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# 2014 Competitive HTC Application Cycle Frequently Asked Questions (FAQs)

Pursuant to §11.1(b) of the Qualified Allocation Plan (QAP), Department staff may, from time to time, make available for use by Applicants information and informal guidance in the form of reports, frequently asked questions, and responses to specific questions. The Department encourages communication with staff in order to clarify any issues that may not be fully addressed in the QAP or be unclear when applied to specific facts. However, while these resources are offered to help Applicants prepare and submit accurate information, Applicants should also appreciate that this type of guidance is limited by its nature and that staff will apply the rules of the QAP to each specific situation as it is presented in the submitted Application. Moreover, after the time that an issue is initially presented and guidance is provided, additional information may be identified and/or the issue itself may continue to develop based upon additional research and guidance. Thus, until confirmed through final action of the Board, staff guidance must be considered merely as an aid and an Applicant continues to assume full responsibility for any actions Applicant takes regarding an Application. In addition, although the Department may compile data from outside sources in order to assist Applicants in the Application process, it remains the sole responsibility of the Applicant to perform independently the necessary due diligence to research, confirm, and verify any data, opinions, interpretations, or other information upon which an Applicant bases an Application or includes in any submittal in connection with an Application. These rules may need to be applied to facts and circumstances not contemplated at the time of their creation and adoption. When and if such situations arise the Board will use a reasonableness standard in evaluating and addressing Applications for Housing Tax Credits.

Following is a list of questions that the Department has received with respect to the 2014 Uniform Multifamily Rules and QAP and how various provisions of the rules will be applied to Applications submitted and reviewed by the Department during the 2014 competitive cycle. Each of the questions was received via email or phone over the past several weeks and at the application workshops held in early December. Each time an update is made the most recently updated date will be added to the box at the top right of this page. The FAQ is an opportunity to provide all Applicants and the public the same information that was relayed to the individuals who asked the question.

Questions and answers are in the same order that their related sections appear in the rules. If questions and answers are added after the initial posting, the revision dates will appear at the top of this page and will be included next to each of the added questions. The Department may not send out a new listserv each time an update is made unless the update is extensive. Staff encourages interested individuals to check back periodically. At the January 23, 2014 board meeting, the board accepted all questions and answers included in this FAQ. However, staff will continue to supplement this FAQ; questions and answers with dates subsequent to this Board action have not been reviewed by the board.

**Chapter 10, Subchapter A – Uniform Multifamily Rules**

### §10.3 – Definitions and Staff Determinations

**Q:** **[ADDED 2/3/14]** In order to meet the definition of Economically Distressed Area does a Development Site located in a municipality have to meet the requirement related to funding under the Economically Distressed Areas Program?

**A:** Yes. The site must meet a two prong test. First, the site must be in a census tract that has a median household income that is 75 percent or less of the statewide median household income.

In addition to this requirement, one of the following must be met:

- the site is in a municipality and the municipality has been awarded funds under the Economically Distressed Areas Program administered by the Texas Water Development Board within the five (5) years ending at the beginning of the Application Acceptance Period;
- the site is in a county and not in a municipality and that county has been awarded funds under the Economically Distressed Areas Program administered by the Texas Water Development Board within the five (5) years ending at the beginning of the Application Acceptance Period; or
- the site is in the jurisdiction of another type of political subdivision (such as a water district) and that political subdivision has been awarded funds under the Economically Distressed Areas Program administered by the Texas Water Development Board within the five (5) years ending at the beginning of the Application Acceptance Period.

**Q:** Will developments that are participating in the City of Houston Permanent Supportive Housing ("PSH") program be considered Supportive Housing under §10.3(124) of the Uniform Multifamily Rules?

**A:** Not necessarily. Regardless of participation in the Houston PSH Program, in order to be considered a Supportive Housing application, the proposed development must comply with the Department's definition, meaning that the entire development is intended for occupancy by households with needs for specialized services and is debt free. Applicants should reference the entire definition to determine whether the proposed development complies and are reminded that a change in target population from pre-application to application could result in a loss of pre-application points. There is no Department rule that specifically precludes a Houston PSH development from being characterized as "general population" for the purposes of filing a 2014 tax credit application.

**Q:** Will the Department underwrite Applications using an applicable percentage of 9%?

**A:** No. Unless new legislation has actually passed (not just proposed) at the time an Application is submitted, the applicable percentage used in underwriting the Application will be 40 basis points over the current (February 2014) applicable percentage for 70% present value credits (for New Construction/Rehabilitation) in accordance with §10.3(a)(5) of the Uniform Multifamily Rules.

**Chapter 10, Subchapter B – Uniform Multifamily Rules**

### §10.101(a)(3)-(4) – Undesirable Area Features

**Q:** When are requests for pre-clearance due? And what is the process for requesting pre-clearance?

**A:** Pre-clearance requests will be accepted prior to or concurrent with the submission of a full application. For 9% HTC applications, the request cannot be submitted prior to the beginning of the Application Acceptance Period. There is no Department template or form for a pre-clearance request - no WPDD packet as in 2013. Requests for pre-clearance for Competitive 9% HTC applications should be sent directly to Jean Latsha at jean.latsha@tdhca.state.tx.us. Requests for pre-clearance for 4% HTC/Bond applications should be sent to Teresa Morales at teresa.morales@tdhca.state.tx.us. Requests for pre-clearance for HOME only applications should be sent to Andrew Sinnott at andrew.sinnott@tdhca.state.tx.us.

**Chapter 10, Subchapter C – Uniform Multifamily Rules**

**§10.203 – Public Notifications and §11.8(b)(2) – Pre-Application Threshold Criteria**

**Q:** **[ADDED 1/10/14]** Whom should applicants contact to obtain a list of neighborhood organizations on record with the county or state?

**A:** It is an applicant's responsibility to perform the due diligence necessary to verify the existence of neighborhood organizations that would require notification or that could affect point elections for the QCP point item. The rules do not require an applicant to seek a list of neighborhood organizations from state or local elected officials although an applicant may seek to do so to ensure that they have sought information from all possible sources.

**§10.204(4) – Notice, Hearing, and Resolution for Tax-Exempt Bond Developments**

**Q:** Can the TEFRA hearing be used to satisfy the requirements of this rule?

**A:** If the Department is the bond issuer, a separate hearing, compliant with the rule, must be held to satisfy this threshold requirement. If using another issuer, there is no requirement in the Uniform Multifamily Rules that precludes an Applicant holding a joint hearing that satisfies both purposes. However, applicants should be cautious and ensure that any such hearing independently satisfies the requirements applicable to both a TEFRA hearing and the hearing required under §10.204(4). The hearing required under Texas Government Code §2306.67071 and §10.204(4) should be hosted by the Governing Body of the city or county, while the TEFRA hearing, required by the Tax Equity and Fiscal Responsibility Act, should be hosted by the bond issuer. It may be possible for an applicant to coordinate a joint hearing.

**§10.204(5) – Experience Requirement**

**Q:** Will the Department accept Experience Certificates from previous years?

**A:** No. The Department is re-evaluating applicants to ensure that the current experience requirements are being met, even those who have previously obtained experience certificates. Applicants can submit documentation to evidence that the requirements are met with the full application or, for 9% HTC applications, at any time during the Application Acceptance Period. Submissions sent outside the full application should be sent to Elizabeth Henderson at elizabeth.henderson@tdhca.state.tx.us.

**§10.204(8)(B) – Operating and Development Costs Documentation**

**Q:** What methods for calculating utility allowances require Department approval? And what is the process for requesting such approval?

**A:** Any method other than using the applicable local housing authority's published utility allowances for the Section 8 Existing Housing Program will require Department review and approval. This includes but is not limited to written local estimates, HUD Models, Energy Consumption Models, Actual Use and a request to use an alternate PHA. Requests for review of an alternative method are required to be submitted to the Department prior to the full Application submission. While requests are typically sent to ua@tdhca.state.tx.us, requests related to Competitive 9% HTC applications should be sent directly to Stephanie Naquin at stephanie.naquin@tdhca.state.tx.us.

### §10.205 – Required Third Party Reports

**Q:** **[ADDED 1/10/14]** When are the various third party reports due for Competitive 9% Housing Tax Credit applications?

**A:** The Environmental Site Assessment (ESA) and Market Analysis Summary are due with the application submission by February 28, 2014. If applicable, the Appraisal, Site Design and Development Feasibility Report, and Property Conditions Assessment (PCA) are also due with the full application by February 28, 2014. Only the full Market Analysis is due at a later date, by April 1, 2014. The originally posted procedures manual included an incorrect date for the ESA.

### §10.207 – Waivers of Rules for Applications

**Q:** What is the process for requesting a waiver?

**A:** Requests for waivers will be accepted any time during the Application Acceptance Period but will not be accepted after a full application has been submitted. There is no Department template or form for a waiver request - no WPDD packet as in 2013. Requests for waivers for Competitive 9% HTC applications should be sent directly to Jean Latsha at jean.latsha@tdhca.state.tx.us. Requests for waivers for 4% HTC/Bond applications should be sent to Teresa Morales at teresa.morales@tdhca.state.tx.us. Requests for waivers for HOME only applications should be sent to Andrew Sinnott at Andrew.sinnott@tdhca.state.tx.us. Requests for waivers can also be submitted within a pre-application or application, in which case there is a place to indicate such on the payment receipt.

## Chapter 11 – Qualified Allocation Plan

### §11.3 – Housing De-Concentration Factors

**Q:** Does the restriction in §11.3(e) related to eligibility of Qualified Elderly Developments in certain counties and regions apply to Applications submitted in the At-Risk Set-Aside?

**A:** Yes. All Applications, including those submitted under the At-Risk Set-Aside, that propose a Qualified Elderly Development in an urban area of the regions/counties listed in §11.3(e) will be considered ineligible.

**Q:** If a Development Site is located within the ETJ of a municipality that has over twice the state average of units per capita supported by Housing Tax Credits or private activity bonds, is a resolution required for the site to be eligible?

**A:** No. However, if any portion of the site is located within the subject municipality a resolution is required. (If located entirely outside the municipality and if applicable, a resolution from the county would be required.)

### §11.4 – Tax Credit Request and Award Limits

**Q:** If an application proposes to qualify for an increase in eligible basis (30% boost) under §11.4(c)(2)(D) by restricting 10% of the low-income units for households at or below 30% AMGI, can these same units be used to qualify for points under either §11.9(c)(1) related to Income Levels of Tenants or §11.9(c)(2) related to Rent Levels of Tenants?

**A:** No. The language in §11.4(c)(2)(D) reads, "Units must be in addition to Units required under any other provision of this chapter." Therefore, the same units cannot be used to qualify for both the boost and points (whether under §11.9(c)(1) or (2)). Applicants should exercise caution in completing the application and should double check their calculations to ensure that a sufficient number of units have the appropriate rent and income levels for all elections made in the application.

**Q:** If an application could qualify for points under the Opportunity Index but chose not elect such points (for instance, the Applicant elected Community Revitalization Plan points instead of Opportunity Index points), could the application qualify for an increase in eligible basis (30% boost) under §11.4(c)(2)(C)?

**A:** Yes. The language in §11.4(c)(2)(C) which reads, "the Development meets the criteria" suggests that it is possible that an Application's score might not include points for Opportunity Index but that the characteristics/location of the Development Site could still allow the Application to elect the 30% boost under the above cited provision of the QAP.

### §11.5 – Competitive HTC Set-Asides

**Q:** Will applications proposing a Rental Assistance Demonstration ("RAD") conversion be considered eligible to compete in the At-Risk Set-Aside?

**A:** In accordance with the Governing Board's action at the November 7, 2013 board meeting, the Department has submitted a request to the Attorney General for a formal opinion as to whether a development exercising a RAD conversion is eligible to compete in the At-Risk Set-Aside. The opinion may or may not be received during the 2014 competitive cycle, so applicants choosing to submit an application under the At-Risk Set-Aside utilizing a RAD conversion for eligibility do so

at their own risk. Applicants are also reminded that pursuant to §11.6(3)(C) of the QAP, applications electing the At-Risk Set-Aside will not be eligible to receive an award from funds made generally available within each of the sub-regions.

**Q:** If an application could qualify for points under the Opportunity Index but chose not elect such points (for instance, the Applicant elected Community Revitalization Plan points instead of Opportunity Index points), could the application be allowed to qualify for relocating the Development Site under the At-Risk Set-Aside pursuant to 11.5(3)(c)(iii)?

**A:** Yes. The language in §11.5(3)(c)(iii) which reads, "the Development Site must qualify for points," suggests that it is possible that an Application's score might not include points for Opportunity Index but that the characteristics/location of the Development Site could still allow the Application to relocate the site under the above cited provisions of the QAP.

### §11.7 – Tie Breaker Factors

**Q:** If two applications (*e.g.* applications 'A' and 'B') have the same score and 'A' could have qualified for points under the Opportunity Index but the Applicant chose not elect the such points (for instance, Applicant for 'A' elected Community Revitalization Plan points instead of Opportunity Index points), can the Opportunity Index point level that could have been elected be used to determine whether the application wins the tie breaker for highest score on the Opportunity Index? In other words, could 'A' win the tie breaker under §11.7(1) using a point level that was not actually elected in the application?

**A:** No. The tie breaker provision is based on score. The language in §11.7(1) reads, "Applications scoring higher on the Opportunity Index," and applications will not be awarded points that are not explicitly elected by the applicant. Therefore, if 'B' actually had points awarded under the Opportunity Index and 'A' did not, then 'B' would win the tie breaker. If neither application in this scenario actually had Opportunity Index points included in the application's total score, staff would look to §11.7(2) to determine which application wins the tie breaker.

## §11.9-Competitive HTC Selection Criteria

### §11.9(c)(4) – Opportunity Index

**Q:** If a Development Site is NOT located within a census tract that has a poverty level below 15% or with income in the first or second quartile of median household income for the county or MSA as applicable, in order to qualify to elect points under §11.9(c)(4)(B), does the qualifying elementary school need to serve grades that align with TEA's conventions for defining elementary schools (K-5 or K-6) as opposed to the qualifying school serving any number of grade levels?

**A:** Yes, but further explanation may be helpful. The scoring item is a two-pronged test.

First, in order for the Application to be eligible for points under the listed point options, the Development Site must pass a threshold test; it must be located in an area with the necessary median income level **OR** poverty level **OR** rating of the elementary school. If meeting the requirements of the first "prong" by way of a highly rated elementary school, the school (or schools) must serve all of the elementary grade levels, as laid out in §11.9(c)(4)(C).

Second, once the development site passes this first test, the applicant can assess whether the application qualifies for points from the menu of options based on proximity to the listed community assets. The application can qualify for points by being in within one mile of these community assets. One of those assets is a school with a Met Standard Rating, but qualifying for these points is different than passing the test discussed in the first step/prong. Instead of the school needing to serve all of the elementary grade levels, it simply must have some grade levels, whether elementary, middle, or high school grades, have a Met Standard, and be within one mile of the development site (the site must also be in the attendance zone).

As an example, a site might be located within the attendance zones of two separate schools that, combined, make up the elementary school used to pass the first prong of the test (combined the schools serve K -6th). If the site is within one mile of just one of those two schools it can elect 3 points under §11.9(c)(4)(B)(2)(i).

**Q:** If a Development Site is located within one linear mile of a child care center that has a child care program that serves school-age children, will the Application qualify for points under §11.9(c)(4)(B)(ii)?

**A:** Staff is aware that there are many centers that are ***licensed*** to serve school-age children that do not in fact ***serve*** them. The Department will require evidence that school-age children are actually served by the center in addition to the center maintaining the required license. "School-age children" is defined by the Department of Family and Protective Services as a child who is five years or older and who will attend school away from the center in August or September of that year. Typically, staff would expect centers qualifying for these points to serve children 5-12 years old.

**Q:** If a Development Site is located within one linear mile of a child care center that has a child care program that serves infants, toddlers, pre-kindergarten, and school-age children, can the Application qualify for points under BOTH §11.9(c)(4)(B)(ii) and (iv)?

**A:** Yes. While one center can qualify for points under both provisions, see the immediately preceding answer regarding the requirement that the center not only be licensed to serve all ages but that it in fact does so.

**Q:** If a Development Site is located within one linear mile of a child care center that 1) has a child care program that currently serves infants, toddlers, pre-kindergarten, 2) is ***licensed*** to serve school-age children but does not serve them, and 3) is proposing to serve school-age children in the near future, can the Application qualify for points under BOTH §11.9(c)(4)(B)(ii) and (iv)?

**A:** No. Staff will review the facts as they exist on February 28, 2014 in determining general eligibility as well as eligibility for points.

**Q:** **[ADDED 1/2/14]** If a Development Site is located within one linear mile of two separate child care centers, one of which is licensed to serve (and actually does serve) infants and one which is licensed to serve (and actually does serve) toddlers and pre-kindergarten, can the Application qualify for points under §11.9(c)(4)(B)(iv)?

**A:** Yes. As long as the Development Site is located within one linear mile of a center or center(s) that combined serve all three age groups, the Application can qualify for these points.

**Q:** **[ADDED 1/2/14]** If a Development Site is located within one linear mile of a child care ***home*** which is licensed to serve (and actually does serve) infants, toddlers and pre-kindergarten, can the Application qualify for points under §11.9(c)(4)(B)(iv)?

**A:** No. Only proximity to child care ***centers*** will qualify an application for points. Applicants should refer to the Department of Family and Protective Services website for the distinctions between child care centers and homes.

**Q:** What qualifies as a full service grocery store? A health related facility? A senior center?

**A:** A full service grocery store is a store in which a typical household may buy the preponderance of its typical food and household items needs, including a variety of options for fresh meats, produce, dairy, baked goods, frozen foods, and some household cleaning and paper goods. A typical convenience store would not qualify.

A health related facility should have licensed health professionals providing direct care medical services (*e.g.* hospital, urgent care facility, dental clinic, general practitioner medical offices, etc.). A pharmacy, retail/wholesale medical devices business, gym with professional trainers, or salon with massage or other health/beauty services would not qualify.

A senior center is a facility (not a seniors club without its own meeting space) where the primary purpose is to provide services to seniors on a regular basis, at least three times per week. The facility should have regular staff, whether paid or volunteer, and should not be a general activity center with some events and/or services for seniors (such as a YMCA). A church or other non-secular institution or club that hosts occasional events for seniors would not qualify.

Department staff welcomes written questions concerning actual examples of such facilities. Please contact Jean Latsha at jean.latsha@tdhca.state.tx.us.

### §11.9(d)(2) – Commitment of Development Funding by Local Political Subdivision

**Q:** **[ADDED 1/2/14]** If a Development Site is located within the city limits of a city what local political subdivisions would be eligible entities for the purpose of scoring points?

**A:** The Applicant for such a site could approach the following Local Political Subdivisions for funds:

- The county government for the county in which the Development Site is located; or
- The city government for the city in which the Development Site is located; or
- A government instrumentality of the city or county in which the Development Site is located provided at least 60% of the board of the instrumentality is made up of city council members or county commissioners, as applicable; or
- A government instrumentality of the city or county in which the Development Site is located provided at least 100% of the board of the instrumentality is appointed by city or county elected officials, as applicable.

**Q:** **[ADDED 1/2/14]** If a Development Site is located within the extraterritorial jurisdiction (ETJ) of a municipality, what local political subdivisions would be eligible entities for the purpose of scoring points?

**A:** In most cases, where a Development Site is in the ETJ of City X, then the Place used to determine the Development Site's rural/urban designation is also City X. In these cases, the population of

City X would be used to calculate the number of points for which the Application is eligible, and the Applicant could approach the following Local Political Subdivisions for funds:

- The county government for the county in which the Development Site is located; or
- The city government for City X; or
- A government instrumentality of City X or the county in which the Development Site is located provided at least 60% of the board of the instrumentality is made up of city council members or county commissioners, as applicable; or
- A government instrumentality of City X or the county in which the Development Site is located provided at least 100% of the board of the instrumentality is appointed by city or county elected officials, as applicable.

In some cases, a Development Site may be located in the ETJ of City X, but the rural/urban designation for the Development Site is derived from Place Y (*i.e.* an unincorporated Census Designated Place). In these cases, Applicants may approach City X or its government instrumentalities, but if they do so the Department will use the population of City X to determine eligibility for points. In cases where the Development Site is located within Place Y, Applicants can also approach the county or eligible instrumentalities thereof, and in those cases would use the population of that Place to calculate points. In many cases the population used to determine the amount of LPS funding can vary widely depending on which LPS is approached for funding. If applicants have any questions please contact staff to ensure that the correct minimum funding amounts for points are understood.

**Q:** **[ADDED 1/2/14]** Are tax abatements and vouchers considered permanent sources with respect to an Application being eligible for the additional point under §11.9(d)(2)(D)?

**A:** Yes. While contracts for vouchers and tax abatements might be for less than 15 years, because these types of sources are not expected to be re-paid they are considered permanent, much like an in-kind contribution or grant.

**Q:** **[ADDED 1/10/14]** Will the Department monitor applicants who claim points under §11.9(d)(2)(D) to ensure that owners close on the permanent source of development funding and maintain the funding for its full term?

**A:** The Department's Asset Management Division may monitor for owners who claimed these points do not maintain the development funding for its full term. Applicants are reminded that by state statute (Sec. 2306.6720) each representation made to secure a housing tax credit allocation is enforceable by the Department. In addition, issues such as these may be taken into account as future applications undergo previous participation reviews and could result in ineligibility in the future.

**Q:** **[ADDED 1/2/14]** Can a resolution which is serving as a commitment of funds for purposes of the additional points under §11.9(d)(2)(C) include a number of options for the type of source being committed? For example, can it read that the LPS is prepared to commit X dollars in the form of either a fee waiver, tax abatement, or grant?

**A:** Yes. The resolution can include flexibility with respect to the type of funding being committed. However, an amount of funding should still be specified in order to assess points. In addition, if an Applicant is also seeking a point under §11.9(d)(2)(D) for a permanent source, then all of the options listed in the resolution should be permanent sources meeting the requirements for the additional point. When submitting a resolution for the additional two points, Applicants should ensure that the submitted resolution supports ALL of the elected points under this scoring item.

### §11.9(d)(6) – Community Revitalization Plan

**Q:** Can a community revitalization plan ("CRP") be submitted for pre-clearance as in 2013?

**A:** No. The provision for pre-clearance of CRPs was specifically for the 2013 competitive cycle. Applicants should submit CRPs meeting the requirements of the rule with the full Application submission. Plans will be reviewed for full compliance with the rule, and points will not be awarded if plans fail to meet those requirements.

**Q:** If a Development Site is located within a half mile of two separate and distinct new water service line projects (or two separate paved roadways, etc.) can the Application qualify for 4 points under just one of the subclauses (I) through (V) of clause §11.9(d)(7)(C)(ii)?

**A:** No. Applications are only eligible for two points per subclause, or two points per type of project.

### §11.9(e)(2) – Cost of Development per Square Foot

**Q:** **[ADDED 2/3/14]** Will soft cost contingencies be included in the Hard Cost calculation?

**A:** The Department does not recognize soft cost contingency as its own line item because the estimation of each soft cost line item is generally accepted as presented and recognized as an estimate that may have some degree of flexibility. For example, an owner may include in the development cost schedule architectural fees of $100,000 although this may be based on the cost of a recently completed similar project whose final cost was closer to $90,000. If additional uncertainty in the cost of a soft cost item estimate is necessary, it is allowed, but is combined with or should be accounted for within the single contingency line item identified as hard cost contingency (line 78 on the developments costs schedule in the Uniform Multifamily Application) and therefore included in the Costs per Square Foot calculation when calculating the Hard Cost per square foot.