions of the Code, §42 or the LURA. The notice will specify a correction period which will not exceed 90 days, during which the Project Owner may respond to the Department's findings, bring the Project into compliance, or supply any missing certifications. The Department may extend the correction period for up to six months if it determines there is good cause for granting an extension. If any communication to the Project Owner under this section is returned to the Department as unclaimed or undeliverable, the Project may be considered not in compliance without further notice to the Project Owner.

(j) Notice to the IRS.

(1) Regardless of whether the noncompliance is corrected, the Department is required to file IRS Form 8823 with the IRS. IRS Form 8823 will be filed not later than 45 days after the end of the correction period specified in the Notice to Owner, but will not be filed before the end of the correction period. The Department will explain on IRS Form 8823 the nature of the noncompliance and will indicate whether the Project Owner has corrected the noncompliance or has otherwise responded to the Department's findings.

(2) The Department will retain records of noncompliance or failure to certify for six years beyond the Department's filing of the respective IRS Form 8823. In all other cases, the Department will retain the certification and records described in §50.8 of this title for three years from the end of the calendar year the Department receives the certifications and records.

(k) Notices to the Department. A Project Owner must notify the Department in writing of the events listed in paragraphs (1) through (3) of this subsection.

(1) prior to any sale, transfer, exchange, or renaming of the Project or any portion of the Project. For Rural Projects that are federally assisted or purchased from HUD, the Department shall not authorize the sale of any portion of the Project;

(2) any change of address to which subsequent notices or communications shall be sent; or

(3) within thirty days of the placement in service of each building, the Department must be provided the in service date of each building.

(l) Liability. Compliance with the requirements of the Code, §42 is the sole responsibility of the Project Owner of the building for which the credit is allowable. By monitoring for compliance, the Department in no way assumes any liability whatsoever for any action or failure to act by the Project Owner including the Project Owner's noncompliance with the Code, §42.

(m) These provisions apply to all buildings for which a low income housing credit is, or has been, allowable at any time. The Department is not required to monitor whether a building or Project was in compliance with the requirements of the Code, §42, prior to January 1, 1992. However, if the Department becomes aware of noncompliance that occurred prior to January 1, 1992, the Department is required to notify the IRS in a manner consistent with subsection (j) of this section.

§50.9. Housing Credit Allocations.

(a) In making a Housing Credit Allocation under this chapter, the Department shall rely upon information contained in the Applicant's Application to determine whether a building is eligible for the credit under the Code, §42. The Applicant shall bear full responsibility for claiming the credit and assuring that the Project complies with the requirements of the Code, §42. The Department shall have no responsibility for ensuring that an Applicant who receives a housing credit allocation from the Department will qualify for the housing credit.

(b) The Housing Credit Allocation Amount shall not exceed the dollar amount the Department determines is necessary for the financial feasibility and the long term viability of the Project throughout the Compliance Period. Such determination shall be made by the Department at the time of issuance of the Commitment Notice or Determination Notice; at the time the Department makes a Housing Credit Allocation; and/or the date the building is placed in service. Any Housing Credit Allocation Amount specified in a Commitment Notice, Determination Notice or Carryover Allocation Document is subject to change by the Department dependent upon such determination. Such a determination shall be made by the Department based on its evaluation and procedures, considering the items specified in the Code, §42(m)(2)(B), and the department in no way or manner represents or warrants to any applicant, sponsor, investor, lender or other entity that the project is, in fact, feasible or viable.

(c) The General Contractor hired by the Applicant must meet specific criteria as defined by the Seventy-fifth Legislature. A general contractor hired by an applicant or an applicant, if the applicant serves as general contractor must demonstrate a history of constructing similar types of housings without the use of federal tax credits. Evidence must be submitted to the Department which sufficiently documents that the general contractor has constructed some housing without the use of low income housing credits. This documentation will be required as a condition of the commitment notice or carryover agreement, and must be complied with prior to commencement of construction and at cost certification and final allocation of credits.

(d) All Carryover Allocations will be contingent upon the following:

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(1) A current original plat of survey of the land, prepared by a duly licensed Texas Registered Professional Land Surveyor. Such survey shall conform to standards prescribed in the Manual of Practice for Land Surveying in Texas as promulgated and amended from time to time by the Texas Surveyors Association as more fully described in the Carryover Procedures Manual.

(2) the Project Owner's closing of the construction loan shall occur not later than the second Friday in June of the year after the execution of the Carryover Allocation Document with the possibility of a one-time 30 day extension as described in §50.11 of this title. Copies of the closing documents must be submitted to the Department within two weeks after the closing. The Carryover Allocation will automatically be revoked if the Project Owner fails to meet the aforementioned closing deadline, and all credits previously allocated to that Project will be returned to the general pool for reallocation.

(3) the Project Owner must commence and continue substantial construction activities not later than the second Friday in November of the year after the execution of the Carryover Allocation Document with the possibility of an extension as described in §50.11(h) of this title. Substantial construction activities for new projects will generally be defined as post foundation construction activities. Evidence of such activity shall be provided in a format prescribed by the Department in the LIHTC Progress Report – Commencement of Construction which will document progress towards placing the Project in service in an expeditious manner.

(e) An allocation will be made in the name of the Applicant identified in the related Commitment Notice or Determination Notice. If an allocation is made in the name of the party expected to be the general partner in an eventual owner partnership, the Department may, upon request, approve a transfer of allocation to such owner partnership in which such party is the sole general partner. Any other transfer of an allocation will be subject to review and approval by the Department. The approval of any such transfer does not constitute a representation to the effect that such transfer is permissible under §42 of the Code or without adverse consequences thereunder, and the Department may condition its approval upon receipt and approval of complete documentation regarding the new owner including all the criteria for scoring, evaluation and underwriting, among others, which were applicable to the original Applicant.

(f) The Department shall make a Housing Credit Allocation, either in the form of IRS Form 8609, with respect to current year allocations for buildings placed in service, or in the Carryover Allocation Document, for buildings not yet placed in service, to any Project Owner who holds a Commitment Notice which has not expired, and for which all fees as specified in §50.11 of this title, have been received by the Department. For Tax Exempt Bond Projects, the Housing Credit Allocation shall be made in the form of a Determination Notice. For an IRS Form 8609 to be issued with respect to a building in a Project with a Housing Credit Allocation, satisfactory evidence must be received by the Department that such building is completed and has been placed in service in accordance with the provisions of the Department's Cost Certification Procedures Manual. The Department shall mail or deliver IRS Form 8609 (or any successor form adopted by the Internal Revenue Service) to the Project Owner, with Part I thereof completed in all respects and signed by an authorized official of the Department. The delivery of the IRS Form 8609 will occur only after the Project Owner has complied with all procedures and requirements listed within the Cost Certification Procedures Manual. Regardless of the year of Application to the Department for low income housing tax credits, the current year's Cost Certification Procedures Manual must be utilized when filing all cost certification requests. A separate housing credit allocation shall be made with respect to each building within a Project which is eligible for a housing credit; provided, however, that where an allocation is made pursuant to a Carryover Allocation Document on a project basis in accordance with the Code, §42(h)(1)(F), a housing credit dollar amount shall not be assigned to particular buildings in the Project until the issuance of IRS Form 8609s with respect to such buildings.

(g) In making a Housing Credit Allocation, the Department shall specify a maximum Applicable Percentage, not to exceed the Applicable Percentage for the building permitted by the Code, §42(b), and a maximum Qualified Basis amount. In specifying the maximum applicable percentage and the maximum Qualified Basis amount, the Department shall disregard the first-year conventions described in the Code, §42(f)(2)(A) and §42(f)(3)(B). The housing credit allocation made by the Department shall not exceed the amount necessary to support the extended low income housing commitment as required by the Code, §42(h)(6)(C)(i).

(h) Project inspections shall be required to show that the Project is built or rehabilitated according to required plans and specifications. At a minimum, all Project inspections must include an inspection for quality during the construction process while defects can reasonably be corrected and a final inspection at the time the Project is placed in service. All such Project inspections shall be performed by the Department or by an independent, third party inspector acceptable to the Department. The Project Owner shall pay all fees and costs of said inspections as described in §50.11(e) of this title.

(i) After the entire Project is placed in service, which must occur prior to the deadline specified in the Carryover Allocation Document, the Project Owner shall be responsible for furnishing the Department with documentation which satisfies the requirements set forth in the Cost Certification Procedures Manual. A newly constructed or rehabilitated building is not placed in service until all units in such building have been completed and certified by the appropriate local authority or registered architect as ready for occupancy. The Cost Certification must be submitted for the entire project, therefore partial Cost Certifications are not allowed. The Department may require copies of invoices and receipts and

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statements for materials and labor utilized for the new construction or rehabilitation and, if applicable, a closing statement for the acquisition of the Project as well as for the closing of all interim and permanent financing for the Project. If the Applicant does not fulfill all representations made in the Application, the Department may make reasonable reductions to the tax credit amount allocated via the IRS Form 8609 or may withhold issuance of the IRS Form 8609s until these representations are met.

§50.10. Department Records; Certain Required Filings.

(a) At all times during each calendar year the Department shall maintain a record of the following:

(1) the cumulative amount of the State Housing Credit Ceiling that has been reserved pursuant to reservation notices during such calendar year;

(2) the cumulative amount of the State Housing Credit Ceiling that has been committed pursuant to Commitment Notices during such calendar year;

(3) the cumulative amount of the State Housing Credit Ceiling that has been committed pursuant to Carryover Allocation Documents during such calendar year;

(4) the cumulative amount of housing credit allocations made during such calendar year; and

(5) the remaining unused portion of the State Housing Credit Ceiling for such calendar year.

(b) The Department shall mail to the Internal Revenue Service, not later than the 28th day of the second calendar month after the close of each calendar year during which the Department makes housing credit allocations, the original of each completed (as to Part I) IRS Form 8609, a copy of which was mailed or delivered by the Department to a Project Owner during such calendar year, along with a single completed IRS Form 8610, Annual Low Income Housing Credit Agencies Report. When a Carryover Allocation is made by the Department, a copy of IRS Form 8609 will be mailed or delivered to the Project Owner by the Department in the year in which the building(s) is placed in service, and thereafter the original will be mailed to the Internal Revenue Service in the time sequence in this subsection. The original of the Carryover Allocation Document will be filed by the Department with IRS Form 8610 for the year in which the allocation is made. The original of all executed Agreement and Election Statements shall be filed by the Department with the Department's IRS Form 8610 for the year a housing credit allocation is made as provided in this section. The Department shall be authorized to vary from the requirements of this section to the extent required to adapt to changes in IRS requirements.

§50.11. Program Fees and Extensions.

(a) Application Fee. Each Applicant that submits an Application shall submit to the Department, along with such Application, a non refundable Application fee, as set forth in the Application Submission Procedures Manual.

(b) Third Party Underwriting Fee. Applicants will be notified in writing prior to the evaluation of a Project by an independent third party underwriter in accordance with §50.7(a)(3) of this title if such a review is required. The cost for the third party underwriting will be set forth in the Application Submission Procedures Manual, and must be received by the Department prior to the engagement of the underwriter. The fees paid by the Project Owner to the Department for the third party underwriting will be credited against the commitment fee established in subsection (c) of this section, in the event that a Commitment Notice or Determination Notice is issued by the Department to the Project Owner.

(c) Commitment or Determination Notice Fee. Each Project Owner that receives a Commitment Notice or Determination Notice shall submit to the Department, not later than the expiration date on the commitment billing notice, a non refundable commitment fee, as set forth in the Application Submission Procedures Manual. The commitment fee shall be paid by cashier's check. Projects located within one of the targeted Texas counties, as indicated in the Reference Manual, will be exempt from the requirement to pay a commitment fee, in the event that Commitment Notice is issued.

(d) Compliance Monitoring Fee. Upon the Project being placed in service, the Project Owner will pay a compliance monitoring fee in the form of a cashier's check, as set forth in the Application Submission Procedures Manual. The compliance monitoring fee must be received by the Department prior to the release of the IRS Form 8609 on the Project.

(e) Building Inspection Fee. Project Owners must pay for any inspections that the Department requires, whether during construction or after completion, and estimated charges for all such inspections may be aggregated and distributed among the projects according to project size, cost or other criteria. All outstanding building inspection fees must be received by the Department prior to the release of the IRS Form 8609.

(f) Public Information Requests. Public information requests are processed by the Department in accordance with the provisions of the Government Code, Chapter 552. The General Services Commission determines the cost of copying, and other costs of production.

(g) Amendment of Fees by the Department. All fees charged by the Department in the administration of the tax credit program will be revised by the Department from time to time as necessary to ensure that such fees compensate the Department for its administrative costs and expenses.

(h) Extension Requests. All extension requests relating to the Commitment Notice, Carryover, Closing of Construction Loan, Substantial Construction Commencement, Placed in Service or Cost Certification requirements shall

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be submitted to the Department in writing and be accompanied by a non refundable extension fee. Such requests must be submitted to the Department at least ten business days prior to the date for which an extension is being requested. The extension fee amount shall be set forth in the Application Submission Procedures Manual. The extension request shall specify a requested extension date and the reason why such an extension is required. The Department, in its sole discretion, may consider and grant such extension requests for all items except for the Closing of Construction Loan and Substantial Construction Commencement. The Committee may grant extensions, in its sole discretion, for the Closing of Construction Loan and Substantial Construction Commencement. The Committee may, in its sole discretion, waive related fees.

§50.12. Manner and Place of Filing Applications and Other Required Documentation.

(a) An Application for a Housing Credit Allocation from the State Housing Credit Ceiling and the required Application fee as described in §50.11(a) of this title must be filed during the Application Acceptance Periods published periodically in the Texas Register.

(b) Applications for a Determination Notice for a Tax Exempt Bond Project may be submitted to the Department as described in paragraphs (1) and (2) of this subsection:

(1) Applicants which receive advance notice of a Program Year 2001 reservation as a result of the Texas Bond Review Board's (TBRB) lottery for the private activity volume cap must file a complete Application per the requirements of §50.7(h) of this title not later than 60 days after the date of the TBRB lottery. Such filing must be accompanied by the Application fee described in §50.11(a) of this title.

(2) Applicants which receive advance notice of a Program Year 2001 reservation after being placed on the waiting list as a result of the TBRB lottery for private activity volume cap must submit Volume 1 of the Application prior to the Applicant's bond reservation date as assigned by the TBRB. The Application fee described in §50.11(a) of this title and any outstanding documentation required under §50.7(h) of this title must be submitted to the Department at least 45 days prior to the Ad Hoc Tax Credit Committee meeting at which the decision to issue a Determination Notice would be made.

(c) All Applications, letters, documents, or other papers filed with the Department will be received only between the hours of 8:00 a.m. and 5:00 p.m. on any day which is not a Saturday, Sunday or a holiday established by law for state employees.

(d) All Applications and related documents submitted to the Department shall be mailed to the Low Income Housing Tax Credit Program, Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, TX 78711-3941 or be delivered by hand or courier to 507 Sabine, Suite 300, Austin, Texas 78701.

§50.13. Withdrawals, Cancellations, Amendments.

(a) An Applicant may withdraw an Application prior to receiving a Commitment Notice, Determination Notice, Carryover Allocation Document or Housing Credit Allocation, or may cancel a Commitment Notice or Determination Notice by submitting to the Department a notice, as applicable, of withdrawal or cancellation.

(b) The Committee, in its sole discretion, may allocate credits to a Project Owner in addition to those awarded at the time of the initial Carryover Allocation in instances where there is bona fide substantiation of cost overruns and the Department has made a determination that the allocation is needed to maintain the Project's financial viability as a qualified low income Project.

(c) The Department may, at any time and without additional administrative process, determine to award credits to projects previously evaluated and awarded credits if it determines that such previously awarded credits are or may be invalid and the owner was not responsible for such invalidity. The Department may also consider an amendment to a Commitment Notice, Determination Notice or Carryover Allocation or other requirement with respect to a Project if the revisions:

- (1) are consistent with the Code and the tax credit program;
- (2) do not occur while the Project is under consideration for tax credits;
- (3) do not involve a change in the number of points scored (unless the Project's ranking is adjusted because of such change);
- (4) do not involve a change in the Project's site; or
- (5) do not involve a change in the set-aside election.

(d) The Department may cancel a Commitment Notice, Determination Notice or Carryover Allocation prior to the issuance of IRS Form 8609 with respect to a Project if:

- (1) the Project Owner or any member of the Development Team, or the Project, as applicable, fails to meet any of the conditions of such Commitment Notice or Carryover Allocation or any of the undertakings and commitments made by the Project Owner in the applications process for the Project;
- (2) any statement or representation made by the Project Owner or made with respect to the Project Owner, the Development Team or the Project is untrue or misleading;

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(3) an event occurs with respect to any member of the Development Team which would have made the Project's Application ineligible for funding pursuant to §50.5 of this title if such event had occurred prior to issuance of the Commitment Notice or Carryover Allocation; or

(4) the Project Owner, any member of the Development Team, or the Project, as applicable, fails to comply with these Rules or the procedures or requirements of the Department.

§50.14. Waiver and Amendment of Rules.

(a) The Board, in its discretion, may waive any one or more of these Rules in cases of natural disasters such as fires, hurricanes, tornadoes, earthquakes, or other acts of nature as declared by Federal or State authorities.

(b) The Department may amend this chapter and the Rules contained herein at any time in accordance with the Government Code, Chapter 2001, as may be amended from time to time.

§50.15. Forward Reservations; Binding Commitments.

(a) Anything in §50.4 of this title or elsewhere in this chapter to the contrary notwithstanding, the Department with approval of the Board may determine to issue commitments of tax credit authority with respect to Projects from the State Housing Credit Ceiling for the calendar year following the year of issuance (each a "forward commitment"). The Department may make such forward commitments:

(1) with respect to Projects placed on a waiting list in any previous Application Round during the year; or

(2) pursuant to an additional Application Round.

(b) If the Department determines to make forward commitments pursuant to a new Application Round, it shall provide information concerning such round in the Texas Register. In inviting and evaluating Applications pursuant to an additional Allocation Round, the Department may waive or modify any of the set-asides set forth in §50.6 of this title and make such modifications as it determines appropriate in the Threshold Criteria, evaluation factors and Selection Criteria set forth in §50.7 of this title and in the dates and times by which actions are required to be performed under this chapter. The Department may also, in an additional Application Round, include Projects previously evaluated within the calendar year and rank such Projects together with those for which Applications are newly received.

(c) Unless otherwise provided in the Commitment Notice with respect to a Project selected to receive a forward commitment or in the announcement of an Application Round for Projects seeking a forward commitment, actions which are required to be performed under this chapter by a particular date within a calendar year shall be performed by such date in the calendar year of the anticipated allocation rather than in the calendar year of the forward commitment.

(d) Any forward commitment made pursuant to this section shall be made subject to the availability of State Housing Credit Ceiling in the calendar year with respect to which the forward commitment is made. No more than 15% of the per capita component of State Housing Credit Ceiling anticipated to be available in the State of Texas in a particular year shall be allocated pursuant to forward commitments to Project Applications carried forward without being ranked in the new Application Round pursuant to subsection (f) of this section. If a forward commitment shall be made with respect to a Project placed in service in the year of such commitment, the forward commitment shall be a "binding commitment" to allocate the applicable credit dollar amount within the meaning of the Code, §42(h)(1)(C).

(e) If tax credit authority shall become available to the Department later in a calendar year in which forward commitments have been awarded, the Department may allocate such tax credit authority to any eligible Project which received a forward commitment, in which event the forward commitment shall be canceled with respect to such Project.

(f) In addition to or in lieu of making forward commitments pursuant to subsection (a) of this section, the Department may determine to carry forward Project Applications on a waiting list or otherwise received and ranked in any Application Round within a calendar year to the subsequent calendar year, requiring such additional information, Applications and/or fees, if any, as it determines appropriate. Project Applications carried forward may, within the discretion of the Department, either be awarded credits in a separate allocation round on the basis of rankings previously assigned or may be ranked together with Project Applications invited and received in a new Application Round. The Department may determine in a particular calendar year to carry forward some Project Applications under the authority provided in this subsection, while issuing forward commitments pursuant to subsection (a) of this section with respect to others.

§50.16. Deadlines for Allocation of Low Income Housing Tax Credits.

(a) Not later than November 15 of each year, the Department shall prepare and submit to the Board for adoption the draft Qualified Allocation Plan required by federal law for use by the Department in setting criteria and priorities for the allocation of tax credits under the low income housing tax credit program.

(b) The Board shall adopt and submit to the Governor the Qualified Allocation Plan not later than January 31 of each year.

(c) The Governor shall approve, reject, or modify and approve the Qualified Allocation Plan not later than February 28.

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(d) An Applicant for a low income housing tax credit to be issued a Commitment Notice during the initial Application Round in a calendar year must submit an Application to the Department not later than May 15.

(e) The Board shall authorize the Department to issue a Commitment Notice for allocation for the initial Application Round of low income housing tax credits each year in accordance with the Qualified Allocation Plan not later than July 31.