2012-2013 Qualified Allocation Plan and Related Laws and Rules

Housing Tax Credit Program

TEXAS DEPARTMENT OF
HOUSING & COMMUNITY AFFAIRS
Building Homes. Strengthening Communities.

Housing Tax Credit Program
2012 - 2013 Qualified Allocation Plan
Table of Contents

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
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§50.1. General Program Information.

(a) Purpose and Authority. The rules in this chapter apply to the allocation by the Texas Department of Housing and Community Affairs (the "Department") of Housing Tax Credits authorized by applicable federal income tax laws. Pursuant to Chapter 2306, Subchapter DD, of the Texas Government Code, the Department is authorized to make Housing Tax Credit Allocations for the State of Texas. As required by §42(m)(1) of the Code, the Department developed this Qualified Allocation Plan (QAP) which is set forth in this chapter. Sections in this chapter establish procedures for applying for and obtaining an allocation of Housing Tax Credits, along with ensuring that the proper Threshold Criteria, Selection Criteria, priorities and preferences are followed in making such allocations. Notwithstanding the fact that these rules may not contemplate unforeseen situations that may arise, the Department would expect to apply a reasonableness standard to the evaluation of Applications for Housing Tax Credits.

(b) General Rule of Construction. Any requirement to meet code, ordinance, etc. is deemed to be met if an appropriate waiver has been lawfully obtained and is being met.

(c) Unless the context indicates otherwise, a reference to a Development Owner, Developer, General Contractor or Guarantor includes all Persons controlled by or under common Control with any such Person.

§50.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Any capitalized terms not specifically mentioned in this section shall have the meaning as defined in Chapter 2306 of the Texas Government Code, §42 of the Internal Revenue Code, §1.1 of this title (relating to Definitions and Amenities for Housing Program Activities), and repeated in the Tax Credit (Procedures) Manual.

(1) **Applicable Percentage**--The percentage used to determine the amount of the Housing Tax Credit for any Development (New Construction, Reconstruction, and/or Rehabilitation), as defined more fully in the Code, §42(b).

(A) For purposes of the Application, the Applicable Percentage will be projected at:

(i) nine percent (9%) if the Development is proposed to be placed in service prior to December 31, 2013 and such timing is deemed appropriate by the Department or if the ability to claim the full 9% credit is extended by the U.S. Congress;

(ii) forty (40) basis points over the current applicable percentage for 70% present value credits, pursuant to §42(b) of the Code for the month in which the Application is submitted to the Department; or

(iii) fifteen (15) basis points over the current applicable percentage for 30% present value credits, unless fixed by Congress, pursuant to §42(b) of the Code for the month in which the Application is submitted to the Department.

(B) For purposes of making a credit recommendation at any other time, the Applicable Percentage will be based in order of priority on:

(i) the percentage indicated in the Agreement and Election Statement, if executed; or

(ii) the actual applicable percentage as determined by the Code, §42(b), if all or part of the Development has been placed in service and for any buildings not placed in service the percentage will be the actual percentage as determined by the Code, §42(b) for the most current month; or

(iii) the percentage as calculated in subparagraph (A) of this paragraph if the Agreement and Election Statement has not been executed and no buildings have been placed in service.

(2) **Application Acceptance Period**--That period of time during which Applications may be submitted to the Department.

(3) **Area Median Gross Income (AMGI)**--Area median gross household income, as determined for all purposes under and in accordance with the requirements of §42 of the Code.

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

(5) **Carryover Allocation Document**--A document issued by the Department, and executed by the Development Owner, pursuant to §50.12(e) of this chapter (relating to Post Award Activities).

(6) **Certificate of Reservation**--The notice given by the Texas Bond Review Board (TBRB) to an issuer reserving a specific amount of the state ceiling for a specific issue of bonds.

(7) **Central Business District or Downtown District**--The area designated by a city with a population of 50,000 or more as that city's Central Business District or Downtown Area and which includes one or more commercial buildings of ten (10) stories or more.

(8) **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 U.S. Department of the Treasury or the Internal Revenue Service (IRS).

(9) **Competitive Housing Tax Credits**--Tax credits available from the State Housing Credit Ceiling.

(10) **Determination Notice**--A notice issued by the Department to the Development Owner of a Tax-Exempt Bond Development which specifies the Department's determination as to the amount of tax credits that the Development may be eligible to claim pursuant to §42(m)(1)(D) of the Code.

(11) **Development Site**--The area, or if scattered site, areas, on which the Development is proposed to be located.

(12) **Economically Distressed Area**--A county that contains an area that meets the criteria for an economically distressed area under §17.92(1), Texas Water Code, and has adopted and enforces the model rules under §16.343, Texas Water Code.

(13) **Eligible Basis**--With respect to a building within a Development, the building's Eligible Basis pursuant to §42(d) of the Code.

(14) **Existing Residential Development**--Any Development Site which contains existing residential Units at the time the Application is submitted to the Department.

(15) **High Opportunity Area**--A Development that is proposed to be located in an area that includes, at a minimum, subparagraphs (A) and (B) of this paragraph along with either subparagraph (C) or (D) of this paragraph:
   (A) in a census tract which has a median income that is above median for that county (as designated in the Housing Tax Credit Site Demographic Characteristics Report for the current Application Round) as of the first day of the Application Acceptance Period; and
   (B) in a census tract that has a 15% or less poverty rate (as designated in the Housing Tax Credit Site Demographic Characteristics Report for the current Application Round) or, for Regions 11 and 13 with a 35% or less poverty rate;

(C) within a half-mile of an accessible transit stop for public transportation if such transportation is available in the municipality or county in which the Development is located; or

(D) in an elementary school attendance zone that has an academic rating, as of the beginning of the Application Acceptance Period, of "Exemplary" or "Recognized," or comparable rating if the rating system changes by the same date as determined by the Texas Education Agency. An elementary attendance zone does not include elementary schools with district-wide possibility of enrollment or no defined attendance zones, sometimes known as magnet schools. However, districts with district-wide enrollment and only one elementary school are acceptable.

(16) **Housing Credit Allocation**--An allocation by the Department to a Development Owner for a specific Application of Housing Tax Credits in accordance with the provisions of this chapter.

(17) **Housing Credit Allocation Amount**--With respect to a Development or a building within a Development, the amount the Department determines to be necessary for the financial feasibility of the Development and its viability as a Development throughout the affordability period which the Board allocates to the Development.

(18) **Qualified Nonprofit Organization**--An organization that meets the requirements of §2306.6706 and §2306.6729 of the Texas Government Code.

(19) **Qualified Nonprofit Development**--A Development in which a Qualified Nonprofit Organization is to own an interest in the Development directly or through a partnership and materially participate (within the meaning of §469(h) of the Code) in the development and operation of the Development throughout the Compliance Period.

(20) **Single Room Occupancy (SRO)**--An Efficiency Unit that meets all the requirements of a Unit except that it may, but is not required, to be rented on a month to month basis to facilitate Transitional Housing. Buildings with SRO Units have extensive living areas in common and are required to be Supportive Housing and include the provision for substantial supports from the Development Owner or its agent on site.

(21) **State Housing Credit Ceiling**--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 applicable federal law, including §42(h)(3)(C) of the Code.

(22) **Supportive Housing**--Residential rental developments intended for occupancy by individuals or households in need of specialized and specific non-medical services in order to maintain independent living. Supportive housing developments generally require established funding sources outside of project cash flow and are expected to be debt free or have no foreclosable or noncash flow debt. The services offered generally address special attributes of such populations as Transitional Housing for homeless and at risk of homelessness, persons who have experienced domestic violence or single parents or guardians with minor children.

(23) **Target Population**--For purposes of this Qualified Allocation Plan, the designation of types of housing populations shall include those Developments that are entirely Qualified Elderly and those that are entirely Supportive Housing. All others will be considered to serve general populations without regard to any subpopulations.

(24) **Tax Credit (Procedures) Manual**--The manual produced and amended from time to time by the Department which reiterates the rules and provides guidance for the filing of tax credit related documents.

(25) **Tax-Exempt Bond Development**--A Development requesting or having been awarded Housing Tax Credits and 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 §42(h)(4) of the Code, such that the Development does not receive an allocation of tax credit authority from the State Housing Credit Ceiling.

(26) **Transitional Housing**--A Supportive Housing development that includes living Units with more limited individual kitchen facilities and is:
(A) used exclusively to facilitate the transition of homeless individuals and those at-risk of becoming homeless, to independent living within 24 months; and
(B) is owned by a governmental entity or a qualified non-profit which provides temporary housing and supportive services to assist such individuals in, among other things, locating and retaining permanent housing. The limited kitchen facilities in individual Units must be appropriately augmented by suitable, accessible shared or common facilities.

§50.3. Program Calendar.

All documentation noted in this section must be submitted to the Department offices located at 221 E. 11th Street, Austin, TX 78701, by 5:00 p.m. (CST) by the date indicated. Any deadline not imposed by statute and including those not specifically listed in the Program Calendar may be extended for good cause by the Executive Director for a period of not more than five (5) business days provided; however, that the Applicant requests an extension of the deadline prior to the date of the original deadline. Any extension of non-statutory deadlines made after the original deadline or for longer than five (5) days must be requested pursuant to §50.16(a) of this chapter (relating to Waiver and Amendment of Rules). Extensions for 10% Test, Carryover and Cost Certification shall be made in accordance with §50.13(c) of this chapter (relating to Application Reevaluation).

2012 Program Year Due Date	2013 Program Year Due Date	Documentation Required
12/19/2011	12/17/2012	Application Acceptance Period Begins (Competitive HTC Only).
12/19/2011	12/17/2012	Pre-application Neighborhood Organization Request Date (Competitive HTC Only).
12/30/2011	12/28/2012	Pre-application Response to Neighborhood Organization Request Date (Competitive HTC Only).
01/10/2012	01/08/2013	Pre-Application Final Delivery Date (Competitive HTC Only).
01/20/2012	01/18/2013	Full Application Neighborhood Organization Request Date (Competitive HTC Only). For Tax-Exempt Bond, Rural Rescue, HOME or HTF Applications the request must be sent no later than fourteen (14) days prior to the submission of the Threshold Documentation.
02/23/2012	02/22/2013	Full Application Response to Neighborhood Organization Request Date (Competitive HTC Only). For Tax-Exempt Bond, HOME or HTF Applications

2012 Program Year Due Date	2013 Program Year Due Date	Documentation Required
		the response should be received no later than seven (7) days prior to the Application submission.
03/01/2012	03/01/2013	Full Application Delivery Date (Competitive HTC Only).
03/01/2012	03/01/2013	Quantifiable Community Participation (QCP) Delivery Date (Competitive HTC Only).
03/01/2012	03/01/2013	Unit of General Local Government Resolutions for Applications applying for TDHCA HOME funds and selecting §50.9(b)(5) points (must be submitted with Application).
03/01/2012	03/01/2013	Third Party Report Delivery Date (Environmental Site Assessment (ESA), Property Condition Assessment (PCA), Appraisal (if applicable). For Tax-Exempt Bond Developments the Third Party Reports must be submitted no later than 60 days prior to the Board meeting at which the tax credits will be considered. The 60 day deadlines are available on the Department's website.
03/02/2012	03/04/2013	Rural Rescue Application Submission Period (Ends 11/13/2012 and 11/12/2013 respectively).
04/02/2012	04/01/2013	Market Analysis Delivery Date (Competitive HTC Only).
04/02/2012	04/01/2013	Resolutions Delivery Date. (For Tax-Exempt Bond Developments all resolutions are due no later than 14 days prior to the Board meeting at which the tax credits will be considered).
05/01/2012	05/01/2013	Final Input from State Representative or State Senator Delivery Date (Competitive HTC Only)
Mid-May	Mid-May	Final Scoring Notices Issued (Competitive HTC Only).
06/13/2012	06/12/2013	Application Challenges Deadline (Competitive HTC Only).
Late June	Late June	Release of Eligible Applications for Consideration for Award in July (Competitive HTC Only).
Late July	Late July	Final Awards (Competitive HTC Only).
Mid-August	Mid-August	Commitments are Issued (Competitive HTC Only).
11/01/2012	11/01/2013	Carryover Documentation Delivery Date (Competitive HTC Only).
07/01/2013	07/01/2014	10% Test Documentation Delivery Date (Competitive HTC Only).

2012 Program Year Due Date	2013 Program Year Due Date	Documentation Required
12/31/2014	12/31/2015	Placement in Service Deadline (Competitive HTC Only).
Forty-five (45) calendar days prior to Board meeting	Forty-five (45) calendar days prior to Board meeting	Amendment Requests.
Thirty (30) calendar days prior to the deadline, as applicable	Thirty (30) calendar days prior to the deadline, as applicable	Extension Requests.
Five (5) business days after the Deficiency Notice date (without incurring point loss or penalty fee)	Five (5) business days after the Deficiency Notice date (without incurring point loss or penalty fee)	Administrative Deficiency Deadline

§50.4. Ineligible Applicants, Applications, and Developments.

(a) The purpose of this section is to identify those situations, in which an Applicant, Application or Development would be considered to be ineligible under the Housing Tax Credit program based on, but not limited to, requirements in §42 of the Internal Revenue Code, Texas Government Code Chapter 2306 and other criteria considered important by the Department. If an Applicant or Application is determined by Staff to be ineligible based on subsections (b) and (c) of this section the Applicant will be sent a notice stating such ineligibility and will be given the opportunity to explain how they believe they are not ineligible. If while the Application is under review the General Contractor or Guarantor is determined by Staff or the Applicant to be ineligible under subsection (b) of this section, the Applicant will be allowed to replace the General Contractor or Guarantor provided such replacement is immediately identified and in place prior to the date by which a Commitment or Determination Notice would be issued provided that the request is made in sufficient time to allow Department Staff to conduct its previous participation review and any other necessary analysis. A proposed replacement and each Principal is required to provide the required previous participation forms.

(b) **Ineligible Applicants**. An Applicant is ineligible if any Applicant, Development Owner, Developer, General Contractor, Guarantor involved with the Application:
- (1) has been or is 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 (§2306.6721(c)(2))
- (2) has been convicted of a state or federal felony crime involving fraud, bribery, theft, misrepresentation of material fact, misappropriation of funds, or other similar criminal offenses within fifteen (15) years preceding the Application deadline; or
- (3) at the time of Application is subject to an enforcement or disciplinary action under state or federal securities law or by the NASD; is subject to a federal tax lien; or is the subject of a proceeding in which a Governmental Entity has issued an order to impose penalties, suspend funding, or take adverse action based on an allegation of:
  - (A) financial misconduct; or
  - (B) uncured violation of material laws, rules, or other legal requirements governing activities considered relevant by the Governmental Entity; or

(4) has any past due audits and has not submitted those past due audits to the Department in a satisfactory format. A Person is not eligible to receive a Commitment of Housing Tax Credits from the Department if any audit finding or questioned or disallowed cost is unresolved as of June 1 of each year, or for Tax-Exempt Bond Developments or other Applications applying only under other Multifamily Programs (HOME, Housing Trust Fund, etc.) no later than thirty (30) days after Parts 5 and 6 of the Application are submitted; or (§2306.6703(a)(1))

(5) at the time of Application or at any time during the two-year period preceding the date the Application Round begins (or for Tax-Exempt Bond Developments any time during the two-year period preceding the date the Application is submitted to the Department), the Applicant or a Related Party is or has been:

(A) a member of the Board; or

(B) the Executive Director, Chief of Staff, General Counsel, a Deputy Executive Director, the Director of Housing Tax Credits, the Chief of Compliance and Asset Oversight, the Director of Real Estate Analysis, or a manager over Housing Tax Credits employed by the Department or any person exercising such responsibilities regardless of job title; (§2306.6703(a)(2))

(6) the Applicant proposes to replace in less than fifteen (15) years any private activity bond financing of the Development described by the Application, unless:

(A) the Applicant proposes to maintain for a period of thirty (30) years or more 100% of the Development Units supported by Housing Tax Credits as rent-restricted and exclusively for occupancy by individuals and families earning not more than 50% of the Area Median Gross Income, adjusted for family size; and

(B) at least one-third of all the Units in the Development are public housing units or Section 8 Development-based Units; or

(C) the applicable private activity bonds will be redeemed only in an amount consistent with their proportionate amortization; or

(D) if the redemption of the applicable private activity bonds will occur in the first five years of the operation of the Development and complies with §429(h)(4), Internal Revenue Code of 1986:

(i) on the date the Certificate of Reservation is issued, the Texas Bond Review Board determines that there is not a waiting list for private activity bonds in the same priority level established under §1372.0321 of the Texas Government Code or, if applicable, in the same uniform state service region, as referenced in §1372.0231 of the Texas Government Code, that is served by the proposed Development; and

(ii) the applicable private activity bonds will be redeemed according to underwriting, if any, established by the Department; (§2306.6703)

(7) is on the Department's debarred list, including any parts of that list that are derived from the debarred list of the United States Department of Housing and Urban Development (§2306.6721(c)(2)); or

(8) has breached a contract with a public agency and failed to cure that breach; or

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

(10) there is, involving the Application or Applicant, a violation of §2306.6733 of the Texas Government Code; or

(11) has been found by the Board, after holding a hearing before the Board, to warrant ineligibility because of the circumstances surrounding a voluntary or involuntary termination of involvement in a rent or income restricted multifamily Development by a lender, equity provider, or any other owners or investors as a Principal during the previous ten (10) years, however designated, or any combination thereof or having had any litigation to effectuate such exit instituted, and continuing at the time of Application. The Department shall be

promptly notified by the Applicant of any such circumstances. The Applicant will provide the Department Staff with such information as it may reasonably request to evaluate the facts and circumstances surrounding such actual or threatened exit and prepare a report to the Executive Director. The information considered and addressed in the report will include, but not be limited to those identified in subparagraphs (A) - (E) of this paragraph. The Executive Director will make a determination, based on the report, whether facts and circumstances are present that would support the institution of formal proceedings to determine eligibility. Any determination of ineligibility under this provision shall be for a period that will not exceed five (5) years. No person shall be made ineligible under this provision except by formal action taken by the Department's Governing Board. Any such matter to be presented for final determination of ineligibility by the Board must include notice from the Department to the affected party not less than fourteen (14) days prior to the scheduled Board meeting. The Executive Director may, but is not required, to issue a formal notice after disclosure if it is determined that the matter does not warrant ineligibility. The Executive Director's report and the Board's decision shall take into account all relevant factors including, but not limited to:

(A) whether the Developer or Principal has invested more of its financial resources in the Development than it has received from or in connection with the Development;
(B) whether such Developer or Principal had the ability to address the facts and circumstances that ultimately led to the actual or threatened exit by other means or whether uncooperative parties or other facts and circumstances beyond its control prevented any other such resolution;
(C) the contributing or causative effect of circumstances beyond such Applicant's, Development Owner's, Developer's or Guarantor's control, such as significant changes in market conditions or a natural disaster;
(D) the compliance history of the Development during the time of the Applicant's, Development Owner's, Developer's or Guarantor's involvement; and
(E) whether such Developer or Principal disclosed to the Department the event of exit as part of the Certification in the current Application.

(c) **Ineligible Applications**. The Department will terminate an Application for those issues identified in paragraphs (1) - (10) of this subsection. In addition to termination, the Department may debar a Person for one (1) year from the date of debarment, or until the violation causing the debarment has been remedied, whichever term is longer, if the Department determines that any of the issues identified in paragraphs (1) - (8) of this subsection exist and the facts warrant debarment:

(1) the provision of fraudulent information, knowingly falsified documentation, or other intentional or negligent material misrepresentation or omission in the Application or other information submitted to the Department at any stage of the evaluation or approval process; or
(2) the Applicant, Development Owner, Developer, General Contractor, or Guarantor or anyone that exercises common Control in the Development Owner, Developer, General Contractor or Guarantor, or any Affiliate that Controls one or more other rent restricted rental housing properties in the state of Texas administered by the Department is in Material Noncompliance with or has repeatedly violated the LURA or if such Material Noncompliance or repeated violation is identified during the Application review or the program rules in effect for such property as further described in Chapter 60 of this title (relating to Compliance Administration); or (§2306.6721(c)(3))
(3) the Applicant, Development Owner, Developer, General Contractor, or Guarantor or anyone that exercises common Control in the Development Owner, Developer, General Contractor, or Guarantor, or any Affiliate of such entity that is active in the ownership or Control has been a Principal of any entity that failed to make all loan payments to the Department in

accordance with the terms of the loan, as amended, or was otherwise in default with any provisions of any loans from the Department; or

(4) the Applicant or the Development Owner that exercises common Control of one or more tax credit properties in the state of Texas has failed to cure any fees described in §50.14 of this chapter (relating to Program Related Fees) seven (7) days prior to the Board meeting at which the decision for the Application is to be made; or

(5) an Applicant or a Related Party and any Person who is active in the construction, Rehabilitation, ownership, or exercises common Control of the proposed Development, including a General Partner or contractor, and a Principal or Affiliate of a General Partner or contractor, or an individual employed as a consultant, lobbyist or attorney by an Applicant or a Related Party, violates §2306.1113 of the Texas Government Code relating to Ex Parte Communication as further described in §50.7 of this chapter (relating to Application Process); or

(6) it is determined by the Department's Executive Director that there is evidence that establishes probable cause to believe that an Applicant, Development Owner, Developer, or any of their employees or agents has violated a state revolving door or other standard of conduct or conflict of interest statute, including §2306.6733 of the Texas Government Code, or a section of Chapter 572 of the Texas Government Code, in making, advancing, or supporting the Application; or

(7) the Applicant, Development Owner, Developer, Guarantor, General Contractor, or any Affiliate of such entity whose previous funding contracts or commitments have been partially or fully deobligated during the twelve (12) months prior to the submission of the Application and through the date of final allocation due to a failure to meet contractual obligations; or

(8) the Applicant, Development Owner, Developer, Guarantor, General Contractor, or any Affiliate of such entity whose pre-development award of non-tax credit funds from the Department has not been repaid in accordance with the terms of repayment for the Development at the time of Carryover Allocation or Bond closing; or

(9) the Application is submitted after the Application submission deadline (time or date); has multiple Parts of the Application missing; is not bookmarked in accordance with the instructions in the Tax Credit (Procedures) Manual; or has a Material Deficiency as defined under §1.1 of this title (relating to Definitions and Amenities for Housing Program Activities); or

(10) for Applications submitted under the State Housing Credit Ceiling, if more than 150% of the credit amount available in the sub-region is requested at the time of the original submission of the Application based on estimates released by the Department on December 1. The Department will consider the amount in the Funding Request of the Application to be the amount of housing tax credits requested.

(d) **Ineligible Developments**. Those Developments identified in paragraphs (1) - (16) of this subsection are considered ineligible for funding under the Housing Tax Credit Program:

(1) Hospitals, nursing homes, trailer parks, dormitories (or other buildings that will be predominantly occupied by students) or other facilities which are usually classified as transient housing (as provided in the §42(i)(3)(B)(iii) and (iv) of the Code) are not eligible. However, structures formerly used as hospitals, nursing homes or dormitories are eligible for Housing Tax Credits if the Development involves the conversion of the building to a non-transient multifamily residential Development;

(2) A property that provides continual or frequent nursing, medical or psychiatric services. Refer to IRS Revenue Ruling 98-47 for clarification of assisted living;

(3) Any Qualified Elderly Development of two stories or more that does not include elevator service for any Units or living space above the first floor;

(4) Any Qualified Elderly Development with any Units having more than two bedrooms with the exception of up to three employee Units reserved for the use of the manager, maintenance, and/or security officer. These employee Units must be specifically designated as such;
(5) Any Development with any building(s) with four or more stories that does not include an elevator;
(6) Any Qualified Elderly Development proposing more than 70% two-bedroom Units;
(7) Any Development (excluding Supportive Housing Developments) proposed in a Central Business District with more than 70% one bedrooms and/or Efficiency Units or 70% two bedrooms or more than 20% three bedrooms. An Application may reflect a total of Units for a given bedroom size greater than these percentages to the extent that the increase is only to reach the next highest number divisible by four;
(8) Any Development that violates §1.15 of this title (relating to Integrated Housing Rule);
(9) A proposed Rehabilitation (excluding Reconstruction) of an Existing Residential Development that is more than forty (40) years old unless the property is either:
  (A) to be rehabilitated with support of historic tax credits;
  (B) to be done as adaptive reuse; or
  (C) a Development that includes an architect's or engineer's statement confirming that the proposed rehabilitation will be structurally viable for its required affordability period, assuming customary ongoing maintenance;
(10) Any Development located in an Urban Area involving New Construction, Reconstruction or Adaptive Reuse of Units (except for a Qualified Elderly Development, a Development proposed in a Central Business District, a Development composed entirely of single family dwellings, or Supportive Housing Developments) in which any of the designs in subparagraphs (A) - (D) of this paragraph are proposed. For Applications involving a combination of single family detached dwellings and multifamily dwellings, the percentages in this subparagraph do not apply to the single family detached dwellings, but they do apply to the multifamily dwellings. An Application may reflect a total of Units for a given bedroom size greater than the percentages in subparagraphs (A) - (D) of this paragraph to the extent that the increase is only to reach the next highest number divisible by four:
  (A) more than 30% of the total Units are one bedroom and/or Efficiency Units; or
  (B) more than 55% of the total Units are two bedroom Units; or
  (C) more than 40% of the total Units are three bedroom Units; or
  (D) more than 5% of the total Units in the Development with four or more bedrooms;
(11) Any Development which is intended to house seniors that is not consistent with the definition of a Qualified Elderly Development;
(12) Any Development that is reasonably believed by Staff not to clearly meet the general public use requirement under Treasury Regulation §1.42-9 unless the Applicant has obtained a private letter ruling that the proposed Development is permitted;
(13) Development Sites with negative characteristics in subparagraphs (A) - (G) of this paragraph will be considered ineligible. If Staff identifies what it believes would constitute an unacceptable negative site feature not covered by the those identified in subparagraphs (A) – (G) of this paragraph Staff may seek Board clarification and, after holding a hearing before the Board, the Board may make a final determination as to whether that feature is unacceptable. Rehabilitation (excluding Reconstruction) Developments with ongoing and existing federal assistance from HUD or TRDO-USDA are exempt. For purposes of this exhibit, the term 'adjacent' is interpreted as sharing a boundary with the Development Site. The distances are to be measured from the nearest boundary of the Development Site to the boundary of the negative characteristic. If none of these negative characteristics exist, the Applicant must sign a certification to that effect. The negative characteristics include:
  (A) developments located adjacent to or within 300 feet of junkyards;
  (B) developments located adjacent to or within 300 feet of active railroad tracks, unless the Applicant provides evidence that the city/community has adopted a Railroad Quiet

Zone or the railroad in question is commuter or light rail; (Developments located in a Central Business District are exempt);

(C) developments located adjacent to or within 300 feet of heavy industrial uses such as manufacturing plants, refinery blast zones, etc.;

(D) developments located adjacent to or within 300 feet of a solid waste or sanitary landfills;

(E) developments where the buildings are located within the easement of any overhead high voltage transmission line or inside the engineered fall distance of any support structure for high voltage transmission lines, radio antennae, satellite towers, etc. This does not apply to local service electric lines and poles;

(F) developments where the buildings are located within the accident zones or clear zones for commercial or military airports; or

(G) development is located adjacent to or within 300 feet of a sexually-oriented business. For purposes of this paragraph, a sexually-oriented business shall be defined as stated in §243.002 of the Texas Government Code;

(14) **Two Mile Same Year Rule**. Staff will not recommend an allocation in the same Application Round if the Developments are, or will be, located less than two linear miles apart as determined by the Department. This limitation applies only to communities contained within counties with populations exceeding one million. For purposes of this chapter, any two sites not more than two linear miles apart are deemed to be "in a single community." (§2306.6711(f)) This restriction does not apply to the allocation of Housing Tax Credits to Developments financed through the Tax-Exempt Bond program, including the Tax-Exempt Bond Development Applications under review and existing Tax-Exempt Bond Developments in the Department's portfolio; (§2306.67021)

(15) **Unacceptable Sites**. Developments will be ineligible if the Development is located on a site that is determined to be unacceptable by the Department, based on the evaluation factors identified in the Site Evaluation form, augmented by any other inspections or other documented findings of the Department. The Department will advise the Applicant if it makes an initial finding that a proposed site is unacceptable and provide the applicant with a reasonable opportunity to address any identified concerns. If in the Department's reasonable judgment the Applicant is not able to address adequately the Department's concerns regarding the site, the Department Staff will issue a determination that the site is unacceptable. If not appealed in accordance with §50.10(c) of this chapter (relating to Board Decisions), this determination becomes final.

(16) **Mandatory Development Amenities**. All New Construction, Reconstruction or Adaptive Reuse Units must provide each and all of the amenities in subparagraphs (A) - (M) of this paragraph. Rehabilitation Developments must provide the amenities in subparagraphs (C) - (M) of this paragraph unless expressly identified as not required. (§2306.187) Supportive Housing Developments are not required to provide the amenities in subparagraph (B), (E), (F) or (G) of this paragraph; however, access must be provided to a comparable amenity in a common area. Deviations for good cause, by which one or more of the foregoing will not be provided, must be approved prior to award and the request for such deviation must be included in the Application. The Executive Director may issue such approvals. Requests not approved may be appealed to the Board in accordance with §50.10(c) of this chapter. These amenities must be at no charge to the tenants.

(A) All New Construction Units must be wired with RG-6/U COAX or better and CAT3 phone cable or better, wired to each bedroom, dining room and living room;

(B) Laundry Connections;

(C) Blinds or window coverings for all windows;

(D) Screens on all operable windows;
(E) Disposal and Energy-Star rated dishwasher (not required for TRDO-USDA; Rehabilitation Developments exempt from dishwasher if one was not originally in the Unit);
(F) Energy-Star rated refrigerator;
(G) Oven/Range;
(H) Exhaust/vent fans (vented to the outside) in bathrooms;
(I) At least one Energy-Star rated ceiling fan per Unit;
(J) Energy-Star rated lighting in all Units which may include compact fluorescent bulbs;
(K) Plumbing fixtures (toilets and faucets) must meet design standards at 30 TAC §290.252 (relating to Design Standards);
(L) All Units must have central heating and air-conditioning (Packaged Terminal Air Conditioners meet this requirement for SRO Units in Supportive Housing Developments only); and
(M) Adequate parking spaces consistent with local code, unless there is no local code, in which case the requirement would be 1.5 spaces per Unit for non-Qualified Elderly Developments and one (1) space per Unit for Qualified Elderly.

§50.5. Site and Development Restrictions.

(a) The purpose of this section is to identify specific restrictions on a proposed Development submitted under the State Housing Credit Ceiling or Tax Exempt Bond Developments, as applicable.

(b) **Floodplain**. Any Development proposing New Construction or Reconstruction and located within the one-hundred (100) year floodplain as identified by the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps must develop the site so that all finished ground floor elevations are at least one foot above the flood plain and parking and drive areas are no lower than six inches below the floodplain, subject to more stringent local requirements. If no FEMA Flood Insurance Rate Maps are available for the proposed Development, flood zone documentation must be provided from the local government with jurisdiction identifying the one-hundred (100) year floodplain. No buildings or roads that are part of a Development proposing Rehabilitation (excluding Reconstruction) with the exception of Developments with existing and ongoing federal funding assistance from HUD or TRDO-USDA, will be permitted in the one-hundred (100) year floodplain unless they already meet the requirements established in this subsection for New Construction, or if the Unit of General Local Government has undertaken mitigation efforts and can establish that the property is no longer within the one-hundred (100) year floodplain.

(c) **Credit Amount**. (§2306.6711(b)) An Applicant may not request more than $2 million in annual tax credits for any given Application. The Department shall not allocate more than $3 million of tax credits in any given Application Round to any Applicant, Developer, Affiliate or Guarantor (unless the Guarantor is also the General Contractor, and is not a Principal of the Applicant, Developer or Affiliate of the Development Owner). Tax-Exempt Bond Development Applications are not subject to this limitation and Tax-Exempt Bond Development Applications will not count towards the total limit on tax credits per Applicant. Competitive Housing Tax Credits approved by the Board during the current calendar year are applied to the credit cap limitation for the current Application Round. In order to evaluate this $3 million limitation, nonprofit entities, public housing authorities, publicly traded corporations, individual board members, and executive directors must provide the documentation required in the Application with regard to this requirement. All entities that share a Principal are Affiliates. For purposes of determining the $3 million limitation of tax credits, a Person is not deemed to be an Applicant, Developer, Affiliate or Guarantor solely because it:

(1) raises or provides equity;
(2) provides "qualified commercial financing";
(3) is a Qualified Nonprofit Organization or other not-for-profit entity that is providing solely loan funds, grant funds or social services;
(4) receives fees as a Development Consultant or Developer that do not exceed 10% of the Developer Fee (or 20% for Qualified Nonprofit Developments) to be paid or $150,000, whichever is greater; or
(5) is acting as a General Contractor providing experience or is providing a required construction guarantee because of that role.

(d) **Limitations on the Size of Developments**.
(1) The minimum Development size will be 16 Units.
(2) Developments in Rural Areas involving any New Construction or Adaptive Reuse (excluding New Construction of non-residential buildings) will be limited to 80 Units. Rehabilitation Developments (excluding Reconstruction) do not have a limitation as to the number of Units.
(3) Urban Developments involving any New Construction or Adaptive Reuse (excluding New Construction of non-residential buildings), in the Competitive Housing Tax Credit Application Round will be limited to 252 total Units, wherein the maximum Department administered Units will be limited to 200 Units. Tax-Exempt Bond Developments will be limited to 252 restricted and total Units. These maximum Unit limitations also apply to those Developments which involve a combination of Rehabilitation, Reconstruction, and New Construction. Only Developments that consist solely of acquisition/Rehabilitation or Rehabilitation may exceed the maximum Unit restrictions.
(4) For Applications that are proposing an additional phase to an existing tax credit Development of the same type; that are otherwise adjacent to an existing tax credit Development of the same type; or that are proposing a Development of the same type on a contiguous site to another Application awarded in the same program year, the combined Unit total for the existing and proposed Developments may not exceed the maximum allowable Development size set forth in this subsection unless:
(A) the first phase of the Development has been completed and has maintained occupancy of at least 90% for a minimum six (6) month period as reflected in the submitted rent roll; or
(B) a resolution from the Governing Body of the city or county, in which the proposed Development is located, dated no more than one (1) year old from the date the Application is submitted. Such resolution must state that the Governing Body has reviewed a market study which supports the need for additional Units. The resolution must be submitted to the Department by the Resolution Delivery Date as indicated in §50.3 of this chapter (relating to Program Calendar); or
(C) the proposed Development is intended to provide replacement of previously existing affordable Units on the Development Site or that were originally located within a one mile radius from the Development Site; provided, however, the combined number of Units in the proposed Development may not exceed the number of Units being replaced. Documentation of such replacement units must be provided.

(e) **Developments Proposing to Qualify for a 30% increase in Eligible Basis**. Staff will evaluate Applications for a 30% increase in Eligible Basis provided they meet the criteria identified in paragraph (1) or (2) of this subsection and Staff will recommend a 30% increase in Eligible Basis unless a 30% increase in Eligible Basis would cause the development to be over sourced, as evaluated by the Real Estate Analysis division, in which case a credit amount necessary to fill the gap in financing will be recommended (paragraph (2) of this subsection does not apply to Tax-Exempt Bond Applications).

(1) The Development is located in a Qualified Census Tract (QCT) (as determined by the Secretary of HUD) that has less than 30% Housing Tax Credit Units per households in the tract as established by the U.S. Census Bureau for the most recent Decennial Census. Developments located in a QCT that has in excess of 30% Housing Tax Credit Units per households in the tract are not eligible to qualify for a 30% increase in Eligible Basis, which would otherwise be available for the Development Site pursuant to §42(d)(5)(C) of the Code, unless the Development is proposing only Reconstruction or Rehabilitation (excluding New Construction of non-residential buildings). Applicants must submit a copy of the census map clearly showing that the proposed Development is located within a QCT. The 11 digit census tract number must be clearly marked on the map. These ineligible Qualified Census Tracts are outlined in the Housing Tax Credit Site Demographic Characteristics Report for the current Application Round; or

(2) The Development meets one of the criteria described in subparagraphs (A) - (E) of this paragraph (pursuant to the authority granted by H.R. 3221):
   (A) any Rural Development;
   (B) developments proposing entirely Supportive Housing and that such Development is expected to be debt free or have no foreclosable or non-cash flow debt;
   (C) developments proposed to be located in a Central Business District as defined in §50.2(7) of this chapter (relating to Definitions);
   (D) Developments proposed in a High Opportunity Area as defined in §50.2(15) of this chapter; or
   (E) any non-Qualified Elderly Development not located in a QCT that receives local HOME, CDBG or other funds distributed or administered by the local jurisdiction provided that such funding amounts are equal to at least $2,000 per Unit and is removed from Eligible Basis.

§50.6. Allocation and Award Process.

(a) The purpose of this section is to identify the statutory set-asides for Applications competing under the State Housing Credit Ceiling, the methodology by which awards under the Ceiling are made as well as the general process for Housing Tax Credit Allocations.

(b) **Regional Allocation Formula**. This formula, developed by the Department, establishes separate targeted tax credit amounts for Rural Areas and Urban Areas within each of the Uniform State Service Regions. Each Uniform State Service Region's targeted tax credit amount will be published on the Department's website. The regional allocation for Rural Areas is referred to as the Rural Regional Allocation and the regional allocation for Urban Areas is referred to as the Urban Regional Allocation. Developments qualifying for the Rural Regional Allocation must meet the Rural Development definition. The Regional Allocation target will reflect that at least 20% of the State Housing Credit Ceiling for each calendar year shall be allocated to Developments in Rural Areas with a minimum of $500,000 for each Uniform State Service Region. (§2306.111(d)(3) and §2306.1115)

(c) **Allocation Set-Asides**. An Applicant may elect to compete in as many of the following Set-Asides for which the proposed Development qualifies: (§2306.111(d))

(1) **Nonprofit Set-Aside**. At least 10% of the State Housing Credit Ceiling for each calendar year shall be allocated to Qualified Nonprofit Developments which meet the requirements of §42(h)(5) of the Code. Qualified Nonprofit Organizations must have the Controlling interest in the Development Owner applying for this Set-Aside. If the Application is filed on behalf of a limited partnership, the Qualified Nonprofit Organization must be the Managing General Partner. If the Application is filed on behalf of a limited liability company, the Qualified

Nonprofit Organization must be the controlling Managing Member. Additionally, a Qualified Nonprofit Development submitting an Application in the nonprofit Set-Aside must have the nonprofit entity or its nonprofit Affiliate or subsidiary be the Developer or a co-Developer as evidenced in the development agreement. An Applicant that meets the requirements to be in the Qualified Non-Profit Set-Aside is deemed to be applying under that set-aside unless their Application specifically includes an affirmative election to not be treated under that set-aside and a certification that they do not expect to receive a benefit in the allocation of tax credits as a result of being affiliated with a nonprofit. The Department reserves the right to request a change in this determination and/or not recommend credits for those unwilling to switch if insufficient Applications in the Nonprofit Set-Aside are received. (§2306.6729 and §2306.6706(b))

(2) **USDA Set-Aside**. At least 5% of the State Housing Credit Ceiling for each calendar year shall be allocated to Rural Developments which are financed through TRDO-USDA. (§2306.111(d)(2)) If an Application in this Set-Aside involves Rehabilitation it will be attributed to and come from the At-Risk Development Set-Aside; if an Application in this Set-Aside involves New Construction it will be attributed to and come from the applicable Uniform State Service Region. Developments financed through TRDO-USDA's §538 Guaranteed Rural Rental Housing Program, in whole or in part, will not be considered under this Set-Aside. Any Rehabilitation or Reconstruction of an existing §515 Development that retains the §515 loan and restrictions will be considered under the At-Risk Development and TRDO-USDA Set-Asides, unless such Development is also financed through TRDO-USDA's §538 Guaranteed Rural Rental Housing Program. Commitments of Competitive Housing Tax Credits issued by the Board in the current program year will be applied to each Set-Aside, Rural Regional Allocation, Urban Regional Allocation and/or TRDO-USDA Set-Aside for the current Application Round as appropriate;

(3) **At-Risk Set-Aside**. At least 15% of the State Housing Credit Ceiling for each calendar year will be allocated under the At-Risk Development Set-Aside and will be deducted from the State Housing Credit Ceiling prior to the application of the regional formula required under subsection (b) of this section. Through this Set-Aside, the Department, to the extent possible, shall allocate credits to Applications involving the preservation of Developments identified as At-Risk Developments. (§2306.6714) Up to 5% of the State Credit Ceiling associated with this Set-Aside may be given priority to Rehabilitation Developments funded with TRDO. An At-Risk Development is a Development that: (§2306.6702)

(A) Has received the benefit of a subsidy in the form of a below-market interest rate loan, interest rate reduction, rental subsidy, Section 8 housing assistance payment, rental supplement payment, rental assistance payment, or equity incentive under at least one of the following federal laws, as applicable:

(i) Section 221(d)(3) and (5), National Housing Act (12 U.S.C. §17151);
(ii) Section 236, National Housing Act (12 U.S.C. §1715z-1);
(iii) Section 202, Housing Act of 1959 (12 U.S.C. §1701q);
(iv) Section 101, Housing and Urban Development Act of 1965 (12 U.S.C. §1701s);
(v) The Section 8 Additional Assistance Program for housing Developments with HUD-Insured and HUD-Held Mortgages administered by the United States Department of Housing and Urban Development;
(vi) The Section 8 Housing Assistance Program for the Disposition of HUD-Owned Projects administered by the United States Department of Housing and Urban Development;
(vii) Sections 514 - 516, Housing Act of 1949 (42 U.S.C. §§1484 - 1486);
(viii) Section 42, of the Internal Revenue Code of 1986 (26 U.S.C. §42); or

(ix) Section 538, Housing Act of 1949 only if the Development involves the Rehabilitation of an existing property that has received and will continue to receive as part of the financing of the Development federal assistance provided under §515 of the Housing Act of 1949; and

(B) Is subject to the following conditions:

(i) The stipulation to maintain affordability in the contract granting the subsidy is nearing expiration (expiration will occur within two (2) calendar years of July 31 of the year the Application is submitted); or

(ii) The federally insured mortgage on the Development is eligible for prepayment or is nearing the end of its mortgage term (the term will end within two calendar years of July 31 of the year the Application is submitted);

(C) An Application for a Development that includes the demolition of the existing Units which have received the financial benefit described in subparagraph (A) of this paragraph will not qualify as an At-Risk Development unless the redevelopment will include the same site;

(D) Developments must be at risk of losing affordability from the financial benefits available to the Development and must retain or renew all possible financial benefit if available, and at least maintain existing affordability to qualify as an At-Risk Development;

(E) Nearing expiration on a requirement to maintain affordability includes Developments eligible to request a qualified contract under §42 of the Code. Evidence must be provided in the form of a copy of the recorded LURA, the first years' IRS Forms 8609 for all buildings showing Part II completed and, if applicable, documentation from the original application regarding the right of first refusal.

(F) An amendment submitted to the Department while the Application is under review that would enable the Development to qualify as an At-Risk Development will not be accepted.

(d) **Redistribution of Credits**. (§2306.111(d)) If any amount of Housing Tax Credits remain after the initial commitment of Housing Tax Credits among the Set-Asides, Rural Regional Allocation and Urban Regional Allocation, the Department may redistribute the credits amongst the different regions and Set-Asides based on the need to most closely achieve regional allocation goals and the level of demand exhibited in the Uniform State Service Regions during the Application Round. However, if there are any tax credits set aside for Developments in a Rural Area in a specific Uniform State Service Region that remain after the allocation under subsection (e) of this section, those tax credits shall be made available in any other Rural Area in the state, first, and then to Developments in Urban areas of any uniform state service region. (§2306.111(d)(3)) As described in subsection (c)(1) and (2) of this section, no more than 90% of the State's Housing Credit Ceiling for the calendar year may go to Developments which are not Qualified Nonprofit Developments. If credits will be transferred from a Uniform State Service Region which does not have enough qualified Applications to meet its regional credit distribution amount, then those credits will be apportioned to the other Uniform State Service Regions.

(e) **Methodology for Award Recommendations under the State Housing Credit Ceiling to the Board**. The Department will assign, as herein described, Developments for review for financial feasibility by the Department's Real Estate Analysis Division. In general these will be those Applications identified as most competitive and that meet the requirements of Eligibility and Threshold. However, an Application may be reviewed by the Real Estate Analysis Division prior to the completion of the Eligibility and Threshold reviews. The procedure identified in paragraphs (1) - (6) of this subsection will also be used in making recommendations to the Board:

(1) Applications with the highest scores in the TRDO-USDA Allocation until the minimum requirements stated in subsection (c)(2) of this section are attained. If an Application in this

Set-Aside involves Rehabilitation it will be attributed to, and come from the, At-Risk Set-Aside; if an Application in this Set-Aside involves New Construction it will be attributed to and come from the applicable Uniform State Service Region;

(2) Applications with the highest scores in the At-Risk Set-Aside Statewide until the minimum requirements stated in subsection (c)(3) of this section are attained;

(3) Remaining funds within each Uniform State Service Region will then be selected based on the highest scoring Developments in each of the 26 sub-regions, regardless of Set-Aside, in accordance with the requirements under subsection (b) of this section, without exceeding the credit amounts available for a Rural Regional Allocation and Urban Regional Allocation in each region. To the extent that Applications in the TRDO-USDA Set-Asides are not competitive enough within their respective Set-Aside, they will also be able to compete, with no Set-Aside preference, within their appropriate sub-region;

(4) If there are any tax credits set-aside for Developments in a Rural Area in a specific Uniform State Service Region that remain after allocation under paragraph (3) of this subsection those tax credits shall then be made available in any other Rural Area in the state to the Application in the most underserved Rural sub-region as compared to the Region's Rural Allocation. This rural redistribution will continue until at least 20% of the funds available to the state are allocated to Rural Areas. (§2306.111(d)(3)) This will be referred to as the Rural collapse;

(5) If there are any tax credits remaining in any sub-region after the Rural collapse, in the Rural Regional Allocation or Urban Regional Allocation, they then will be combined and made available to the Application in the most underserved sub-region as compared to the sub-region's allocation. This will be referred to as the statewide collapse;

(6) Staff will ensure that at least 10% of the State Housing Credit Ceiling is allocated to Qualified Nonprofit Organizations to satisfy the Nonprofit Set-Aside. If 10% is not met through the existing competitive process, then the Department will add the highest scoring Application by a Qualified Nonprofit Organization statewide until the 10% Nonprofit Set-Aside is met and this set-aside will take precedence over selection for the Rural Regional Allocation and Urban Regional Allocation. Funds for the Rural Regional Allocation or Urban Regional Allocation within a region, for which there are no eligible feasible Applications, will be redistributed as provided in subsection (d) of this section. If the Department determines that an allocation recommendation would cause a violation of the $2 million limit described in §50.5(c) of this chapter (relating to Site and Development Restrictions), the Department will make its recommendation by selecting the Development(s) that most effectively satisfy the Department's goals in meeting Set-Aside and regional allocation goals. Based on Application rankings, the Department shall continue to underwrite Applications until the Department has processed enough Applications satisfying the Department's underwriting criteria to enable the allocation of all available Housing Tax Credits according to regional allocation goals and Set-Aside categories. To enable the Board to establish a waiting list, the Department shall underwrite as many additional Applications as necessary to ensure that all available Competitive Housing Tax Credits are allocated within the period required by law. (§2306.6710(a) - (f); §2306.111)

(f) **Tie Breaker Factors**.

(1) In the event that two or more Applications receive the same number of points in any given Set-Aside category, Rural Regional Allocation or Urban Regional Allocation, or Rural or state collapse and each of the tied Applicants are practicable and economically feasible, the Department will utilize the factors in this paragraph, in the order they are presented, to determine which Development will receive a preference in consideration for a tax credit Commitment.

(A) Applications located in a census tract that has the lowest average of units per capita, supported by Housing Tax Credits, including those supported by Tax Exempt Bonds, at the time the Application Round begins will win the first tie breaker.

(B) The amount of requested tax credits per person assisted calculated at 1.5 persons per Bedroom (Efficiency Units will be considered to have one Bedroom for the purposes of this provision) as of the date of Application submission. The lower credits per Bedroom will win this second tie breaker.

(C) Each scoring item for the tied Applications will be compared in descending order until an item is identified where one Applicant's score is greater than the score of the tied Applicants and the Applicant with the highest score on that item will win this third tie breaker.

(2) This paragraph identifies how ties will be handled when dealing with the restrictions on location identified in §50.8(2)(B) of this chapter (relating to Threshold Criteria), and in dealing with any issues relating to capture rate calculation. When two Tax-Exempt Bond Developments would violate one of these restrictions, and only one Development can be selected, the Department will utilize the Certificate of Reservation docket number issued by the Texas Bond Review Board (TBRB) in making its determination. When two Competitive Housing Tax Credits Applications in the Application Round would violate one of these restrictions, and only one Development can be selected, the Department will utilize the tie breaker identified in paragraph (1) of this subsection. When a Tax-Exempt Bond Development and a Competitive Housing Tax Credit Application in the Application Round would both violate a restriction, the following determination will be used:

(A) Tax-Exempt Bond Developments that receive their Certificate of Reservation from the TBRB on or before April 30 of the current program year will take precedence over the Housing Tax Credit Applications in the current Application Round;

(B) Housing Tax Credit Applications approved by the Board for tax credits in July of the current program year will take precedence over the Tax-Exempt Bond Developments that received their Certificate of Reservation from the TBRB on or between May 1 and July 31of the current program year; and

(C) After July 31, a Tax-Exempt Bond Development with a Certificate of Reservation from the TBRB will take precedence over any Housing Tax Credit Application from the current Application Round on the waiting list. However, if no Certificate of Reservation has been issued by the date the Board approves an allocation to a Development from the waiting list of Applications in the current Application Round then the waiting list Application will be eligible for its allocation.

(g) **Staff Recommendations**. (§2306.1112 and §2306.6731) In accordance with the QAP and other applicable Department rules, the Department Staff shall make its recommendations to the Executive Award and Review Advisory Committee for that committee to recommend to the Board. That committee, in making its recommendations, is not constrained to whether the proposed award meets legal and regulatory requirements and may, as it deems appropriate provide information about other factors and concerns. The committee, if it is not unanimous, shall report opposing minority views.

§50.7. Application Process.

(a) The purpose of this section is to outline the process by which Housing Tax Credit Applications are accepted and reviewed by the Department.

(b) **General**. The application process has two parts, a pre-application which is voluntary but creates an opportunity for a greater score on the required Application and applies only to Applications submitted under the State Housing Credit Ceiling and an Application which is mandatory. An

Applicant that does not provide an Application on or before the deadlines provided herein is not eligible to be placed on the list of eligible Applicants to which awards of tax credits may be made. Pre-applications and Applications submitted to the Department are subject to restrictions in paragraphs (1) and (2) of this subsection.

(1) **Ex Parte Communications**. (§2306.1113) An ex parte communication occurs, when an Applicant initiates substantive contact (other than permitted social contact) with a board member, or vice versa, in a setting other than a duly posted and convened public meeting, in any manner not specifically permitted by §2306.1113(b). Such action is prohibited. For Applicants seeking funding after initial awards have been made, such as waiting list Applicants, the ex parte communication prohibition remains in effect. The ex parte provision does not prohibit the Board from participating in social events at which a Person with whom communications are prohibited may, or will be present, provided that all matters related to the Applications be considered by the Board will not be discussed.

(2) **Administrative Deficiency Process**. The purpose of the Administrative Deficiency process is to allow the Applicant an opportunity to provide clarification, correction or non-material missing information (i.e. not rising to the level of a Material Deficiency) to resolve inconsistencies in the original Application. Staff will request the missing information via an Administrative Deficiency and will make a recommendation to award points provided the information submitted in response to the Administrative Deficiency is submitted in the time frames specified therein and addresses the issues to the reasonable satisfaction of Staff.

(A) **Administrative Deficiencies for Applications submitted under the State Housing Credit Ceiling and Rural Rescue Applications**. If an Application contains Administrative Deficiencies which, in the determination of the Department Staff, require clarification, correction or the request of non-material missing information to resolve inconsistencies in the original Application the Department Staff may request such information in the form of an Administrative Deficiency. Because the review for Eligibility, Selection, Threshold Criteria, Quantifiable Community Participation (QCP) and review for financial feasibility by the Department's Real Estate Analysis Division may occur separately, Administrative Deficiency requests may be made during any of these reviews. The Department Staff will request the information in the form of an e-mail, or if an e-mail address is not provided in the Application, by facsimile, and a telephone call (only if there has not been confirmation of the receipt of the e-mail within twenty-four (24) hours) to the Applicant and one other party identified by the Applicant in the Application advising that such a request has been transmitted. If Administrative Deficiencies are not resolved to the satisfaction of the Department by 5:00 p.m. on the fifth business day following the date of the deficiency notice, then (5 points) shall be deducted from the Selection Criteria score for each additional day the deficiency remains unresolved. If Administrative Deficiencies are not resolved by 5:00 p.m. on the seventh business day following the date of the deficiency notice, then the Application shall be terminated. 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 and may also be sent in response to reviews on post award submissions. An Applicant may not change or supplement any part of an Application in any manner after the filing deadline, and may not add any Set-Asides, increase the requested credit amount, revise the Unit mix (both income levels and bedroom mixes), or adjust their self-score except in response to a direct request from the Department to do so as a result of an Administrative Deficiency or by approved amendment of an Application after a commitment or allocation of tax credits as further described in

§50.13(b) of this chapter (relating to Application Reevaluation). (§2306.6708(b); §2306.6708) To the extent that the review of Administrative Deficiency documentation during the review alters the score assigned to the Application, Applicants will be re-notified of their final adjusted score.

(B) **Administrative Deficiencies for Tax Exempt Bond Applications**. If an Application contains deficiencies which, in the determination of the Department Staff, require clarification, correction, or non-material missing information to resolve inconsistencies in the original Application the Department Staff may request such information in the form of an Administrative Deficiency. Because the review for Eligibility, Threshold Criteria, and review for financial feasibility by the Department's Real Estate Analysis Division may occur separately, Administrative Deficiency requests may be made during any of these reviews. The Department Staff will request the information in a deficiency notice in the form of an e-mail, or if an e-mail address is not provided in the Application, by facsimile, and a telephone call (only if there has not been confirmation of the receipt of the e-mail within twenty-four (24) hours) to the Applicant and one other party identified by the Applicant in the Application advising that such a request has been transmitted. All Administrative Deficiencies shall be resolved to the satisfaction of the Department within five (5) business days. Failure to resolve all outstanding deficiencies by 5:00 p.m. on the fifth business day following the date of the deficiency notice will result in a penalty fee of $500 for each business day the deficiency remains unresolved. Applications with unresolved deficiencies after 5:00 p.m. on the tenth day following the date of the deficiency notice will be terminated. The Applicant will be responsible for the payment of fees accrued pursuant to this paragraph regardless of any termination pursuant to §50.4 of this chapter (relating to Ineligible Applicants, Applications, and Developments). 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 and may also be sent in response to reviews on post award submissions. The Application will not be presented to the Board for consideration until all outstanding fees have been paid.

(c) **Pre-application Submission**. The purpose of the pre-application process is to enable Applicants interested in pursuing the Application to assess generally who else is interested in submitting Applications and the nature of their proposed Development. Based on an understanding of the potential competition they can make a better and more informed decision whether they wish to proceed to prepare and submit an Application.

(1) As used herein a "complete pre-application" means a pre-application that meets all of the Department's criteria for an Application with all required information and exhibits provided pursuant to the Tax Credit (Procedures) Manual.

(2) The pre-application must be submitted in accordance with the Application Acceptance Period and Pre-application Final Delivery Date as identified in §50.3 of this chapter (relating to Program Calendar).

(3) To submit the complete pre-application the Applicant must deliver one (1) CD-R containing a PDF copy and Excel copy of the complete pre-application to the Department prior to the Pre-application Final Delivery Date.

(4) The pre-application must be a single file and individually bookmarked as presented in the order as required in the Tax Credit (Procedures) Manual.

(5) If a pre-application is not submitted to the Department on or before the applicable deadline indicated in §50.3 of this chapter, the Applicant will be deemed to have not made a pre-application.

(6) The required pre-application fee as described in §50.14 of this chapter (relating to Program Related Fees) must be submitted with the pre-application in order for the pre-application to be accepted by the Department.
(7) Only one pre-application may be submitted by an Applicant for each site. Prior to the pre-application deadline Applicants may withdraw their pre-application and subsequently file a new pre-application utilizing the original pre-application fee that was paid as long as no evaluation was performed by the Department.
(8) Department review at this stage is limited, and not all issues of eligibility and threshold are reviewed at pre-application. Acceptance by Staff of a pre-application does not ensure that an Applicant satisfies all Application eligibility, threshold or documentation requirements. The Department is not responsible for notifying an Applicant of potential areas of ineligibility or threshold deficiencies at the time of pre-application. The rejection of a pre-application shall not preclude an Applicant from submitting an Application with respect to a particular Development at the appropriate time.

(d) **Pre-application Threshold Criteria**. The Pre-application Threshold Criteria include:
(1) submission of a pre-application;
(2) legal description of the Development Site; and
(3) evidence in the form of a certification that all of the notifications required under this paragraph have been made. (§2306.6704)
(A) The Applicant must request a list of Neighborhood Organizations on record with the county and state whose boundaries include the proposed Development Site:
(i) No later than the Pre-application Neighborhood Organization Request Date identified in §50.3 of this chapter, the Applicant must e-mail, fax or mail with registered receipt (email or fax to be "receipt confirmed") a completed "Neighborhood Organization Request" letter as provided in the pre-application to the local elected official for the city and county where the Development is proposed to be located. If the Development is located in an area that has district based local elected officials, or both at-large and district based local elected officials, the request must be made to the city council member or county commissioner representing that district; if the Development is located in an area that has only at-large local elected officials, the request must be made to the mayor or county judge for the jurisdiction. If the Development is not located within a city or is located in the Extra Territorial Jurisdiction (ETJ) of a city, the county local elected official must be contacted. In the event that local elected officials refer the Applicant to another source, the Applicant must request Neighborhood Organizations from that source in the same format;
(ii) If no reply letter is received from the local elected officials by the Pre-application Response to Neighborhood Organization Request Date, then the Applicant must certify to that fact in the pre-application;
(iii) The Applicant must list in the pre-application all Neighborhood Organizations on record with the county or state whose boundaries include the proposed Development Site as provided by the local elected officials, or that the Applicant has knowledge of (regardless of whether the organization is on record with the county or state) as of the pre-application submission.
(B) Not later than the date the pre-application is submitted, notification must be sent to all of the following individuals and entities by e-mail, fax or mail with registered receipt return or similar tracking mechanism in the format required in the "Pre-application Notification Template" provided in the pre-application. Developments located in an ETJ of a city are not required to notify city officials, however, are required to notify county officials. Evidence of notification is required in the form of a certification provided in the pre-application, although it is encouraged that Applicants

retain proof of delivery of the notifications, to the persons or entities prescribed in clauses (i) - (ix) of this subparagraph, in the event that the Department requires proof of notification. Evidence of proof of delivery is demonstrated by signed receipt for mail or courier delivery and confirmation of receipt by the recipient for facsimile and electronic mail. Officials to be notified are those officials in office at the time the pre-application is submitted.

(i) Neighborhood Organizations on record with the state or county whose boundaries include the proposed Development Site;
(ii) Superintendent of the school district containing the Development;
(iii) Presiding officer of the board of trustees of the school district containing the Development;
(iv) Mayor of any municipality containing the Development;
(v) All elected members of the Governing Body of any municipality containing the Development;
(vi) Presiding officer of the Governing Body of the county containing the Development;
(vii) All elected members of the Governing Body of the county containing the Development;
(viii) State senator of the district containing the Development; and
(ix) State representative of the district containing the Development.

(C) Each such notice must include, at a minimum, all of the following:
(i) the Applicant's name, address, individual contact name and phone number;
(ii) the Development name, address, city and county;
(iii) a statement informing the entity or individual being notified that the Applicant is submitting a request for Housing Tax Credits with the Texas Department of Housing and Community Affairs;
(iv) whether the Development proposes New Construction, Reconstruction, Adaptive Reuse, or Rehabilitation;
(v) the type of Development being proposed (single family homes, duplex, apartments, townhomes, high-rise etc.); and
(vi) the approximate total number of Units and approximate total number of low-income Units.

(D) Pre-applications not meeting the Pre-application Threshold Criteria identified in this subsection will be terminated and the Applicant will receive a written notice to that effect. The Department shall not be responsible for the Applicant's failure to meet the Pre-application Threshold Criteria and any failure of the Department's Staff to notify the Applicant of such inability to satisfy the Pre-application Threshold Criteria shall not confer upon the Applicant any rights to which it would not otherwise be entitled.

(e) **Pre-application Results**. Only pre-applications which have satisfied all of the Pre-application Threshold Criteria requirements set forth in subsection (d) of this section and §50.9(b)(14) of this chapter (relating to Selection Criteria), will be eligible for pre-application points. The order and scores of those Developments released on the Pre-application Submission Log do not represent a Commitment on the part of the Department or the Board to allocate tax credits to any Development and the Department bears no liability for decisions made by Applicants based on the results of the Pre-application Submission Log. Inclusion of a Development on the Pre-application Submission Log does not ensure that an Applicant will receive points for a pre-application.

(f) **Application Submission**. An Applicant requesting a Housing Credit Allocation or a Determination Notice must submit an Application in order to be considered for Housing Tax Credits.

(1) As used herein a "complete application" means an Application that meets all of the Department's criteria for an Application with all required information and exhibits provided pursuant to the Tax Credit (Procedures) Manual.
(2) For Applications submitted under the State Housing Credit Ceiling, the Application must be submitted by the Full Application Delivery Date as identified in §50.3 of this chapter. The Full Application Delivery Date for Tax-Exempt Bond Developments is triggered by the Certificate of Reservation issued by the Texas Bond Review Board and is further defined in §50.11 of this chapter (relating to Tax-Exempt Bond Developments).
(3) To submit the complete application the Applicant must deliver one (1) CD-R containing a PDF copy and Excel copy of the complete application to the Department.
(4) The Application must be a single file and individually bookmarked in the order as required by the Tax Credit (Procedures) Manual.
(5) If an Application is not submitted to the Department on or before the applicable deadline indicated in paragraph (2) of this subsection, the Applicant will be deemed to have not made an Application.
(6) The required Application fee as described in §50.14 of this chapter must be submitted with the Application in order for the Application to be accepted by the Department.
(7) Only one Application may be submitted for a site in an Application Round. While the Application Acceptance Period is open, an Applicant may withdraw an Application and subsequently file a new Application utilizing the original Pre-application Fee that was paid as long as no evaluation was performed by the Department.

(g) **Evaluation Process**. Applications submitted for consideration (including Tax Exempt Bond Developments) will be reviewed according to the eligibility, threshold and for competitive applications under the State Housing Credit Ceiling, for Selection Criteria. An Application, during any of these stages of review, may be determined to be ineligible as further described in §50.4 of this chapter. Applicants will be notified in these instances.

(h) **Underwriting Evaluation**. The Department shall underwrite an Application to determine the financial feasibility of the Development and an appropriate allocation of Housing Tax Credits. In making this determination, the Department will use §1.32 of this title (relating to Underwriting Rules and Guidelines). The Department may have an external party perform the underwriting evaluation to the extent it determines appropriate. The expense of any external underwriting evaluation shall be paid by the Applicant prior to the commencement of the aforementioned evaluation.

(i) **Compliance Evaluation**. After the Department has determined which Developments will be reviewed for financial feasibility, those same Developments will be reviewed for evaluation of the compliance status in accordance with Chapter 60 of this title (relating to Compliance Administration), and will be evaluated in detail for eligibility under §50.4 of this chapter.

(j) **Site Evaluation**. Site conditions may be evaluated through a physical site inspection by the Department or its agents. Such inspection will evaluate the Development Site. The evaluations shall be based on the condition of the surrounding neighborhood, including appropriate environmental and aesthetic conditions and proximity to retail, medical, recreational, educational facilities, and employment centers. The site's appearance to prospective tenants and its accessibility via the existing transportation infrastructure and public transportation systems shall be considered. "Unacceptable" sites include, without limitation, those containing a non-mitigable environmental factor that may adversely affect the health and safety of the residents. For Developments applying under the TRDO-USDA Set-Aside, the Department may rely on the physical site inspection performed by TRDO-USDA.

(k) **Application Process for Rural Rescue Applications under the Credit Ceiling**.

(1) **Submission Requirements**. Rural Rescue Applications may be submitted during the Rural Rescue Application Submission Period as identified in §50.3 of this chapter. A complete Application must be submitted at least sixty (60) days prior to the date of the Board meeting at which the Applicant would like the Board to act on the proposed Development. Applications must include the full Application Fee as further described in §50.14 of this chapter. Applicants must submit documents in accordance with the Tax Credit (Procedures) Manual.

(A) Applications will be processed on a first-come, first-served basis. Applications unable to meet all Administrative Deficiency and underwriting requirements within thirty (30) days of the request by the Department, will remain under consideration, but will lose their submission status and the next Application in line will be moved ahead in order to expedite those Applications ready to proceed. Applications for Rural Rescue will be processed and evaluated as described in this paragraph. Applications will be reviewed to ensure that the Application is eligible as a rural "rescue" Development as described in paragraph (2) of this subsection.

(B) Prior to the Development being recommended to the Board, TRDO-USDA shall provide the Department with a copy of the physical site inspection report performed by TRDO-USDA, if applicable.

(2) **Eligibility and Threshold Review**. All Rural Rescue Applications will be reviewed pursuant to §50.8 and §50.9 of this chapter. Additional eligibility requirements include the criteria listed in subparagraphs (A) - (C) of this paragraph. Applications found to be ineligible will be notified.

(A) Applications must be funded through TRDO-USDA;

(B) Applications must be able to provide evidence that the loan:

(i) has been foreclosed and is in the TRDO-USDA inventory; or

(ii) is being foreclosed; or

(iii) is being accelerated; or

(iv) is in imminent danger of foreclosure or acceleration; or

(v) is for an Application in which two adjacent parcels are involved, of which at least one parcel qualifies under clauses (i) - (iv) of this subparagraph and for which the Application is submitted under one ownership structure, one financing plan and for which there are no market rate units; and

(C) Applicants must be identified as in compliance with TRDO-USDA regulations with all other properties.

(3) **Selection Criteria Review**. All Rural Rescue Applications will be evaluated against the Selection Criteria pursuant to §50.9 of this chapter and a score will be assigned to the Application. The minimum score for Selection Criteria as identified in §50.9(b) of this chapter is not required to be achieved to be eligible.

(4) **Credit Ceiling and Applicability of this chapter**. All Rural Rescue Applicants will receive their credit allocation out of the following program year Credit Ceiling and therefore, will be subject to the rules and guidelines identified in the Qualified Allocation Plan (QAP) of that program year. However, because the QAP for the following program year will not be in effect during the time period that the Rural Rescue Applications can be submitted, Applications submitted and eligible under the Rural Rescue Set-Aside will be considered to have satisfied the requirements of the following program years' QAP by having satisfied the requirements of the QAP for the current program year, to the extent permitted by statute.

(5) **Procedures for Recommendation to the Board**. Consistent with subsection (d) of this section, Staff will make its recommendation to the Committee. The Committee will make Commitment recommendations to the Board. Staff will provide the Board with a written, documented recommendation which will address at a minimum the financial and programmatic viability of each Application and a breakdown of which Selection Criteria were met by the Applicant. The Board will make its decision based on §50.10(a) of this chapter (relating to Board Decisions).

(6) **Limitation on Allocation**. No more than $350,000 in credits will be committed from the current State Housing Credit Ceiling. To the extent Applications are received that exceed the maximum limitation; Staff will prepare the award for Board consideration noting for the Board that the award would require a waiver of this limitation.

§50.8. Threshold Criteria.

The purpose of this section is to identify the mandatory requirements that must be submitted at the time of the original Application submission unless specifically indicated otherwise. If any of the Threshold Criteria indicated below are not resolved, clarified or corrected to the satisfaction of the Department, through the Administrative Deficiency process, the Application will be terminated.

(1) **Submission of the Application**. Includes the entire Uniform Application and any other supplemental forms which may be required by the Department and in the format prescribed by the Department. (§2306.1111)

(2) **Governing Body Resolutions**. The following resolutions, if applicable to the proposed Development, must be submitted by the Resolutions Delivery Date as indicated in §50.3 of this chapter (relating to Program Calendar) and may not be more than one year old from the beginning of the Application Acceptance Period or for Tax-Exempt Bond Developments from the date Parts 1 - 4 are submitted to the Department.

(A) **Twice the State Average**. If the Development is located in a municipality, or if located completely outside a municipality, a county, that has more than twice the state average of units per capita supported by Housing Tax Credits or private activity bonds at the time the Application Round begins (or for Tax-Exempt Bond Developments at the time the Certificate of Reservation is issued by the Texas Bond Review Board) the Applicant must obtain prior approval of the Development from the Governing Body of the appropriate municipality or county containing the Development. Such approval must reference this rule and authorize an allocation of Housing Tax Credits for the Development; (§2306.6703(a)(4))

(B) **One Mile Three Year Rule**. If the Applicant proposes to construct a Development proposing New Construction or Adaptive Reuse (excluding New Construction of non-residential buildings) that is located one linear mile (measured by a straight line on a map) or less from a Development that: (§2306.6703(a)(3))

(i) serves the same type of household as the new Development, regardless of whether the Development serves families, elderly individuals, or another type of household; and

(ii) has received an allocation of Housing Tax Credits or private activity bonds for any New Construction at any time during the three-year period preceding the date the Application Round begins (or for Tax-Exempt Bond Developments the three-year period preceding the date Parts 1 - 4 are submitted); and

(iii) has not been withdrawn or terminated from the Housing Tax Credit Program;

(iv) an Application is not ineligible under this paragraph if:

(I) the Development is using federal HOPE VI funds received through the United States Department of Housing and Urban Development; locally approved funds received from a public improvement district or a tax increment financing district; funds provided to the state under the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. §§12701 et seq.); or funds provided to the state and participating jurisdictions under the Housing and Community Development Act of 1974 (42 U.S.C. §§5301 et seq.); or

(II) the Development is located in a county with a population of less than one million; or

(III) the Development is located outside of a metropolitan statistical area; or

(IV) the Governing Body, of the Unit of General Local Government where the Development is to be located has by vote specifically allowed the construction of a new Development located within one linear mile or less from a Development described under clause (i) of this subparagraph.

(v) In determining when an existing Development received an allocation as it relates to the application of the three-year period, the Development will be considered from the date the Board took action on approving the allocation of tax credits. In dealing with ties between two or more Developments as it relates to this rule, refer to §50.6(f) of this chapter (relating to Allocation and Award Process).

(C) **Developments in Certain Census Tracts**. Staff will not recommend and the Board will not allocate Housing Tax Credits for a Competitive Housing Tax Credit or Tax-Exempt Bond Development located in a census tract that has more than 30% Housing Tax Credit Units per total households in the census tract as established by the U.S. Census Bureau for the most recent Decennial Census unless:

(i) the Development is in a Place whose population is less than 100,000;

(ii) the Applicant proposes only Reconstruction or Rehabilitation (excluding New Construction of non-residential buildings); or

(iii) submits to the Department an approval of the Development referencing this rule in the form of a resolution from the Governing Body of the appropriate municipality or county containing the Development. These ineligible census tracts are outlined in the Housing Tax Credit Site Demographic Characteristics Report for the current Application Round.

(3) **Rehabilitation Costs.** Developments involving Rehabilitation must establish a scope of work that will substantially improve the interiors of all Units and exterior deferred maintenance, at a minimum, and will involve at least $25,000 per Unit in direct construction cost, also referred to as building costs in §1.32(e)(4) of this title (relating to Underwriting Rules and Guidelines), and site work. If financed with TRDO-USDA the minimum is $19,000 and for Tax-Exempt Bond Developments, less than twenty-five (25) years old, the minimum is $15,000 per Unit.

(4) **Experience Requirement.** The purpose of the experience requirement is for someone in the Development to demonstrate they have experience in development. Evidence must be provided in the Application that meets the criteria as stated in subparagraph (A) of this paragraph. An Applicant may submit their experience documentation prior to the Application deadline and the Department will attempt to review and respond within thirty (30) days of submission regarding approval of the experience requirement. Experience of multiple parties may not be aggregated.

(A) A Principal of the Developer, Development Owner, General Partner or General Contractor must establish that they have experience in the development of 150 units or more. Acceptable documentation to meet this requirement shall include:

(i) an experience certificate issued by the Department in the past three (3) years; or

(ii) any of the items in subclauses (I) – (IX) of this clause:

(I) American Institute of Architects (AIA) Document (A102) or (A103) 2007 - Standard Form of Agreement between Owner & Contractor;
(II) AIA Document G704--Certificate of Substantial Completion;
(III) AIA Document G702--Application and Certificate for Payment;
(IV) Certificate of Occupancy;
(V) IRS Form 8609, (only one per development is required);
(VI) HUD Form 9822;
(VII) Development agreements;
(VIII) Partnership agreements; or
(IX) other documentation satisfactory to the Department verifying that the Development Owner's General Partner, partner (or if Applicant is to be a limited liability company, the managing member), General Contractor, Developer or their Principals have the required experience.

(B) For purposes of this requirement any individual attempting to use the experience of another individual must demonstrate they have or had the authority to act on their behalf that substantiates the minimum 150 unit requirement.
(i) The names on the forms and agreements in subparagraph (A)(ii) of this paragraph must tie back to the Development Owner's General Partner, partner (or if Applicant is to be a limited liability company, the managing member), Developer or their Principals as listed in the Application.
(ii) Experience may not be established for a Person who at any time within the preceding three years has been involved with affordable housing that has been in material non-compliance under the Department's rules or for affordable housing in another state, has been the subject of issued IRS Form 8823 citing non-compliance that has not been or is not being corrected with reasonable due diligence.
(iii) If a Principal is determined by the Department to not have the required experience, an acceptable replacement for that Principal must be identified prior to the date the award is made by the Board.
(iv) Notwithstanding the foregoing, no person may be used to establish such required experience if that Person or an Affiliate of that Person would not be eligible to be an Applicant themselves.

(5) **Certifications.** The "Certification Form" provided in the Application confirming:
(A) a certification of the basic common amenities selected for the Development. All Developments must meet at least the minimum threshold of points based on the total number of Units in the Development. These points are not associated with the Selection Criteria points in §50.9(b) of this chapter (relating to Selection Criteria). The amenities selected must be made available for the benefit of all tenants and must be made available throughout normal business hours. If fees in addition to rent are charged for amenities, then the amenity may not be included among those provided to satisfy the threshold requirement. All amenities must meet accessibility standards. Spaces for activities must be sized appropriately to serve the Target Population of the Development. Applications for non-contiguous scattered site housing, excluding non-contiguous single family sites, will have the threshold test applied based on the number of Units per individual site, and will have to identify in the LURA which amenities are at each individual site. The complete list of amenities can be found in §1.1 of this title (relating to Definitions and Amenities for Housing Program Activities).
(i) Applications must meet a minimum threshold of points:
(I) Total Units equal 16, (1 point) is required;
(II) Total Units are 17 to 40, (4 points) are required;
(III) Total Units are 41 to 76, (7 points) are required;
(IV) Total Units are 77 to 99, (10 points) are required;

(V) Total Units are 100 to 149, (14 points) are required;
(VI) Total Units are 150 to 199, (18 points) are required; or
(VII) Total Units are 200 or more, (22 points) are required.

(ii) Unit Amenities (Tax Exempt Bond Developments Only). The Development must include enough amenities to meet the minimum threshold of (14 points). The amenity and quality feature shall be for every Unit at no extra charge to the tenant as certified to in the Application. The amenities and corresponding point structure is provided in §1.1 of this title. The amenities will be required to be identified in the LURA. Applications involving scattered site Developments must have a specific amenity located within each Unit to count for points. Rehabilitation Developments will start with a base score of (3 points) and Supportive Housing Developments will start with a base score of (5 points).

(B) A certification that the Development will meet the minimum threshold for size of Units as provided in clauses (i) - (v) of this subparagraph. These minimum requirements are not associated with the points in §50.9(b)(4) of this chapter. Developments proposing Rehabilitation (excluding Reconstruction) or Supportive Housing Developments will not be subject to the requirements of this subparagraph.

(i) five hundred-fifty (550) square feet for an Efficiency Unit;
(ii) six hundred-fifty (650) square feet for a one Bedroom Unit that is not in a Qualified Elderly Development; 550 square feet for a one Bedroom Unit in a Qualified Elderly Development;
(iii) nine hundred (900) square feet for a two Bedroom Unit that is not in a Qualified Elderly Development; 700 square feet for a two Bedroom Unit in a Qualified Elderly Development;
(iv) one thousand (1,000) square feet for a three Bedroom Unit; and
(v) one thousand, two-hundred (1,200) square feet for a four Bedroom Unit;

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

(D) A certification that the Applicant is and will remain in compliance with state and federal laws, including but not limited to, fair housing laws, including Chapter 301, Property Code, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), the Fair Housing Amendments Act of 1988 (42 U.S.C. §§3601 et seq.); the Civil Rights Act of 1964 (42 U.S.C. §§2000a et seq.); the Americans with Disabilities Act of 1990 (42 U.S.C. §§12101 et seq.); the Rehabilitation Act of 1973 (29 U.S.C. §§701 et seq.); Fair Housing Accessibility; the Texas Fair Housing Act; and that the Development is designed consistent with the Fair Housing Act Design Manual produced by HUD, the Code Requirements for Housing Accessibility 2000 (or as amended from time to time) produced by the International Code Council and the Texas Accessibility Standards. (§2306.257; §2306.6705(7))

(E) A certification that the Applicant has read and understands the Department's fair housing educational materials posted on the Department's website as of the beginning of the Application Acceptance Period.

(F) A certification that the Applicant will attempt to ensure that at least 30% of the construction and management businesses with which the Applicant contracts in connection with the Development are Minority Owned Businesses, and that the Applicant will submit a report at least once in each 90-day period following the date of the Commitment until the Cost Certification is submitted, in a format prescribed by the Department and provided at the

time a Commitment is received, on the percentage of businesses with which the Applicant has contracted that qualify as Minority Owned Businesses. (§2306.6734)

(G) Pursuant to §2306.6722 of the Texas Government Code, any Development supported with a Housing Tax Credit allocation shall comply with the accessibility standards that are required under §504, Rehabilitation Act of 1973 (29 U.S.C. §794), and specified under 24 C.F.R. Part 8, Subpart C. The Applicant must provide a certification from the Development engineer, an accredited architect or Department-approved Third Party accessibility specialist, that the Development will comply with the accessibility standards that are required under §504, Rehabilitation Act of 1973 (29 U.S.C. §794), and specified under 24 C.F.R. Part 8, Subpart C, and this subparagraph. (§2306.6722 and §2306.6730)

(H) For Developments involving New Construction (excluding New Construction of non-residential buildings) where some Units are two-stories or single family design and are normally exempt from Fair Housing accessibility requirements, a minimum of 20% of each Unit type (i.e., one bedroom, two bedroom, three bedroom) must provide an accessible entry level and all common-use facilities in compliance with the Fair Housing Guidelines, and include a minimum of one bedroom and one bathroom or powder room at the entry level. A similar certification will also be required after the Development is completed from an inspector, architect, or accessibility specialist.

(I) A certification that the Development Owner agrees to establish a reserve account consistent with §2306.186 of the Texas Government Code and as further described in §1.37 of this title (relating to Reserve for Replacement Rules and Guidelines).

(J) A certification that the Applicant, Developer, or any employee or agent of the Applicant has not formed a Neighborhood Organization for purposes of §50.9(b)(2) of this chapter, has not given money or a gift to cause the Neighborhood Organization to take its position of support or opposition, nor has provided any assistance to a Neighborhood Organization outside of the assistance allowed under §50.9(b)(2)(A)(viii) of this chapter to meet the requirements under §50.9(b)(2) of this chapter as it relates to the Applicant's Application or any other Application under consideration in the current Application Round.

(K) A certification that the Development will operate in accordance with the requirements pertaining to rental assistance in Chapter 60 of this title (relating to Compliance Administration).

(L) A certification that the Development Owner will contract with a Management Company throughout the Compliance Period that will perform criminal background checks on all adult tenants, head and co-head of households.

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

(N) A certification as to whether the Applicant, Development Owner, Developer or Guarantor involved with the Application has not voluntarily or involuntarily had their involvement in a rent or income restricted multifamily Development terminated by a lender, equity provider, or other investors or owners as a Principal during the previous ten (10) years, however designated, or any combination thereof or if any litigation to effectuate such exit has been

instituted and is continuing at the time of Application. If such a termination of involvement occurred the facts and circumstances shall be fully disclosed. If an Applicant or Developer signs the certification and fails to disclose a discloseable matter and the Department learns at a later date that an exit did take place as described, then the Application may be terminated and any Allocation made will be rescinded. The disclosure of an exit does not, in and of itself, result in the Applicant or Application being deemed ineligible. Only if the Executive Director determines that the disclosed matter warrants ineligibility, a report of the matter and that recommendation shall be presented to the Board for a final determination. The Board may impose reasonable constraints, including time constraints, as a part of its determination. Any such matter to be presented for final determination of ineligibility by the Board must include notice from the Department to the affected party not less than fourteen (14) days prior to the scheduled Board meeting. The Executive Director may, but is not required, to issue a formal notice after disclosure if it is determined that the matter does not warrant ineligibility.

(6) **Architectural Drawings**. While full size design or construction documents are not required, the drawings must have an accurate and legible scale and show the dimensions. All Developments involving New Construction, or conversion of existing buildings not configured in the Unit pattern proposed in the Application as well as all other Developments unless specifically stated otherwise, must provide all of the items identified in subparagraphs (A) - (C) of this paragraph.

(A) A site plan which:
  (i) is consistent with the number of Units and Unit mix specified in the "Rent Schedule" provided in the Application;
  (ii) is consistent with the number of buildings and building type/unit mix specified in the "Building/Unit Configuration" provided in the Application;
  (iii) identifies all residential and common buildings;
  (iv) clearly delineates the flood plain boundary lines and shows all easements;
  (v) indicates possible placement of detention/retention pond(s) (if applicable); and
  (vi) indicates the location of the parking spaces;

(B) Building floor plans and elevations for each type of residential building and each common area building clearly depicting the height of each floor, a percentage estimate of the exterior composition and square footage of the common areas. Adaptive Reuse Developments, are only required to provide building plans delineating each Unit by number, type and area consistent with those in the "Rent Schedule" and pictures of each elevation of the existing building depicting the height of each floor and percentage estimate of the exterior composition. For Rehabilitation Developments in which the Unit configurations are not being altered then building floor plans are not required; however, photographs of elevations must be submitted and if elevations are proposed to be altered then after renovation drawings must be submitted; and

(C) Unit floor plans for each type of Unit. The Net Rentable Areas these Unit floor plans represent should be consistent with those shown in the "Rent Schedule" and "Building/Unit Configuration" provided in the Application. Adaptive Reuse Developments, are only required to provide Unit floor plans for each distinct typical Unit type (i.e. one-bedroom, two-bedroom) and for all Unit types that vary in Net Rentable Area by 10% from the typical Unit.

(7) **Development Costs.**

(A) The Development Cost Schedule, as provided in the Application, must include the contact information for the person providing the cost estimate for the Hard Costs.

(B) If offsite costs are included in the budget as a line item, or embedded in the site acquisition contract, or referenced in the utility provider letters, then the supplemental form "Off Site Cost Breakdown" must be provided.

(C) If projected site work costs (excluding ineligible demolition costs) include unusual or extraordinary items or exceed $9,000 per Unit, then the Applicant must provide a detailed cost breakdown prepared by a Third Party engineer, and a letter from a certified public accountant allocating which portions of those site costs should be included in Eligible Basis and which ones may be ineligible.

(8) **Readiness to Proceed.**

(A) **Site Control**. Evidence that the Development Owner has and will have at all times while the Application or any Commitment or Determination Notice is pending the ability to compel legal title to a developable interest in the Development Site, i.e., site control. If by the timeframes required in this chapter or any extension thereof as approved by the Department, Applicant fails to have the ability to compel legal title to such a developable interest, that Applicant shall be ineligible for participation in the next Application Round. This is an appealable matter. If the evidence is not in the name of the Development Owner, then the documentation should reflect an expressed ability to transfer the rights to the Development Owner. All of the sellers of the proposed Property for the thirty-six (36) months prior to the first day of the Application Acceptance Period and their relationship, if any, to members of the Development team must be identified at the time of Application (not required at pre-application). One of the following items described in clauses (i) - (iii) of this subparagraph must be provided:

(i) a recorded warranty deed with corresponding executed settlement statement, unless required to submit items under clause (iv) of this subparagraph; or

(ii) a contract for lease (the minimum term of the lease must be at least forty-five (45) years) which is valid for the entire period the Development is under consideration for tax credits; or

(iii) a contract for sale, an exclusive option to purchase or a lease which is valid for the entire period the Development is under consideration for tax credits. For Tax Exempt Bond Development Applications, site control must be valid through December 1 of the prior program year with option to extend through March 1 of the current program year (Applications submitted for lottery) or ninety (90) days from the date of the Certificate of Reservation with the option to extend through the scheduled TDHCA Board meeting at which the award of Housing Tax Credits will be considered (Applications not submitted for lottery). The potential expiration of Site Control does not warrant the Application being presented to the TDHCA Board prior to the scheduled meeting. Proof of consideration, as specified in the contract, must be submitted and the expiration date and closing date deadline must be identified.

(iv) If the acquisition can be characterized as an identity of interest transaction, as described in §1.32 of this title then the Applicant will be required to meet the documentation requirements as further described in §1.32 of this title.

(B) **Zoning.** Evidence from the appropriate local municipal authority that satisfies one of clauses (i) - (iii) of this subparagraph. Documentation may be from more than one department of the municipal authority and must have been prepared and executed not more than six (6) months prior to the close of the Application Acceptance Period. (§2306.6705(5))

(i) For New Construction, Adaptive Reuse or Reconstruction Developments, a letter from the chief executive officer of the Unit of General Local Government or another local official with appropriate jurisdiction stating that the Development is located within the boundaries of a Unit of General Local Government that has no zoning or for Developments located in Harris County the letter must state the Development is consistent with local housing policy adopted by the Unit of General Local Government

within which the Development is located or that such Unit of General Local Government has no zoning or formally adopted local housing policy.

(ii) For New Construction, Adaptive Reuse or Reconstruction Developments, a letter from the chief executive officer of the Unit of General Local Government or another local official with appropriate jurisdiction stating that:

(I) The Development is permitted under the provisions of the zoning ordinance that applies to the location of the Development; or

(II) the Applicant is in the process of seeking the appropriate zoning and has signed and provided to the Unit of General Local Government a release agreeing to hold the Unit of General Local Government and all other parties harmless in the event that the appropriate zoning is denied. (§2306.6705(5)(B)) Documentation of final approval of appropriate zoning must be submitted to the Department with the Commitment or Determination Notice. No extensions may be requested to the deadline for submitting evidence of final approval of appropriate zoning.

(iii) For Rehabilitation Developments, documentation of current zoning is required. If the property is currently conforming but with an overlay that would make it a non-conforming use as presently zoned, a letter from the chief executive officer of the Unit of General Local Government or another local official with appropriate jurisdiction which addresses the items in subclauses (I) - (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) **Financing Requirements.**

(i) Evidence of all necessary interim and permanent financing sufficient to fund the proposed Total Housing Development Cost less any other funds requested from the Department and any other sources documented in the Application. Any local, state or federal financing identified in this section which restricts household incomes at any AMGI lower than restrictions required pursuant to this chapter must be identified in the "Rent Schedule" and the local, state or federal income restrictions must include corresponding rent levels that do not exceed 30% of the income limitation in accordance with §42(g) of the Code. The income and corresponding rent restrictions will be imposed by the Housing Tax Credit LURA and monitored throughout the extended use period. 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 subclauses (I) - (IV) of this clause:

(I) Financing is in place as evidenced by:

(-a-) a valid and binding loan agreement; and

(-b-) deed(s) of trust in the name of the Development Owner as grantor; or

(-c-) for TRDO-USDA §515 Developments involving, an executed TRDO-USDA letter indicating TRDO-USDA has received a notification of the tax credit Application; or

(II) term sheet for the interim and permanent loans 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 Development Owner and includes the following as identified in items (-a-) - (-d-) of this subclause:

(-a-) has been executed by the lender; and

(-b-) a minimum loan term of fifteen (15) years with at least a thirty (30) year amortization; and

(-c-) an expiration date; and

(-d-) all the terms and conditions applicable to the financing including the mechanism for determining the Interest rate, if applicable, and the anticipated interest rate, any required Guarantors, and anticipated developer fees paid during construction and anticipated deferred developer fees. Such a commitment may be conditional upon the completion of specified due diligence by the lender and upon the award of tax credits; or

(III) any federal, state or local gap financing, whether of soft or hard debt, must be identified at the time of Application as evidenced by:

(-a-) a term sheet from the lending agency which clearly describes the amount and terms of the funding must be submitted. If applying for points under §50.9(b)(5) of this chapter then documentation must be submitted as required by the deadlines stated therein; and

(-b-) evidence of a complete and receipted application for funding from another Department program must be obtained no later than March 1 (or for Tax Exempt Bond Developments at the time Parts 1 - 4 are submitted). The Department funding must be on a concurrent funding period with current tax credit Application Round; and

(IV) if the Development will be financed through more than 5% of Development Owner contributions, provide a letter from a Third Party CPA verifying the capacity of the Development Owner to provide the proposed financing with funds that are not otherwise committed together with a letter from the Development Owner's bank or banks confirming that sufficient funds are available to the Development Owner. Documentation must have been prepared and executed not more than six (6) months prior to the close of the Application Acceptance Period;

(ii) a written narrative describing the financing plan for the Development, including any non-traditional financing arrangements; the use of funds with respect to the Development; the funding sources for the Development including construction, permanent and bridge loans, rents, operating subsidies, and replacement reserves; and the commitment status of the funding sources for the Development. This information must be consistent with the information provided throughout the Application; and (§2306.6705(1))

(iii) provide a term sheet from a syndicator that, at a minimum, provides an estimate of the amount of equity dollars expected to be raised for the Development in conjunction with the amount of Housing Tax Credits requested for allocation to the Development Owner, including pay-in schedules, anticipated developer fees paid during construction and anticipated deferred developer fees, syndicator consulting fees and other syndication costs. No syndication costs should be included in the Eligible Basis. (§2306.6705(2) and (3))

(D) **Title Commitment or Policy**. The Application shall include a copy of:

(i) the current title policy (or title status report if on Tribal Land) including a legal description which shows that the ownership (or leasehold) of the Development Site is vested in the name of the Development Owner; or

(ii) a complete, current title commitment with the proposed insured matching the name of the Development Owner and the title of the Development Site vested in the name of the seller or lessor as indicated on the sales contract, option or lease;

(iii) if the title policy, title status report, or commitment is more than six (6) months old as of the day the Application Acceptance Period closes, then a letter from the title company/Bureau of Indian Affairs indicating that nothing further has transpired on the policy, title status report or commitment must be provided.

(9) **Notifications.** Evidence in the form of a certification that the Applicant met the requirements and deadlines identified in subparagraphs (A) - (C) of this paragraph. Notification must not be older than three (3) months from the first day of the Application Acceptance Period. (§2306.6705(9)) If evidence of these notifications was submitted with the pre-application for the same Application and satisfied the Department's review of Pre-application Threshold, then no additional notification is required at Application. However, re-notification is required by tax credit Applicants who have submitted a change in the Application, whether from pre-application to Application or as a result of an Administrative Deficiency that reflects a total Unit increase of greater than 10%, a total increase of greater than 10% for any given level of AMGI, or a change to the Target Population being served. For Applications submitted for Tax-Exempt Bond Developments or Applications not applying for Tax Credits, but applying only under other Multifamily Programs (HOME, Housing Trust Fund, etc.), notifications and proof thereof must not be older than three (3) months prior to the date Parts 5 and 6 of the Application are submitted.

(A) The Applicant must request a list of Neighborhood Organizations on record with the county and state whose boundaries include the proposed Development Site from local elected officials:

(i) no later than the Full Application Neighborhood Organization Request Date as identified in §50.3 of this chapter, the Applicant must e-mail, fax or mail with registered receipt a completed "Neighborhood Organization Request" letter as provided in the Application to the local elected official for the city and county where the Development is proposed to be located. If the Development is located in an area that has district based local elected officials, or both at-large and district based local elected officials, the request must be made to the city council member or county commissioner representing that district; if the Development is located an area that has only at-large local elected officials, the request must be made to the mayor or county judge for the jurisdiction. If the Development is not located within a city or is located in the ETJ of a city, the county local elected official must be contacted. In the event that local elected officials refer the Applicant to another source, the Applicant must request Neighborhood Organizations from that source in the same format;

(ii) if no reply letter is received from the local elected officials by the Full Application Response to Neighborhood Organization Request Date, then the Applicant must certify to that fact in the certification form provided in the Application;

(iii) the Applicant must list all Neighborhood Organizations on record with the county or state whose boundaries include the proposed Development Site as outlined by the local elected officials, or that the Applicant has knowledge of (regardless of whether the organization is on record with the county or state) as of the submission of the Application, in the certification form provided in the Application.

(B) No later than the date the Application is submitted, notification must be sent to all of the following individuals and entities by e-mail, fax or mail with registered receipt return or similar tracking mechanism e-mail, fax or mail with registered receipt in the format required in the "Application Notification Template" provided in the Application. Developments located in an ETJ of a city are not required to notify city officials, however, are required to notify county officials. Evidence of notification is required in the form of a certification provided in the Application, although it is encouraged that Applicants retain proof of delivery of the notifications, to the persons or entities prescribed in clauses (i) - (ix) of this subparagraph, in the event that the Department requires proof of notification. Evidence of proof of delivery is demonstrated by signed receipt for mail or courier delivery and confirmation of receipt by recipient for facsimile and electronic mail. Officials to be notified are those officials in office at the time the Application is submitted.

(i) Neighborhood Organizations on record with the state or county whose boundaries include the proposed Development Site as identified in subparagraph (A)(iii) of this paragraph;

(ii) Superintendent of the school district containing the Development;
(iii) Presiding officer of the board of trustees of the school district containing the Development;
(iv) Mayor of the Governing Body of any municipality containing the Development;
(v) All elected members of the Governing Body of any municipality containing the Development;
(vi) Presiding officer of the Governing Body of the county containing the Development;
(vii) All elected members of the Governing Body of the county containing the Development;
(viii) State senator of the district containing the Development; and
(ix) State representative of the district containing the Development.

(C) Each such notice must include, at a minimum, all of the following as identified in clauses (i) - (vi) of this subparagraph:
(i) the Applicant's name, address, individual contact name and phone number;
(ii) the Development name, address, city and county;
(iii) a statement informing the entity or individual being notified that the Applicant is submitting a request for Housing Tax Credits with the Texas Department of Housing and Community Affairs (TDHCA);
(iv) statement of whether the Development proposes New Construction, Reconstruction, Adaptive Reuse or Rehabilitation;
(v) the type of Development being proposed (single family homes, duplex, apartments, townhomes, high-rise etc.); and
(vi) the approximate total number of Units and approximate total number of low-income Units.

(10) **Development's Proposed Ownership Structure.**

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

(B) Evidence that each entity shown on the organizational chart described in subparagraph (A) of this paragraph that has ownership interest in the Development Owner, Developer or Guarantor, has provided a copy of the completed and executed Previous Participation and Background Certification Form to the Department. Nonprofit entities, public housing authorities and publicly traded corporations are required to submit documentation for the entities involved. Documentation for individual board members and executive directors, any Person receiving more than 10% of the Developer fee and Units of General Local Government are all required to submit this document. The form must include a list of all developments that are, or were, previously under ownership or Control of the Applicant and each Principal, including any Person providing the required experience. All participation in any TDHCA funded or monitored activity, including non-housing activities, as well as housing tax credit developments or other programs administered by other states using state or federal programs must be disclosed and authorize the parties overseeing such assistance to release compliance histories to the Department.

(C) The documentation relating to the experience requirement, as further described under paragraph (4) of this section, is submitted that reflects a Person that appears in the organizational chart provided in subparagraph (A) of this paragraph.

(11) **Development's Projected Income and Operating Expenses.**

(A) All Applications must include a 15-year pro forma estimate of operating expenses and supporting documentation used to generate projections (operating statements from comparable properties);

(B) If rental assistance, an operating subsidy, an annuity, or an interest rate reduction payment is proposed to exist or continue for the Development, any related contract or other agreement securing those funds or proof of application for such funds must be provided, which at a minimum identifies the source and annual amount of the funds, the number of Units receiving the funds, and the term and expiration date of the contract or other agreement; (§2306.6705(4))

(C) 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;

(D) Occupied Developments undergoing Rehabilitation must also submit the items described in clauses (i) - (vi) of this subparagraph;

(i) The items in subclauses (I) and (II) of this clause are required unless the current property owner is unwilling to provide the required documentation. In that case, submit a signed statement as to the Applicant's inability to provide all documentation as described:

(I) submit at least one of the following identified in items (-a-) – (-d-) of this subclause:

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

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

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

(-d-) all monthly or annual operating summaries available; and

(II) a rent roll not more than six (6) months old as of the first day the Application Acceptance Period, that discloses the terms and rate of the lease, rental rates offered at the date of the rent roll, Unit mix, and tenant names or vacancy;

(ii) a written explanation of the process used to notify and consult with the tenants in preparing the Application; (§2306.6705(6))

(iii) for Qualified Elderly Developments, identification of the number of existing tenants qualified under the Target Population elected under this title;

(iv) a relocation plan outlining relocation requirements and a budget with an identified funding source; (§2306.6705(6))

(v) compliance with the Uniform Relocation Act, if applicable; and

(vi) if applicable, evidence that the relocation plan has been submitted to the appropriate legal or governmental agency. (§2306.6705(6))

(12) **Applications involving Nonprofit General Partners and Qualified Nonprofit Developments.** All Applications under the State Housing Credit Ceiling involving a §501(c)(3) or (4) nonprofit General Partner, and which meet the Nonprofit Set-Aside in §42(h)(5) of the Code, must submit all of the documents described in this subparagraph and indicate the nonprofit status on the carryover documentation and IRS Forms 8609. (§2306.6706) Applications under the State Housing Credit Ceiling that include an affirmative election to not be treated under the set-aside and a certification that they do not expect to receive a benefit in the allocation of tax credits as a result of being affiliated with a nonprofit only need to submit the information in subparagraphs (A) and (B) of this paragraph. Tax-Exempt Bond Applications only need to submit the information in subparagraphs (A) and (B) of this paragraph. Applications involving a nonprofit that is not a

§501(c)(3) or (4) only need to disclose the basis of their nonprofit status. A participating nonprofit, regardless of whether it is applying under the Nonprofit Set-Aside (for Applications under the State Housing Credit Ceiling) may be reported to the Internal Revenue Service as being involved if such request is by the Internal Revenue Service.

(A) An IRS determination letter which states that the nonprofit organization is a §501(c)(3) or (4) entity;

(B) The "Nonprofit Participation Exhibit" as provided in the Application;

(C) A Third Party legal opinion stating:

(i) that the nonprofit organization is not affiliated with or Controlled by a for-profit organization and the basis for that opinion; and

(ii) that the nonprofit organization is eligible, as further described, for a Housing Credit Allocation from the Nonprofit Set-Aside pursuant to §42(h)(5) of the Code and the basis for that opinion; and

(iii) that one of the exempt purposes of the nonprofit organization is to provide low-income housing; and

(iv) that the nonprofit organization prohibits a member of its board of directors, other than a chief Staff member serving concurrently as a member of the board, from receiving material compensation for service on the board; and

(v) that the Qualified Nonprofit Development will have the nonprofit entity or its nonprofit Affiliate or subsidiary be the Developer or co-Developer as evidenced in the development agreement; and

(D) a copy of the nonprofit organization's most recent financial statement as prepared by a Certified Public Accountant; and

(E) evidence in the form of a certification that a majority of the members of the nonprofit organization's board of directors principally reside:

(i) in this state, if the Development is located in a Rural Area; or

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

(13) **Authorization to Release Credit Information.** The Authorization to Release Credit Information form may be requested, at the discretion of the Department, for any General Partner, Developer or Guarantor and other Affiliates of the Applicant.

(14) **Supplemental Threshold Reports.** The reports as required in this section must be prepared by a qualified Third party and must meet the requirements stated in subparagraphs (A) - (F) of this paragraph. The Environmental Site Assessment, Property Condition Assessment and Appraisal (if applicable) must be submitted on or before the Third Party Report Delivery Date as identified in §50.3 of this chapter. The Market Analysis Report must be submitted on or before the Market Analysis Delivery Date as identified in §50.3 of this chapter. If the entire report is not received by that date, the Application will be terminated and will be removed from consideration. A searchable electronic copy of the report in the format of a single file containing all information and exhibits clearly labeled with the report type, Development name, and Development location are required.

(A) **A Phase I Environmental Site Assessment (ESA) Report (required for all Developments)**:

(i) dated not more than twelve (12) months prior to the first day of the Application Acceptance Period. In the event that a Phase I Environmental Site Assessment on the Development is more than twelve (12) months old prior to the first day of the Application Acceptance Period, the Applicant must supply the Department with an updated letter or updated report dated not more than three (3) months prior to the first day of the Application Acceptance Period from the Person or organization which prepared the initial assessment confirming that the site has been re-inspected and

reaffirming the conclusions of the initial report or identifying the changes since the initial report;

(ii) prepared in accordance with §1.35 of this title (relating to Environmental Site Assessment Rules and Guidelines);

(iii) developments whose funds have been obligated by TRDO-USDA will not be required to supply this information; however, the Applicants of such Developments are hereby notified that it is their responsibility to ensure that the Development is maintained in compliance with all state and federal environmental hazard requirements; and

(iv) if the report includes a recommendation that an additional assessment be performed then a statement from the Applicant must be submitted with the Application indicating those additional assessments and recommendations will be performed prior to closing. If the assessments require further mitigating recommendations then evidence indicating the mitigating recommendations have been carried out must be submitted at cost certification.

(B) **A comprehensive Market Analysis Report (required for all Developments)**:

(i) prepared by a Qualified Market Analyst approved by the Department in accordance with the approval process outlined in §1.33 of this title (relating to Market Analysis Rules and Guidelines);

(ii) dated not more than six (6) months prior to the first day of the Application Acceptance Period. In the event that a Market Analysis is more than six (6) months old prior to the first day of the Application Acceptance Period, the Applicant must supply the Department with an updated Market Analysis from the Person or organization which prepared the initial report; however, the Department will not accept any Market Analysis which is more than twelve (12) months old as of the first day of the Application Acceptance Period;

(iii) prepared in accordance with the methodology prescribed in §1.33 of this title;

(iv) included in the Application submission is an executed engagement letter by the Qualified Market Analyst stating that the required exhibit has been commissioned to be performed and that the delivery date will be no later than the Market Analysis Delivery Date as identified in §50.3 of this chapter. In addition to the submission of the engagement letter with the Application, a map must be submitted that reflects the Qualified Market Analyst's intended market area; and,

(v) for Applications in the TRDO-USDA Set-Aside proposing acquisition and Rehabilitation with residential structures at or above 80% occupancy at the time of Application Submission, the appraisal, required for Rehabilitation Developments and Identity of Interest transactions prepared in accordance with §1.34 of this title (relating to Appraisal Rules and Guidelines), will satisfy the requirement for a Market Analysis; however, the Department may request additional information as needed. (§2306.67055; §42(m)(1)(A)(iii))

(C) **A Property Condition Assessment (PCA) Report (required for Rehabilitation and Adaptive Reuse Developments):**

(i) dated not more than six (6) months prior to the first day of the Application Acceptance Period. In the event that a PCA is more than six (6) months old prior to the first day of the Application Acceptance Period, the Applicant must supply the Department with an updated PCA from the Person or organization which prepared the initial report; however the Department will not accept any PCA which is more than twelve (12) months old as of the first day of the Application Acceptance Period;

(ii) prepared in accordance with §1.36 of this title (relating to Property Condition Assessment Guidelines); and

(iii) for Developments which require a capital needs assessment from TRDO-USDA, the capital needs assessment may be substituted and may be more than six (6) months old, as long as TRDO-USDA has confirmed in writing that the existing capital needs assessment is still acceptable and it meets the requirements of §1.36 of this title.

(D) **An appraisal report (required for Rehabilitation Developments and Identity of Interest transactions pursuant to §1.34 of this title)**:

(i) dated not more than six (6) months prior to the first day of the Application Acceptance Period. In the event that an appraisal is more than six (6) months old prior to the first day of the Application Acceptance Period, the Applicant must supply the Department with an updated appraisal from the Person or organization which prepared the initial report; however the Department will not accept any appraisal which is more than twelve (12) months old as of the first day of the Application Acceptance Period;

(ii) prepared in accordance with the §1.34 of this title; and

(iii) for Developments that require an appraisal from TRDO-USDA, the appraisal may be more than six (6) months old, as long as TRDO-USDA has confirmed in writing that the existing appraisal is still acceptable.

(E) Inserted at the front of each of these reports must be a transmittal letter from the individual preparing the report that states that the Department is granted full authority to rely on the findings and conclusions of the report. The transmittal letter must also state the report preparer has read and understood the Department rules specific to the report found at §§1.33 - 1.36 of this title.

(F) All Applicants acknowledge by virtue of filing an Application that the Department is not bound by any opinion expressed in the report. The Department may determine from time to time that information not required in the Department's Rules and Guidelines will be relevant to the Department's evaluation of the need for the Development and the allocation of the requested Housing Credit Allocation Amount. The Department may request additional information from the report provider or revisions to the report to meet this need. In instances of non-response by the report provider, the Department may substitute in-house analysis.

§50.9. Selection Criteria.

(a) The purpose of this section is to identify the scoring criteria used in evaluating and ranking Applications submitted under the State Housing Credit Ceiling. The criteria identified below include those items required under Chapter 2306 of the Texas Government Code, §42 of the Internal Revenue Code and other criteria considered important by the Department.

(b) All Applications, with the exception of TRDO-USDA Applications, must receive a final score totaling a minimum of 130, not including any points awarded or deducted pursuant to paragraphs (2) and (6) of this subsection to be eligible for an allocation of Housing Tax Credits. Unless otherwise stated, do not round calculations.

(1) **Financial Feasibility**. (§2306.6710(b)(1)(A)) Applications may qualify to receive a maximum of (28 points) for this item. The purpose of this scoring item, as the highest prioritized item under Chapter 2306 of the Texas Government Code, is to provide an incentive for Applications based on the financial feasibility of the Development based on the supporting financial data as required in the Application. Receipt of feasibility points under this paragraph does not ensure that an Application will be considered feasible during the feasibility evaluation by the Real Estate Analysis Division, and, conversely, a Development

may be found feasible during the feasibility evaluation by the Real Estate Analysis Division even if it did not receive all possible points under this paragraph. To qualify for the points, the supporting financial data in the Application must include:

(A) a fifteen (15) year pro forma prepared by the permanent or construction lender:
  (i) specifically identifying each of the first five (5) years and every fifth year thereafter;
  (ii) specifically identifying underlying assumptions including, but not limited to general growth factor applied to income and expense; and
  (iii) indicating that the Development maintains a minimum 1.15 debt coverage ratio throughout the initial fifteen (15) years proposed for all third party lenders that require scheduled repayment; and

(B) a statement in the term sheet, or other form deemed acceptable by the Department, indicating that the lender's assessment, based on considerations that included the Development's underwriting pro forma, finds that the Development will be feasible for fifteen (15) years.

(C) For Developments maintaining existing financing from TRDO-USDA, a current note balance must be provided or other form of documentation of the existing loan deemed acceptable by the Department to meet the requirements of this section.

(2) **Quantifiable Community Participation.** (§2306.6710(b)(1)(B); §2306.6725(a)(2)) The purpose of this scoring item is to encourage community participation from Neighborhood Organizations whose boundaries contain the proposed Development Site with consideration for those areas that may not have any Neighborhood Organizations. Points will be awarded based on written statements of support or opposition from Neighborhood Organizations on record with the state or county in which the Development is to be located and whose boundaries contain the proposed Development Site. It is possible for points to be awarded or deducted based on written statements from organizations that were not identified by the process utilized for notification purposes under §50.8(9) of this chapter (relating to Threshold Criteria) if the organization provides the information and documentation required in subparagraphs (A) and (B) of this paragraph. It is also possible that Neighborhood Organizations that were initially identified as appropriate organizations for purposes of the notification requirements will subsequently be determined by the Department not to meet the requirements for scoring. If an organization is determined not to be qualified under this paragraph, the organization may qualify under paragraph (13)(B) of this subsection and will be reviewed by Staff accordingly even if points under paragraph (13)(B) of this subsection were not selected in the Self-Scoring Form. If an Application receives points under subparagraph (B)(i)(II) or (III) of this paragraph then they may also qualify for points under paragraph (13)(B) of this subsection provided that documentation required under that scoring item is submitted.

(A) Submission Requirements. Each Neighborhood Organization may submit the form as included in the QCP Neighborhood Information Packet that represents the organization's input. In order to receive a point score, the form must be received, by the Department, or postmarked, if mailed by the U.S. Postal Service, no later than the Quantifiable Community Participation Delivery Date as identified in §50.3 of this chapter (relating to Program Calendar). Forms received after the deadline will be summarized for the Board's information and consideration, but will not affect the score for the Application. The form must:
  (i) state the name and location of the proposed single Development;
  (ii) certify that the letter is signed by two officials or board members of the Neighborhood Organization with the authority to sign on behalf of the Neighborhood Organization, and include:
    (I) the street and/or mailing addressee(s) for the signers of the letter;

(II) day and evening phone number(s) for the signers of the letter;
(III) email addresses and/or facsimile number(s) for the signers of the letter and one additional contact for the organization; and
(IV) a written description and map of the organization's geographical boundaries;

(iii) certify that the organization has boundaries, and that the boundaries in effect on or before the Full Application Delivery Date identified in §50.3 of this chapter contain the proposed Development Site;

(iv) certify that the organization meets the definition of "Neighborhood Organization"; defined as an organization of persons living near one another within the organization's defined boundaries that contain the proposed Development Site and that has a primary purpose of working to maintain or improve the general welfare of the neighborhood (§2306.004(23-a)). For purposes of this section, "persons living near one another" means two or more separate residential households. "Neighborhood Organizations" include homeowners associations, property owners associations, and resident councils in which the council is commenting on the Rehabilitation or Reconstruction of the property occupied by the residents. "Neighborhood Organizations" do not include broader based "community" organizations;

(v) include documentation showing that the organization is on record as of the Full Application Delivery Date with the state or the county in which the Development is proposed to be located. The receipt of the QCP form that meets the requirements of this subsection and further outlined in the QCP Neighborhood Information Packet will constitute being on record with the State. The Department is permitted to issue an Administrative Deficiency notice for this registration process and, if satisfied, the organization will still be deemed to be timely placed on record with the state;

(vi) a Neighborhood Organization must provide notice, of at least seventy-two (72) hours, to persons eligible to join or participate in the affairs of the organization.

(vii) while a formal meeting is not required, the organization is encouraged to hold a meeting, that complies with its bylaws, to which all the members of the organization are invited to consider and/or have a membership vote on whether the organization should support, oppose, or be neutral on the proposed Development. The organization is also encouraged to meet with the Developer or Applicant to discuss the proposed Development; and

(viii) the form from the Neighborhood Organization for the purposes of this subsection must be submitted to the Department by the Neighborhood Organization and not the Applicant. This documentation must be submitted independent of the Application. Furthermore, while the Applicant may assist the Neighborhood Organization in the Administrative Deficiency process or any other request from the Department as it relates to this item, the Administrative Deficiency Notice from the Department will be issued to the Neighborhood Organization with a copy to the Applicant; however, the Deficiency response must be submitted to the Department directly by the Neighborhood Organization.

(B) Scoring. The input must clearly and concisely state each reason for the Neighborhood Organization's support for or opposition to the proposed Development.

(i) The score awarded for each letter for this exhibit will be based on the following:

(I) support letters will receive (24 points). Support letters must make a direct statement of support. Support by inference (i.e. “The city supports the Development and we support the city” will not suffice; or

(II) letters that do not meet the requirements of this section, letters that do not provide a reason for support or opposition, letters that are unclear even after correspondence with the Department or Applications for which no letters are received will receive a score of (14 points);

(III) applications for which no Neighborhood Organizations exist will receive a score of (18 points);

(IV) opposition letters (must state at least one reason for opposition) will receive (0 points);

(V) if an Application receives multiple eligible letters, the average score of all eligible letters will be applied to the Application.

(ii) The Department may investigate a matter and contact the Applicant and Neighborhood Organizations to clarify if it is unclear whether the letter is a letter of support, opposition, or neutrality and to confirm compliance with procedural matters such as organization, existence, and being on record.

(iii) The Department highly values quality public input addressed to the merits of a Development. Input that identifies matters that are specific to the neighborhood, the proposed site, the proposed Development, or Developer are valued. If a proposed Development is permitted by the existing or pending zoning or absence of zoning, concerns addressed by the allowable land use that are related to any multifamily development may generally be considered to have been addressed at the local level through the land use planning process. Input concerning positive efforts or the lack of efforts by the Applicant to inform and communicate with the neighborhood about the proposed Development is highly valued. If the Neighborhood Organization refuses to communicate with the Applicant the efforts of the Applicant will not be considered negative. Input that evidences unlawful discrimination against classes of persons protected by Fair Housing law or the scoring of which the Department determines to be contrary to the Department's efforts to affirmatively further fair housing will not be considered. If the Department receives input that could reasonably be suspected to implicate issues of non-compliance under the Fair Housing Act, Staff will refer the matter to the Texas Workforce Commission for investigation, but such referral will not, in and of itself, cause Staff or the Department to terminate consideration of the Application. Staff will report all such referrals to the Board and summarize the status of any such referrals in any recommendations.

(3) **The Income Levels of Tenants of the Development.** (§§2306.111(g)(3)(B) and (E); 2306.6710(b)(1)(C) and (e); and §42(m)(1)(B)(ii)(I)) The purpose of this scoring item is to encourage deep income targeting with Units set aside for households at 30% and/or 50% of AMGI. Applications may qualify to receive up to (22 points) for qualifying under only one of subparagraph (A) or (B) of this paragraph. To qualify for these points, the household incomes must not be higher than permitted by the AMGI level (must round to the next highest whole Unit, no less than one Unit). The Development Owner, upon making selections for this exhibit, will set aside Units at the levels of AMGI and will maintain the percentage of such Units continuously over the compliance and extended use period as specified in the LURA. These income levels require corresponding rent levels that do not exceed 30% of the income limitation in accordance with §42(g) of the Internal Revenue Code.

(A) For Developments proposed to be located in an area of the MSA of Houston, Dallas, Fort Worth, San Antonio or Austin that is not a Rural Area, an Application may qualify to receive:

(i) twenty-two (22) points if at least 40% of the Low-Income Units in the Development are set-aside with incomes at or below a combination of 50% and

30% of AMGI in which at least 5% of the Low-Income Units are at or below 30% of AMGI;

(ii) twenty (20) points if at least 60% of the Low-Income Units in the Development are set-aside with incomes at or below 50% of AMGI; or

(iii) eighteen (18) points if at least 10% of the Low-Income Units in the Development are set-aside with incomes at or below 30% of AMGI.

(B) For Developments proposed to be located in areas other than those listed in subparagraph (A) of this paragraph, an Application may qualify to receive:

(i) twenty-two (22) points if at least 20% of the Low-Income Units in the Development are set-aside with incomes at or below a combination of 50% and 30% of AMGI in which at least 5% of the Low-Income Units are at or below 30% of AMGI;

(ii) twenty (20) points if at least 30% of the Low-Income Units in the Development are set-aside with incomes at or below 50% of AMGI; or

(iii) eighteen (18) points if at least 5% of the Low-Income Units in the Development are set-aside with incomes at or below 30% of AMGI.

(4) **The Size and Quality of the Units** (§2306.6710(b)(1)(D); §42(m)(1)(C)(iii)). The purpose of this scoring item is to promote interior features of the Unit that would serve to improve the quality of life of the resident. Applications may qualify to receive up to (20 points) under both subparagraphs (A) and (B) of this paragraph.

(A) **Size of the Units** (6 points). The Development must meet the minimum requirements identified in this subparagraph to qualify for points. Six (6) points for this item will be automatically granted for Applications involving Rehabilitation (excluding Reconstruction), Developments receiving funding from TRDO-USDA, or Supportive Housing Developments without meeting these square footage minimums only if requested in the Self Scoring Form. The square feet of all of the Units in the Development, for each type of Unit, must be at least the minimum noted in clauses (i) - (v) of this subparagraph. Changes to an Application during any phase of the review process that decreases the square footage below the minimums noted in clauses (i) - (v) of this subparagraph, will be re-evaluated and may result in a reduction of the Application score.

(i) six-hundred (600) square feet for an Efficiency Unit;

(ii) seven-hundred (700) square feet for a one Bedroom Unit that is not in a Qualified Elderly Development; 600 square feet for a one Bedroom Unit in a Qualified Elderly Development;

(iii) nine-hundred-fifty (950) square feet for a two Bedroom Unit that is not in a Qualified Elderly Development; 750 square feet for a two Bedroom Unit in a Qualified Elderly Development;

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

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

(B) **Quality of the Units** (14 points). Applications in which Developments provide specific amenity and quality features in every Unit at no extra charge to the tenant will be awarded points based on the point structure provided in §1.1 of this title and as certified to in the Application. The amenities will be required to be identified in the LURA. Applications involving scattered site Developments must have a specific amenity located within each Unit to count for points. Rehabilitation Developments will start with a base score of (3 points) and Supportive Housing Developments will start with a base score of (5 points).

(5) **The Commitment of Development Funding by a Unit of General Local Government or Governmental Instrumentality.** (§2306.6710(b)(1)(E)) The purpose of this scoring item is to

provide an incentive for local support for a proposed Development as demonstrated by the dedication of financial assistance, as described in this section, for the proposed Development. Applications may qualify to receive up to (18 points) under this paragraph. Funding must be from a Unit of General Local Government or a Governmental Instrumentality with jurisdiction, as established in accordance with statute, in the same county as or a contiguous county to the proposed Development.

(A) Submission Requirements. Evidence of the following must be submitted in accordance with the Tax Credit (Procedures) Manual.

(i) The loans, grant(s) or in-kind contribution(s) must be attributed to the total number of Low-Income Units in the Development.

(ii) An Applicant may submit enough sources to substantiate the point request, and all sources must be included in the Sources and Uses form.

(iii) An Applicant may substitute any source in response to an Administrative Deficiency Notice or after the Application has been submitted to the Department.

(iv) In-kind contributions such as donation of land, tax exemptions, or waivers of fees such as building permits, water and sewer tap fees, or similar contributions are only eligible for points if the in-kind contribution provides a tangible economic benefit that results in a quantifiable Total Housing Development Cost reduction to benefit the Development. The quantified value of the Total Housing Development Cost reduction may only include the value during the period the contribution or waiver is received and/or assessed. Donations of land must be under the control of the Applicant, pursuant to §50.8(8)(A) of this chapter to qualify. The value of in-kind contributions may only include the time period as of the beginning of the Application Acceptance Period and the Development's Placed in Service date, with the exception of contributions of land. The full value of land contributions, as established by the appraisal required pursuant §50.8(14)(D) of this chapter will be counted. Contributions in the form of tax exemptions or abatements may only count for points if the contribution is in addition to any tax exemption or abatement required under statute.

(v) To the extent that a Notice of Funding Availability (NOFA) is released and funds are available, funds from TDHCA's HOME Investment Partnerships (HOME) Program will qualify if a resolution, dated on or before the date the Application Acceptance Period ends, is submitted with the Application from the Governing Body of the Unit of General Local Government authorizing the Applicant to act on behalf of the Governing Body of the Unit of General Local Government in applying for HOME Funds from TDHCA for the particular Application. TDHCA's HOME funds may be substituted for a source originally submitted with the Application, provided the HOME funds substituted are from a NOFA released after the Application Acceptance Period ends and a resolution is submitted with the substitution documentation from the Governing Body of the Unit of General Local Government authorizing the Applicant to act on behalf of the Unit of General Local Government in applying for HOME Funds from TDHCA for the particular Application.

(vi) The granting of a new rental support or subsidy with a term of not less than fifteen (15) years; the funding for which is provided directly (not merely as administrator) by the UGLG or an instrumentality thereof.

(vii) If the support is being provided in the form of a below market rate loan, the loan must be at least 100 basis points below the current market rate and have a term of at least three (3) years and origination fees (including other lender fees that are substantially similar) must be equal to or less than 2% of the loan

amount. A statement from the Applicant with respect to the loan amount to be applied for and the specific terms requested or to be requested must be submitted.

(viii) Acceptable evidence submitted in the Application would include, by way of example and not by way of limitation, a resolution from the Unit of General Local Government, a letter from its Appropriate Local Official, or an executed agreement with the Unit of General Local Government or Governmental Instrumentality that will be providing the funding. If the funds have been applied for but not awarded, a letter from the funding entity indicating that an application has been received, funding is available and that award results will be announced by August 1 of the current program year is required in the Application. The Application must also include a statement from the Applicant that reflects the requirements of clause (vii) of this subparagraph. If, in the instance of a below market rate loan as provided for in clause (vii) of this subparagraph, the application has not yet been made, a letter from the Applicant setting forth when the application will be made must be submitted.

(ix) At the time the executed Commitment is required to be submitted, the Applicant or Development Owner must provide updated evidence of a commitment approved by the Governing Body of the Unit of General Local Government, or its designee or agent, for the Development Funding to the Department. If the funding commitment is not available as of the date the Department's Commitment is to be submitted, the Department will determine if the Application would have been infeasible or noncompetitive without the source of funding. The Commitment will be rescinded and the credits reallocated if the Department determines that the Application would have been infeasible or noncompetitive.

(x) Funding commitments from a Governmental Instrumentality will not be considered final unless the Governmental Instrumentality attests to the fact that any funds committed were not first provided to the Governmental Instrumentality by the Applicant, the Developer, Consultant, Related Party or any individual or entity acting on behalf of the proposed Application, unless the Applicant itself is a Governmental Instrumentality or subsidiary.

(B) Scoring. Points will be determined based on the amount of funds committed to the Development on a per Unit basis, based on the total number of Low-Income Units in the Development.

(i) A total contribution of at least $1,000 (or $500 for Rural Developments or Developments located in non-participating jurisdictions) per Low-Income Unit receives (12 points); or

(ii) A total contribution at least $2,000 (or $1,000 for Rural Developments or Developments located in non-participating jurisdictions) per Low-Income Unit receives (18 points).

(6) **Community Support from State Representative or State Senator.** (§2306.6710(b)(1)(F); §2306.6725(a)(2)) The purpose of this scoring item is to allow the State Representative and State Senator the opportunity to express their support or opposition for proposed Developments whose boundaries are within their district. Applications may qualify to receive up to (16 points) or have deducted up to (16 points) for this item. Letters must be on the State Representative's or State Senator's letterhead, must be signed by the State Representative or State Senator, identify the specific Development and must clearly state support for or opposition to the specific Development. This documentation will be accepted with the Application or through delivery to the Department from the Applicant or the State Representative or Senator and must be submitted no later than the Input from State Senator

or Representative Delivery Date as identified in §50.3 of this chapter. Once a State Representative or State Senator submits a letter it may not be changed or withdrawn; therefore, it is encouraged that letters not be submitted earlier than the specified Delivery Date in order to facilitate consideration of all constituent comment and other relevant input on the proposed Development. State Representatives or Senators to be considered are those State Representatives or Senators in office at the time the letter is submitted. Support letters are (+16 points); neutral letters, or letters that do not specifically refer to the Development, will receive (0 points); Opposition letters (must state reason for opposition) will receive (-16 points). If one letter is received in support and one letter is received in opposition the score would be (0 points). A letter that does not directly express support but expresses it indirectly by inference, (i.e. "the local jurisdiction supports the Development and I support the local jurisdiction") will be treated as a neutral letter.

(7) **The Rent Levels of the Units.** (§2306.6710(b)(1)(G)) The purpose of this scoring item is to encourage deep rent targeting with Units set aside for households at 30% and/or 50% of AMGI that are in addition to those Units already designated under paragraph (3) of this subsection. Additionally, such Units must come from the 60% of AMGI Units that have not previously been designated under paragraph (3) of this subsection. Applications may qualify to receive up to (14 points) for this item under subparagraph (A) or (B) of this paragraph provided the Application has qualified for points under paragraph (3) of this subsection, relating to Income Levels of Tenants of the Development. An Application may qualify for points under this subsection by providing the additional Low-Income Units at 30% and 50% of AMGI (must round up to the next whole Unit, not less than one Unit):

(A) for Developments proposed to be located in an area of the MSA of Houston, Dallas, Fort Worth, San Antonio or Austin that is not a Rural Area, an Application may qualify to receive:

(i) an Application may receive (2 points) for every 5% of Low-Income Units at rents and incomes at 50% of AMGI; or

(ii) an Application may receive (6 points) for every 2.5% of Low-Income Units at rents and incomes at 30% of AMGI.

(B) for Developments proposed to be located in areas other than those listed in subparagraph (A) of this paragraph, an Application may qualify to receive:

(i) An Application may receive (2 points) for every 2.5% of Low-Income Units at rents and incomes at 50% of AMGI; or

(ii) An Application may receive (6 points) for every 1% of Low-Income Units at rents and incomes at 30% of AMGI.

(8) **The Cost of the Development by Square Foot.** (§2306.6710(b)(1)(H); §42(m)(1)(C)(iii)) Applications may qualify to receive (12 points) for this item. For this exhibit, costs shall be defined as Hard Cost plus contractor profit, overhead and general requirements, as represented in the Development Cost Schedule. This calculation does not include indirect construction costs. The calculation will be costs per square foot of Net Rentable Area (NRA). For the purposes of this paragraph only, if a building is in a Qualified Elderly Development with an elevator or a Development with one or more buildings any of which have elevators serving four or more floors (Elevator Served Development) the NRA may include elevator served interior corridors. If the proposed Development is a Supportive Housing Development, the NRA may include elevator served interior corridors and may include up to 50 square feet of common area per Unit. As it relates to this paragraph, an interior corridor is a corridor that is enclosed, heated and/or cooled and otherwise finished space. The calculations will be based on the cost listed in the Development Cost Schedule and NRA shown in the Rent Schedule of the Application. Developments qualify for (12 points) if their costs do not exceed:

(A) ninety-five dollars ($95) per square foot (and direct construction cost, also referred to as building costs in §1.32(e)(4) of this title do not exceed $80 per square foot) for Qualified Elderly and Elevator Served Development, single family design, and Supportive Housing Developments and Developments located in a Central Business District unless located in a "First Tier County" in which case their costs do not exceed $97 per square foot (and direct construction cost, also referred to as building costs in §1.32(e)(4) of this title (relating to Underwriting Rules and Guidelines) do not exceed $82 per square foot); or

(B) eighty-five ($85) per square foot (and direct construction cost, also referred to as building costs in §1.32(e)(4) of this title do not exceed $70 per square foot) for all other Developments, unless designated as "First Tier" by the Texas Department of Insurance, in which case their costs do not exceed $87 per square foot (and direct construction cost, also referred to as building costs in §1.32(e)(4) of this title do not exceed $72 per square foot). The First Tier counties are identified in the Tax Credit (Procedures) Manual. There are also specifically designated First Tier communities in Harris County that are east of State Highway 146, and evidence in the Application must include a map with the Development Site designated clearly within the community. These communities are Pasadena, Morgan's Point, Shoreacres, Seabrook and La Porte.

(9) **Tenant Services.** (§2306.6710(b)(1)(I) and §2306.6725(a)(1)) The purpose of this scoring item is to provide professional tenant services, tailored for the tenant population that will enhance the quality of life for the residents of the proposed Development. Applications may qualify to receive up to (10 points) for this item. By electing points, the Applicant certifies that the Development will provide a combination of supportive services, which are listed in §1.1 of this title, appropriate for the proposed tenants and that there is adequate space for the intended services. The provision and complete list of supportive services will be included in the LURA. The Owner may change, from time to time, the services offered; however, the overall points as selected at Application must remain the same. No fees may be charged to the tenants for any of the services. Services must be provided on-site or transportation to those off-site services identified on the list must be provided. The same service may not be used for more than one scoring item.

(10) **Declared Disaster Areas.** (§2306.6710(b)(1)) The purpose of this scoring item is to provide an incentive for the development of affordable housing in declared disaster areas. Applications may receive (8 points), if by the Full Application Delivery Date as identified in §50.3 of this chapter or at any time within the two-year period preceding the date of submission, the proposed Development Site is located in an area declared a disaster under §418.014 of the Texas Government Code.

(11) **Additional Evidence of Preparation to Proceed.** The purpose of this scoring item is to provide an incentive for a level of due diligence by the Applicant and lender that ultimately should result in better Developments, better site selection, the expeditious construction of Units and less feasibility risk on the financial aspects of the Development. Applications may receive up to (7 points) under subparagraphs (A) - (C) of this paragraph.

(A) Submission of a civil engineering feasibility study that includes, at a minimum, discussion of utility availability and fees, offsite requirements and costs, onsite requirements and costs, ingress and egress requirements, drainage and detention/retention requirements, discussion of required approvals, review process and general timing, and discussion of other necessary fees (permit, impact, drainage, tree, etc). All cost estimates to be as of the date of the study (3 points).

(B) Applicants may qualify to receive up to (4 points) by providing:

(i) for New Construction and Reconstruction, the submission of:

(I) executed architectural and engineering contracts (including structural, Mechanical, Electrical, Plumbing, Civil and landscape) with architect or other Third-Party lead consultant certification showing all total fees (1 point);

(II) a survey or current plat, for the Development Site, as defined by the Texas Society of Professional Surveyors in their Manual of Practice for Land Surveying in Texas;

(-a-) Category 1A: Land Title Survey no older than 6 months prior to the beginning of the Application Acceptance Period (1 point); or

(-b-) Category 1B: Standard Land Boundary Survey no older than twelve (12) months prior to the beginning of the Application Acceptance Period (1 point);

(III) a Geotechnical Report with non-building specific soil borings and general recommendations regarding slab specifications (1 point);

(IV) a civil engineered site plan as by a Third-Party civil engineer, showing all structures, site amenities, parking and driveways, topography, drainage and detention, water and waste water utility distribution, retaining walls and any other typical or required items (1 point);

(ii) for Rehabilitation Developments, the submission of:

(I) Executed architectural and engineering contracts (including structural, Mechanical, Electrical, Plumbing, Civil and landscape as applicable) with an architect or other Third-Party lead consultant certification indicating total fees and all fees paid to date (1 point);

(II) Category 5: As-built survey (an existing survey dated within the last twelve (12) months of the beginning of the Application Acceptance Period qualifies) (1 point);

(III) in addition to the PCA independently identified scope of immediate work, the submission of the Applicant's detailed schedule outlining the unit-by-unit specifications for all interior work and a detailed schedule outlining the building-by-building specifications; each including a line-item preliminary cost estimate, as if constructed as of the date of the Application submission, provided by the General Contractor (1 point);

(IV) Structural and Mechanical, Electrical, Plumbing reports prepared by licensed engineers reconciling all existing conditions to the scope of work identified in subclause (III) of this clause (1 point).

(C) Applications (excluding Pre-applications) that were submitted in the preceding three (3) Application Rounds; however, they were not considered competitive enough to ultimately receive an award may receive up to (2 points). The current Application must include the same number of Units, some overlap of the original Development Site, and at least one Affiliate of the previous Applicant is an Affiliate of the current Applicant. Terminated Applications do not qualify for these points.

(i) The Application, as submitted for the current Application Round, was previously submitted in one prior Application Round (1 point); or

(ii) The Application, as submitted for the current Application Round, was previously submitted in two prior Application Rounds (2 points).

(iii) Documentation must be submitted in the Application that includes the name, location, assigned TDHCA Identification Number and year of submission(s).

(12) **Leveraging of Private, State, and Federal Resources.** (§2306.6725(a)(3)). The purpose of this scoring item is to provide an incentive for the leveraging of financial resources, when economically feasible, for a Development that proposes to serve a specified percentage of households at or below 30% of AMGI. Applications may qualify to receive (7 points) for a

Development located outside of a Qualified Census Tract and (6 points) for a Development located inside a Qualified Census Tract. To receive points under this item, the Development must have at least 5% of the total Units restricted for occupancy by households at or below 30% of AMGI. Funding sources used for points under paragraph (5) of this subsection may not be used for this point item. Division of the same source into separate loans or grants does not result in eligibility under this paragraph and paragraph (5) of this subsection. Multiple sources may be combined to qualify under this item.

(A) If in the form of a loan, funding must be the primary source of debt with a first lien position and a minimum loan term of fifteen (15) years. Loans that are not first lien but are the largest source(s) of funding, not including equity generated from Housing Tax Credits, other federal tax credits, or funds used under paragraph (5) of this subsection also qualify. Origination fees cannot exceed 2% of the loan amount(s). Funding must be provided by a Third Party except when the funds are federally sourced and passed-through a Government Instrumentality. All loan funds qualifying for consideration under this section must provide an economic benefit over a market rate transaction (i.e. cannot buy down the rate by increasing upfront interest costs).

(B) Permanent grant funding not secured by a deed of trust may be used, provided the grant funding is the largest source of funding not including equity generated from Housing Tax Credits, other federal tax credits, or funds used under paragraph (5) of this subsection. Funding must be provided by a Third Party except when the funds are federally sourced and passed-through a Government Instrumentality.

(C) Examples of sources of funds that may qualify include those listed under clauses (i) – (viii) of this subparagraph. A Certification from the lender as of the date of such certification that the loan would meet this provision is required.
  (i) HOPE VI;
  (ii) Capital Grant Funds;
  (iii) Community Investment Program (Federal Home Loan Bank);
  (iv) Affordable Housing Program (Federal Home Loan Bank);
  (v) HOME Investment Partnerships Program;
  (vi) Community Development Block Grant (CDBG);
  (vii) HUD-insured mortgage loans; or
  (viii) other sources of grants or loans that provide for a 100 basis point savings over the market interest rate for comparable terms.

(D) Funding for ongoing operations, including rental subsidies, or other sources not directly offsetting the Total Housing Development Cost are not eligible for points under this paragraph. Qualifying funds awarded through local entities may qualify for points if the original source of the funds is from a private, state or federal source. If qualifying funds awarded through local entities are used for this item, a statement from the local entity must be provided that identifies the original source of funds.

(E) The Development must have already applied for funding from the funding entity. Evidence to be submitted with the Application must include a copy of the commitment of funds with terms meeting the requirements of subparagraphs (A) – (C) of this paragraph or a letter from the funding entity indicating that the application was received and that the terms for available funding meet the requirements of subparagraphs (A) – (C) of this paragraph.

(F) At the time of the Carryover Documentation Delivery Date, the Applicant or Development Owner must provide evidence of a commitment approved by the funding entity for the sufficient financing to the Department. An Applicant may substitute the qualifying source under this item between the time of Application and Carryover.

(13) **Community Input other than Quantifiable Community Participation**. The purpose of this scoring item is to allow community and civic organizations active in the area that includes

the proposed Development the opportunity to express their support or opposition. If an Application was awarded (18 or 14 points) under paragraph (2) of this subsection, then that Application may receive up to (6 points) for letters that qualify for points under subparagraph (A), (B) or (C) of this paragraph. An Application may not receive points under more than one of the subparagraphs (A) - (C) of this paragraph. All letters must be submitted within the Application. At no time will the Application receive a score lower than zero (0) for this item.

(A) An Application may receive (2 points) maximum of (6 points) for each letter of support submitted from a community or civic organization that serves the community in which the Development Site is located. Letters of support must identify the specific Development and must state support of the specific Development at the proposed location. The community or civic organization must provide some documentation of its existence in the community in which the Development is located including, but not limited to, listing of services and/or members, brochures, annual reports, etc. Letters of support from organizations that cannot provide reasonable evidence that they are active in the area that includes the location of the Development will not be counted. For purposes of this subparagraph, community and civic organizations do not include neighborhood organizations, governmental entities (excluding Special Management Districts), taxing entities or educational activities. Organizations that were created by a governmental entity or derive their source of creation from a governmental entity do not qualify under this item. For purposes of this item, educational activities include school districts, trade and vocational schools, charter schools and depending on how characterized could include day care centers; a PTA or PTO would qualify. Should an Applicant elect this option and the Application receives letters in opposition, then (2 points) will be subtracted from the score for each letter in opposition, provided that the letter is from an organization serving the community.

(B) An Application may receive (6 points) for a letter of support, from a property owners association created for a master planned community whose boundaries include the Development Site that does not meet the requirements of a Neighborhood Organization for points under paragraph (2) of this subsection.

(C) An Application may receive (6 points) for a letter of support from a Special Management District, whose boundaries, as of the Full Application Delivery Date as identified in §50.3 of this chapter, include the Development Site and for which there is not a Neighborhood Organization on record with the county or state.

(D) Input that evidences unlawful discrimination against classes of persons protected by Fair Housing law or the scoring of which the Department determines to be contrary to the Department's efforts to affirmatively further fair housing will not be considered. If the Department receives input that could reasonably be suspected to implicate issues of non-compliance under the Fair Housing Act, Staff will refer the matter to the Texas Workforce Commission for investigation, but such referral will not, in and of itself, cause Staff or the Department to terminate consideration of the Application. Staff will report all such referrals to the Board and summarize the status of any such referrals in any recommendations.

(14) **Pre-application Participation Incentive Points.** (§2306.6704) Applicants that submitted a pre-application during the Pre-Application Acceptance Period and meet the requirements of this paragraph will qualify to receive (6 points) for this item. The purpose of this scoring item is to encourage participation in the pre-application process and prevent unnecessary filing costs by promoting transparency in the external assessment of competing Applications. Amendments to the Application subsequent to the award do not affect pre-application points if approved by the Board; however, the Board may take into consideration points received that would be lost as a result of the amendment. To be eligible for these points, the Application must:

(A) be for the identical Development Site, or reduced portion of the Development Site based on the legal description provided at pre-application;
(B) have met the Pre-application Threshold Criteria;
(C) be serving the same Target Population as in the pre-application;
(D) be applying for the same Set-Asides as indicated in the pre-application (Set-Asides can be dropped between pre-application and Application, but no Set-Asides can be added); and
(E) be awarded by the Department an Application score that is not more than (9 points) greater or less than the number of points awarded by the Department at pre-application, with the exclusion of points for support and opposition under paragraphs (2), (6), and (14) of this subsection. The Application score used to determine whether the Application score is (9 points) greater or less than the number of points awarded at pre-application will also include all point losses under §50.7(b)(2)(A) of this chapter (relating to Application Process). An Applicant must choose, at the time of Application either clause (i) or (ii) of this subparagraph:
  (i) to request the pre-application points and have the Department cap the Application score at no greater than the (9 points) increase regardless of the total points accumulated in the scoring evaluation. This allows an Applicant to avoid penalty for increasing the point structure outside the (9 points) range from pre-application to Application; or
  (ii) to request that the pre-application points be forfeited and that the Department evaluate the Application as requested in the Self-Score Form.

(15) **Developments in Census Tracts with Limited Existing HTC Developments.** (§2306.6725(b)(2)) The purpose of this scoring item is to encourage a de-concentration of housing tax credit Developments in census tracts, according to the Department's Housing Tax Credit Site Demographic Characteristics Report for the current Application Round. Applications may qualify for up to (6 points) under subparagraph (A) or (B) of this paragraph.
(A) If the proposed Development is located in a census tract in which there are no other existing HTC Developments that serve the same Target Population (4 points); or
(B) If the proposed Development is located in a census tract in which there are no other existing HTC Developments (6 points).
(C) Evidence of the census tract identifying the location of the proposed Development must be submitted in the Application.

(16) **Development Location.** (§2306.6725(a)(4); §42(m)(1)(C)(i)) Applications (excluding those requesting funds from the At-Risk Set-Aside) may qualify to receive up to (4 points) under subparagraph (A) of this paragraph, with the exception of Qualified Elderly Developments which may receive up to (3 points) under subparagraph (A) of this paragraph, or (4 points) under subparagraph (B) of this paragraph or (1 point) under subparagraph (C), (D) or (E) of this paragraph. The purpose of this scoring item is to promote affordable housing development in traditionally underserved areas that allow access to a variety of services and socioeconomic opportunities that would not otherwise be readily accessible as well as meet legally mandated requirements. Evidence must not be more than six (6) months old from the first day of the Application Acceptance Period. Applicants must submit documentation in the form of a map of the defined area that includes the location of the proposed Development. If qualifying for being in a Colonia, the name of the Colonia must also be identified on the map. An Application may only receive points under one of the subparagraphs (A) - (E) of this paragraph.
(A) The Development is proposed to be located in a High Opportunity Area as defined in §50.2(15) of this chapter (relating to Definitions), ((3 points) for Qualified Elderly Developments or (4 points) for all other Developments).

(B) The Development is proposed to be located in a Central Business District as defined in §50.2(7) of this chapter. The Application must include a letter from the Appropriate Local Official confirming the location of the proposed Development and include the boundaries of the Central Business District (4 points).
(C) A Federal Enterprise Community, a Growth Zone or any other comparable community as designated by HUD, which are typically defined with census tract boundaries. Such locations may have previously been known as Empowerment Zones, Enterprise Communities or Renewal Communities (1 point); or
(D) An Economically Distressed Area as specifically designated by the Water Development Board as of the beginning of the Application Acceptance Period or a Colonia (1 point); or
(E) The Application is not receiving points under paragraph (5) of this subsection and the proposed Development will be located in an area supported by the Governing Body of the appropriate municipality or county containing the Development Site, as evidenced by a resolution or ordinance, submitted with the Application, supporting the location of the Development Site (1 point).

(17) **Tenant Populations with Special Housing Needs.** (§42(m)(1)(C)(v)) Applications may qualify to receive (4 points) for this item. The purpose of this scoring item is to integrate special housing needs populations into traditional housing tax credit Developments. The Department will award these points to Applications in which at least 5% of the Units are set aside for Persons with Special Needs. For purposes of this section, Persons with Special Needs is defined as persons with alcohol and/or drug addictions, Colonia residents, Persons with Disabilities, victims of domestic violence, persons with HIV/AIDS, homeless populations and migrant farm workers. Throughout the Compliance Period, unless otherwise permitted by the Department, the Development Owner agrees to affirmatively market Units to Persons with Special Needs. In addition, the Department will require a minimum twelve-month period during which Units must either be occupied by Persons with Special Needs or held vacant. The twelve-month period will begin on the date each building receives its Certificate of Occupancy. For buildings that do not receive a Certificate of Occupancy, the twelve-month period will begin on the placed in service date as provided in the Cost Certification manual. After the twelve-month period, the Development Owner will no longer be required to hold Units vacant for households with special needs, but will be required to continue to affirmatively market Units to household with special needs.

(18) **Length of Affordability Period.** (§§2306.6725(a)(5); 2306.111(g)(3)(C); 2306.185(a)(1) and (c); 2306.6710(e)(2); and 42(m)(1)(B)(ii)(II)) The purpose of this scoring item is to provide an incentive for Applications that will extend the affordability period beyond the extended use period. Rehabilitation (excluding Reconstruction) Developments are not eligible for these points. Applications may qualify to receive up to (4 points). In accordance with the Code, each Development is required to maintain its affordability for a 15-year compliance period and, subject to certain exceptions, an additional 15-year extended use period. Development Owners that are willing to extend the affordability period for a Development beyond the thirty (30) years required in the Code may receive points as follows:
(A) add five (5) years of affordability after the extended use period for a total affordability period of thirty-five (35) years (2 points); or
(B) add ten (10) years of affordability after the extended use period for a total affordability period of forty (40) years (4 points).

(19) **Site Characteristics.** Development Sites, including scattered sites, may qualify to receive up to (4 points) for this item. The purpose of this scoring item is to encourage affordable rental housing development in proximity to services and amenities that would be considered

beneficial to the tenants. Developments Sites must be located within a one mile radius (two-mile radius for Developments competing for a Rural Regional Allocation) of at least six (6) services. A site located within one-half mile of public transportation that is accessible to all residents including Persons With Disabilities and/or located within a community that has another form of transportation, including, but not limited to, special transit service or specialized elderly transportation for Qualified Elderly Developments, will receive full points regardless of the proximity to amenities, as long as the Applicant provides appropriate evidence of the transportation services used to satisfy this requirement. If a Development is providing its own specialized van or funding a comparable service, then this will be a requirement of the LURA. Only one service of each type listed in subparagraphs (A) - (O) of this paragraph will count towards the points. A map must be included identifying the Development Site and the location of the services by name. If the services are not identified by name, points will not be awarded. All services must exist or, if under construction, must be under active construction, post pad by the date the Application is submitted.

(A) Full service grocery store.
(B) Pharmacy.
(C) Convenience Store/Mini-market.
(D) Department or Retail Merchandise Store.
(E) Bank/Credit Union.
(F) Restaurant (including fast food).
(G) Indoor public recreation facilities, such as civic centers, community centers, and libraries.
(H) Outdoor public recreation facilities such as parks, golf courses, and swimming pools.
(I) Medical offices (physician, dentistry, optometry) or hospital/medical clinic.
(J) Public Schools (only eligible for Developments that are not Qualified Elderly Developments).
(K) Senior Center.
(L) Religious Institutions.
(M) Day Care Services (must be licensed – only eligible for Developments that are not Qualified Elderly Developments).
(N) Post Office, City Hall, County Courthouse.
(O) Fire/Police Station.

(20) **Repositioning of Existing Developments.** Applications may qualify to receive up to (3 points) for this item. The purpose of this scoring item is to provide an incentive for Applications proposing the substantial Rehabilitation of an Existing Residential Development that meet the following criteria:

(A) proposes Rehabilitation (including Reconstruction);
(B) contains residential buildings originally constructed between 1980 – 1990;
(C) the Application includes a scope of work (excluding Reconstruction) for the interior of the Units that includes an intentional lease-down or relocation of tenants off-site; and
(D) the Development, as of the beginning of the Application Acceptance Period, has no income or rent restrictions recorded in the property records of the county.

(21) **Sponsor Characteristics.** The purpose of this scoring item is to encourage the material participation of Historically Underutilized Businesses relative to the housing industry in the development and operation of affordable housing. Applications may qualify to receive a maximum of (2 points) for this item. Qualifying under subparagraph (A) of this paragraph shall be worth (1 point) and qualifying under subparagraph (B) of this paragraph shall be worth (2 points). (§42(m)(1)(C)(iv))

(A) The Applicant has submitted a plan to use Historically Underutilized Businesses (HUB) in the development process consistent with the Historically Underutilized Business

Guidelines for contracting with the State of Texas. The Applicant will be required to submit a report of the success of the plan as part of the cost certification documentation, in order to receive IRS Forms 8609; or

(B) there is a HUB as certified by the Texas Comptroller of Public Accounts, has at least 51% ownership interest in the General Partner and materially participates in the Development and operation of the Development throughout the Compliance Period. To qualify for these points, the Applicant must submit a certification from the Texas Comptroller of Public Accounts that the Person is a HUB at the close of the Application Acceptance Period.

(22) **Economic Development Initiatives.** (§2306.127) The purpose of this item is to provide an incentive for proposed Developments located in areas that have adopted initiatives that promote economic development. An Application may qualify to receive (1 point) under subparagraph (A) or (B) of this paragraph.

(A) An economic development initiative adopted by the local government in which the Development Site is located, such as, but not limited to, a Tax Increment Financing (TIF) or Tax Increment Reinvestment Zone (TIRZ). Acceptable evidence will be a letter from the Appropriate Local Official certifying they have authority, stating the economic development initiative that is in place and certifying the date the initiative was adopted by the Unit of General Local Government.

(B) A Designated State Enterprise Zone.

(23) **Community Revitalization (§42(m)(1)(C)(iii)) or Historic Preservation.** Applications may qualify to receive (1 point) under subparagraph (A) or (B) of this paragraph. The purpose of this scoring item is to provide an incentive for community transformation (including Qualified Census Tracts) by utilizing already existing capacities and providing long-term improvements to specific geographic areas as well as preserving federal or state designated historic buildings.

(A) Any Development, regardless of whether located in a Qualified Census Tract that is part of a community revitalization plan. To qualify for these points a letter from the Appropriate Local Official must be submitted affirming that the Development is located within the specific geographic area covered by the plan, that the plan is not a Consolidated Plan or other Economic Development Plan or city-wide plan, the plan has been approved or adopted by ordinance, resolution, or other vote by the Governing Body with jurisdiction over the area covered by the plan (or, if such body has delegated that responsibility to another body by resolution, ordinance, or other vote, the body to which the responsibility was delegated) in a process that allows for public input and/or comment.

(B) The Development includes the use of an existing building that is designated as historic by a federal or state Entity and proposes Rehabilitation (including Reconstruction) or Adaptive Reuse. The Development itself must have the designation; points in this subparagraph are not available for Developments simply located within historic districts or areas that do not have a designation on the building. The Development must include the historic building. Evidence will include proof of the historic designation from the appropriate Governmental Entity. The Applicant will be required to show proof of the Historic designation and Historic Tax Credits at Cost Certification.

(24) **Developments Intended for Eventual Tenant Ownership--Right of First Refusal.** Applications may qualify to receive (1 point) for this item. (§2306.6725(b)(1); §42(m)(1)(C)(viii)) The purpose of this scoring item is to allow for consideration for tenant or nonprofit ownership at the end of the Compliance Period. Evidence that Development Owner agrees to provide a right of first refusal to purchase the Development upon or following the

end of the Compliance Period in accordance with §2306.6726 and the Department's rules related to Right of First Refusal and Qualified Contract in §1.9 of this title (relating to Qualified Contract Policy).

(c) **Scoring Criteria Imposing Penalties.** (§2306.6710(b)(2)) Staff will recommend to the Board a penalty of up to (5 points) for any of the items listed in paragraphs (1) and (2) of this subsection, unless the person approving the extension (the Board or Executive Director, as applicable) makes an affirmative finding setting forth that the facts which gave rise to the need for the extension were beyond the reasonable control of the Applicant and could not have been reasonably anticipated. Any such matter to be presented for final determination of penalties by the Board must include notice from the Department to the affected party not less than fourteen (14) days prior to the scheduled Board meeting. The Executive Director may, but is not required, to issue a formal notice after disclosure if it is determined that the matter does not warrant penalties.

(1) If the Applicant or Affiliate failed to meet the original Carryover submission or 10% Test deadline(s) or has requested an extension of the Carryover submission deadline, the 10% Test deadline (relating to either submission or expenditure).

(2) If the Developer or Principal of the Applicant violates the Adherence to Obligations pursuant to §50.12(a) of this chapter (relating to Post Award Activities).

(3) No penalty points will be deducted for extensions that were requested on Developments that involved Rehabilitation when the Department is the primary lender, or for Developments that involve TRDO-USDA as a lender if TRDO-USDA or the Department is the cause for the Applicant not meeting the deadline.

(4) Any penalties assessed by the Board for paragraph (1) or (2) of this subsection based on a Housing Tax Credit Commitment from the preceding Application Round will be attributable to the Applicant or Affiliate of an Application submitted in the current Application Round.

§50.10. Board Decisions.

(a) The Board's decisions shall be based upon the Department's and the Board's evaluation of the proposed Developments' consistency with the criteria and requirements set forth in this QAP and other applicable Department rules.

(1) On awarding tax credits, the Board shall document the reasons for each Application's selection, including any discretionary factors used in making its determination, including good cause and the reasons for any decision that conflicts with the recommendations made by Department Staff. Good cause includes the Board's decision to apply discretionary factors. (§§2306.6725(c); 2306.6731; and 42(m)(1)(A)(iv))

(2) Before the Board approves any Application, the Department shall assess the compliance history of the Applicant with respect to all applicable requirements; and the compliance issues associated with the proposed Development. The Board has established a rule for the materiality of noncompliance in Chapter 60 of this title (relating to Compliance Administration) to address noncompliance associated with the Development, Applicant or Affiliate.

(b) **Waiting List.** (§2306.6711(c) and (d)) If the entire State Housing Credit Ceiling for the applicable calendar year has been committed or allocated in accordance with this chapter, the Board shall generate, concurrently with the issuance of the Commitment, a waiting list of additional Applications ranked by score in descending order of priority based on Set-Aside categories and regional allocation goals. The Board may also apply discretionary factors in determining the waiting list provided that it takes into account the need to assure adherence to regional allocation requirements. If at any time prior to the end of the Application Round, one or more Commitments expire or a sufficient amount of the State Housing Credit Ceiling becomes available, the Board shall issue a Commitment to Applications on the waiting list subject to the

amount of returned credits, the regional allocation goals and the Set-Aside categories, including the 10% Nonprofit Set-Aside allocation, 15% At-Risk Set-Aside allocation and 5% TRDO-USDA Set-Aside required under §42(h)(5) of the Code. At the end of each calendar year, all Applications which have not received a Commitment shall be deemed terminated. The Applicant may re-apply to the Department during the next Application Round.

(c) **Appeals Process.** (§2306.6715) An Applicant may appeal decisions made by the Department described in paragraphs (1) – (6) of this subsection:

(1) The decisions that may be appealed are identified in subparagraphs (A) - (D) of this paragraph.
   (A) A determination regarding the Application's satisfaction of:
      (i) Eligibility Requirements;
      (ii) Disqualification or debarment criteria;
      (iii) Pre-application or Application Threshold Criteria;
      (iv) Underwriting Criteria;
   (B) the scoring of the Application under the Selection Criteria;
   (C) a recommendation as to the amount of Housing Tax Credits to be allocated to the Application; and
   (D) any Department decision that results in termination of an Application can be appealed in accordance with this section. Termination of an Application based on Material Noncompliance will follow the process as described in Chapter 60 of this title (relating to Compliance Administration).

(2) An Applicant may not appeal a decision made regarding an Application filed by another Applicant;

(3) An Applicant must file its appeal in writing with the Department not later than the seventh calendar day after the date the Department publishes the results of any stage of the Application evaluation process identified in §50.7 of this chapter (relating to Application Process). The appeal must be in writing, signed by the person designated to act on behalf of the Applicant or an attorney that represents the Applicant. The Appeal must be addressed to the Department to the attention of the Director of Housing Tax Credits. In the appeal, the Applicant must specifically identify the Applicant's grounds for appeal, based on the original Application and additional documentation filed with the original Application as supplemented in accordance with the limitations and requirements of this chapter. If the appeal relates to the amount of Housing Tax Credits recommended to be allocated, the Department will provide the Applicant with the underwriting report upon request;

(4) The Executive Director of the Department shall respond in writing to the appeal not later than fourteen (14) calendar days after the date of actual receipt of the appeal by the Department in its offices. If the Applicant is not satisfied with the Executive Director's response to the appeal, the Applicant may appeal directly in writing to the Board, provided that an appeal filed with the Board under this subsection must be received by the Board before:
   (A) the seventh calendar day preceding the date of the Board meeting at which the relevant commitment decision is expected to be made; or
   (B) the third calendar day preceding the date of the Board meeting described by subparagraph (A) of this paragraph, if the Executive Director does not respond to the appeal before the date described by subparagraph (A) of this paragraph;

(5) Board review of an appeal under paragraph (4) of this subsection is based on the original Application. The Board may not review any information not contained in or filed with the original Application. The decision of the Board regarding the appeal is the final decision of the Department;

(6) the Department will post to its website an appeal filed with the Department or Board and any other document relating to the processing of the appeal. (§2306.6717(a)(5))

(d) **Provision of Information or Challenges Regarding Applications from Unrelated Entities to the Application.** The Department will address information or challenges received from unrelated entities to a specific active Application, utilizing a preponderance of the evidence standard, as stated in paragraphs (1) - (4) of this subsection, provided the information or challenge includes a contact name, telephone number, fax number and e-mail address of the person providing the information or challenge and must be received by the Department no later than the Application Challenges Deadline as identified in §50.3 of this chapter (relating to Program Calendar):

(1) within fourteen (14) business days of the Application Challenges Deadline as identified in §50.3 of this chapter the Department will post all information and challenges received (including any identifying information) to the Department's website;

(2) within seven (7) business days of the Application Challenges Deadline as identified in §50.3 of this chapter the Department will notify the Applicant related to the information or challenge. The Applicant will then have seven (7) business days to respond to all information and challenges provided to the Department; and

(3) within fourteen (14) business days of the receipt of the response from the Applicant, the Department will evaluate all information submitted and other relevant documentation related to the investigation. This information may include information requested by the Department relating to this evaluation. The Department will post its determination summary to its website. Any determinations made by the Department cannot be appealed by any party unrelated to the Applicant.

(4) Nothing herein shall serve to limit the authority of the Board to apply discretion for good cause to the fullest extent lawfully permitted.

§50.11. Tax-Exempt Bond Developments.

(a) **Filing of Applications.** Applications for a Tax-Exempt Bond Development may be submitted to the Department as described in paragraphs (1) and (2) of this subsection:

(1) Applicants which receive advance notice of a Certificate of Reservation as a result of the Texas Bond Review Board's (TBRB) lottery for the private activity bond volume cap must file a complete Application not later than the deadline as posted in the Application Procedures for Housing Tax Credits with Tax Exempt Bond Financing document on the Department's website. Such filing must be accompanied by the Application fee described in §50.14 of this chapter (relating to Program Related Fees);

(2) Applicants which receive advance notice of a Certificate of Reservation after being placed on the waiting list for private activity bond volume cap must submit Parts 1 - 4 of the Application and the Application fee described in §50.14 of this chapter prior to the Applicant's Certificate of Reservation date as assigned by the TBRB. Those Applications designated as Priority 3 by the TBRB must submit Parts 1 - 4 within fourteen (14) days of the Certificate of Reservation date if the Applicant intends to apply for tax credits regardless of the Issuer. Any outstanding documentation required under this section regardless of Priority must be submitted to the Department at least sixty (60) days prior to the Board meeting at which the decision to issue a Determination Notice would be made unless a waiver is requested by the Applicant. The Department Staff will have limited discretion to recommend an Application with appropriate justification of the late submission;

(3) Multiple site applications will be considered to be one Application as identified in Chapter 1372 of the Texas Government Code.

(b) **Applicability of Rules.** Tax-Exempt Bond Development Applications are subject to all rules in this chapter, with the only exceptions being the following sections: §50.4(d)(14) of this chapter (relating to Ineligible Applicants, Applications, and Developments); §50.5(c) of this chapter (relating to Site and Development Restrictions); §50.6(b) – (e) of this chapter (relating to

Allocation and Award Process); §50.7(c), (d), (e), and (k) of this chapter (relating to Application Process); §50.9(b) of this chapter (relating to Selection Criteria); §50.10(b) of this chapter (relating to Board Decisions); and §50.12(e) - (f) of this chapter (relating to Post Award Activities).

(c) **Tenant Services.** Tax-Exempt Bond Development Applications must include the provision of supportive services. No fees may be charged to the tenants for any of the services. Services must be provided on-site or transportation to off-site services as identified on the list must be provided. The provision of these services will be included in the LURA. Acceptable services include those described in §1.1 of this title (relating to Definitions and Amenities for Housing Program Activities).

(d) **Financial Feasibility Evaluation for Tax-Exempt Bond Developments.** Section 42(m)(2)(D), Internal Revenue Code, requires the bond issuer (if other than the Department) to ensure that a Tax-Exempt Bond Development does not receive more tax credits than the amount needed for the financial feasibility and viability of a Development 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 Development for this purpose in accordance with the QAP and §1.32 of this title (relating to Underwriting Rules and Guidelines), or request that the Department perform the function. If the issuer underwrites the Development, the Department may request such underwriting report and may upon review make such changes in the amount of credits which the Development 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 Development is determined to be eligible in accordance with this subsection, 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. Any increase of tax credits, from the amount specified in the Determination Notice, at the time of each building's placement in service will only be permitted if it is determined by the Department, as required by §42(m)(2)(D) of the Code. Increases to the amount of tax credits that exceed 110% of the amount of credits reflected in the Determination Notice are contingent upon approval by the Board. Increases to the amount of tax credits that do not exceed 110% of the amount of credits reflected in the Determination Notice may be approved administratively by the Executive Director and are subject to the Credit Increase Fee as described in §50.14 of this chapter.

(e) **Certification of Tax Exempt Applications with New Docket Numbers.** Applications that are processed through the Department review and evaluation process and receive an affirmative Board Determination, but do not close the bonds prior to the Certificate of Reservation expiration date, and subsequently have that docket number withdrawn from the TBRB, may have their Determination Notice reinstated. The Applicant would need to receive a new docket number from the TBRB and paragraph (1) or (2) of this subsection must apply:

(1) the new docket number must be issued in the same program year as the original docket number and must not be more than four (4) months from the date the original application was withdrawn from the TBRB. The Application must remain unchanged. This means that at a minimum, the following cannot have changed: site control, total number of units, unit mix (bedroom sizes and income restrictions), design/site plan documents, financial structure including bond and Housing Tax Credit amounts, development costs, rent schedule, operating expenses, sources and uses, ad valorem tax exemption status, target population, scoring criteria (TDHCA issues) or TBRB priority status including the effect on the inclusive capture rate. Note that the entities involved in the Applicant entity and Developer cannot change; however, the certification can be submitted even if the lender, syndicator or issuer changes,

as long as the financing structure and terms remain unchanged. Notifications under §50.8(9) of this chapter (relating to Threshold Criteria) are not required to be reissued. A revised Determination Notice will be issued once notice of the assignment of a new docket number has been provided to the Department and the Department has confirmed that the capture rate and market demand remain acceptable. This certification must be submitted no later than thirty (30) days after the date the TBRB issues the new docket number. In the event that the Department's Board has not yet approved the Application, the Application will continue to be processed and ultimately provided to the Board for consideration. This certification must be submitted no later than thirty (30) days after the date the TBRB issues the new docket number; or

(2) if there are changes to the Application as referenced in paragraph (1) of this subsection or if there is public opposition, the Applicant will be required to submit a new Application in full, along with the applicable fees, to be reviewed and evaluated in its entirety for a new Determination Notice to be issued.

§50.12. Post Award Activities.

(a) **Adherence to Obligations.** (§2306.6720) Compliance with representations, undertakings and commitments made by an Applicant in the Application process for a Development, whether with respect to Threshold Criteria, Selection Criteria or otherwise, including the timely submittal and completion of cost certification (except for Department approved extensions), shall be deemed to be a condition to any Commitment, Determination Notice, or Carryover Allocation for such Development, the violation of which shall be cause for cancellation of such Commitment, Determination Notice, or Carryover Allocation by the Department, and if concerning the ongoing features or operation of the Development, shall be enforceable even if not reflected in the LURA. All such representations are enforceable by the Department and the tenants of the Development, including enforcement by administrative penalties for failure to perform, as stated in the representations and in accordance with the LURA. If a Development Owner does not produce the Development as represented in the Application; does not receive approval for an amendment to the Application by the Department prior to implementation of such amendment; or does not provide the necessary evidence for any points received by the required deadline:

(1) the Development Owner must provide a plan to the Department, for approval and subsequent implementation, that incorporates additional amenities to compensate for the non-conforming components; and

(2) the Board will opt either to terminate the Application and rescind the Commitment, Determination Notice or Carryover Allocation Agreement as applicable or the Department must:

(A) reduce the score for Applications for Competitive Housing Tax Credits that are submitted by an Applicant or Affiliate related to the Development Owner of the non-conforming Development by up to (10 points) for the two Application Rounds concurrent to, or following, the date that the non-conforming aspect, or lack of financing, was recognized by the Department of the need for the amendment; the placed in service date; or the date the amendment is accepted by the Board;

(B) prohibit eligibility to apply for Housing Tax Credits for a Tax-Exempt Bond Development that are submitted by an Applicant or Affiliate related to the Development Owner of the non-conforming Development for up to twenty-four (24) months from the date that the non-conforming aspect, or lack of financing, was recognized by the Department of the need for the amendment; the placed in service date; or the date the amendment is accepted by the Board, less any time delay caused by the Department;

(C) in addition to, or in lieu of, the penalty in subparagraph (A) or (B) of this paragraph, the Board may assess a penalty fee of up to $1,000 per day for each violation.

(3) For amendments approved administratively by the Executive Director, the penalties in paragraph (2) of this subsection will not be imposed.

(b) **Commitments and Determination Notices.**

(1) **Commitments.** If the Application is for a commitment from the State Housing Credit Ceiling, the Department shall issue a Commitment to the Development 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 Development Owner in a specified amount, subject to the feasibility determination described in this chapter, and compliance by the Development Owner with the remaining requirements of this chapter and any other terms and conditions set forth therein by the Department. This Commitment shall expire on the date specified therein unless the Development Owner indicates acceptance of the Commitment by executing the Commitment, pays the required fee specified in §50.14(f) of this chapter (relating to Program Related Fees), and satisfies any other conditions set forth therein by the Department. The Commitment expiration date may not be extended;

(2) **Determination Notices.** If the Application regards a Tax-Exempt Bond Development, issue a Determination Notice to the Development Owner which shall:

(A) confirm the Board's determination that the Development satisfies the requirements of this chapter and other applicable Department rules in accordance with the §42(m)(1)(D) of the Code. Applications that receive a Certificate of Reservation from the TBRB on or before November 15 of the prior program year will be required to satisfy the requirements of the prior year QAP; Applications that receive a Certificate a Reservation from the TBRB on or after January 2 of the current program year will be required to satisfy the requirements of the current program year QAP; and

(B) state the Department's commitment to issue IRS Form(s) 8609 to the Development Owner in a specified amount, subject to the requirements set forth in §50.11 of this chapter (relating to Tax-Exempt Bond Developments) and compliance by the Development Owner with all applicable requirements of this chapter and any other terms and conditions set forth therein by the Department. The Determination Notice shall expire on the date specified therein unless the Development Owner indicates acceptance by executing the Determination Notice, pays the required fee specified in §50.14(f) of this chapter and satisfies any conditions set forth therein by the Department. The Determination Notice expiration date may not be extended. Furthermore, no later than sixty (60) days following closing on the bonds, the Development Owner must submit:

(i) a Management Plan and an Affirmative Marketing Plan (as further described in the carryover procedures as identified in the Tax Credit (Procedures) Manual; and

(ii) evidence that the Development Owner or management company has attended Department-approved Fair Housing training relating to leasing and management issues for at least five (5) hours; and

(iii) the Development architect or engineer responsible for Fair Housing compliance for the Development has attended Department-approved Fair Housing training relating to design issues for at least five (5) hours. Certifications required under clauses (ii) and (iii) of this subparagraph must not be older than two (2) years from the date of the submission deadline.

(3) The Department shall 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 or Determination Notice, as applicable;

(4) a Commitment or Determination Notice shall not be issued with respect to any Development for an unnecessary amount or 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, unless the Department Staff make a recommendation to the Board based on the need to fulfill the goals of the Housing Tax Credit Program as expressed in this QAP and other applicable Department rules, and the Board accepts the recommendation. The Department's recommendation to the Board shall be clearly documented;

(5) the executed Commitment or Determination Notice must be returned to the Department no later than thirty (30) days after the effective date of the Notice provided that for Commitments under the State Housing Credit Ceiling that date is not later than December 31;

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

(A) the Applicant or the Development Owner, or the Development, as applicable, fails after written notice and a reasonable opportunity to cure to meet any of the conditions of such Commitment, Determination Notice or Carryover Allocation or any of the undertakings and commitments made by the Development Owner in the Applications process for the Development;

(B) any material statement or representation made by the Development Owner or made with respect to the Development Owner or the Development is untrue or misleading;

(C) an event occurs with respect to the Applicant or the Development Owner which would have made the Development's Application ineligible for funding pursuant to §50.4 of this chapter (relating to Ineligible Applicants, Applications, and Developments) if such event had occurred prior to issuance of the Commitment, Determination Notice or Carryover Allocation; or

(D) the Applicant or the Development Owner or the Development, as applicable, fails after written notice and a reasonable opportunity to cure to comply with this chapter or other applicable Department rules or the procedures or requirements of the Department.

(c) **Agreement and Election Statement.** The Development Owner may execute an Agreement and Election Statement, in the form prescribed by the Department, for the purpose of fixing the Applicable Percentage with respect to a building or buildings for the month in which the Carryover Allocation was accepted (or the month the bonds were closed for Tax-Exempt Bond Developments), as provided in the §42(b)(2) of the Code. Current Treasury Regulations, §1.42-8(a)(1)(v), suggest that in order to permit a Development Owner to make an effective election to fix the Applicable Percentage for a Development receiving credits from the State Housing Credit Ceiling, the Carryover Allocation Document must be executed by the Department and the Development Owner within the same month. The Department Staff will cooperate with a Development Owner, as possible or reasonable; to assure that the Carryover Allocation Document can be so executed. For Tax-Exempt Bond Developments where the election is not made for the month the bonds closed, the Applicable Percentage will be determined based on the month each building is placed in service.

(d) **Documentation Submission Requirements at Commitment of Funds.** No later than the date the Commitment or Determination Notice is executed by the Applicant and returned to the Department with the appropriate Commitment or Determination Fee as further described in §50.14(f) of this chapter, the following documents must also be provided to the Department. Failure to provide these documents may cause the Commitment or Determination Notice to be rescinded. For each Applicant documents described in paragraphs (1) – (5) of this subsection must be provided:

(1) for entities formed outside the state of Texas, evidence that the entity has the authority to do business in Texas in the form of a Certificate of Filing from the Texas Office of the Secretary of State;
(2) a Certificate of Account Status from the Texas Comptroller of Public Accounts or, if such a Certificate is not available because the entity is newly formed, a statement to such effect; and a Certificate of Name Reservation from the Texas Office of the Secretary of State;
(3) evidence that the signer(s) of the Application have the authority to sign on behalf of the Applicant in the form of a corporate resolution which indicates the sub-entity in Control and that those Persons signing the Application constitute all Persons required to sign or submit such documents;
(4) evidence of final zoning that was proposed or needed to be changed pursuant to the Development plan; and
(5) any conditions identified in the Real Estate Analysis report or any other conditions of the award required to be met at Commitment or Determination Notice.

(e) **Carryover.** All Developments which received a Commitment, and will not be placed in service and receive IRS Form 8609 in the year the Commitment was issued, must submit the Carryover documentation to the Department no later than the Carryover Documentation Delivery Date as identified in §50.3 of this chapter (relating to Program Calendar) of the year in which the Commitment is issued pursuant to §42(h)(1)(C) of the Code.
(1) Commitments for credits will be terminated if the Carryover documentation, or an approved extension, has not been received by this deadline. In the event that a Development Owner intends to submit the Carryover documentation in any month preceding November of the year in which the Commitment is issued, in order to fix the Applicable Percentage for the Development in that month, it must be submitted no later than the first Friday in the preceding month.
(2) If the financing structure, syndication rate, amount of debt or syndication proceeds are revised at the time of Carryover from what was proposed in the original Application, applicable documentation of such changes must be provided and the Development may be reevaluated by the Department.
(3) The Carryover Allocation must be properly completed and delivered to the Department as prescribed by the carryover procedures identified in the Tax Credit (Procedures) Manual.
(4) All Carryover Allocations will be contingent upon the Development Owner providing evidence that they have and will maintain Site Control through 10% Test or through the anticipated closing date, whichever is earlier. For purposes of this paragraph, site control must be identical to the same Development Site that was submitted at the time of Application submission.
(5) Evidence that the Development Owner entity has been formed must be submitted with the Carryover Allocation.
(6) The Department will not execute a Carryover Allocation Agreement with any Development Owner having any member in Material Noncompliance on October 1 of the current program year.

(f) **10% Test.** No later than July 1 of the year following the submission of the Carryover Allocation Document more than 10% of the Development Owner's reasonably expected basis must have been incurred pursuant to §42(h)(1)(E)(i) and (ii) of the Internal Revenue Code (as amended by The Housing and Economic Recovery Act of 2008) and Treasury Regulations, §1.42-6. The evidence to support the satisfaction of this requirement must be submitted to the Department no later than the 10% Test Documentation Delivery Date as identified in §50.3 of this chapter. The Development Owner must submit, in the form prescribed by the Department, documentation evidencing paragraphs (1) - (5) of this subsection. The 10% Test Documentation will be contingent

upon the following, in addition to all other conditions placed upon the Application in the Commitment:

(1) evidence that the Development Owner has purchased, transferred, leased or otherwise has ownership of, the Development Site;
(2) a certification from a Third Party civil engineer stating that all necessary utilities will be available at the site and that no easements, licenses, royalties or other conditions on or affecting the Development which would materially and adversely impact the ability to acquire, develop and operate as set forth in the Application. Copies of such supporting documents will be provided upon request;
(3) a Management Plan and an Affirmative Marketing Plan as further described in the carryover procedures identified in Tax Credit (Procedures) Manual;
(4) evidence confirming attendance of the Development Owner or management company at Department-approved Fair Housing training relating to leasing and management issues for at least five (5) hours and the Development architect or engineer responsible for Fair Housing compliance for the Development has attended Department-approved Fair Housing training relating to design issues for at least five (5) hours on or before the time the 10% Test Documentation is submitted. Certifications must not be older than two (2) years from the date of submission of the 10% Test Documentation; and
(5) a Certification from the lender or syndicator identifying all Guarantors.

(g) **Cost Certification.** The Cost Certification Procedures Manual sets forth the documentation required for the Department to perform a feasibility analysis in accordance with §42(m)(2)(C)(i)(II), Internal Revenue Code, and determine the final Credit to be allocated to the Development.

(1) Required cost certification documentation must be received by the Department no later than January 15 following the year the Credit Period begins. Any Developments issued a Commitment or Determination Notice that fails to submit its cost certification documentation by this deadline will be reported to the IRS and the Owner will be required to submit a request for extension consistent with §50.13(c) of this chapter (relating to Application Reevaluation); (§2306.6731(b))
(2) the Department will perform an initial evaluation of the cost certification documentation and notify the Development Owner in a deficiency letter of all additional required documentation. Any communication issued to the Development Owner pertaining to the cost certification documentation may also be copied to the syndicator;
(3) for the Department to release IRS Forms 8609, Developments must have:
    (A) placed in Service by December 31 of the year the Commitment Notice was issued if a Carryover Allocation was not requested and received; December 31 of the second year following the year the Carryover Allocation Agreement was executed; or approved Placed in Service deadline;
    (B) submitted all Cost Certification documentation as more fully described in the Cost Certification Procedures Manual including:
        (i) Carryover Allocation Agreement/Determination Notice and Election Statement;
        (ii) Owner's Statement of Certification;
        (iii) Owner Summary;
        (iv) Evidence of Nonprofit and CHDO Participation;
        (v) Evidence of Historically Underutilized Business (HUB) Participation;
        (vi) Development Summary (including list of tenant services, unit and common amenities);
        (vii) As-Built Survey;
        (viii) Closing Statement;
        (ix) Title Policy;
        (x) Evidence of Placement in Service;

(xi) Independent Auditor's Reports;
(xii) Total Development Cost Schedule;
(xiii) AIA Form G702 and G703, Application and Certificate for Payment;
(xiv) Rent Schedule;
(xv) Utility Allowance;
(xvi) Annual Estimated Operating Expenses and 15-Year Proforma;
(xvii) Current Annual Operating Statement and Rent Roll;
(xviii) Final Sources of Funds;
(xix) Executed Limited Partnership Agreement;
(xx) Loan Agreement or Firm Commitment;
(xxi) Architect's Certification of Fair Housing Requirements;
(xxii) TDHCA Compliance Workshop Certificate;

(C) complied with the requirements set forth in the Cost Certification Procedures Manual;
(D) received written notice from the Department that all deficiencies noted during the final construction inspection have been resolved in accordance with Chapter 60 of this title;
(E) informed the Department of and received written approval for all Development amendments in accordance with §50.13(b) of this chapter (relating to Application Reevaluation); (§2306.6731(b))
(F) informed the Department of and received written approval for all ownership transfers in accordance with §50.13(d) of this chapter;
(G) submitted to the Department the recorded LURA in accordance with Chapter 60 of this title (relating to Compliance Administration);
(H) paid all applicable Department fees; and
(I) corrected all issues of noncompliance, including but not limited to noncompliance status with the LURA (or any other document containing an Extended Low-income Housing Commitment) or the program rules in effect for the subject property, as described in Chapter 60 of this title.

§50.13. Application Reevaluation (§2306.6731(b)).

(a) Regardless of development stage, the Board shall reevaluate a Development that undergoes a substantial change at any time after the initial Board approval of the Development. For the purposes of this subsection, substantial change shall be based on those items identified in subsection (b)(4) of this section. The Board may revoke any Commitment or Determination Notice issued for a Development that has been unfavorably reevaluated by the Board.

(b) Amendment of Application Subsequent to Allocation by Board. (§2306.6712 and §2306.6717(a)(4))
(1) If a proposed modification would materially alter a Development approved for an allocation of Housing Tax Credits, or if the Applicant has altered any Selection Criteria item for which it received points, the Department shall require the Applicant to file a formal, written request for an amendment to the Application. Such request shall include a proposed form of amendment, if requested by the Department, and the applicable fee as identified in §50.14(l) of this chapter (relating to Program Related Fees). The amendment request will not be considered received or processed unless accompanied with the corresponding fee. Changes to the Developer, Guarantor, or Person used for experience constitute a change requiring an amendment and may be approved by the Executive Director.
(2) The Executive Director of the Department shall require appropriate Department Staff to evaluate the amendment and provide a written analysis and recommendation to the Board. The appropriate party monitoring compliance during construction in accordance with Chapter 60 of this title (relating to Compliance Administration) shall also provide to the Board an

analysis and written recommendation regarding the amendment. For amendments not requiring Board approval, the amendment will be deemed approved if the Executive Director does not approve or deny within thirty (30) days from the date on which the Department has acknowledged it has received all additional information that it has, in writing, requested of the Applicant to enable the Department to evaluate the amendment request. Amendment requests which require Board approval must be received by the Department at least forty-five (45) calendar days prior to the Board meeting in which the amendment will be considered.

(3) The Board must vote whether to approve an amendment that is material. The Executive Director may administratively approve all non-material amendments. The Board may vote to reject an amendment request and if appropriate, rescind a Commitment or terminate the allocation of Housing Tax Credits and reallocate the credits to other Applicants on the waiting list. Amendment requests may be denied if the Board determines that the modification proposed in the amendment:
   (A) would materially alter the Development in a negative manner; or
   (B) would have adversely affected the selection of the Application in the Application Round.

(4) Material alteration of a Development includes, but is not limited to:
   (A) a significant modification of the site plan;
   (B) a modification of the number of units or bedroom mix of units;
   (C) a substantive modification of the scope of tenant services;
   (D) a reduction of 3% or more in the square footage of the units or common areas;
   (E) a significant modification of the architectural design of the Development;
   (F) a modification of the residential density of the Development of at least 5%;
   (G) an increase or decrease in the site acreage of greater than 10% from the original site under control and proposed in the Application; and
   (H) exclusion of any threshold requirements as identified in §50.8 of this chapter (relating to Threshold Criteria).
   (I) Any other modification considered significant by the Board.

(5) In evaluating the amendment under this subsection, Department Staff shall consider whether the need for the proposed modification was:
   (A) reasonably foreseeable by the Applicant at the time the Application was submitted; or
   (B) preventable by the Applicant. Amendment requests will be denied if the circumstances were reasonably foreseeable and preventable unless good cause is found for the approval of the amendment.

(6) This section shall be administered in a manner that is consistent with §42 of the Code.

(7) Before the 15th day preceding the date of Board action on the amendment, notice of an amendment and the recommendation of the Executive Director and monitor regarding the amendment will be posted to the Department's website and the Applicant will be notified of the posting.

(8) In the event that an Applicant or Developer seeks to be released from the commitment to serve the income level of tenants targeted in the Real Estate Analysis Report at the time of the Commitment or Determination Notice issuance, as approved by the Board, the following procedure described in subparagraphs (A) and (B) of this paragraph will apply:
   (A) for amendments that involve a reduction in the total number of Low-Income Units being served, or a reduction in the number of Low-Income Units at any level of AMGI, as approved by the Board, evidence must be presented to the Department that includes written confirmation from the lender and syndicator that the Development is infeasible without the adjustment in Units. The Board may or may not approve the amendment request; however, any affirmative recommendation to the Board is contingent upon concurrence from the Real Estate Analysis Division that the Unit adjustment (or an

alternative Unit adjustment) is necessary for the continued feasibility of the Development; and

(B) if it is determined by the Department that the allocation of credits would not have been made in the year of allocation because the loss of low-income targeting points would have resulted in the Application not receiving an allocation, and the amendment is approved by the Board, the approved amendment will carry a penalty that prohibits the Applicant and all Persons or entities with any ownership interest in the Application (excluding any tax credit purchaser/syndicator), from participation in the Housing Tax Credit Program (for both the Competitive Housing Tax Credit Developments and Tax-Exempt Bond Developments) for twenty-four (24) months from the time that the amendment is approved.

(c) **Extension Requests.** Extensions must be requested if the original deadline associated with Carryover, 10% Test (including submission and expenditure deadlines), or Cost Certification requirements will not be met. If the extension is requested at least thirty (30) calendar days in advance of the deadline no fee will be required; however, if the extension is requested at any point after the applicable deadline the applicable fee as further described in §50.14(l) of this chapter must be submitted. Extension requests submitted after the deadline will not be considered received or processed unless accompanied by the applicable fee. Extension requests will be approved by the Executive Director, unless, at Staff's discretion it warrants Board approval due to extenuating circumstances stated in the request. The extension request must specify a requested extension date and the reason why such an extension is required. Carryover extension requests will not be granted an extended deadline later than December 1st of the year the Commitment was issued. If an extension is required at Cost Certification, the fee as identified in §50.14 of this chapter must be received by the Department to qualify for issuance of IRS Forms 8609.

(d) **Housing Tax Credit and Ownership Transfers.** (§2306.6713) A Development Owner may not transfer an allocation of Housing Tax Credits or ownership of a Development supported with an allocation of Housing Tax Credits to any Person including an Affiliate of the Development Owner unless the Development Owner obtains the Executive Director's prior, written approval of the transfer. The Executive Director may not unreasonably withhold approval of the transfer.

(1) Transfers (other than to an Affiliate included in the ownership structure) will not be approved prior to the issuance of IRS Forms 8609 unless the Development Owner can provide evidence that a hardship is creating the need for the transfer (potential bankruptcy, removal by a partner, etc.). A Development Owner seeking Executive Director approval of a transfer and the proposed transferee must provide to the Department a copy of any applicable agreement between the parties to the transfer, including any Third Party agreement.

(2) A Development Owner seeking Executive Director approval of a transfer must submit documentation requested by the Department, including but not limited to, a list of the names of transferees and Related Parties and detailed information describing the experience and financial capacity of transferees and related parties. All transfer requests must disclose the reason for the request. The Development Owner shall certify to the Executive Director that the tenants in the Development have been notified in writing of the transfer before the 30th day preceding the date of submission of the transfer request to the Department. Not later than the fifth working day after the date the Department receives all necessary information under this section, Staff shall conduct a qualifications review of a transferee to determine the transferee's past compliance with all aspects of the Housing Tax Credit Program, LURAs and eligibility under §§50.4(a), 50.5(c), and 50.8(4) of this chapter. If the viable operation of the Development is deemed to be in jeopardy by the Department, the Department may authorize changes that were not contemplated in the Application.

(3) As it relates to the credit amount further described in §50.5(c) of this chapter (relating to Site and Development Restrictions), the credit amount will not be applied in circumstances described in subparagraphs (A) and (B) of this paragraph:
   (A) in cases of transfers in which the syndicator, investor or limited partner is taking over ownership of the Development and not merely replacing the General Partner; or
   (B) in cases where the General Partner is being replaced if the award of credits was made at least five (5) years prior to the transfer request date.
(4) The Development Owner, as on record with the Department, will be liable for any penalties imposed by the Department even if such penalty can be attributable to the new Owner unless such ownership transfer is approved by the Department.
(5) The Development Owner must comply with the additional documentation requirements as stated in Chapter 60 of this title (relating to Compliance Administration).

(e) **Withdrawals.** An Applicant may withdraw an Application prior to receiving a Commitment, Determination Notice, Carryover Allocation Document or Housing Credit Allocation, or may cancel a Commitment or Determination Notice by submitting to the Department written notice of withdrawal or cancellation, and subject to the Unused Credit Fee or Penalty in §50.14(n) of this chapter.

(f) **Alternative Dispute Resolution (ADR) Policy.** In accordance with §2306.082 of the Texas Government Code, it is the Department's policy to encourage the use of appropriate ADR procedures under the Governmental Dispute Resolution Act, Chapter 2010, Texas Government Code, to assist in resolving disputes under the Department's jurisdiction. As described in Chapter 154, Civil Practices and Remedies Code, ADR procedures include mediation. Except as prohibited by law and the Department's Ex Parte Communications policy, the Department encourages informal communications between Department Staff and Applicants, and other interested persons, to exchange information and informally resolve disputes. The Department also has administrative appeals processes to fairly and expeditiously resolve disputes. If at any time an Applicant or other person would like to engage the Department in an ADR procedure, the person may send a proposal to the Department's Dispute Resolution Coordinator. For additional information on the Department's ADR Policy, see the Department's General Administrative Rule on ADR at §1.17 of this title. Any Applicant may request an informal conference with Staff to attempt to resolve any appealable matter, and the Executive Director may toll the running of periods for appeal to accommodate such meetings. In the event a successful resolution cannot be reached, the statements made in the meeting process may not be used by the Department as admissions.

§50.14. Program Related Fees.

(a) **Timely Payment of Fees.** All fees must be paid as stated in this section, unless the Executive Director has granted a waiver for specific extenuating and extraordinary circumstances. To be eligible for a waiver, the Applicant must submit a request for a waiver no later than ten (10) business days prior to the deadlines as stated in this section. Any fees, as further described in this section, that are not paid will cause an Applicant to be ineligible to apply for tax credits and additional tax credits and ineligible to submit extension requests, ownership changes and Application amendments until such time the Department receives payment. Payments made by check, for which insufficient funds are available, may cause the Application, Commitment or Allocation to be terminated.

(b) **Pre-application Fee.** Each Applicant that submits a Pre-application shall submit to the Department, along with such Pre-application, a non refundable Pre-application fee, in the amount of $10 per Unit. Units for the calculation of the Pre-application Fee include all Units

within the Development, including tax credit, market rate and owner-occupied Units. Pre-applications without the specified Pre-application Fee in the form of a check will not be accepted. Pre-applications in which a CHDO or Qualified Nonprofit Organization intends to serve as the Managing General Partner of the Development Owner, or Control the Managing General Partner of the Development Owner, will receive a discount of 10% off the calculated Pre-application fee. (§2306.6716(d)) For Tax Exempt Bond Developments with the Department as the issuer, the Applicant shall submit the following fees: $1,000 (payable to TDHCA), $2,000 (payable to Vinson & Elkins, Bond Counsel), and $5,000 (payable to the Texas Bond Review Board).

(c) **Application Fee.** Each Applicant that submits an Application shall submit to the Department, along with such Application, an Application fee. For Applicants having submitted a pre-application which met Pre-application Threshold and for which a pre-application fee was paid, the Application fee will be $20 per Unit. For Applicants not having submitted a pre-application, the Application fee will be $30 per Unit. Units for the calculation of the Application Fee include all Units within the Development, including tax credit, market rate and owner-occupied Units. Applications without the specified Application Fee in the form of a check will not be accepted. Applications in which a CHDO or Qualified Nonprofit Organization intends to serve as the Managing General Partner of the Development Owner, or Control the Managing General Partner of the Development Owner, will receive a discount of 10% off the calculated Application fee. (§2306.6716(d)) For Tax Exempt Bond Developments with the Department as the Issuer the Applicant shall submit a tax credit application fee of $30 per unit and bond application fee of $10,000. Those Applications utilizing a local issuer only need to submit the tax credit application fee. For Tax-Exempt Bond Development refunding Applications, with the Department as the issuer, the Application Fee will be $10,000 unless the refunding is not required to have a TEFRA public hearing, in which case the fee will be $5,000.

(d) **Refunds of Pre-application or Application Fees.** (§2306.6716(c)) Upon written request from the Applicant, the Department shall refund the balance of any fees collected for a pre-application or Application that is withdrawn by the Applicant or that is not fully processed by the Department. The amount of refund on pre-applications not fully processed by the Department will be commensurate with the level of review completed. Intake and data entry will constitute 50% of the review, and Threshold review prior to a deficiency issued will constitute 30% of the review. Deficiencies submitted and reviewed constitute 20% of the review. The amount of refund on Applications not fully processed by the Department will be commensurate with the level of review completed. Intake and data entry will constitute 20% of the review, the site visit will constitute 20% of the review, Eligibility and Selection review will constitute 20%, and Threshold review will constitute 20% of the review, and underwriting review will constitute 20%. The Department must provide the refund to the Applicant not later than the 30th day after the date of request.

(e) **Third Party Underwriting Fee.** Applicants will be notified in writing prior to the evaluation of a Development by an independent external underwriter in accordance with §50.7(h) of this chapter (relating to Application Process) if such a review is required. The fee must be received by the Department prior to the engagement of the underwriter. The fees paid by the Development Owner to the Department for the external underwriting will be credited against the Commitment Fee established in subsection (f) of this section, in the event that a Commitment or Determination Notice is issued by the Department to the Development Owner.

(f) **Commitment or Determination Notice Fee.** Each Development Owner that receives a Commitment or Determination Notice shall submit to the Department, not later than the expiration date on the Commitment or Determination Notice, a Commitment or Determination Fee equal to 4% of the annual Housing Credit Allocation amount. The Commitment or

Determination Fee shall be paid by check. If a Development Owner of an Application awarded Competitive Housing Tax Credits has paid a Commitment Fee and returns the credits by November 1 of the current Application Round, the Development Owner may receive a refund of 50% of the Commitment Fee. If a Development Owner of an Application awarded Housing Tax Credits associated with Tax-Exempt Bonds has paid a Determination Fee and is not able close on the bond transaction within ninety (90) days of the issuance date of the Determination Notice, the Development Owner may receive a refund of 50% of the Determination Fee. The Determination Fee will not be refundable after ninety (90) days of the issuance date of the Determination Notice.

(g) **Compliance Monitoring Fee.** Upon receipt of the cost certification, the Department will invoice the Development Owner for compliance monitoring fees. The amount due will equal $40 per tax credit Unit. The fee will be collected, retroactively if applicable, beginning with the first year of the credit period. The invoice must be paid prior to the issuance of IRS Form 8609. Subsequent anniversary dates on which the compliance monitoring fee payments are due shall be determined by the month the first building is placed in service. For Tax-Exempt Bond Developments with the Department as the issuer, the tax credit compliance fee will be paid annually in advance (for the duration of the compliance or affordability period) and is equal to $40/Unit beginning two (2) years from the first payment date of the bonds; the asset management fee, if applicable, is paid in advance and is equal to $25/Unit beginning two (2) years from the first payment date. Compliance fees may be adjusted from time to time by the Department.

(h) **Building Inspection Fee.** The Building Inspection Fee must be paid at the time the Commitment Fee is paid. The Building Inspection Fee for all Developments is $750. Inspection fees in excess of $750 may be charged to the Development Owner not to exceed an additional $250 per Development.

(i) **Tax-Exempt Bond Credit Increase Request Fee.** As further described in §50.11 of this chapter (relating to Tax-Exempt Bond Developments), requests for increases to the credit amounts to be issued on IRS Forms 8609 for Tax-Exempt Bond Developments must be submitted with a request fee equal to 5% of the amount of the credit increase for one (1) year.

(j) **Public Information Requests.** Public information requests are processed by the Department in accordance with the provisions of the Texas Government Code, Chapter 552. The Department uses the guidelines promulgated by the Office of the Attorney General to determine the cost of copying and other costs of production.

(k) **Periodic Adjustment of Fees by the Department and Notification of Fees.** (§2306.6716(b)) 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. The Department shall publish each year an updated schedule of Application fees that specifies the amount to be charged at each stage of the Application process. Unless otherwise determined by the Department, all revised fees shall apply to all Applications in process and all Developments in operation at the time of such revisions.

(l) **Extension and Amendment Fees.**

(1) All extension requests for deadlines relating to the Carryover, 10% Test (submission and expenditure), or Cost Certification requirements that are submitted after the applicable deadline must be accompanied by an extension fee in the form of a check in the amount of $2,500. Extension requests submitted at least thirty (30) days in advance of the applicable deadline will not be required to submit an extension fee. An extension fee will not be

required for extensions requested on Developments that involved Rehabilitation when the Department is the primary lender, or for Developments that involve TRDO-USDA as a lender if TRDO-USDA or the Department is the cause for the Applicant not meeting the deadline.

(2) Amendment requests must be submitted in accordance with §50.13(b) of this chapter (relating to Application Reevaluation). (§2306.6731(b)) An amendment request to be considered non-material that has not been implemented will not be required to pay an amendment fee. Material or non-material amendment requests that have already been implemented will be required to be accompanied by a mandatory amendment fee in the form of a check in the amount of $2,500.

(3) The Board may waive extension or amendment fees for good cause.

(m) **Refund of Fees.** The Executive Director may approve full or partial refunds of the fees listed in this subsection to ensure equity regarding the work already performed by the Department.

(n) **Unused Credit Fee or Penalty.** Development Owners who have more tax credits allocated to them than they can substantiate through Cost Certification will return those excess tax credits prior to issuance of 8609's. For Competitive Housing Tax Credit Developments, a penalty fee equal to the one year credit amount of the lost credits (10% of the total unused tax credit amount) will be required to be paid by the Owner prior to the issuance of form 8609's if the tax credits are not returned, and 8609's issued, within one hundred eighty (180) days of the end of the first year of the credit period. This penalty fee may be waived without further Board action if the Department recaptures and re-issues the returned tax credits in accordance with §42, Internal Revenue Code. If an Applicant returns a full credit allocation after the Carryover Allocation deadline required for that allocation, the Executive Director will recommend to the Board the imposition of a penalty on the score for any Competitive Housing Tax Credit Applications submitted by that Applicant or any Affiliate for any Application in an Application Round occurring concurrent to the return of credits or if no Application Round is pending the Application Round immediately following the return of credits. If any such point penalty is recommended to be assessed and presented for final determination by the Board, it must include notice from the Department to the affected party not less than fourteen (14) days prior to the scheduled Board meeting. The Executive Director may, but is not required, to issue a formal notice after disclosure if it is determined that the matter does not warrant point penalties. The penalty will be assessed in an amount that reduces the Applicant's final awarded score by an additional 20%.

§50.15. Manner and Place of Filing All Required Documentation.

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

(b) All notices, information, correspondence and other communications under this chapter shall be deemed to be duly given if delivered or sent and effective in accordance with this subsection. Such correspondence must reference that the subject matter is pursuant to the Tax Credit Program and must be addressed to the Housing Tax Credit Program, Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas 78711-3941 or for hand delivery or courier to 221 East 11th Street, Austin, Texas 78701 or more current address of the Department as released on the Department's website. Every such correspondence required or contemplated by this chapter to be given, delivered or sent by any party may be delivered in person or may be sent by courier, express mail, electronic submission, or postage prepaid United States first class mail (or its equivalent under the laws of the country where mailed), addressed to the party for

whom it is intended, at the address specified in this subsection. Regardless of method of delivery, documents must be received by the Department no later than 5:00 p.m. for the given deadline date. Notice by courier, express mail, certified mail, or registered mail will be considered received on the date it is officially recorded as delivered by return receipt or equivalent. Notice by electronic submission will be deemed given when sent. Notice by U.S. mail other than mail sent registered or certified shall be deemed given on the second business day after postmarking. All other notice shall be deemed given when logged as received by the Department. Notice not given in writing will be effective only if acknowledged in writing by the Department.

(c) If required by the Department, Development Owners must comply with all requirements to use the Department's website to provide necessary data to the Department.

§50.16. Waiver and Amendment of Rules.

(a) The Board, in its discretion, may waive any one or more of the rules provided herein if the Board finds that a waiver is necessary to fulfill the purposes or policies of Chapter 2306 of the Texas Government Code, as determined by the Board or if the Board finds that such waiver is in response to a natural, federally declared disaster that occurs after the adoption of this Qualified Allocation Plan. No waiver shall be granted to provide forward commitments. Any such waiver will be subject to all reasonable restrictions and requirements customarily applied by Staff including as applicable, but not limited to, underwriting, satisfactory previous participation reviews, scoring criteria and receipt of required Third Party approvals, including lender or investor approvals.

(b) An Applicant may, at any time, make a specific written request for a waiver. Any waiver must be evidenced in writing consistent with Board approval and must expressly state the purposes or other good cause that the Board finds to justify the waiver. Waiver requests will be submitted to agency Staff, who will review it and place it on the next eligible Board meeting agenda. Staff shall have at least ten (10) days from the date on which it has received all information reasonably necessary for its consideration and evaluation of the request to make a recommendation to the Executive Director. The Staff recommendation must be reviewed by the Executive Award and Review Advisory Committee. Any recommendation to grant a waiver that would have the effect of changing the Applicant's score must be accompanied by an analysis of competing Applications and their scores. Any such request for waiver must be specific to the unique facts and circumstances of an actual proposed Development. Any waiver, if granted, shall apply solely to the Application and shall not constitute a modification or waiver of the rule involved. Any waiver must be evidenced in writing consistent with Board approval and may specify necessary restrictions, exceptions and other requirements. It is an Applicant's responsibility to initiate any waiver request in sufficient time to allow for it to be assessed and acted upon prior to the time it is actually needed.

§50.17. Department Responsibilities.

(a) The Department shall make all required notifications pursuant to Chapter 2306 of the Texas Government Code.

(b) In accordance with §§2306.6724, 2306.67022, 2306.6711, and §42(m)(1) regarding the deadlines for allocating Housing Tax Credits, paragraphs (1) – (7) of this subsection shall apply:

(1) regardless of whether the Board will adopt the Qualified Allocation Plan (QAP) annually or biennially, the Department, not later than September 30 of the year preceding the year in which the new plan is proposed for use, shall prepare and submit to the Board for adoption

any proposed QAP required by federal law for use by the Department in setting criteria and priorities for the allocation of tax credits under the Housing Tax Credit program;

(2) regardless of whether the Board has adopted the plan annually or biennially, the Board shall submit to the Governor any proposed QAP not later than November 15 of the year preceding the year in which the new plan is proposed for use;

(3) the Governor shall approve, reject, or modify and approve the proposed QAP not later than December 1;

(4) the Board shall annually adopt a manual, corresponding to the QAP, to provide information on how to apply for Housing Tax Credits;

(5) applications for Housing Tax Credits to be issued a Commitment during the Application Round in a calendar year must be submitted to the Department not later than March 1;

(6) the Board shall review the recommendations of Department Staff regarding Applications and shall issue a list of approved Applications each year in accordance with the Qualified Allocation Plan not later than June 30 or thirty (30) days preceding the date the board approves final Commitments of Housing Tax Credits for the Application Round; and

(7) the Board shall approve final commitments for allocations of Housing Tax Credits each year in accordance with the QAP not later than July 31, unless unforeseen circumstances prohibit action by that date. In any event, the Board shall approve final Commitments for allocations of Housing Tax Credits each year in accordance with the QAP not later than September 30. Department Staff will subsequently issue Commitments based on the Board's approval. Final Commitments may be conditioned on various factors approved by the Board, including resolution of contested matters in litigation.

(c) With respect to site demographics information, the general rule is for the Department to use current State Demographer information. If the State Demographer information is not available as of the date that is four (4) months prior to the Application Acceptance Period, the Executive Director may approve the use of prior year site demographics.

Definitions and Amenities for Housing Program Activities

Table of Contents

§1.1.Definitions and Amenities for Housing Program Activities.

(a) Definitions. The following definitions apply to the Housing Tax Credit Program, Multifamily Housing Revenue Bond Program, and other Department programs as defined in this title. Any capitalized terms not specifically mentioned in this section shall have the meaning as defined in Texas Government Code, Chapter 2306, §42 of the Internal Revenue Code, this section, and repeated in the Tax Credit (Procedures) Manual.

(1) Adaptive Reuse--The change-in-use of an existing non-residential building (e.g., school, warehouse, office, hospital, hotel, etc.), into a residential building. Adaptive reuse does not include the demolition of the external walls of the existing building. All units must be contained within the original exterior walls of the existing building. Porches and patios may protrude beyond the exterior walls. Ancillary non-residential buildings, such as a clubhouse, leasing office and/or amenity center may be newly constructed outside the walls of the existing building or as detached buildings on the Development Site.

(2) Administrative Deficiencies--Information requested by the Department that is required to clarify or correct inconsistencies in an Application that in the Department's reasonable judgment, may be cured by supplemental information or explanation which will not necessitate a substantial reassessment or re-evaluation of the Application.

(3) 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. All entities that share a Principal are Affiliates.

(4) Applicant--Any Person or Affiliate of a Person who files a pre-application or an Application with the Department requesting a Housing Credit Allocation. (§2306.6702)

(5) Application--A request for funds, housing tax credits or other financial assistance submitted to the Department in a form prescribed by the Department, including any exhibits or other supporting material. (§2306.6702)

(6) Appropriate Local Official--With respect to a municipality or area within an extraterritorial jurisdiction (ETJ), where applicable, means either the mayor, the city manager, or another official of the body operating under valid, written confirmation of authority signed by the mayor or city manager. With respect to an area not within the municipality or its ETJ, Appropriate Local Official means a county commissioner or another official authorized by the county commissioner to act.

(7) Bedroom--A portion of a Unit which is no less than 100 square feet; has no width or length less than 8 feet; is self contained with a door (or the Unit contains a second level sleeping area of 100 square feet or more); has at least one window that provides exterior access; and has at least one closet that is not less than 2 feet deep and 3 feet wide and high enough to accommodate 5 feet of hanging space. A den, study or other similar space that could reasonably function as a bedroom and meets this definition is considered a bedroom.

(8) Board--The Governing Board of the Texas Department of Housing and Community Affairs.

(9) Colonia--A geographic area that is located in a county some part of which is within one-hundred fifty (150) miles of the international border of this state, that consists of eleven (11) or more dwellings that are located in close proximity to each other in an area that may be described as a community or neighborhood, and that:

(A) has a majority population composed of individuals and families of low-income and very low-income, based on the federal Office of Management and Budget poverty index, and meets the qualifications of an economically distressed Area under §17.921 of the Texas Water Code; or

(B) has the physical and economic characteristics of a colonia, as determined by the Department.

(10) Commitment--A legally binding written contract, setting forth the terms and conditions under which housing tax credits, loans, grants or other sources of funds or financial assistance will be made available.

(11) Control (including the terms "Controlling," "Controlled by," and/or "under common Control with")--The power or authority to manage, direct, superintend, restrict, regulate, govern, administer, or oversee. Controlling entities of a partnership include the general partners, special limited partners when applicable, but not investor limited partners who do not possess other factors or attributes that give them Control. Controlling entities of a limited liability company include the managers, managing members, any members with 10% or more ownership of the limited liability company, and any members with authority similar to that of a general partner in a limited partnership, but not investor members who do not possess other factors or attributes that give them Control. Multiple Persons may be deemed to have Control simultaneously.

(12) Department--The Texas Department of Housing and Community Affairs or any successor agency.

(13) Developer--Any Person entering into a contract with the Development Owner to provide development services with respect to the Development and receiving a fee for such services and any other Person receiving any portion of such fee, whether by subcontract or otherwise.

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

(15) Development Owner--Any Person, General Partner, or Affiliate of a Person who owns or proposes a Development or expects to acquire Control of a Development under a purchase contract or ground lease approved by the Department. (§2306.6702)

(16) Development Team--All Persons or Affiliates thereof that play a role in the Development, construction, Rehabilitation, management and/or continuing operation of the subject Property, which will include any Development Consultant and Guarantor.

(17) Efficiency Unit--A Unit without a separately enclosed Bedroom designed principally for use by a single person.

(18) Executive Award and Review Advisory Committee ("The Committee")--The Department committee created under §2306.112 of the Texas Government Code.

(19) General Contractor--One who contracts for the construction or Rehabilitation of an entire Development, 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 subcontractors. This party may also be referred to as the "contractor."

(20) General Partner--That partner, or collective of partners, identified as the general partner of the partnership that is the Development Owner and that has general liability for the partnership. In addition, unless the context shall clearly indicate the contrary, if the Development Owner in question is a limited liability company, the term "General Partner" shall also mean the managing member or other party with management responsibility for the limited liability company.

(21) Governing Body--The elected or appointed body of public or tribal officials, responsible for the enactment, implementation and enforcement of local rules and the implementation and enforcement of applicable laws for its respective jurisdiction.

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

(23) Governmental Instrumentality--A legal entity which is created by a Unit of General Local Government under statutory authority and which instrumentality is authorized to transact business for the Unit of General Local Government.

(24) Grant--Financial assistance that is awarded in the form of money to a housing sponsor for a specific purpose and that is not required to be repaid. A Grant includes a forgivable loan.

(25) Guarantor--Any Person that provides, or is anticipated to provide, a guaranty for all or a portion of the equity or debt financing for the Development.

(26) Historically Underutilized Businesses (HUB)--A business that is a Corporation, Sole Proprietorship, Partnership, or Joint Venture in which at least 51% of the business is owned, operated, and actively controlled and managed by a minority or woman in which the owner(s):
(A) have a proportionate interest and demonstrate active participation in the control, operation, and management of the entities' affairs; and

(B) are economically disadvantaged because of their identification as members of the following groups:

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

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

(iii) American Women--Includes all women of any ethnicity except those specified in clauses (i), (ii), (iv), and (v) of this subparagraph;

(iv) Asian Pacific Americans--Includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of the Pacific, the Northern Marianas, and Subcontinent Asian Americans which includes persons whose origins are from India, Pakistan, Bangladesh, Sri Lanka, Bhutan or Nepal; and

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

(C) a corporation formed for the purpose of making a profit in which at least 51% of all classes of the shares of stock or other equitable securities are owned by one or more persons described by subparagraphs (A) and (B) of this paragraph; or

(D) a sole proprietorship created for the purpose of making a profit that is 100% owned, operated, and controlled by a person described by subparagraphs (A) and (B) of this paragraph; or

(E) a partnership formed for the purpose of making a profit in which 51% of the assets and interest in the partnership is owned by one or more persons who are described by subparagraphs (A) and (B) of this paragraph; or

(F) a joint venture in which each entity in the joint venture is a HUB under this paragraph; or

(G) a supplier contract between a HUB under this paragraph and a prime contractor/vendor under which the HUB is directly involved in the manufacture or distribution of the supplies or materials or otherwise warehouses and ships the supplies; or

(H) a business other than described in subparagraphs (D), (F), and (G) of this paragraph, which is formed for the purpose of making a profit and is otherwise a legally recognized business organization under the laws of the State of Texas, provided that at least 51% of the assets and 51% of any classes of stock and equitable securities are owned by one or more persons described by subparagraphs (A) and (B) of this paragraph.

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

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

(29) Land Use Restriction Agreement (LURA)--An agreement between the Department and the Development Owner which is a binding covenant upon the Development Owner's successors in interest, that, when recorded, encumbers the Development with respect to the requirements of the programs for which it receives funds.

(30) Low Income Unit--A Unit that is intended to be restricted for occupancy by an income eligible household, as defined by the Department.

(31) Managing General Partner--A general partner of a partnership that is vested with the authority to take actions that are binding on behalf of the partnership and the other partners. The term Managing General Partner can also be used for a Managing Member of a limited liability company where so designated to bind the limited liability company and its members under its Agreement or any other person that has such powers in fact, regardless of their organizational title.

(32) Material Deficiency--Any individual Application deficiency or group of Administrative Deficiencies which, if addressed, would require, in the Department's reasonable judgment, a substantial reassessment or re-evaluation of the Application or which, are so numerous and pervasive that they indicate a failure by the Applicant to submit a substantively complete and accurate Application.

(33) Material Noncompliance--Defined as:

(A) a Housing Tax Credit (HTC) Development located within the state of Texas will be classified by the Department as being in Material Noncompliance status if the noncompliance score for such Development is equal to or exceeds a threshold of (30 points) in accordance with the Material Noncompliance provisions, methodology, and point system in §60.123 of this title (relating to Material Noncompliance Methodology);

(B) non-HTC Developments monitored by the Department with 1 - 50 Low Income Units will be classified as being in Material Noncompliance status if the noncompliance score is equal to or exceeds a threshold of (30 points). Non-HTC Developments monitored by the Department with 51 - 200 Low Income Units will be classified as being in Material Noncompliance status if the noncompliance score is equal to or exceeds a threshold of (50 points). Non-HTC Developments monitored by the Department with 201 or more Low Income Units will be classified as being in Material Noncompliance status if the noncompliance score is equal to or exceeds a threshold of (80 points);

(C) for all programs, a Development will be in Material Noncompliance if the noncompliance is stated in §60.123 of this title, to be in Material Noncompliance.

(34) Minority Owned Business--A business entity at least 51% of which is owned by members of a minority group or, in the case of a corporation, at least 51% of the shares of which are owned by members of a minority group, and that is managed and Controlled by members of a minority group in its daily operations. Minority group includes women, African Americans, American Indians, Asian Americans, and Mexican Americans and other Americans of Hispanic origin. (§2306.6734)

(35) Net Rentable Area (NRA)--The unit space that is available exclusively to the tenant and is typically heated and cooled by a mechanical HVAC system. NRA is measured to the outside of the studs of a unit or to the middle of walls in common with other units. NRA does not include common hallways, stairwells, elevator shafts, janitor closets, electrical closets, balconies, porches, patios, or other areas not actually available to the tenants for their furnishings, nor does NRA include the enclosing walls of such areas.

(36) New Construction--Any construction of a Development or a portion of a Development that does not meet the definition of Rehabilitation.

(37) Office of Rural Affairs established within the Department of Agriculture; formerly the Texas Department of Rural Affairs (TDRA).

(38) Person--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 or entity of any nature whatsoever and shall include any group of Persons acting in concert toward a common goal, including the individual members of the group.

(39) Persons with Disabilities--With respect to an individual:

(A) a physical or mental impairment that substantially limits one or more major life activities of such individual;

(B) a record of such an impairment; or

(C) being regarded as having such an impairment, to include persons with severe mental illness and persons with substance abuse disorders.

(40) Principal--The term Principal is defined as Persons that will exercise Control over a partnership, corporation, limited liability company, trust, or any other private entity. In the case of:

(A) partnerships, Principals include all General Partners, special limited partners, and Principals with ownership interest;

(B) corporations, Principals include any officer authorized by the board of directors to act on behalf of the corporation, including the president, vice president, secretary, treasurer and all other executive officers, and each stock holder having a 10% or more interest in the corporation and any individual Controlling such stock holder; and

(C) limited liability companies, Principals include all managers, managing members, members having a 10% or more interest in the limited liability company, any individual Controlling such members, or any officer authorized to act on behalf of the limited liability company.

(41) 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.

(42) Qualified Allocation Plan--A plan adopted by the Board under this subchapter that:

(A) provides the threshold, scoring, and underwriting criteria based on housing priorities of the department that are appropriate to local conditions;

(B) consistent with §2306.6710(e) of the Texas Government Code, gives preference in housing tax credit allocations to developments that, as compared to the other developments:

(i) when practicable and feasible based on documented, committed, and available Third Party funding sources, serve the lowest income tenants per housing tax credit; and

(ii) produce for the longest economically feasible period the greatest number of high quality units committed to remaining affordable to any tenants who are income-eligible under the low income housing tax credit program; and

(C) provides a procedure for the Department, the Department's agent, or another private contractor of the Department to use in monitoring compliance with the Qualified Allocation Plan and this subchapter.

(43) Qualified Elderly Development--A Development which meets the requirements of the federal Fair Housing Act.

(44) Reconstruction--The demolition of one or more residential buildings in an Existing Residential Development and the re-construction of an equal number of Units or less on the Development Site.

(45) Rehabilitation--The improvement or modification of an Existing Residential Development through alteration, incidental addition or enhancement. The term includes the demolition of an Existing Residential Development and the Reconstruction of a Development on the Development Site, but does not include Adaptive Reuse (§2306.004(26-a)). More specifically, Rehabilitation is the repair, refurbishment and/or replacement of existing mechanical and structural components, fixtures and finishes. Rehabilitation will correct deferred maintenance, reduce functional obsolescence to the extent possible and may include the addition of: energy efficient components and appliances, life and safety systems; site and resident amenities; and other quality of life improvements typical of new residential Developments.

(46) Related Party--As defined (§2306.6702)

(A) The following individuals or entities:

(i) the brothers, sisters, spouse, ancestors, and descendants of a person within the third degree of consanguinity, as determined by Chapter 573 of the Texas Government Code;

(ii) a person and a corporation, if the person owns more than 50% of the outstanding stock of the corporation;

(iii) two or more corporations that are connected through stock ownership with a common parent possessing more than 50% of:
(I) the total combined voting power of all classes of stock of each of the corporations that can vote;

(II) the total value of shares of all classes of stock of each of the corporations; or

(III) the total value of shares of all classes of stock of at least one of the corporations, excluding, in computing that voting power or value, stock owned directly by the other corporation;

(iv) a grantor and fiduciary of any trust;

(v) a fiduciary of one trust and a fiduciary of another trust, if the same person is a grantor of both trusts;

(vi) a fiduciary of a trust and a beneficiary of the trust;

(vii) a fiduciary of a trust and a corporation if more than 50% of the outstanding stock of the corporation is owned by or for:

(I) the trust; or

(II) a person who is a grantor of the trust;

(viii) a person or organization and an organization that is tax-exempt under §501(a) of the Code, and that is controlled by that person or the person's family members or by that organization;

(ix) a corporation and a partnership or joint venture if the same persons own more than:

(I) fifty percent (50%) of the outstanding stock of the corporation; and

(II) fifty percent (50%) of the capital interest or the profits' interest in the partnership or joint venture;

(x) an S corporation and another S corporation if the same persons own more than 50% of the outstanding stock of each corporation;

(xi) an S corporation and a C corporation if the same persons own more than 50% of the outstanding stock of each corporation;

(xii) a partnership and a person or organization owning more than 50% of the capital interest or the profits' interest in that partnership; or

(xiii) two (2) partnerships, if the same person or organization owns more than 50% of the capital interests or profits' interests.

(B) Nothing in this definition is intended to constitute the Department's determination as to what relationship might cause entities to be considered "related" for various purposes under the Code.

(47) Rural Area--An area that is located:

(A) outside the boundaries of a primary metropolitan statistical area or a metropolitan statistical area;

(B) within the boundaries of a primary metropolitan statistical area or a metropolitan statistical area, if the statistical area has a population of 25,000 or less and does not share a boundary with an Urban Area; or

(C) in an area that is eligible for funding by Texas Rural Development Office of the United States Department of Agriculture (TRDO-USDA), other than an area that is located in a municipality with a population of more than 50,000. (§2306.004)

(48) Selection Criteria--Criteria used to determine funding priorities of the State under the specific housing program as defined in the rules or funding notices of that program.

(49) Site Control--Ownership or a current contract that is legally enforceable giving the Applicant the ability, not subject to any legal defense by the owner, to require conveyance to the Applicant.

(50) Third Party--A Third Party is a Person who is not:

(A) an Applicant, General Partner, Developer, or General Contractor; or

(B) an Affiliate or a Related Party to the Applicant, General Partner, Developer or General Contractor;

(C) anyone receiving any portion of the Developer fees from the Development; or

(D) any individual that is an executive officer or member of the governing board or has greater than 10% ownership interest in any of the entities are identified in subparagraphs (A) – (C) of this paragraph.

(51) Total Housing Development Cost--The sum total of the Acquisition Cost, Hard Costs, Soft Costs, Developer Fee and Contractor Fee incurred or to be incurred through lease-up by the Development Owner in the acquisition, construction, rehabilitation and financing of the Development.

(52) TRDO-USDA--Texas Rural Development Office (TRDO) of the U.S. Department of Agriculture (USDA) serving the State of Texas.

(53) Unit of General Local Government--A city, town, county, village, tribal reservation or other general purpose political subdivision of the State.

(b) Common Amenities. All Developments, as further mandated by the housing program under which they are receiving funding, must meet at least the minimum threshold of points based on the total number of Units in the Development. The amenities selected must be made available for the benefit of all tenants and must be made available during normal business hours. If fees in addition to rent are charged for amenities then the amenity may not be included among those provided to satisfy this requirement. All amenities must meet accessibility standards. Spaces for activities must be sized appropriately to serve the Target Population of the Development. Applications for non-contiguous scattered site housing, excluding non-contiguous single family sites, will have the threshold test applied based on the number of Units per individual site, and must submit a separate certification in the Application for each individual site under control by the Applicant.

(1) The minimum threshold of points for all Developments are:
(A) total Units equal 16, (1 point) is required;
(B) total Units are 17 to 40, (4 points) are required;
(C) total Units are 41 to 76, (7 points) are required;
(D) total Units are 77 to 99, (10 points) are required;
(E) total Units are 100 to 149, (14 points) are required;
(F) total Units are 150 to 199, (18 points) are required; or
(G) total Units are 200 or more, (22 points) are required.

(2) The amenities include those items listed in subparagraphs (A) - (CC) of this paragraph. All Developments can earn points for providing each identified amenity unless the item is specifically restricted to a specific Target Population. An Application can only count an amenity once, therefore combined functions (a library which is part of a community room) only count under one category:

(A) Full perimeter fencing (2 points);
(B) Controlled gate access (2 points);
(C) Gazebo w/sitting area (1 point);

(D) Accessible walking/jogging path separate from a sidewalk and in addition to required accessible routes to Units or other amenities (1 point);
(E) Community laundry room with at least one washer and dryer for each 25 Units (3 points);
(F) Barbecue grill and picnic table-at least one of each for every 50 Units (1 point);
(G) Covered pavilion that includes barbecue grills and tables (2 points);
(H) Swimming pool (3 points);
(I) Splash pad/water feature play area (1 point);
(J) Furnished fitness center. Equipped with fitness equipment options with at least one option per every 40 Units or partial increment of 40 Units: stationary bicycle, elliptical trainer, treadmill, rowing machine, universal gym, multi-functional weight bench, sauna, stair-climber or other similar equipment. Equipment shall be designated for commercial use. All Developments must have at least two equipment options but are not required to have more than five equipment options regardless of number of Units (2 points);
(K) Equipped and functioning business center or equipped computer learning center. Must be equipped with 1 computer for every 30 Units loaded with basic programs, 1 laser printer for every 3 computers (minimum of one printer) and at least one scanner which may be integrated with printer (2 points);
(L) Furnished Community room (2 points);
(M) Library with an accessible sitting area (separate from the community room) (1 point);
(N) Enclosed community sun porch or covered community porch/patio (2 points);
(O) Service coordinator office in addition to leasing offices (1 point);
(P) Senior Activity Room (Arts and Crafts, etc.) (2 points);
(Q) Health Screening Room (1 point);
(R) Secured Entry (applicable only if all Unit entries are within the building's interior) (1 point);
(S) Horseshoe pit, putting green or shuffleboard court (1 point);
(T) Community Dining Room w/full or warming kitchen furnished with adequate tables and seating (3 points);
(U) One Children's Playscape Equipped for 5 to 12 year olds, or one Tot Lot; (1 point). Can only select this item if subparagraph (V) of this paragraph is not selected; or
(V) Two Children's Playscapes Equipped for 5 to 12 year olds, two Tot Lots, or one of each (2 points). Can only select this item if subparagraph (U) of this paragraph is not selected;
(W) Sport Court (Tennis, Basketball or Volleyball) (2 points);
(X) Furnished and staffed Children's Activity Center that must have age appropriate furnishings and equipment. Appropriate levels of staffing must be provided during after-school hours and during school vacations (3 points);
(Y) Community Theater Room equipped with a 52 inch or larger screen with surround sound equipment; DVD player; and theater seating (3 points);
(Z) Dog Park area that is fully enclosed and intended for tenant owned dogs to run off leash (1 point);
(AA) Common area Wi-Fi (1 point); or
(BB) Twenty-four hour monitored camera/security system in each building (3 points);
(CC) Green Building Certifications. Points under this item are intended to promote energy and water conservation, operational savings and sustainable building practices. Points may be selected from only one of four categories: Limited Green Amenities, Enterprise Green Communities, Leadership in Energy and Environmental Design (LEED) and National Green Building Standard (NAHB) Green. (maximum 4 points)

(i) Limited Green Amenities (2 points). The items listed in subclauses (I) – (IX) of this clause constitute the minimum requirements for demonstrating green building of housing tax credit Developments. Six of the nine items listed under subclauses (I) - (IX) of this clause must be met in order to qualify for the maximum points under this item;
(I) at least 20% of the water needed annually for site irrigation is from a rain water harvesting/collection system and/or locally approved greywater collection system. This can include rainwater harvested from gutters and downspouts to a storage tank or cistern where it can be treated or filtered for potable uses; untreated rainwater may be used for non-potable uses;
(II) native trees and plants installed that are appropriate to the Development Site's soil and microclimate to allow for shading in the summer and heat gain in the winter;
(III) install water-conserving fixtures that meet the EPA's WaterSense Label. Such fixtures must include low-flow or high efficiency toilets, bathroom lavatory faucets, showerheads and kitchen faucets. Rehabilitation Developments may install compliant faucet aerators instead of replacing the entire faucets;
(IV) all of the HVAC condenser units are located so they are fully shaded 75% of the time during summer months (i.e. May through August);
(V) install Energy-Star qualified hot water heaters or install those that are part of an overall Energy-Star efficient system;

(VI) install individual or sub-metered utility meters. Rehabilitation Developments may claim sub-meter only if not already sub-metered at the time of Application;
(VII) healthy finish materials including the use of paints, stains, adhesives and sealants consistent with the Green Seal 11 standard or other applicable Green Seal standard;
(VIII) install daylight sensor, motion sensors or timers on all exterior lighting and install fixtures that include automatic switching on timers or photocell controls for all lighting not intended for 24-hour operation or required for security;
(IX) recycling service provided throughout the compliance period.

(ii) Enterprise Green Communities (4 points). The Development must incorporate all mandatory and optional items applicable to the construction type (i.e. New Construction, Rehabilitation, etc.) as provided in the most recent version of the Enterprise Green Communities Criteria found at http://www.greencommunitiesonline.org.

(iii) LEED (4 points). The Development must incorporate, at a minimum, all of the applicable criteria necessary to obtain a LEED Certification, regardless of the rating level achieved (i.e. Certified, Silver, Gold or Platinum).

(iv) National Green Building Standard (NAHB Green) (4 points). The Development must incorporate, at a minimum, all of the applicable criteria necessary to obtain a NAHB Green Certification, regardless of the rating level achieved (i.e. Bronze, Silver, Gold, or Emerald).

(c) Unit Amenities. Applications that received points under this scoring item and subsequently received an award must provide enough Unit amenities to substantiate the points requested and awarded at Application. For Tax-Exempt Bond Developments, (14 points) in Unit amenities must be selected to meet threshold. Applications in which Developments provide specific amenity and quality features in every Unit at no extra charge to the tenant can select points based on the point structure provided in paragraphs (1) – (16) of this subsection and as certified to in the Application. The amenities will be required to be identified in the LURA. Applications involving scattered site Developments must have a specific amenity located within each Unit to count for points. Rehabilitation Developments will start with a base score of (3 points) and Supportive Housing Developments will start with a base score of (5 points).

(1) Covered entries (1 point);
(2) Nine foot ceilings in living room and all bedrooms (at minimum) (1 point);
(3) Microwave ovens (1 point);
(4) Self-cleaning or continuous cleaning ovens (1 point);
(5) Refrigerator with icemaker (1 point);
(6) Storage room or closet, of approximately 9 square feet or greater, which does not include bedroom, entryway or linen closets - does not need to be in the Unit but must be on the property site (1 point);
(7) Laundry equipment (washers and dryers) for each individual Unit including a front loading washer and dryer in required UFAS compliant Units (3 points);
(8) Thirty (30) year shingle or metal roofing (1 point);
(9) Covered patios or covered balconies (1 point);
(10) Covered parking (including garages) of at least one covered space per Unit (2 points);
(11) 100% masonry on exterior (3 points) (Applicants may not select this item if paragraph (12) of this subsection is selected);
(12) Greater than 75% masonry on exterior (1 point) (Applicants may not select this item if paragraph (11) of this subsection is selected);
(13) Structural Insulated Panel construction with wall insulation at a minimum of R-20 and roof at a minimum R-30 (3 points);
(14) R-15 Walls / R-30 Ceilings (rating of wall/ceiling system) (3 points);
(15) 14 SEER HVAC (or greater) or evaporative coolers in dry climates for New Construction, Adaptive Reuse, and Reconstruction or radiant barrier in the attic for Rehabilitation (excluding Reconstruction) (3 points);
(16) High Speed Internet service to all Units (2 points).

(d) Tenant Supportive Services. Applications that received points under this scoring item and subsequently received an award must provide enough supportive services to substantiate the points awarded at Application. The provision and complete list of supportive services will be included in the LURA and the timeframe by which services are offered must be in accordance with Chapter 60 of this title (relating to Compliance Administration). The Owner may change, from time to time, the services offered; however, the overall points as selected at Application must remain the same. No fees may be charged to the tenants for any of the services and there must

be adequate space for the intended services. Services must be provided on-site or transportation to those off-site services identified on the list must be provided. The same service may not be used for more than one scoring item.

(1) joint use library center, as evidenced by a written agreement with the local school district (2 points);
(2) weekday character building program (shall include at least on a monthly basis a curriculum based character building presentation on relevant topics (i.e. teen dating violence, drug prevention, teambuilding, internet dangers, stranger danger, etc.)) (2 points);
(3) daily transportation (i.e. bus passes, cab vouchers, specialized van on-site) (4 points);
(4) Food pantry/common household items accessible to residents at least on a monthly basis (1 point);
(5) GED preparation classes (shall include an instructor providing on-site coursework and exam) (1 point);
(6) English as a second language classes (shall include an instructor providing on-site coursework and exam) (1 point);
(7) quarterly financial planning courses (i.e. homebuyer education, credit counseling, investing advice, retirement plans, etc.). Courses must be offered through an on-site instructor; a CD-Rom course is not acceptable (1 point);
(8) annual health fair (1 point);
(9) quarterly health and nutritional courses (1 point);
(10) organized team sports programs or youth programs offered by the Development (1 point);
(11) scholastic tutoring (shall include weekday homework help or other focus on academics) (3 points);
(12) Notary Public Services during regular business hours (§2306.6710(b)(3)) (1 point);
(13) weekly exercise classes (2 points);
(14) twice monthly arts, crafts and other recreational activities such as Book Clubs and creative writing classes (2 points);
(15) annual income tax preparation (offered by an income tax prep service) (1 point);
(16) monthly transportation to community/social events (i.e. lawful gaming sites, mall trips, community theatre, bowling, organized tours, etc.) (1 point);
(17) twice monthly on-site social events (i.e. potluck dinners, game night, sing-a-longs, movie nights, birthday parties, etc.) (1 point);
(18) specific and pre-approved caseworker services for seniors, Persons with Disabilities or Supportive Housing (1 point);
(19) weekly home chore services (such as valet trash removal, assistance with recycling, furniture movement, etc. and quarterly preventative maintenance including light bulb replacement) for seniors and Persons with Disabilities (2 points); and
(20) any of the following programs 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 (1 point).

The following is a list of consolidated definitions that apply to the Housing Tax Credit Program, Multifamily Housing Revenue Bond Program, and other multifamily Department programs. The capitalized terms listed below represent those definitions identified in the Qualified Allocation Plan, the Multifamily Housing Revenue Bond Rules, the Real Estate Analysis Rules, the Definitions and Amenities for Housing Program Activities Rule, Chapter 2306 and §42 of the Internal Revenue Code. *This is a convenience document only (not an official rule); therefore, Applicant's are encouraged to refer to the applicable published rule.* Any capitalized terms not specifically mentioned in this document shall have the meaning as defined in Texas Government Code, Chapter 2306, §42 of the Internal Revenue Code, and 10 TAC Chapter 1, §1.1.

(1) **Adaptive Reuse--** The change-in-use of an existing non-residential building (e.g., school, warehouse, office, hospital, hotel, etc.), into a residential building. Adaptive reuse does not include the demolition of the external walls of the existing building. All units must be contained within the original exterior walls of the existing building. Porches and patios may protrude beyond the exterior walls. Ancillary non-residential buildings, such as a clubhouse, leasing office and/or amenity center may be newly constructed outside the walls of the existing building or as detached buildings on the Development Site. (10 TAC §1.1)

(2) **Administrative Deficiencies**-- Information requested by the Department that is required to clarify or correct inconsistencies in an Application that in the Department's reasonable judgment, may be cured by supplemental information or explanation which will not necessitate a substantial reassessment or re-evaluation of the Application. (10 TAC §1.1)

(3) **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. All entities that share a Principal are Affiliates. (10 TAC §1.1)

(4) **Affordable Housing**-- Housing that has at least one unit that is restricted in the rent that can be charged either by a Land Use Restriction Agreement or other form of Deed Restriction. (10 TAC §1.1)

(5) **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, all determined as provided in §42(c)(1) of the Code.

(6) **Applicable Percentage**--The percentage used to determine the amount of the Housing Tax Credit for any Development (New Construction, Reconstruction, and/or Rehabilitation), as defined more fully in the Code, §42(b).

(A) For purposes of the Application, the Applicable Percentage will be projected at:

(i) nine percent (9%) if the Development is proposed to be placed in service prior to December 31, 2013 and such timing is deemed appropriate by the Department or if the ability to claim the full 9% credit is extended by the U.S. Congress;

(ii) forty (40) basis points over the current applicable percentage for 70% present value credits, pursuant to §42(b) of the Code for the month in which the Application is submitted to the Department; or

(iii) fifteen (15) basis points over the current applicable percentage for 30% present value credits, unless fixed by Congress, pursuant to §42(b) of the Code for the month in which the Application is submitted to the Department.

(B) For purposes of making a credit recommendation at any other time, the Applicable Percentage will be based in order of priority on:

(i) the percentage indicated in the Agreement and Election Statement, if executed; or

(ii) the actual applicable percentage as determined by the Code, §42(b), if all or part of the Development has been placed in service and for any buildings not placed in service the percentage will be the actual percentage as determined by the Code, §42(b) for the most current month; or

(iii) the percentage as calculated in subparagraph (A) of this paragraph if the Agreement and Election Statement has not been executed and no buildings have been placed in service.

(7) Applicant-- Any Person or Affiliate of a Person who files a pre-application or an Application with the Department requesting a Housing Credit Allocation. (§2306.6702)

(8) Application-- A request for funds, housing tax credits or other financial assistance submitted to the Department in a form prescribed by the Department, including any exhibits or other supporting material. (§2306.6702)

(9) Application Acceptance Period-- That period of time during which Applications may be submitted to the Department. (QAP §50.2)

(10) Application Log-- Means a form containing at least the information required by Section 2306.6709.

(11) Application Round-- Means the period beginning on the date the Department begins accepting applications and continuing until all available housing tax credits are allocated, but not extending past the last day of the calendar year. (§2306.6702)

(12) Appropriate Local Official-- With respect to a municipality or area within an extraterritorial jurisdiction (ETJ), where applicable, means either the mayor, the city manager, or another official of the body operating under valid, written confirmation of authority signed by the mayor or city manager. With respect to an area not within the municipality or its ETJ,

Appropriate Local Official means a county commissioner or another official authorized by the county commissioner to act. (10 TAC §1.1)

(13) Area Median Gross Income (AMGI)-- Area median gross household income, as determined for all purposes under and in accordance with the requirements of §42 of the Code.

(14) At Risk Development—Means a development that:

(A) has received the benefit of a subsidy in the form of a below-market interest rate loan, interest rate reduction, rental subsidy, Section 8 housing assistance payment, rental supplement payment, rental assistance payment, or equity incentive under the following federal laws, as applicable:

(i) Sections 221(d)(3) and (5), National Housing Act (12 U.S.C. Section 1715l);

(ii) Section 236, National Housing Act (12 U.S.C. Section 1715z-1);

(iii) Section 202, Housing Act of 1959 (12 U.S.C. Section 1701q);

(iv) Section 101, Housing and Urban Development Act of 1965 (12 U.S.C. Section 1701s);

(v) the Section 8 Additional Assistance Program for housing developments with HUD-Insured and HUD-Held Mortgages administered by the United States Department of Housing and Urban Development;

(vi) the Section 8 Housing Assistance Program for the Disposition of HUD-Owned Projects administered by the United States Department of Housing and Urban Development;

(vii) Sections 514, 515, and 516, Housing Act of 1949 (42 U.S.C. Sections 1484, 1485, and 1486); or

(viii) Section 42, Internal Revenue Code of 1986 (26 U.S.C. Section 42);

(ix) Section 538, Housing Act of 1949 only if the Development involves the Rehabilitation of an existing property that has received and will continue to receive as part of the financing of the Development federal assistance provided under §515 of the Housing Act of 1949; and

(B) is subject to the following conditions:

(i) the stipulation to maintain affordability in the contract granting the subsidy is nearing expiration; or

(ii) the federally insured mortgage on the development is eligible for prepayment or is nearing the end of its term. (§2306.6702)

(15) Bank Trustee-- A bank authorized to do business in this state, with the power to act as trustee. (REA Rules §1.31(b))

(16) Bedroom-- A portion of a Unit which is no less than 100 square feet; has no width or length less than 8 feet; is self contained with a door (or the Unit contains a second level sleeping area of 100 square feet or more); has at least one window that provides exterior access; and has at least one closet that is not less than 2 feet deep and 3 feet wide and high enough to accommodate 5 feet of hanging space. A den, study or other similar space that could reasonably function as a bedroom and meets this definition is considered a bedroom (10 TAC §1.1)

(17) Board-- The Governing Board of the Department. (10 TAC §1.1)

(18) Breakeven Occupancy-- The occupancy level at which rental income plus secondary income is equal to all operating expenses, including replacement reserves and taxes, and mandatory debt service requirements for a Development. (REA Rules §1.31(b))

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

(20) Carryover Allocation Document-- A document issued by the Department, and executed by the Development Owner, pursuant to §50.12(e) of the QAP, (relating to Carryover). (QAP §50.2)

(21) Cash Flow-- The funds available from operations after all expenses and debt service required to be paid has been considered. (REA Rules §1.31(b))

(22) Certificate of Reservation-- The notice given by the Texas Bond Review Board (TBRB) to an issuer reserving a specific amount of the state ceiling for a specific issue of bonds. (QAP §50.2)

(23) 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 U.S. Department of the Treasury or the Internal Revenue Service. (QAP §50.2)

(24) Colonia-- A geographic area that is located in a county some part of which is within one-hundred fifty (150) miles of the international border of this state, that consists of eleven (11) or more dwellings that are located in close proximity to each other in an area that may be described as a community or neighborhood, and that:

(A) has a majority population composed of individuals and families of low-income and very low-income, based on the federal Office of Management and Budget poverty index, and meets the qualifications of an economically distressed Area under §17.921 of the Texas Water Code; or

(B) has the physical and economic characteristics of a colonia, as determined by the Department. (10 TAC §1.1)

(25) Commitment-- A legally binding written contract, setting forth the terms and conditions under which housing tax credits, loans, grants or other sources of funds or financial assistance will be made available. (10 TAC §1.1)

(26) Comparable Unit-- A Unit, when compared to the subject Unit, similar in net rentable square footage, number of bedrooms, overall condition, location, age, unit amenities, utility structure, and common amenities. (REA Rules §1.31(b))

(27) Competitive Housing Tax Credits-- Tax credits available from the State Housing Credit Ceiling. (QAP §50.2)

(28) Compliance Period-- Means with respect to any building, the period of 15 taxable years beginning with the 1st taxable year of the credit period. (IRS §42(i)(1))

(29) Contract Rent-- Net rent based upon current and executed rental assistance contract(s), typically with a federal, state or local government agency. (REA Rules §1.31(b))

(30) Control (including the terms "Controlling," "Controlled by," and/or "Under common Control with")-- The power or authority to manage, direct, superintend, restrict, regulate, govern, administer, or oversee. Controlling entities of a partnership include the general partners, special limited partners when applicable, but not investor limited partners who do not possess other factors or attributes that give them Control. Controlling entities of a limited liability company include the managers, managing members, any members with 10% or more ownership of the limited liability company, and any members with authority similar to that of a general partner in a limited partnership, but not investor members who do not possess other factors or attributes that give them Control. Multiple Persons may be deemed to have Control simultaneously. (10 TAC §1.1)

(31) Credit Period-- Means with respect to any building, the period of 10 taxable years beginning with the taxable year in which the building is placed in service, or at the election of the taxpayer, the succeeding taxable year, but only if the building is a qualified low-income building as of the close of the 1st year of such period. (IRS §42(f)(1))

(32) Credit Underwriting Analysis Report-- Sometimes referred to as the "Report." A decision making tool used by the Department and Board containing a synopsis and reconciliation of the application information submitted by the Applicant. (REA Rules §1.31(b))

(33) Debt Coverage Ratio (DCR)-- Sometimes referred to as the "Debt Coverage" or "Debt Service Coverage." Calculated as Net Operating Income for any period divided by debt service required to be paid during the same period. (REA Rules §1.31(b))

(34) Department-- The Texas Department of Housing and Community Affairs or any successor agency. (10 TAC §1.1)

(35) Determination Notice-- A notice issued by the Department to the Development Owner of a Tax-Exempt Bond Development which specifies the Department's determination as to the amount of tax credits that the Development may be eligible to claim pursuant to §42(m)(1)(D) of the Code. (QAP §50.2)

(36) Developer-- Any Person entering into a contract with the Development Owner to provide development services with respect to the Development and receiving a fee for such services and any other Person receiving any portion of such fee, whether by subcontract or otherwise. (10 TAC §1.1)

(37) Development-- means a proposed qualified low income housing project, as defined by Section 42(g), Internal Revenue Code of 1986 (26 U.S.C. Section 42(g)), that consists of one or more buildings containing at least 16 units, that is financed under a common plan, and that is owned by the same person for federal tax purposes, including a project consisting of multiple buildings that:

(A) are located on scattered sites; and

(B) contain only rent-restricted units. (§2306.6702; REA Rules §1.31(b))

(38) Development Consultant or Consultant-- Any Person (with or without ownership interest in the Development) who provides professional services relating to the filing of an Application, Carryover Allocation Document, and/or cost certification documents. (10 TAC §1.1)

(39) Development Owner-- Any Person, General Partner, or Affiliate of a Person who owns or proposes a Development or expects to acquire Control of a Development under a purchase contract or ground lease approved by the Department. (§2306.6702; 10 TAC §1.1)

(40) Development Site-- The area, or if scattered site, areas, on which the Development is proposed to be located. (QAP §50.2)

(41) Development Team-- All Persons or Affiliates thereof that play a role in the Development, construction, Rehabilitation, management and/or continuing operation of the subject Property, which will include any Development Consultant and Guarantor. (10 TAC §1.1)

(42) Difficult Development Areas-- Means any area designated by the Secretary of Housing and Urban Development as an area which has high construction, land, and utility costs relative to area median gross income. (IRS §42 (4)(D)(C)(iii))

(43) Economically Distressed Area-- A county that contains an area that meets the criteria for an economically distressed area under §17.92(1), Texas Water Code and has adopted and enforces the model rules under §16.343, Texas Water Code. (10 TAC §1.1)

(44) Effective Gross Income (EGI)-- The sum total of all sources of anticipated or actual income for a rental Development less vacancy and collection loss, leasing concessions, and rental income from employee-occupied units that is not anticipated to be charged or collected. (REA Rules §1.31(b))

(45) Efficiency Unit-- A Unit without a separately enclosed bedroom designed principally for use by a single person. (10 TAC §1.1)

(46) Elderly Individual-- Means an individual 62 years of age or older or of an age specified by the applicable federal program. (§2306.004)

(47) Eligible Basis-- With respect to a building within a Development, the building's Eligible Basis pursuant to §42(d) of the Code.

(48) Eligible Hard Costs-- Hard Costs includable in Eligible Basis for the purposes of determining a Housing Tax Credit Allocation. (REA Rules §1.31(b))

(49) Eligible Tenants-- Means: (A) individuals and families of Extremely Low, Very Low and Low Income; (B) individuals and families of Moderate Income; or (C) Persons with Special Needs, in each case, with an Anticipated Annual Income not in excess of 140% of the area median income

for a four-person household in the applicable standard metropolitan statistical area; provided that all Low-Income Tenants shall count as Eligible Tenants. (Bond Rules §33.3)

(50) Environmental Site Assessment (ESA)-- An environmental report that conforms with the Standard Practice for Environmental Site Assessments: Phase I Assessment Process (ASTM Standard Designation: E 1527) and conducted in accordance with the Department's Environmental Site Assessment Rules and Guidelines in §1.35 of the REA Rules as it relates to a specific Development.(REA Rules §1.31(b))

(51) Executive Award and Review Advisory Committee ("The Committee")-- The Department committee created under Texas Government Code, §2306.112. (10 TAC §1.1)

(52) Existing Residential Development-- Any Development Site which contains existing residential Units at the time the Application is submitted to the Department. (QAP §50.2)

(53) Extended Use Period-- Means the period beginning on the 1st day in the compliance period on which such building is part of a qualified low-income housing project and ending on the later of the date specified by such agency in such agreement, or the date which is 15 years after the close of the compliance period. (IRS §42(6)(D))

(54) Family of Moderate Income-- Means a family:

(A) That is determined by the Board to require assistance, taking into account:

(i) The amount of the total income available for housing needs of the individuals and families;

(ii) The size of the family;

(iii) The cost and condition of available housing facilities;

(iv) The ability of the individuals and families to compete successfully in the private housing market and pay the amounts required by private enterprise for sanitary, decent, and safe housing; and

(v) Standards established for various federal programs determining eligibility based on income; and

(B) That does not qualify as a family of low income. (§2306.004)

(55) Floor Space Fraction-- The fraction of which the numerator is the total floor space of the low-income units in such building and the denominator is the total floor space of the residential rental units (whether or not occupied) in such building. (IRS §42(C)(1)(D))

(56) First Lien Lender-- A lender whose lien has first priority. (REA Rules §1.31(b))

(57) General Contractor-- One who contracts for the construction or Rehabilitation of an entire Development, 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 subcontractors. This party may also be referred to as the "contractor." (10 TAC §1.1)

(58) General Partner-- That partner, or collective of partners, identified as the general partner of the partnership that is the Development Owner and that has general liability for the partnership. In addition, unless the context shall clearly indicate the contrary, if the Development Owner in question is a limited liability company, the term "General Partner" shall also mean the managing member or other party with management responsibility for the limited liability company. (10 TAC §1.1)

(59) Governing Body-- The elected or appointed body of public or tribal officials, responsible for the enactment, implementation and enforcement of local rules and the implementation and enforcement of applicable laws for its respective jurisdiction. (10 TAC §1.1)

(60) Government Entity-- Includes federal, state or local agencies, departments, boards, bureaus, commissions, authorities, and political subdivisions, special districts, tribal governments and other similar entities. (10 TAC §1.1)

(61) Government Instrumentality-- A legal entity which is created by a Unit of General Local Government under statutory authority and which instrumentality is authorized to transact business for the Unit of General Local Government. (10 TAC §1.1)

(62) Grant-- Financial assistance that is awarded in the form of money to a housing sponsor for a specific purpose and that is not required to be repaid. A Grant includes a forgivable loan. (10 TAC §1.1)

(63) Gross Capture Rate-- Calculated as the Relevant Supply divided by the Gross Demand. (REA Rules §1.31(b))

(64) Gross Demand-- The sum of Potential Demand from the Primary Market (PMA), demand from other sources, and Potential Demand from a Secondary Market Area (SMA) to the extent that SMA demand does not exceed 25% of Gross Demand. (REA Rules §1.31(b))

(65) Gross Program Rent-- Maximum rent limits based upon the tables promulgated by the Department's division responsible for compliance which are developed by program and by county or Metropolitan Statistical Area (MSA) or Primary Metropolitan Statistical Area (PMSA) or national non-metro area. (REA Rules §1.31(b))

(66) Guarantor-- Any Person that provides, or is anticipated to provide, a guaranty for all or a portion of the equity or debt financing for the Development. (10 TAC §1.1)

(67) Hard Costs-- The sum total of direct construction costs, site work costs, off-site costs and contingency. (REA Rules §1.31(b))

(68) Historically Underutilized Businesses (HUB)-- A business that is a Corporation, Sole Proprietorship, Partnership, or Joint Venture in which at least 51% of the business is owned, operated, and actively controlled and managed by a minority or woman in which the owner(s):

(A) have a proportionate interest and demonstrate active participation in the control, operation, and management of the entities' affairs; and

(B) are economically disadvantaged because of their identification as members of the following groups:

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

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

(iii) American Women--Includes all women of any ethnicity except those specified in clauses (i), (ii), (iv), and (v) of this subparagraph;

(iv) Asian Pacific Americans--Includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of the Pacific, the Northern Marianas, and Subcontinent Asian Americans which includes persons whose origins are from India, Pakistan, Bangladesh, Sri Lanka, Bhutan or Nepal; and

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

(C) a corporation formed for the purpose of making a profit in which at least 51% of all classes of the shares of stock or other equitable securities are owned by one or more persons described by subparagraphs (A) and (B) of this paragraph; or

(D) a sole proprietorship created for the purpose of making a profit that is 100% owned, operated, and controlled by a person described by subparagraphs (A) and (B) of this paragraph; or

(E) a partnership formed for the purpose of making a profit in which 51% of the assets and interest in the partnership is owned by one or more persons who are described by subparagraphs (A) and (B) of this paragraph; or

(F) a joint venture in which each entity in the joint venture is a HUB under this paragraph; or

(G) a supplier contract between a HUB under this paragraph and a prime contractor/vendor under which the HUB is directly involved in the manufacture or distribution of the supplies or materials or otherwise warehouses and ships the supplies; or

(H) a business other than described in subparagraphs (D), (F), and (G) of this paragraph, which is formed for the purpose of making a profit and is otherwise a legally recognized business organization under the laws of the State of Texas, provided that at least 51% of the assets and 51% of any classes of stock and equitable securities are owned by one or more persons described by subparagraphs (A) and (B) of this paragraph. (10 TAC §1.1)

(69) Housing Credit Allocation-- An allocation by the Department to a Development Owner for a specific Application of Housing Tax Credits in accordance with the provisions of the QAP. (QAP §50.2)

(70) Housing Credit Allocation Amount-- With respect to a Development or a building within a Development, the amount the Department determines to be necessary for the financial feasibility of the Development and its viability as a Development throughout the affordability period which the Board allocates to the Development. (QAP §50.2)

(71) Housing Development-- Means property or work or a project, building, structure, facility, or undertaking, whether existing, new construction, remodeling, improvement, or rehabilitation, that meets or is designed to meet minimum property standards required by the department

and that is financed under the provisions of this chapter for the primary purpose of providing sanitary, decent, and safe dwelling accommodations for rent, lease, use, or purchase by individuals and families of low and very low income and families of moderate income in need of housing. The term includes:

(A) buildings, structures, land, equipment, facilities, or other real or personal properties that are necessary, convenient, or desirable appurtenances, including streets, water, sewers, utilities, parks, site preparation, landscaping, stores, offices, and other non-housing facilities, such as administrative, community, and recreational facilities the department determines to be necessary, convenient, or desirable appurtenances; and

(B) single and multifamily dwellings in rural and urban areas. (§2306.004)

(72) Housing Sponsor-- Means an individual, joint venture, partnership, limited partnership, trust, firm, corporation, limited liability company, other form of business organization, or cooperative that is approved by the department as qualified to own, construct, acquire, rehabilitate, operate, manage, or maintain a housing development, subject to the regulatory powers of the department and other terms and conditions in Chapter 2306. (§2306.004)

(73) Housing Tax Credit-- Means a tax credit allocated under the low income housing tax credit program. (§2306.6702)

(74) HUD-- The United States Department of Housing and Urban Development, or its successor. (10 TAC §1.1)

(75) Institutional Buyer-- (A) An accredited investor as defined in Regulation D promulgated under the Securities Act of 1933, as amended (17 CFR §230.501(a)), but excluding any natural person or any director or executive officer of the Department (17 CFR §230.501(a)(4) - (6)); or (B) A qualified institutional buyer as defined by Rule 144A promulgated under the Securities Act of 1935, as amended (17 CFR §230.144A). (Bond Rules §33.3)

(76) Individuals and families of very low income-- Means individuals and families earning not more than 60 percent of the area median income or applicable federal poverty line, as determined under Section 2306.123 or Section 2306.1231. (§2306.004)

(77) Individuals and families of extremely low income-- Means individuals and families earning not more than 30 percent of the area median income or applicable federal poverty line, as determined under Section 2306.123 or Section 2306.1231. (§2306.004)

(78) IRS-- The Internal Revenue Service, or its successor. (10 TAC §1.1)

(79) Land Use Restriction Agreement or LURA-- An agreement between the Department and the Development Owner which is a binding covenant upon the Development Owner's successors in interest, that, when recorded, encumbers the Development with respect to the requirements of the programs for which it receives funds. (10 TAC §1.1)

(80) Local government-- Means a county, municipality, special district, or any other political subdivision of the state, a public, nonprofit housing finance corporation created under Chapter 394, Local Government Code, or a combination of those entities. (§2306.004)

(81) Low Income Unit-- A Unit that is intended to be restricted for occupancy by an income eligible household, as defined by the Department. (10 TAC §1.1)

(82) Managing General Partner-- A general partner of a partnership that is vested with the authority to take actions that are binding on behalf of the partnership and the other partners. The term Managing General Partner can also be used for a Managing Member of a limited liability company where so designated to bind the limited liability company and its members under its Agreement or any other person that has such powers in fact, regardless of their organizational title. (10 TAC §1.1)

(83) Market Analysis-- Sometimes referred to as "Market Study." An evaluation of the economic conditions of supply, demand and rental rates or pricing conducted in accordance with the Department's Market Analysis Rules and Guidelines in §1.33 of the REA Rules as it relates to a specific Development. (REA Rules §1.31(b))

(84) Market Analyst-- Any person who prepares a market study. (REA Rules §1.31(b))

(85) Market Rent-- The rent for a particular Comparable unit determined after adjustments are made to rents charged by owners of Comparable Units on properties without rent and income restrictions. (REA Rules §1.31(b))

(86) Material Deficiency-- Any individual Application deficiency or group of Administrative Deficiencies which, if addressed, would require, in the Department's reasonable judgment, a substantial reassessment or re-evaluation of the Application or which, are so numerous and pervasive that they indicate a failure by the Applicant to submit a substantively complete and accurate Application. (10 TAC §1.1)

(87) Material Noncompliance—Defined as:

(A) a Housing Tax Credit (HTC) Development located within the state of Texas will be classified by the Department as being in Material Noncompliance status if the noncompliance score for such Development is equal to or exceeds a threshold of (30 points) in accordance with the Material Noncompliance provisions, methodology, and point system in §60.123 of this title (relating to Material Noncompliance Methodology);

(B) non-HTC Developments monitored by the Department with 1 - 50 Low Income Units will be classified as being in Material Noncompliance status if the noncompliance score is equal to or exceeds a threshold of (30 points). Non-HTC Developments monitored by the Department with 51 - 200 Low Income Units will be classified as being in Material Noncompliance status if the noncompliance score is equal to or exceeds a threshold of (50 points). Non-HTC Developments monitored by the Department with 201 or more Low Income Units will be classified as being in Material Noncompliance status if the noncompliance score is equal to or exceeds a threshold of (80 points);

(C) for all programs, a Development will be in Material Noncompliance if the noncompliance is stated in §60.123 of this title, to be in Material Noncompliance. (10 TAC §1.1)

(88) Minority Owned Business-- A business entity at least 51% of which is owned by members of a minority group or, in the case of a corporation, at least 51% of the shares of which are owned by members of a minority group, and that is managed and Controlled by members of a minority group in its daily operations. Minority group includes women, African Americans, American Indians, Asian Americans, and Mexican Americans and other Americans of Hispanic origin. (§2306.6734; 10 TAC §1.1)

(89) Municipality-- Includes only a municipality in this state. (§2306.004)

(90) Neighborhood Organization-- Means an organization that is composed of persons living near one another within the organization's defined boundaries for the neighborhood and that has a primary purpose of working to maintain or improve the general welfare of the neighborhood. A neighborhood organization includes a homeowners' association or a property owners' association. (§2306.004)

(91) Net Operating Income (NOI)-- The income remaining after all operating expenses, including replacement reserves and taxes have been paid. (REA Rules §1.31(b))

(92) Net Rentable Area-- The unit space that is available exclusively to the tenant and is typically heated and cooled by a mechanical HVAC system. NRA is measured to the outside of the studs of a unit or to the middle of walls in common with other units. NRA does not include common hallways, stairwells, elevator shafts, janitor closets, electrical closets, balconies, porches, patios, or other areas not actually available to the tenants for their furnishings, nor does NRA include the enclosing walls of such areas. (10 TAC §1.1)

(93) New Construction-- Any construction of a Development or a portion of a Development that does not meet the definition of Rehabilitation. (10 TAC §1.1)

(94) Owner-- An Applicant that is approved by the Department as qualified to own, construct, acquire, rehabilitate, operate, manage, or maintain a Development subject to the regulatory powers of the Department and other terms and conditions required by the Department and the Act. (Bond Rules §33.3)

(95) Person-- 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 or entity of any nature whatsoever and shall include any group of Persons acting in concert toward a common goal, including the individual members of the group. (10 TAC §1.1)

(96) Persons with Disabilities-- With respect to an individual:

(A) a physical or mental impairment that substantially limits one or more major life activities of such individual;

(B) a record of such an impairment; or

(C) being regarded as having such an impairment, to include persons with severe mental illness and persons with substance abuse disorders. (10 TAC §1.1)

(97) Persons with Special Needs—Persons who:
(A) Are considered to be disabled under a state or federal law;
(B) Are Elderly;
(C) Are designated by the Board as experiencing a unique need for decent, safe housing that is not being met adequately by private enterprise; or
(D) Are legally responsible for caring for an individual described by subparagraph (A), (B), or (C) of this paragraph and meet the income guidelines established by the Board. (Bond Rules §33.3)

(98) Potential Demand-- The number of income-eligible, age-, size-, and tenure-appropriate target households in the designated market area at the proposed placement in service date. (REA Rules §1.31(b))

(99) Primary Market (PMA)-- Sometimes referred to as "Primary Market Area." The area defined by the Qualified Market Analyst as described in §1.33(d)(9) of the REA Rules from which a proposed or existing Development is most likely to draw the majority of its prospective tenants or homebuyers. (REA Rules §1.31(b))

(100) Principal-- The term Principal is defined as Persons that will exercise Control over a partnership, corporation, limited liability company, trust, or any other private entity. In the case of:
(A) Partnerships, Principals include all General Partners, Special Limited Partners and Principals with ownership interest;
(B) Corporations, Principals include any officer authorized by the board of directors to act on behalf of the corporation, including the president, vice president, secretary, treasurer and all other executive officers, and each stock holder having a 10% or more interest in the corporation and any individual Controlling such stock holder; and
(C) Limited liability companies, Principals include all managing members, members having a 10% or more interest in the limited liability company, any individual Controlling such members, or any officer authorized to act on behalf of the limited liability company. (10 TAC §1.1)

(101) Private Activity Bond Program Scoring Criteria-- The scoring criteria established by the Department for the Department's Multifamily Housing Revenue Bond Program, §33.5(e) of the Bond Rules. (Bond Rules §33.3)

(102) Private Activity Bond Program Threshold Requirements-- The threshold requirements established by the Department for the Department's Multifamily Housing Revenue Bond Program, §33.5(d) of the Bond Rules. (Bond Rules §33.3)

(103) 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. (10 TAC §1.1)

(104) Property Condition Assessment (PCA)-- Sometimes referred to as "Physical Needs Assessment," "Project Capital Needs Assessment," or "Property Condition Report." The PCA provides an evaluation of the physical condition of an existing property to evaluate the immediate cost to rehabilitate and to determine costs of future capital improvements to maintain the property. The PCA must be prepared in accordance with the Department's Property Condition Assessment Rules and Guidelines in §1.36 of the REA Rules as it relates to a specific Development. (REA Rules §1.31(b))

(105) Qualified Allocation Plan (QAP)-- A plan adopted by the board under this subchapter that:

(A) provides the threshold, scoring, and underwriting criteria based on housing priorities of the department that are appropriate to local conditions;

(B) consistent with §2306.6710(e), gives preference in housing tax credit allocations to developments that, as compared to the other developments:

(i) when practicable and feasible based on documented, committed, and available third party funding sources, serve the lowest income tenants per housing tax credit; and

(ii) produce for the longest economically feasible period the greatest number of high quality units committed to remaining affordable to any tenants who are income-eligible under the low income housing tax credit program; and

(C) provides a procedure for the Department, the Department's agent, or another private contractor of the Department to use in monitoring compliance with the Qualified Allocation Plan and this subchapter. (§2306.6702; 10 TAC §1.1)

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

(107) Qualified Census Tract-- Means any census tract which is designated by the Secretary of Housing and Urban Development and for the most recent year for which census data are available on household income in such tract, either in which 50 percent or more of the households have an income which is less than 60 percent of the area median gross income for such year or which has a poverty rate of at least 25 percent. (IRS §42(d)(5)(C)(i))

(108) Qualified Elderly Development-- A Development which meets the requirements of the federal Fair Housing Act, and:

(A) Provided under any state or federal program that the HUD Secretary determines is specifically designed and operated to assist elderly persons (as defined in the state or federal program); or

(B) Is intended for, and solely occupied by, individuals sixty-two (62) years of age or older; or

(C) Is intended and operated for occupancy by at least one individual fifty-five (55) years of age or older per Unit, where at least 80% of the total housing Units are occupied by at least one individual who is fifty-five (55) years of age or older; and where the Development Owner publishes and adheres to policies and procedures which demonstrate an intent by

the owner and manager to provide housing for individuals fifty-five (55) years of age or older. (42 U.S.C. §3607(b); 10 TAC §1.1)

(109) Qualified Low-Income Building-- Means any building which is part of a qualified low-income housing project at all times during the period beginning on the 1st day in the compliance period on which such building is part of such a project and ending on the last day of the compliance period with respect to such building and to which the amendments made by section 201(a) of the Tax Reform Act of 1986 apply. (IRS §42)

(110) Qualified Low-Income Housing Project-- Means any project for residential rental property if the project meets the requirements of one of the following, whichever is elected by the taxpayer: (A) if 20 percent or more of the residential units in such project are both rent-restricted and occupied by individuals whose income is 50 percent or less of area median gross income; or (B) if 40 percent or more of the residential units in such project are both rent-restricted and occupied by individuals whose income is 60 percent or less of area median gross income. Any election made shall be irrevocable. (IRS §42(g)(1))

(111) Qualified Market Analyst-- A real estate appraiser or other professional familiar with the subject property's market area who demonstrates competency, expertise, and the ability to render a high quality Market Analysis. The individual's performance, experience and educational background will provide the general basis for the determining competency as a Market Analyst. Competency will be determined by the Department, in its sole discretion. The Qualified Market Analyst must be a Third Party. (REA Rules §1.31(b))

(112) Qualified Nonprofit Development-- A Development in which a Qualified Nonprofit Organization is to own an interest in the Development directly or through a partnership and materially participates (within the meaning of §469(h) of the Code) in the development and operation of the development throughout the Compliance Period. (QAP §50.2)

(113) Qualified Nonprofit Organization-- An organization that meets the requirements of Texas Government Code §2306.6706 and §2306.6729.

(114) Real Property-- Means land, including improvements and fixtures on the land, property of any nature appurtenant to the land or used in connection with the land, and a legal or equitable estate, interest, or right in land, including leasehold interests, terms for years, and a judgment, mortgage, or other lien. (§2306.004)

(115) Reconstruction-- The demolition of one or more residential buildings in an Existing Residential Development and the re-construction of an equal number of Units or less on the Development Site. (10 TAC §1.1)

(116) Rehabilitation-- The improvement or modification of an Existing Residential Development through alteration, incidental addition or enhancement. The term includes the demolition of an Existing Residential Development and the Reconstruction of a Development on the Development Site, but does not include Adaptive Reuse (§2306.004(26-a)). More specifically, Rehabilitation is the repair, refurbishment and/or replacement of existing mechanical and

structural components, fixtures and finishes. Rehabilitation will correct deferred maintenance, reduce functional obsolescence to the extent possible and may include the addition of: energy efficient components and appliances, life and safety systems; site and resident amenities; and other quality of life improvements typical of new residential Developments. (10 TAC §1.1)

(117) Related Party-- As defined,

(A) The following individuals or entities:

(i) The brothers, sisters, spouse, ancestors, and descendants of a person within the third degree of consanguinity, as determined by Chapter 573 of the Texas Government Code;

(ii) A person and a corporation, if the person owns more than 50% of the outstanding stock of the corporation;

(iii) Two or more corporations that are connected through stock ownership with a common parent possessing more than 50% of:

(I) The total combined voting power of all classes of stock of each of the corporations that can vote;

(II) The total value of shares of all classes of stock of each of the corporations; or

(III) The total value of shares of all classes of stock of at least one of the corporations, excluding, in computing that voting power or value, stock owned directly by the other corporation;

(iv) A grantor and fiduciary of any trust;

(v) A fiduciary of one trust and a fiduciary of another trust, if the same person is a grantor of both trusts;

(vi) A fiduciary of a trust and a beneficiary of the trust;

(vii) A fiduciary of a trust and a corporation if more than 50% of the outstanding stock of the corporation is owned by or for:

(I) The trust; or

(II) A person who is a grantor of the trust;

(viii) A person or organization and an organization that is tax-exempt under §501(a) of the Code, and that is controlled by that person or the person's family members or by that organization;

(ix) A corporation and a partnership or joint venture if the same persons own more than:

(I) 50% of the outstanding stock of the corporation; and

(II) 50% of the capital interest or the profits' interest in the partnership or joint venture;

(x) An S corporation and another S corporation if the same persons own more than 50% of the outstanding stock of each corporation;

(xi) An S corporation and a C corporation if the same persons own more than 50% of the outstanding stock of each corporation;

(xii) A partnership and a person or organization owning more than 50% of the capital interest or the profits' interest in that partnership; or

(xiii) Two partnerships, if the same person or organization owns more than 50% of the capital interests or profits' interests.

(B) Nothing in this definition is intended to constitute the Department's determination as to what relationship might cause entities to be considered "related" for various purposes under the Code. (§2306.6702; 10 TAC §1.1)

(118) Relevant Supply-- The supply of Comparable Units in proposed and Unstabilized Developments targeting the same population including:

(A) The proposed subject Units;

(B) Comparable Units in another development within the PMA with a priority Application over the subject, based on the Department's evaluation process described in the QAP that may not have been presented to the TDHCA Board for decision;

(C) Comparable Units in previously approved but Unstabilized Developments in the Primary Market Area (PMA); and

(D) Comparable Units in previously approved but Unstabilized Developments in the Secondary Market Area (SMA), in the same proportion as the proportion of Potential Demand from the SMA that is included in Gross Demand. (REA Rules §1.31(b))

(119) Rent Restricted Unit-- A residential unit is rent-restricted if the gross rent with respect to such unit does not exceed 30 percent of the imputed income limitation applicable to such unit. (IRS §42(g)(2))

(120) Reserve Account-- An individual account:

(A) Created to fund any necessary repairs for a multifamily rental housing development; and

(B) Maintained by a First Lien Lender or Bank Trustee. (REA Rules §1.31(b))

(121) Residential Housing-- Means a specific work or improvement undertaken primarily to provide dwelling accommodations, including the acquisition, construction, reconstruction, remodeling, improvement, or rehabilitation of land and buildings and improvements to the buildings for residential housing and other incidental or appurtenant non-housing facilities. (§2306.004)

(122) Rural Area—An Area that is located:

(A) Outside the boundaries of a primary metropolitan statistical area or a metropolitan statistical area;

(B) Within the boundaries of a primary metropolitan statistical area or a metropolitan statistical area, if the statistical area has a population of 25,000 or less and does not share a boundary with an Urban Area; or

(C) In an area that is eligible for funding by Texas Rural Development Office of the United States Department of Agriculture (TRDO-USDA), other than an area that is located in a municipality with a population of more than 50,000. (§2306.004; 10 TAC §1.1)

(123) Rural Development-- Means a development or proposed development that is located in a rural area, other than rural new construction developments with more than 80 units. (§2306.004)

(124) Secondary Market (SMA) -- Sometimes referred to as "Secondary Market Area." The area defined by the Qualified Market Analyst as described in §1.33(d)(8) of the REA Rules. (REA Rules §1.31(b))

(125) Selection Criteria-- Criteria used to determine funding priorities of the State under the specific housing program as defined in the rules or funding notices of that program. (10 TAC §1.1)

(126) Set-Aside-- Means a reservation of a portion of the available housing tax credits to provide financial support for specific types of housing or geographic locations or serve specific types of applicants as permitted by the qualified allocation plan on a priority basis. (§2306.6702)

(127) Single Room Occupancy (SRO)-- An Efficiency Unit that meets all the requirements of a Unit except that it may, but is not required, to be rented on a month to month basis to facilitate Transitional Housing. Buildings with SRO Units have extensive living areas in common and are required to be Supportive Housing and include the provisions for substantial supports from the Development Owner or its agent on site. (QAP §50.2)

(128) Site Control-- Ownership or a current contract that is legally enforceable giving the Applicant the ability, not subject to any legal defense by the owner, to require conveyance to the Applicant. (10 TAC §1.1)

(129) State Housing Credit Ceiling-- 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 applicable federal law, including §42(h)(3)(C) of the Code. (QAP §50.2)

(130) Sub-Market-- An area defined by the Underwriter based on general overall market segmentation promulgated by market data tracking and reporting services from which a proposed or existing Development is most likely to draw the majority of its prospective tenants or homebuyers. (REA Rules §1.31(b))

(131) Supportive Housing-- Residential rental developments intended for occupancy by individuals or households in need of specialized and specific non-medical services in order to maintain independent living. Supportive housing development generally require established funding sources outside of project cash flow and are expected to be debt free or have no foreclosable or noncash flow debt. The services offered generally address special attributes of such populations as Transition housing for homeless and at risk of homelessness, persons who have experienced domestic violence or single parents or guardians with minor children. (QAP §50.2)

(132) Tax Credit (Procedures) Manual-- The manual produced and amended from time to time by the Department which reiterates the rules and provides guidance for the filing of tax credit related documents. (QAP §50.2)

(133) Tax Exempt Bond Development-- A Development requesting or having been awarded Housing Tax Credits and 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 §42(h)(4) of the Code, such that the Development does not receive an allocation of tax credit authority from the State Housing Credit Ceiling. (QAP §50.2)

(134) Trustee-- A national banking association organized and existing under the laws of the United States, as trustee (together with its successors and assigns and any successor trustee). (Bond Rules §33.3)

(135) Texas Department of Rural Affairs (TDRA)-- As established by Chapter 487 of the Texas Government Code. (10 TAC §1.1)

(136) TDHCA Operating Expense Database-- Sometimes referred to as "TDHCA Database." A consolidation of recent actual operating expense information collected through the Department's Annual Owner Financial Certification process, as required and described in Chapter 60, Subchapter A of this title, and published on the Department's web site. (REA Rules §1.31(b))

(137) Third Party-- A Third Party is a Person who is not:
(A) An Applicant, General Partner, Developer, or General Contractor; or
(B) An Affiliate or a Related Party to the Applicant, General Partner, Developer or General Contractor; or
(C) Anyone receiving any portion of the Developer fees from the Development. (10 TAC §1.1)

(138) Threshold Criteria-- Means the criteria used to determine whether the development satisfies the minimum level of acceptability for consideration established in the department's qualified allocation plan. (§2306.6702)

(139) Total Housing Development Cost-- The sum total of the Acquisition Cost, Hard Costs, Soft Costs, Developer Fee and Contractor Fee incurred or to be incurred through lease-up by the Development Owner in the acquisition, construction, rehabilitation and financing of the Development. (10 TAC §1.1)

(140) TDRO-USDA-- Texas Rural Development Office (TRDO) of the U.S. Department of Agriculture (USDA) serving the State of Texas. (10 TAC §1.1)

(141) Underwriter-- The author(s) of the Credit Underwriting Analysis Report. (REA Rules §1.31(b))

(142) Unit-- Means any residential rental unit in a development consisting of an accommodation, including a single room used as an accommodation on a non-transient basis that contains complete physical facilities and fixtures for living, sleeping, eating, cooking, and sanitation. (§2306.6702)

(143) Unit Fraction-- The fraction of which the numerator is the number of low income units in the building and the denominator is the number of residential rental units (whether or not occupied) in such building. (IRS §42(c)(1)(C))

(144) Unit of General Local Government-- A city, town, county, village, tribal reservation or other general purpose political subdivision of the State. (10 TAC §1.1)

(145) Unstabilized Development-- A Development with Comparable Units that has been approved for funding by the TDHCA Board or is currently under construction or has not maintained a 90% occupancy level for at least twelve (12) consecutive months following construction completion. A development may be deemed stabilized by the Underwriter based on factors relating to a development's lease-up velocity, Sub-Market rents, Sub-Market occupancy trends and other

information available to the Underwriter. The Market Analyst may not consider a development stabilized in the Market Study. (REA Rules §1.31(b))

(146) Urban Area-- Means the area that is located within the boundaries of a primary metropolitan statistical area or a metropolitan statistical area other than an area described by Subdivision (28-a)(B) or eligible for funding as described by Subdivision (28-a)(C). (§2306.004)

(147) Utility Allowance-- The estimate of tenant-paid utilities, based either on the most current HUD Form 52667, "Section 8, Existing Housing Allowance for Tenant-Furnished Utilities and Other Services," provided by the local entity responsible for administering the HUD Section 8 program with most direct jurisdiction over the majority of the buildings existing, a documented estimate from the utility provider proposed in the Application, or for an existing development an allowance calculated by the Department pursuant to §60.109 of this title. Documentation from the local utility provider to support an alternative calculation can be used to justify alternative Utility Allowance conclusions but must be specific to the subject development and consistent with the building plans provided. (REA Rules §1.31(b))

(148) Work Out Development-- A financially distressed Development for which the Owner and/or a primary financing participant is seeking a change in the terms of Department funding or program restriction. (REA Rules §1.31(b))

2012 – 2013 Multifamily Housing Revenue Bond Rules

TEXAS DEPARTMENT OF HOUSING & COMMUNITY AFFAIRS

Building Homes. Strengthening Communities.

Private Activity Bond Program
Multifamily Housing Revenue Bond Rules
Table of Contents

§33.1.Introduction.

The purpose of this chapter is to state the Texas Department of Housing and Community Affairs (the "Department") requirements for issuing Bonds, the procedures for applying for multifamily housing revenue Bond financing, and the regulatory and land use restrictions imposed upon Developments financed with the issuance of Bonds for the 2012 – 2013 Private Activity Bond Program years. The rules and provisions contained in this chapter are separate from the rules relating to the Department's administration of the Housing Tax Credit Program. Applicants seeking a housing tax credit allocation should consult the Department's Qualified Allocation Plan ("QAP"), in effect for the program year for which the Housing Tax Credit application will be submitted. If the applicable QAP contradicts rules set forth in this chapter, the applicable QAP will take precedence over the rules in this chapter. The Department encourages the participation in the Multifamily Bond programs by working directly with Applicants, lenders, trustees, legal counsels, local and state officials and the general public to conduct business in an open, transparent and straightforward manner. The Department has simplified the process, within the limitation of statute, to affirmatively support and create affordable housing throughout the State of Texas.

§33.2.Authority.

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

§33.3.Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Any capitalized terms not specifically mentioned in this section shall have the meaning as defined in Chapter 2306 of the Texas Government Code, §§42, 141 and 145 of the Internal Revenue Code, and §1.1 of this title (relating to Definitions and Amenities for Housing Program Activities) and repeated in the Tax Credit (Procedures) Manual.

(1) Eligible Tenants--

(A) Individuals and families of Extremely Low, Very Low and Low Income;

(B) Individuals and families of Moderate Income; or

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

(2) Institutional Buyer--

(A) An accredited investor as defined in Regulation D promulgated under the Securities Act of 1933, as amended (17 CFR §230.501(a)), but excluding any natural person or any director or executive officer of the Department (17 CFR §230.501(a)(4) - (6)); or

(B) A qualified institutional buyer as defined by 17 CFR §230.144(A), promulgated under the Securities Act of 1935, as amended.

(3) Owner--An Applicant that is approved by the Department as qualified to own, construct, acquire, rehabilitate, operate, manage, or maintain a Development subject to the regulatory powers of the Department and other terms and conditions required by the Department and the Act.

(4) Persons with Special Needs--Persons who:

(A) Are considered to be disabled under a state or federal law;

(B) Are elderly;

(C) Are designated by the Board as experiencing a unique need for decent, safe housing that is not being met adequately by private enterprise; or

(D) Are legally responsible for caring for an individual described by subparagraph (A), (B) or (C) of this paragraph and meet the income guidelines established by the Board.

(5) Private Activity Bond Program Scoring Criteria--The scoring criteria established by the Department for the Department's Multifamily Housing Revenue Bond Program, §33.5(e) of this chapter (relating to Application Procedures, Evaluation and Approval).

(6) Private Activity Bond Program Threshold Requirements--The threshold requirements established by the Department for the Department's Multifamily Housing Revenue Bond Program, §33.5(d) of this chapter.

(7) Program--The Department's Multifamily Housing Revenue Bond Program.

(8) Trustee--A national banking association organized and existing under the laws of the United States, as trustee (together with its successors and assigns and any successor trustee).

§33.4.Bond Rating and Investment Letter.

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

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

§33.5.Application Procedures, Evaluation and Approval.

(a) Application Costs, Costs of Issuance, Responsibility and Disclaimer. The Applicant shall pay all costs associated with the preparation and submission of the Pre-application including costs associated with the publication and posting of required public notices and all costs and expenses associated with the issuance of the Bonds, regardless of whether the Application is ultimately approved or whether Bonds are ultimately issued. At any stage during the Application process, the Applicant is solely responsible for determining whether to proceed with the Application, and the Department disclaims any and all responsibility and liability in this regard.

(b) Pre-application. An Applicant who requests financing from the Department for a Development shall submit a pre-application in the format prescribed by the Department. Within fourteen (14) days of the Department's receipt of the pre-application, the Department will be responsible for federal, state, and local community notifications of the proposed Development. Department review at this stage is limited and not all issues of Eligibility pursuant to §50.4 of this title (relating to Ineligible Applicants, Applications and Developments) and Threshold pursuant to §50.8 of this title (relating to Threshold Criteria) are reviewed. Acceptance by staff of a pre-application does not ensure that the Applicant satisfies all Application Eligibility and Threshold requirements, including supporting documentation. The Department is not responsible for notifying an Applicant of potential areas of ineligibility or threshold deficiencies at the time of pre-application. If the Development is determined to be eligible for Bond financing by the Department, the Department will score and rank the pre-application based on the Private Activity Bond Program Scoring Criteria as described in subsection (e) of this section.

(1) The Department will rank the pre-application with higher scores ranking higher within each priority defined by §1372.0321, Texas Government Code. All Priority 1 Applications will be ranked above all Priority 2 Applications which will be ranked above all Priority 3 Applications, regardless of score, reflecting a priority structure which gives consideration to the income levels of the tenants and the rent levels of the units consistent with §2306.359, Texas Government Code. This priority ranking will be used throughout the calendar year. In the event two or more Applications receive the same score, the Department will use as a tie-breaking mechanism the criteria as stipulated in §50.6(e) of this title (relating to Allocation and Award Process). Pre-Applications must meet the threshold requirements as stated in the Private Activity Bond Program Threshold Requirements as set out in subsection (d) of this section.

(2) After scoring and ranking, the Development and the proposed financing structure will be presented to the Department's Board for consideration of an inducement resolution declaring the Department's initial intent to issue Bonds with respect to the Development.

(c) Approval of the inducement resolution does not guarantee final Board approval of the Bond Application. Department staff, for good cause, may recommend that the Board not approve an inducement resolution for an Application. Because each Development is unique, making the final determination is often dependent on the issues presented at the time the full Application is presented to the Board.

(d) Pre-Application Threshold Requirements.

(1) As the Department reviews the Application, the Department will use the assumptions as reflected in §1.32 of this title (relating to Underwriting Rules and Guidelines), even if not reflected by the Applicant in the Application.

(A) Construction Costs Per Unit Assumption. Costs not to exceed $85 per square foot for general population developments and $95 for elderly developments (Rehabilitation developments are exempt from this requirement).

(B) Anticipated Interest Rate and Term. As stated in the pre-application.

(C) Size of Units as reflected in §50.8(5)(B) of this title.

(2) Zoning. Evidence of appropriate zoning must be provided as referenced in §50.8(8)(B) of this title.

(3) Proper Site Control. Properly executed and escrow receipted Site Control in the name of the Applicant (principal or member of the General Partner) valid through the inducement Board meeting at pre-application and ninety (90) days from the date of the Certificate of Reservation with the option to extend through the scheduled TDHCA Board meeting at full application. The potential expiration of site control does not warrant the application being presented to the TDHCA Board prior to the scheduled meeting.

(4) Current Market Information (must support affordable rents).

(5) Completed current TDHCA Bond Pre-Application.

(6) Completed Bond Review Board Residential Rental Attachment for the current program year.

(7) Evidence of paid Application Fees ($1,000 to TDHCA, $2,000 to Vinson and Elkins, as the Department's bond counsel, and $5,000 to Texas Bond Review Board).

(8) Boundary Survey or Plat clearly identifying the location and boundaries of the subject property.

(9) Local Area map showing the location of the Property and Community Services/Amenities within a three (3) mile radius (radius ring or scale must be present on the map).

(10) Organization Chart showing the structure of the Applicant and the ownership structure of any principals of the Applicant with evidence of Entity Registration or Reservation with the Office of the Secretary of State.

(11) Required Notification. Evidence of notification is required in the form provided in the pre-application. The "Public Information Form" must be completed and include a list of all of the recipients (including names and complete addresses). Proof of delivery, though not required to be submitted with the Application, must not be older than three months prior to the Application submission date. Notification must be sent to all the following individuals and entities (if the QAP in effect for the program year for which the Bond and Housing Tax Credit applications are submitted reflect a notification process that is different from the process listed in subparagraphs (A) - (G) of this paragraph, then the QAP will override the notification process listed in subparagraphs (A) - (G) of this paragraph):

(A) State Senator and Representative that represents the district containing the development;

(B) Presiding Officer of the governing body of any municipality containing the development and all elected members of that body (Mayor, City Council members);

(C) Presiding Officer of the governing body of the county containing the development and all elected members of that body (County Judge and/or Commissioners);

(D) School District Superintendent of the school district containing the development;

(E) Presiding Officer of the School Board of Trustees of the school district containing the development; and

(F) The Applicant must request Neighborhood Organizations on record with the county or state whose boundaries include the proposed Development Site as follows:

(i) No later than fourteen (14) days prior to the date the pre-application is submitted, the Applicant must e-mail, fax or mail with registered receipt a completed, "Neighborhood Organization Request" letter as provided in the pre-application materials to the local

elected official for the city and county where the Development is proposed to be located. If the Development is located in an area that has district based local elected officials, or both at-large and district based local elected officials, the request must be made to the city council member or county commissioner representing that district; if the Development is located in an area that has only at-large local elected officials, the request must be made to the mayor or county judge for the jurisdiction. If the Development is not located within a city or is located in the Extra Territorial Jurisdiction (the "ETJ") of a city, the county local elected official must be contacted. In the event that local elected officials refer the Applicant to another source, the Applicant must request Neighborhood Organizations from that source in the same format;

(ii) If no reply letter is received from the local elected officials by seven (7) days prior to the pre-application submission, then the Applicant must certify to that fact in the pre-application materials; and

(iii) The Applicant must list all Neighborhood Organizations on record with the county or state whose boundaries include the proposed Development Site as provided by the local elected officials, or that the Applicant has knowledge of (regardless of whether the organization is on record with the county or state) as of the pre-Application submission in the "Certification of Notification Form" provided in the pre-application.

(G) No later than the date the pre-application is submitted, notification must be sent to all of the following individuals and entities by e-mail, fax or mail with registered receipt (email or fax to be "receipt confirmed") in the format required in the "Pre-application Notification Template" provided in the pre-Application materials. Developments located in an ETJ of a city are not required to notify city officials; however the county officials are required to be notified. It is strongly encouraged that Applicants retain proof of delivery of the notifications to the persons or entities prescribed in clauses (i) - (ix) of this subparagraph in the event the Department requires proof of notification. Evidence of proof of delivery is demonstrated by signed receipt for mail or courier delivery and confirmation of receipt by recipient for facsimile and electronic mail. Officials to be notified are those officials in office at the time the pre-application is submitted.

(i) Neighborhood Organizations on record with the state or county whose boundaries contain the proposed Development Site as identified in subparagraph (F)(iii) of this paragraph;

(ii) Superintendent of the school district containing the Development;

(iii) Presiding officer of the board of trustees of the school district containing the Development;

(iv) Mayor of any municipality containing the Development;

(v) All elected members of the governing body of any municipality containing the Development;

(vi) Presiding officer of the governing body of the county containing the Development;

(vii) All elected members of the governing body of the county containing the Development;

(viii) State representative of the district containing the Development; and

(ix) State senator of the district containing the Development.

(H) Each such notice must include, at a minimum, all of the following:

(i) The Applicant's name, address, individual contact name and phone number;

(ii) The Development name, address, city and county;

(iii) A statement informing the entity or individual being notified that the Applicant is submitting a request for Private Activity Bonds and Housing Tax Credits with the Texas Department of Housing and Community Affairs;

(iv) Statement of whether the Development proposes New Construction or Rehabilitation;

(v) The type of Development being proposed (single family homes, duplex, apartments, townhomes, highrise etc.); and

(vi) The approximate total number of Units and approximate total number of low-income Units.

(e) Pre-application Scoring Criteria.

(1) Income and Rent Levels of the Tenants. Applications submitted as a Priority 1 will receive (10 points), Priority 2 will receive (7 points) and Priority 3 will receive (5 points).

(2) Cost of the Development by Square Foot. For this item, costs shall be defined as construction costs, including site work, direct hard costs, contingency, contractor profit, overhead and general requirements, as represented in the Development Cost Schedule. This calculation does not include indirect construction costs. The calculation will be costs per square foot of Net Rentable Area (NRA). Costs do not exceed $85 per square foot for general population Developments and $95 per square foot for elderly Developments (1 point) (Rehabilitations will automatically receive (1 point)).

(3) Size of Units. The average size of all Units combined in the Development must be greater than or equal to 950 square foot for general and must be greater than or equal to 750 square foot for elderly (5 points) (Rehabilitations will automatically receive (5 points)).

(4) Period of Guaranteed Affordability for Low Income Tenants. Add ten (10) years of affordability after the extended use period for a total affordability period of forty (40) years (4 points).

(5) Quality of the Units as referenced in §50.9(b)(4)(B) of this title (relating to Selection Criteria) and further defined in §1.1 of this title (relating to Definitions and Amenities for Housing Program Activities). Must select at least (14 points).

(6) Common Amenities as referenced in §50.8(5)(A) of this title and further defined in §1.1 of this title.

(7) Tenant Services. Acceptable services include those described in §1.1 of this title (maximum 8 points).

(8) Development Support/Opposition. Maximum net points of +24 to -24. Each letter will receive a maximum of +3 to -3. All letters received by 5:00 PM, seven (7) business days prior to the date of the Board meeting at which the Application will be considered for Applications submitted for waiting list and carryforward will be used in scoring. Letters must clearly state support or opposition to the specific Development. State Representatives or Senators as well as local elected officials to be considered are those in office at the time the Application is submitted and represent the district containing the proposed Development Site. Letters of support from State or local elected officials that do not represent the district containing the proposed Development Site will not qualify for points under this exhibit. Neutral letters, or letters that do not specifically refer to the Development, will receive (0 points). A letter that does not directly express support by expresses it indirectly by inference (i.e. a letter that says "the local jurisdiction supports the Development and I support the local jurisdiction" will be treated as a neutral letter).

(A) Texas State Senator and Texas State Representative (maximum +3 to -3 points per official);

(B) Presiding officer of the governing body of any municipality containing the Development and the elected district member of the governing body of the municipality containing the Development (maximum +3 to -3 points per official);

(C) Presiding officer of the governing body of the county containing the Development and the elected district member of the governing body of the county containing the Development (if the site is not in a municipality, these points will be doubled) (maximum +3 to -3 points per official);

(D) Local School District Superintendent and Presiding Officer of the Board of Trustees for the School district containing the Development (maximum +3 to -3 points per official).

(9) Proximity to Community Services/Amenities within three (3) miles of the site. A map must be included identifying the Development Site and the location of services by name. If the services are not identified by name, points will not be awarded. All services must exist or, if under construction must be under active construction, post pad by the date pre-application is submitted. The map must include either a three (3) mile radius ring or a scale (Rehabilitation developments will receive (1.5 points) for each item in subparagraphs (A) - (O) of this paragraph).

(A) Full service grocery store (1 point);

(B) Pharmacy (1 point);

(C) Convenience store/mini-market (1 point);

(D) Department or Retail Merchandise Store (1 point);

(E) Bank/Credit Union (1 point);

(F) Restaurant (including fast food) (1 point);

(G)Indoor public recreation facilities, such as civic centers, community centers, and libraries (1 point);

(H) Outdoor public recreation facilities, such as parks, golf courses, and swimming pools (1 point);

(I) Fire/Police Station (1 point);

(J) Medical offices (physician, dentistry, optometry) or hospital/medical clinic (1 point);

(K) Public School (only one school required for point and only eligible with general population developments) (1 point);

(L) Senior Center (1 point);

(M) Religious Institutions (1 point);

(N) Day Care Services (must be licensed - only eligible for Developments that are not Qualified Elderly Developments) (1 point);

(O) Post Office, City Hall, County Courthouse (1 point).

(10) Rehabilitation or Reconstruction Developments will receive (30 points). This will include the demolition of old buildings and New Construction of the same number of units if allowed by local codes or less units to comply with local codes.

(11) Preservation Developments will receive (10 points). This includes Rehabilitation proposals on properties which are nearing expiration of an existing affordability requirement within the

next two (2) years or for which there has been a rent restriction requirement in the past ten (10) years. Evidence must be provided.

(12) Declared Disaster Areas. Applications will receive (7 points), if at the time the complete pre-application is submitted or at any time within the two-year period preceding the date of submission, the proposed Development Site is located in a declared Disaster Area. This includes federal, state and Governor declared disaster areas.

(13) Developments in Census Tracts with No Other Existing Developments Supported by Tax Credits. Applications will receive (6 points) if the proposed Development is located in a census tract in which there are no other existing Developments that were awarded housing tax credits in the last five (5) years and (3 points) if there are no other existing developments that were awarded housing tax credits in the last three (3) years. The applicant must provide evidence of the census tract in which the Development is located. These census tracts are outlined in the Housing Tax Credit Site Demographic Characteristics Report for the current program year.

(f) Multiple Site Applications. For the purposes of scoring, applicants must submit the required information as outlined in the Pre-Application Submission Manual. Each individual property will be scored on its own merits and the final score will be determined based on an average of all of the individual scores.

(g) Financing Commitments. After approval by the Board of the inducement resolution, and as part of the submission of a final application, the Applicant will be solely responsible for making appropriate arrangements with financial institutions which are to be involved with the issuance of the Bonds or the financing of the Development, and to begin the process of obtaining firm commitments for financing from each of the financial institutions involved.

(h) Trustee and Investment Banking Firm Selection. The Applicant shall select, from the Approved list on the Department's website, a Trustee. An Applicant may coordinate with an out-of-state Trustee on the Approved list; however the funds must flow through a Texas office. The Applicant shall also select from the Approved list on the Department's website, an investment banking firm to serve as senior managing underwriter, co-managing underwriter or placement agent, as applicable. The Applicant will be responsible for all fees and expenses including those of the respective counsels, associated with the transaction.

(i) Full Application. Once the inducement resolution has been approved by the Board, an Applicant who elects to proceed with submitting a final Application to the Department must submit the Parts 1 - 4 of the Housing Tax Credit Application. Priority 1 and 2 Applications (as elected on the Bond Review Board Residential Rental Attachment) must submit the Parts 1 - 4 prior to receipt of a Certificate of Reservation from the Texas Bond Review Board. For Priority 3 Applications the Parts 1 - 4 must be submitted within fourteen (14) days of the Certificate of Reservation date from the Texas Bond Review Board. The Parts 5 and 6 of the Application and all Third Party reports as required by the Department must be submitted at least sixty (60) days prior to the scheduled meeting of the Board at which the Development and the Bond issuance are to be considered, unless the Department directs the Applicant otherwise in writing. The Application consists of the completed Uniform Application and Multifamily Rental Worksheets in the format required by the Department as posted to the Department's website. The Tax Credit (Procedures) Manual provides guidance on completing the Uniform Application. If the Applicant is applying for other Department funding then they are encouraged to refer to the Rules for that program regarding Application submission requirements. The full Application must adhere to the Department's QAP in effect for the program year for which the Bond and Housing Tax Credit applications are submitted. The Department may determine that supporting materials listed in the full Application shall be provided subsequent to the final Application deadline in accordance with a schedule approved by the Department. Failure to provide any supporting materials in accordance with the approved schedule

may be grounds for terminating the Application and returning the reservation to the Texas Bond Review Board.

(j) Administrative Deficiencies. If an Application contains deficiencies which, in the determination of the Department staff, require clarification, correction, or non-material missing information to resolve inconsistencies in the original Application the Department staff may request such information in the form of an Administrative Deficiency as described in §50.7(b)(2)(B) of this title (relating to Application Process).

(k) Eligibility Criteria. The Department, in addition to those items described in §50.4 of this title, will evaluate the Development for eligibility at the time of full Application. If there are changes to the Application at any point prior to closing that have an adverse affect on the score and ranking order and that would have resulted in the Application being placed below another Application in the ranking, the Department will terminate the Application and return the Certificate of Reservation to the Texas Bond Review Board (with the exception of changes to deferred developer's fees and support or opposition points). The Development and the Applicant must satisfy the conditions set out in paragraphs (1) and (2) of this subsection in order for a Development to be considered eligible:

(1) The proposed Development must further meet the public purposes of the Department as identified in the Code.

(2) An Application may include either the Rehabilitation or New Construction, or both the Rehabilitation and New Construction, of qualified residential rental facilities located at multiple sites and with respect to which 51% or more of the residential units are located:

(A) in a county with a population of less than 75,000; or

(B) in a county in which the median income is less than the median income for the state, provided that the units are located in that portion of the county that is not included in a metropolitan statistical area containing one or more projects that are proposed to be financed, in whole or in part, by an issuance of bonds. The number of sites may be reduced as needed without affecting their status as a project for purposes of the application, provided that the final application for a reservation contains at least two sites. (§1372.002, Texas Government Code)

(l) Bond Documents. After receipt of the final Application, bond counsel for the Department shall draft Bond documents which conform to the state and federal laws and regulations which apply to the transaction. Bond counsel is not required to begin drafting the Bond documents until the appropriate fees have been received. The Applicant will be responsible for all bond counsel fees and expenses associated with the transaction.

(m) Public Hearings. For every Bond issuance, the Department will hold a public hearing in accordance with §147(f) of the Code, in order to receive comments from the public pertaining to the Development and the issuance of the Bonds. The Applicant or member of the Development team must be present and will be responsible for conducting a brief presentation on the proposed Development and providing handouts at the hearing that should contain at a minimum, a description of the Development, maximum rents and income restrictions. If the proposed Development is a Rehabilitation then the presentation should include the scope of work that will be done to the property. All handouts must be submitted to the Department for review at least two (2) days prior to the public hearing. Publication of all notices required for the public hearing shall be at the sole expense of the Applicant.

(n) Approval of the Bonds.

(1) Subject to the timely receipt and approval of commitments for financing, an acceptable evaluation for eligibility, the satisfactory negotiation of Bond documents, and the completion

of a public hearing, the Board, upon presentation by the Department's staff, will consider the approval of the Bond issuance, final Bond documents and in the instance of privately placed Bonds, the pricing of the Bonds. The process for appeals and grounds for appeals may be found under §1.7 of this title (relating to Staff Appeals Process) and §1.8 of this title (relating to Board Appeals Process). To the extent applicable to each specific bond issuance, the Department's conduit housing transactions will be processed in accordance with 34 TAC Part 9, Chapter 181, Subchapter A (relating to Bond Review Rules) and Chapter 1372, Texas Government Code. The Bond issuance must receive an approving opinion from the Department's bond counsel with respect to the legality and validity of the Bonds and the security therefore, and in the case of tax-exempt Bonds, with respect to the excludability from gross income for federal income tax purposes of interest on the Bonds.

(2) Alternative Dispute Resolution Policy. The Department encourages use of Alternative Dispute Resolution methods as outlined in §1.17 of this title.

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

(p) Closing. Once all approvals have been obtained, including final approval by the Board and Bond documents have been finalized to the respective parties' satisfaction, the Bond transaction will close. Any outstanding Housing Trust Fund Pre-Development loans, if applicable, for the proposed Development Site must be paid in full at the time the bond transaction is closed. All Applicants are subject to §1.20 of this title (relating to Asset Review Committee). Upon satisfaction of all conditions precedent to closing, the Department will issue Bonds in exchange for payment thereof. The Department will then loan the proceeds of the Bonds to the Applicant and disbursements of the proceeds may begin.

§33.6.Regulatory and Land Use Restrictions.

(a) Filing and Term of LURA. A Regulatory and Land Use Restriction Agreement or other similar instrument (the "LURA"), will be filed in the property records of the county in which the Development is located for each Development financed from the proceeds of Bonds issued by the Department. The term of the LURA will be the longer of thirty (30) years, from the date the Development Owner takes legal possession of the Development or until the end of the remaining term of the existing federal government assistance pursuant to §2306.185 of the Texas Government Code.

(b) Development Occupancy. The LURA will specify occupancy restrictions for each Development based on the income of its tenants, and will restrict the rents that may be charged for Units occupied by tenants who satisfy the specified income requirements. Pursuant to §2306.269 of the Texas Government Code, the LURA will prohibit a Development Owner from excluding an individual or family from admission to the Development because the individual or family participates in the housing choice voucher program under §8, United States Housing Act of 1937 (the "Housing Act"), and from using a financial or minimum income standard for an individual or family participating in the voucher program that requires the individual or family to have a monthly income of more than two and one half (2.5) times the individual's or family's share of the total monthly rent payable to the Development Owner. Development occupancy requirements must be met on or prior to the date on which Bonds are issued unless the Development is under construction. Adequate substantiation that the occupancy requirements have been met, in the sole discretion of the Department, must be provided prior to closing. Occupancy requirements exclude Units for managers and maintenance personnel that are reasonably required by the Development.

(c) Set Asides.

(1) Developments which are financed from the proceeds of Private Activity Bonds or from the proceeds of Qualified §501(c)(3) Bonds must be restricted under one of the following two minimum set-asides:

(A) at least 20% of the Units within the Development that are available for occupancy shall be occupied or held vacant and available for occupancy at all times by persons or families whose income does not exceed 50% of the area median income; or

(B) at least 40% of the Units within the Development that are available for occupancy shall be occupied or held vacant and available for occupancy at all times by persons or families whose income does not exceed 60% of the area median income.

(2) The Development Owner must designate at the time of Application which of the two set-asides will apply to the Development and must also designate the selected priority for the Development in accordance with §1372.0321, Texas Government Code. Units intended to satisfy set-aside requirements must be distributed evenly throughout the Development, and must include a reasonably proportionate amount of each type of Unit available in the Development.

(3) No tenant qualifying under either of the set-asides shall be denied continued occupancy of a Unit in the Development because, after commencement of such occupancy, such tenant's income increases to exceed the qualifying limit; provided, however, that, should a tenant's income, as of the most recent determination thereof, exceed 140% of the then applicable income limit and such tenant constitutes a portion of the set-aside requirement of this section, then such tenant shall only continue to qualify for so long as no Unit of comparable or smaller size is rented to a tenant that does not qualify as a Low-Income Tenant (Required federal set-aside requirements).

(d) Global Income Requirement. All of the Units that are available for occupancy in Developments financed from the proceeds of Private Activity Bonds or from the proceeds of Qualified §501(c)(3) Bonds shall be occupied or held vacant (in the case of New Construction) and available for occupancy at all times by persons or families whose income does not exceed 140% of the area median income for a four-person household.

(e) Qualified §501(c)(3) Bonds. Developments which are financed from the proceeds of Qualified §501(c)(3) Bonds are further subject to the restriction that at least 75% of the Units within the Development that are available for occupancy shall be occupied (or, in the case of New Construction, held vacant and available for occupancy until such time as initial lease-up is complete) at all times by individuals and families of Low Income (less than or equal to 80% of AMGI).

(f) Taxable Bonds. The occupancy requirements for Developments financed from the issuance of taxable Bonds will be negotiated, considered and approved by the Department on a case by case basis.

(g) Fair Housing. All Developments financed by the Department must comply with the Fair Housing Act which prohibits discrimination in the sale, rental, and financing of dwellings based on race, color, religion, sex, national origin, familial status, and disability. The Fair Housing Act also mandates specific design and construction requirements for multifamily housing built for first occupancy after March 13, 1991, in order to provide accessible housing for individuals with disabilities.

§33.7. Fees.

(a) Pre-Application Fees. The Applicant is required to submit, at the time of pre-application, the following fees: $1,000 (payable to TDHCA), $2,000 (payable to Vinson & Elkins, the Department's bond counsel) and $5,000 (payable to the Texas Bond Review Board (BRB)). These fees cover the costs of pre-application review by bond counsel and filing fees to the BRB. The Department shall set fees to be paid by the Applicant in order to cover the costs of pre-application review, Application and Development review, the Department's expenses in connection with providing financing for a Development, and as required by law. (§1372.006(a), Texas Government Code)

(b) Application and Issuance Fees. At the time of full application the Applicant is required to submit a tax credit application fee of $30/unit and $10,000 for the bond application fee (for multiple site Applications $10,000 or $30/unit, whichever is greater, for the bond application fee). At the closing of the bonds the following fees are required: an issuance fee equal to 50 basis points (0.005) of the issued bond amount, administration fee equal to 20 basis points (0.002) and a Private Activity Bond compliance fee equal to $25/unit and a tax credit compliance fee equal to $40/unit. For refunding Applications the Application fee will be $10,000 unless the refunding is not required to have a TEFRA public hearing, in which case the fee will be $5,000.

(c) Annual Administration, Compliance, and Asset Management Fees. The Department shall set ongoing fees to be paid by Development Owners to cover the Department's costs of administering the Bonds, compliance with the program requirements applicable to each Development and asset management requirements as applicable.

(1) Administration. The annual administration fee is paid in arrears and is equal to 10 basis points (0.001) of the outstanding bond amount beginning three (3) years from the closing date. These fees are paid as long as the bonds are outstanding.

(2) Compliance Monitoring Fees. The annual tax credit compliance fee is paid in advance (for the duration of the compliance or affordability period) and is equal to $40/unit beginning two (2) years from the closing date on the bonds. The fee will be collected, retroactively if applicable, beginning with the first year of the credit period. The invoice must be paid prior to the issuance of form 8609. Subsequent anniversary dates on which the compliance monitoring fee payments are due shall be determined by the month the first building is placed in service. The Private Activity Bond compliance fee is paid in advance at closing (for as long as the bonds are outstanding) and is equal to $25/unit beginning two (2) years from the closing date on the bonds for payment to be applied to the third year following closing. Compliance monitoring fees may be adjusted from time to time by the Department.

(3) Asset Management. The asset management fee is paid in advance and is equal to $25/unit beginning two (2) years from the closing date on the bonds. This fee is based on voluntary participation in the asset management program. Those who elect to participate are encouraged to contact the Texas State Affordable Housing Corporation (TSAHC) for information on billing and services offered.

§33.8. Waiver of Rules.

Provided all requirements of the Act, the Code, and any other applicable law are met, the Board may waive any one or more of the Rules set forth in this chapter relating to the Multifamily Housing Revenue Bond Program in order to further the purposes and the policies of Chapter 2306, Texas Government Code; as further referenced in §50.16 of this title (relating to Waiver and Amendment of Rules).

§33.9. No Discrimination.

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

Real Estate Analysis Division

2012 Real Estate Analysis Rules

§1.31. General Provisions.

(a) **Purpose**. The rules in this subchapter apply to the underwriting, market analysis, appraisal, environmental site assessment, property condition assessment, and reserve for replacement standards employed by the Texas Department of Housing and Community Affairs (the "Department" or "TDHCA"). This subchapter provides rules for the underwriting review of an affordable housing development's financial feasibility and economic viability that ensures the most efficient allocation of resources while promoting and preserving the public interest in ensuring the long-term health of the Department's portfolio. In addition, this chapter guides the underwriting staff in making recommendations to the Executive Award and Review Advisory Committee (the "Committee"), Executive Director, and TDHCA Governing Board (the "Board") to help ensure procedural consistency in the determination of Development feasibility (§§2306.081(c), 2306.185 and 2306.6710(d), Texas Government Code). Due to the unique characteristics of each development the interpretation of the rules and guidelines described in this subchapter is subject to the discretion of the Department and final determination by the Board.

(b**) Definitions**. Terms used in this subchapter that are also defined in Chapter 50 of this title (relating to the Department's Housing Tax Credit Program 2012 Qualified Allocation Plan, known as the "QAP") have the same meaning as in the QAP. Those terms that are not defined in the QAP or which may have another meaning when used in this subchapter, shall have the meanings set forth in this subsection (relating to General Provisions) and §1.1 of this chapter (relating to Definitions and Amenities for Housing Program Activities).

(1) **Affordable Housing**--Housing that has at least one unit that is restricted in the rent that can be charged either by a Land Use Restriction Agreement or other form of Deed Restriction.
(2) **Bank Trustee**--A bank authorized to do business in this state, with the power to act as trustee.
(3) **Breakeven Occupancy**--The occupancy level at which rental income plus secondary income is equal to all operating expenses, including replacement reserves and taxes, and mandatory debt service requirements for a Development.
(4) **Cash Flow**--The funds available from operations after all expenses and debt service required to be paid has been considered.
(5) **Comparable Unit**--A Unit, when compared to the subject Unit, similar in net rentable square footage, number of bedrooms, overall condition, location, age, unit amenities, utility structure, and common amenities.
(6) **Contract Rent**--Net rent based upon current and executed rental assistance contract(s), typically with a federal, state or local governmental agency.

(7) **Credit Underwriting Analysis Report**--Sometimes referred to as the "Report." A decision making tool used by the Department and Board containing a synopsis and reconciliation of the Application information submitted by the Applicant.

(8) **Debt Coverage Ratio** (DCR)--Sometimes referred to as the "Debt Coverage" or "Debt Service Coverage." Calculated as Net Operating Income for any period divided by debt service required to be paid during the same period.

(9) **Development**--A residential rental housing development that has no less than 16 units under common ownership which has applied for Department funds.

(10) **Effective Gross Income** (EGI)--The sum total of all sources of anticipated or actual income for a rental Development less vacancy and collection loss, leasing concessions, and rental income from employee-occupied units that is not anticipated to be charged or collected.

(11) **Eligible Hard Costs**--Hard Costs includable in Eligible Basis for the purposes of determining a Housing Credit Allocation.

(12) **Environmental Site Assessment** (ESA)--An environmental report that conforms with the Standard Practice for Environmental Site Assessments: Phase I Assessment Process (ASTM Standard Designation: E 1527) and conducted in accordance with §1.35 of this subchapter (relating **to** Environmental Site Assessment Rules and Guidelines) as it relates to a specific Development.

(13) **First Lien Lender**--A lender whose lien has first priority.

(14) **Gross Capture Rate**--Calculated as the Relevant Supply divided by the Gross Demand.

(15) **Gross Demand**--The sum of Potential Demand from the Primary Market (PMA), demand from other sources, and Potential Demand from a Secondary Market Area (SMA) to the extent that SMA demand does not exceed 25% of Gross Demand.

(16) **Gross Program Rent**--Maximum rent limits based upon the tables promulgated by the Department's division responsible for compliance which are developed by program and by county or Metropolitan Statistical Area (MSA) or Primary Metropolitan Statistical Area (PMSA) or national non-metro area.

(17) **Hard Costs**--The sum total of Building Cost, site work costs, off-site costs and contingency.

(18) **Market Analysis**--Sometimes referred to as "Market Study." An evaluation of the economic conditions of supply, demand and rental rates conducted in accordance with §1.33 of this subchapter (relating to Market Analysis Rules and Guidelines) as it relates to a specific Development.

(19) **Market Analyst**--Any person who prepares a market study.

(20) **Market Rent**--The rent for a particular Comparable Unit determined after adjustments are made to rents charged by owners of Comparable Units on properties without rent and income restrictions.

(21) **Net Operating Income** (NOI)--The income remaining after all operating expenses, including replacement reserves and taxes have been paid.

(22) **Net Program Rent**--Calculated as Gross Program Rent less Utility Allowance.

(23) **Potential Demand**--The number of income-eligible, age-, size-, and tenure-appropriate target households in the designated market area at the proposed placement in service date.

(24) **Primary Market** (PMA)--Sometimes referred to as "Primary Market Area." The area defined by the Qualified Market Analyst as described in §1.33(d)(9) of this subchapter from which a proposed or existing Development is most likely to draw the majority of its prospective tenants or homebuyers.

(25) **Pro Forma Rent**--For a restricted unit, the lesser of the Net Program Rent or the Market Rent. For an unrestricted unit, the Market Rent. Contract Rents, if applicable, will be used as the Pro Forma Rent.

(26) **Property Condition Assessment** (PCA)--Sometimes referred to as "Physical Needs Assessment," "Project Capital Needs Assessment," or "Property Condition Report." The PCA provides an evaluation of the physical condition of an existing property to evaluate the immediate cost to rehabilitate and to determine costs of future capital improvements to maintain the property. The PCA must be prepared in accordance with §1.36 of this subchapter (relating to Property Condition Assessment Guidelines) as it relates to a specific Development.

(27) **Qualified Market Analyst**--A real estate appraiser or other professional familiar with the subject property's market area who demonstrates competency, expertise, and the ability to render a high quality Market Analysis. The individual's performance, experience, and educational background will provide the general basis for determining competency as a Market Analyst. Competency will

be determined by the Department, in its sole discretion. The Qualified Market Analyst must be a Third Party.

(28) **Relevant Supply**--The supply of Comparable Units in proposed and Unstabilized Developments targeting the same population including:
  (A) The proposed subject Units;
  (B) Comparable Units in another development within the PMA with a priority Application over the subject, based on the Department's evaluation process described in the QAP that may not have been presented to the TDHCA Board for decision;
  (C) Comparable Units in previously approved but Unstabilized Developments in the PMA; and
  (D) Comparable Units in previously approved but Unstabilized Developments in the Secondary Market Area (SMA), in the same proportion as the proportion of Potential Demand from the SMA that is included in Gross Demand.

(29) **Reserve Account**--An individual account:
  (A) Created to fund any necessary repairs for a multifamily rental housing development; and
  (B) Maintained by a First Lien Lender or Bank Trustee.

(30) **Secondary Market (SMA)**--Sometimes referred to as "Secondary Market Area." The area defined by the Qualified Market Analyst as described in §1.33(d)(8) of this subchapter.

(31) **Sub-Market**--An area defined by the Underwriter based on general overall market segmentation promulgated by market data tracking and reporting services from which a proposed or existing Development is most likely to draw the majority of its prospective tenants or homebuyers.

(32) **TDHCA Operating Database**--Sometimes referred to as "TDHCA Database." A consolidation of recent actual income and operating expense information collected through the Department's Annual Owner Financial Certification process, as required and described in Chapter 60, Subchapter A of this title (relating to Compliance Monitoring), and published on the Department's web site.

(33) **Underwriter**--The author(s) of the Credit Underwriting Analysis Report.

(34) **Unstabilized Development**--A development with Comparable Units that has been approved for funding by the TDHCA Board or is currently under construction or has not maintained a 90% occupancy level for at least twelve (12) consecutive months following construction completion. A development may be deemed stabilized by the Underwriter based on factors relating to a development's lease-up velocity, Sub-Market rents, Sub-Market occupancy trends and other information available to the Underwriter. The Market Analyst may not consider a development stabilized in the Market Study.

(35) **Utility Allowance**--The estimate of tenant-paid utilities, based either on the most current HUD Form 52667, "Section 8, Existing Housing Allowance for Tenant-Furnished Utilities and Other Services," provided by the local entity responsible for administering the HUD Section 8 program with most direct jurisdiction over the majority of the buildings existing, a documented estimate from the utility provider proposed in the Application, or for an existing development an allowance calculated by the Department pursuant to §60.109 of this title (relating to Utility Allowances). Documentation from the local utility provider to support an alternative calculation can be used to justify alternative Utility Allowance conclusions but must be specific to the subject development and consistent with the building plans provided.

(36) **Work Out Development**--A financially distressed Development for which the Owner and/or a primary financing participant is seeking a change in the terms of Department funding or program restrictions.

(c) **Appeals.** Certain programs contain express appeal options. Where not indicated, §1.7 of this chapter (relating to Staff Appeals Process) and §1.8 of this chapter (relating to Board Appeals Process) include general appeal procedures. In addition, the Department encourages the use of Alternative Dispute Resolution (ADR) methods, as outlined in §1.17 of this chapter.

§1.32. Underwriting Rules and Guidelines.

(a) **General Provisions.** Pursuant to §2306.148 and §2306.185(b), Texas Government Code, the Department's Governing Board is authorized to adopt underwriting standards as set forth in this section. Furthermore, for Housing Credit Allocation, §42(m)(2) of the Internal Revenue Code (IRC), requires the tax credits allocated to a development not to exceed the amount necessary to assure feasibility. The rules of the Texas Government Code and the IRC, resulting in a Credit Underwriting Analysis Report used by the Department's Governing Board in decision making with the goal to assist as many Texans as possible by providing no more financing than necessary based on an independent analysis of development feasibility. The Report considers all information timely provided by the Applicant. The Report generated in no way guarantees or purports to warrant the actual performance, feasibility, or viability of the Development.

(b) **Report Contents.** The Report provides a synopsis and reconciliation of the Application information submitted by the Applicant. The Report contents will be based solely upon information that is provided in accordance with the time frames provided in the current Qualified Allocation Plan (QAP) or Notice of Funds Availability (NOFA), as applicable.

(c) **Recommendations in the Report.** The conclusion of the Report includes a recommended award of funds or Housing Credit Allocation Amount based on the lesser amount calculated by the program limit method, if applicable, gap/DCR method, or the amount requested by the Applicant as further described in paragraphs (1) - (3) of this subsection, and states any feasibility conditions to be placed on the award.

(1) **Program Limit Method**. For Applicants requesting a Housing Credit Allocation, this method is based upon calculation of Eligible Basis after applying all cost verification measures and program limits as described in this section. The Applicable Percentage used is as defined in the QAP. For Applicants requesting funding through a Department program other than Housing Tax Credits, this method is based upon calculation of the funding limit based on the current program rules or NOFA at the time of underwriting.

(2) **Gap/DCR Method**. This method evaluates the amount of funds needed to fill the gap created by Total Housing Development Cost less total non-Department-sourced funds or Housing Tax Credits. In making this determination, the Underwriter resizes any anticipated deferred developer fee down to zero before reducing the amount of Department funds or Tax Credits. In the case of Housing Tax Credits, the syndication proceeds needed to fill the gap in permanent funds are divided by the syndication rate to determine the amount of Housing Tax Credits. In making this determination and based upon specific conditions set forth in the Report, the Underwriter may assume adjustments to the financing structure or make adjustments to any Department financing, such that the cumulative DCR conforms to the standards described in this section.

(3) **The Amount Requested**. The amount of funds that is requested by the Applicant as reflected in the original Application documentation.

(d) **Operating Feasibility.** The operating financial feasibility of developments funded by the Department is tested by subtracting operating expenses, including replacement reserves and taxes, from Income to determine Net Operating Income. The annual Net Operating Income is divided by the cumulative annual debt service required to be paid to determine the Debt Coverage Ratio. The Underwriter characterizes a Development as infeasible from an operational standpoint when the Debt Coverage Ratio does not meet the minimum standard set forth in paragraph (4)(D) of this subsection. The Underwriter may make adjustments to the financing structure, which could result in a re-characterization of the Development as feasible based upon specific conditions set forth in the Report.

(1) **Income**. In determining the first year stabilized pro forma, the Underwriter evaluates the reasonableness of the Applicant's income estimate by determining the appropriate rental rate per unit based on contract, program and market factors. Miscellaneous income and vacancy and collection loss limits as set forth in subparagraphs (B) and (C) of this paragraph, respectively, are applied unless well-documented support is provided.

(A) **Rental Income**. The Underwriter will independently calculate the Pro Forma Rent for comparison to the Applicant's estimate in the Application.

(i) Market Rents. The Underwriter will use the Market Analyst's conclusion of Market Rent if reasonably justified and supported by the attribute adjustment matrix of Comparable Units as described in §1.33 of this subchapter (relating to Market Analysis Rules and Guidelines). Independently determined Market Rents by the Underwriter may be used based on rent information gained from direct contact with comparable properties, whether or not used by the Market Analyst, and other market data sources.

(ii) Net Program Rents. The Underwriter reviews the Applicant's proposed rent schedule and determines if it is consistent with the representations made in the remainder of the Application. The Underwriter uses the Gross Program Rents for the year that is most current at the time the underwriting begins. When underwriting for a simultaneously funded competitive round, all Applications are underwritten with the Gross Program Rents for the same year. If Gross Program Rents are adjusted by the Department after the close of the Application Acceptance Period but prior to publication of the Report, the Underwriter may adjust the Applicant's EGI to account for any increase or decrease in Gross Program Rents for the purposes of determining the reasonableness of the Applicant's EGI.

(I) Units must be individually metered for all utility costs to be paid by the tenant.

(II) Gas utilities are verified on the building plans and elsewhere in the Application when applicable.

(III) Trash allowances paid by the tenant are rare and only considered when the building plans allow for individual exterior receptacles.

(IV) Refrigerator and range allowances are not considered part of the tenant-paid utilities unless the tenant is expected to provide their own appliances, and no eligible appliance costs are included in the Total Housing Development Cost schedule.

(iii) Contract Rents. The Underwriter reviews rental assistance contracts to determine the Contract Rents currently applicable to the Development. Documentation supporting the likelihood of continued rental assistance is also reviewed. The Underwriter will take into consideration the Applicant's intent to request a Contract Rent increase. At the discretion of the Underwriter, the Applicant's proposed rents may be used as the Pro Forma Rent with the recommendations of the Report conditioned upon receipt of final approval of such increase.

(B) **Miscellaneous Income**. All ancillary fees and miscellaneous secondary income, including but not limited to late fees, storage fees, laundry income, interest on deposits, carport rent, washer and dryer rent, telecommunications fees, and other miscellaneous income, are anticipated to be included in a $5 to $20 per unit per month range. Exceptions may be made at the discretion of the Underwriter for garage income, pass-through utility payments, pass-through water, sewer and trash payments, cable fees, congregate care/assisted living/elderly facilities, and child care facilities.

(i) Exceptions must be justified by operating history of existing comparable properties.

(ii) The Applicant must show that the tenant will not be required to pay the additional fee or charge as a condition of renting a Unit and must show that the tenant has a reasonable alternative.

(iii) The Applicant's operating expense schedule should reflect an itemized offsetting cost associated with income derived from pass-through utility payments, pass-through water, sewer and trash payments, and cable fees.

(iv) Collection rates of exceptional fee items will generally be heavily discounted.

(v) If an additional fee is charged for the use of an amenity, any cost associated with the construction, acquisition, or development of the hard assets needed to produce the additional fee for such amenity must be excluded from Eligible Basis.

(C) **Vacancy and Collection Loss**. The Underwriter generally uses a vacancy rate of 7.5% (5% vacancy plus 2.5% for collection loss). The Underwriter may use other assumptions based on conditions in the immediate market area. Qualified Elderly Developments and 100% project-based rental subsidy developments and other well documented cases may be

underwritten at a combined 5% at the discretion of the Underwriter if the historical performance reflected in the Market Analysis is consistently higher than a 95% occupancy rate.

(D) Effective Gross Income (EGI)--The Underwriter independently calculates EGI. If the EGI estimate provided by the Applicant is within 5% of the EGI calculated by the Underwriter, the Applicant's EGI is characterized as reasonable in the Report; however, for purposes of calculating DCR the Underwriter's pro forma will be used unless the Applicant's pro forma meets the requirements of paragraph (3) of this subsection.

(2) **Expenses**. In determining the first year stabilized pro forma, the Underwriter evaluates the reasonableness of the Applicant's expense estimate by line item comparisons based upon the specifics of each transaction, including the Type of Development, the size of the units, and the Applicant's expectations as reflected in their pro forma. Historical stabilized certified financial statements of the Development or Third Party quotes specific to the Development will reflect the strongest data points to predict future performance. The TDHCA Database of properties in the same location or region as the proposed Development also provides heavily relied upon data points; expense data from the TDHCA Database is available on the TDHCA website. Data from the Institute of Real Estate Management's (IREM) most recent Conventional Apartments-Income/Expense Analysis book for the proposed Development's property type and specific location or region may be referenced. In some cases local or project-specific data such as Public Housing Authority (PHA) Utility Allowances and property tax rates are also given significant weight in determining the appropriate line item expense estimate. Estimates of utility savings from green building components, including on-site renewable energy, must be documented by an unrelated contractor or component vendor. Well documented information provided in the Market Analysis, Appraisal, the Application, and other sources may be considered.

(A) **General and Administrative Expense** (G&A)--Expense for operational accounting fees, legal fees, advertising and marketing expenses, office operation, supplies, and equipment expenses. G&A does not include partnership related expenses such as asset management, accounting or audit fees. Costs of Tenant Services are not included in G&A.

(B) **Management Fee**. Fee paid to the property management company to oversee the operation of the property and is most often based upon a percentage of Effective Gross Income as documented in a property management agreement. Typically, 5% of the Effective Gross Income is used, though higher percentages for rural transactions that are consistent with the TDHCA Database may be used. Percentages as low as 3% may be used if well documented.

(C) Payroll Expense. Expense for direct on-site staff payroll, insurance benefits, and payroll taxes including payroll expenses for repairs and maintenance typical of a comparable development. It does not, however, include direct security payroll or additional Tenant Services payroll.

(D) **Repairs and Maintenance Expense**. Expense for repairs and maintenance, third-party maintenance contracts and supplies. It should not include capitalized expenses that would result from major replacements or renovations. Direct payroll for repairs and maintenance activities are included in payroll expense.

(E) **Utilities Expense**. Utilities expense includes all gas and electric energy expenses paid by the development.

(F) **Water, Sewer and Trash Expense** (WST)--Includes all water, sewer and trash expenses paid by the development.

(G) **Insurance Expense**. Insurance expense includes any insurance for the buildings, contents, and general liability but not health or workman's compensation insurance.

(H) **Property Tax**. Real property and personal property taxes but not payroll taxes.

(i) An assessed value will be calculated based on the capitalization rate published by the county taxing authority. If the county taxing authority does not publish a capitalization rate, a capitalization rate of 10% or a comparable assessed value may be used.

(ii) Property tax exemptions or a "Proposed Payment In Lieu Of Tax" agreement (PILOT) must be documented as being reasonably achievable. At the discretion of the Underwriter, a property tax exemption that meets known federal, state and

local laws may be applied based on the tax-exempt status of the Development Owner and its Affiliates.

(I) **Reserves**. An annual reserve for replacements of future capital expenses and any ongoing operating reserve requirements. The Underwriter includes minimum reserves of $250 per unit for New Construction and Reconstruction developments and $300 per unit for all other developments. The Underwriter may require an amount above $300 for the Development based on information provided in the PCA. The Applicant's assumption for reserves may be adjusted by the Underwriter if the amount provided by the Applicant is insufficient to fund capital needs as documented by the PCA during the first fifteen (15) years of the long term pro forma. Higher reserves may be used if documented by a primary lender or syndicator.

(J) **Other Expenses**. The Underwriter will include other reasonable and documented expenses. These include audit fees, tenant services, security expense and compliance fees. This category does not include depreciation, interest expense, lender or syndicator's asset management fees, or other ongoing partnership fees. The most common other expenses are described in more detail in clauses (i) - (iv) of this subparagraph.

(i) **Tenant Services**. Cost to the development of any non-traditional tenant benefit such as payroll for instruction or activities personnel and associated operating expenses. Tenant Services expenses are considered in calculating the Debt Coverage Ratio.

(ii) **Security Expense.** Contract or direct payroll expense for policing the premises of the Development.

(iii) **Compliance Fees.** Compliance fees include only compliance fees charged by the Department and are considered in calculating the Debt Coverage Ratio.

(iv) **Cable Television Expense.** Cable Television Expense includes fees charged directly to the owner of the Development to provide cable services to all units. The expense will be considered only if a contract for such services with terms is provided and income derived from cable television fees is included in the projected EGI. Cost of providing cable television in only the community building should be included in General and Administrative Expense as described in subparagraph (A) of this paragraph.

(K) The Underwriter may request additional documentation supporting some, none or all expense line items. If a rationale acceptable to the Underwriter for the difference is not provided, the discrepancy is documented in the Report. If the Applicant's total expense estimate is within 5% of the final total expense figure calculated by the Underwriter, the Applicant's figure is characterized as reasonable in the Report; however, for purposes of calculating DCR the Underwriter's independent calculation will be used unless the Applicant's first year stabilized pro forma meets the requirements of paragraph (3) of this subsection.

(3) **Net Operating Income**. The difference between the EGI and total operating expenses. If the first year stabilized NOI figure provided by the Applicant is within 5% of the NOI calculated by the Underwriter, the Applicant's figure is characterized as reasonable in the Report; however, for purposes of calculating the first year stabilized pro forma DCR the Underwriter will maintain and use his independent calculation of NOI unless the Applicant's first year stabilized EGI, total expenses, and NOI are each within 5% of the Underwriter's estimates.

(4) **Debt Coverage Ratio**. DCR is calculated by dividing Net Operating Income by the sum of scheduled loan principal and interest payments for all permanent sources of funds. Loan principal and interest payments are calculated based on the terms indicated in the term sheet(s) for financing submitted in the Application. Unusual or non-traditional financing structures may also be considered.

(A) **Interest Rate**. The rate documented in the term sheet(s) will be used for debt service calculations. Term sheets indicating a variable interest rate must provide a breakdown of the rate index and component rates comprising an all-in interest rate. The term sheet(s) must state the lender's underwriting interest rate, or the Applicant must submit a separate statement from the lender with an estimate of the interest rate as of the date of such statement. The Underwriter may adjust the underwritten interest rate based on data collected on similarly structured transactions or rate index history.

(B) **Amortization Period**. The Department generally requires an amortization of not less than thirty (30) years and not more than forty (40) years (fifty (50) years for federally sourced loans), or an adjustment to the amortization is made for the purposes of the analysis and recommendations. In non-Tax Credit transactions a lesser amortization period may be used if the Department's funds are fully amortized over the same period.

(C) **Repayment Period**. For purposes of projecting the DCR over a 30-year period for developments with permanent financing structures with balloon payments in less than thirty (30) years, the Underwriter will carry forward debt service based on a full amortization at the interest rate stated in the term sheet(s).

(D) **Acceptable Debt Coverage Ratio Range**. The acceptable first year stabilized pro forma DCR for all priority or foreclosable lien financing plus the Department's proposed financing must be between a minimum of 1.15 and a maximum of 1.35. HOPE VI and TRDO-USDA transactions may underwrite to a DCR less than 1.15 or greater than 1.35 based upon documentation of acceptance from the lender.

(i) For developments other than HOPE VI and TRDO-USDA transactions, if the DCR is less than the minimum, the recommendations of the Report may be based on an assumed reduction to debt service and the Underwriter will make adjustments to the assumed financing structure in the order presented in subclauses (I) - (III) of this clause.

(I) A reduction of the interest rate or an increase in the amortization period for TDHCA funded loans;

(II) A reclassification of TDHCA funded loans to reflect grants, if permitted by program rules;

(III) A reduction in the permanent loan amount for non-TDHCA funded loans based upon the rates and terms in the permanent loan term sheet(s) as long as they are within the ranges in subparagraphs (A) and (B) of this paragraph.

(ii) If the DCR is greater than the maximum, the recommendations of the Report may be based on an assumed increase to debt service and the Underwriter will make adjustments to the assumed financing structure in the order presented in subclauses (I) - (III) of this clause.

(I) reclassification of TDHCA funded grants to reflect loans, if permitted by program rules;

(II) An increase in the interest rate or a decrease in the amortization period for TDHCA funded loans;

(III) An increase in the permanent loan amount for non-TDHCA funded loans based upon the rates and terms in the permanent loan term sheet as long as they are within the ranges in subparagraphs (A) and (B) of this paragraph.

(iii) For Housing Tax Credit developments, a reduction in the recommended Housing Credit Allocation Amount may be made based on the gap/DCR method described in subsection (c)(2) of this section.

(iv) Although adjustments in debt service may become a condition of the Report, future changes in income, expenses, and financing terms could allow for an acceptable DCR.

(5) **Long Term Pro forma**. The Underwriter will create a 30-year operating pro forma.

(A) The Underwriter's first year stabilized pro forma is utilized unless the Applicant's first year stabilized EGI, operating expenses, and NOI are each within 5% of the Underwriter's estimates.

(B) A 2% annual growth factor is utilized for income and a 3% annual growth factor is utilized for expenses.

(C) Adjustments may be made to the Long Term Pro forma if satisfactory support documentation is provided by the Applicant or as determined by the Underwriter.

(e) **Total Housing Development Costs.** The Development's need for permanent funds and, when applicable, the Development's Eligible Basis is based upon the projected Total Housing Development Cost. The Department's estimate of the Total Housing Development Cost will be based on the Applicant's project cost schedule to the

extent that it can be verified to a reasonable degree of certainty with documentation from the Applicant and tools available to the Underwriter. For New Construction developments, the Underwriter's total cost estimate will be used unless the Applicant's Total Housing Development Cost is within 5% of the Underwriter's estimate. The Department's estimate of the Total Housing Development Cost for acquisition/Rehabilitation will be based in accordance with the PCA's estimated cost for the scope of work as defined by the Applicant and §1.36(a)(5) of this subchapter (relating to Property Condition Assessment Guidelines). If the Applicant's is utilized and the Applicant's line item costs are inconsistent with documentation provided in the Application or program rules, the Underwriter may make adjustments to the Applicant's Total Housing Development Cost.

(1) **Acquisition Costs**. The underwritten acquisition cost is verified with Site Control document(s) for the Property.

(A) **Excess Land Acquisition**. In cases where more land is to be acquired than will be utilized as the Development Site and the remainder acreage is not accessible for use by tenants or dedicated as permanent and maintained green space, the value ascribed to the proposed Development Site will be prorated based on acreage from the total cost reflected in the Site Control document(s). An appraisal containing segregated values for the total acreage, the acreage for the Development Site and the remainder acreage, or tax assessment value may be used by the Underwriter in making a proration determination based on relative value; however, the Underwriter will not utilize a prorated value greater than the total amount in the Site Control document(s).

(B) **Identity of Interest Acquisitions**.

(i) The acquisition will be considered an identity of interest transaction when the seller is an Affiliate of, a Related Party to, any owner at any level of the Development Team or a related party lender; and

(I) Is the current owner in whole or in part of the Property; or

(II) Was the owner in whole or in part of the Property during any period within the thirty-six (36) months prior to the first day of the Application Acceptance Period.

(ii) In all identity of interest transactions the Applicant is required to provide subclauses (I) and (II) of this clause.

(I) The original acquisition cost evidenced by an executed settlement statement or, if a settlement statement is not available, the original asset value listed in the most current financial statement for the identity of interest owner; and

(II) If the original acquisition cost evidenced by subclause (I) of this clause is less than the acquisition cost stated in the application:

(-a-) an appraisal that meets the requirements of §1.34 of this subchapter (relating to Appraisal Rules and Guidelines); and

(-b-) any other verifiable costs of owning, holding, or improving the Property, excluding seller financing, that when added to the value from subclause (I) of this clause justifies the Applicant's proposed acquisition amount.

(-1-) For land-only transactions, documentation of owning, holding or improving costs since the original acquisition date may include property taxes, interest expense, capitalized costs of any physical improvements, the cost of zoning, platting, and any off-site costs to provide utilities or improve access to the Property. All allowable holding and improvement costs must directly benefit the proposed Development by a reduction to hard or soft costs. Additionally, an annual return of 10% may be applied to the original capital investment and documented holding and improvement costs; this return will be applied from the date the applicable cost is incurred until the date of the Department's Board meeting at which the Grant, loan and/or Housing Credit Allocation will be considered.

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

(iii) In no instance will the acquisition cost utilized by the Underwriter exceed the lesser of the original acquisition cost evidenced by clause (ii)(I) of this subparagraph plus costs identified in clause (ii)(II)(-b-) of this subparagraph, or the "as-is" value conclusion evidenced by clause (ii)(II)(-a-) of this subparagraph. The resulting acquisition cost will be referred to as the "Adjusted Acquisition Cost."

(C) **Acquisition of Buildings for Tax Credit Properties**. Building acquisition cost will be included in the underwritten Total Housing Development Cost and/or Eligible Basis if the Applicant provided an appraisal that meets the Department's Appraisal Rules and Guidelines as described in §1.34 of this subchapter. The underwritten Total Housing Development Cost and/or Eligible Basis will include the lowest of the values determined based on clauses (i) - (iii) of this subparagraph.

(i) The Applicant's stated building acquisition cost;

(ii) The building acquisition cost reflected in the Site Control document(s), or the Adjusted Acquisition Cost, prorated using the relative land and building values indicated by the applicable appraised value;

(iii) Total acquisition cost reflected in the Site Control document(s), or the Adjusted Acquisition Cost, less the appraised "as-vacant" land value;

(iv) The Underwriter will use the value that best corresponds to the circumstances presently affecting the Development and that will continue to affect the Development after transfer to the new owner in determining the building value. Any value of existing favorable financing will be attributed prorata to the land and buildings.

(2) **Off-Site Costs**. Off-Site costs are costs of improvements up to the Development Site such as the cost of roads, water, sewer and other utilities to provide the site with access. All off-site costs must be well documented and certified by a Third Party engineer on the required application form. The certification from a Third Party engineer must describe the necessity of the off-site improvements, including the relevant requirements of the local jurisdiction with authority over building codes. If off-site costs are included in Eligible Basis based on PLR 200916007, a statement of findings from a CPA must be provided which describes the facts relevant to the Development and affirmatively certifies that the fact pattern of the Development matches the fact pattern in PLR 200916007.

(3) **Site Work Costs**. Site work costs exceeding $9,000 per Unit, exclusive of ineligible demolition costs, must be documented and certified by a Third Party engineer on the required application form. The Underwriter may require such documentation in cases where the site work cost estimates are not consistent with the Underwriter's site evaluation regardless of the per unit

threshold. In addition, for Applicants seeking Housing Tax Credits, documentation in keeping with §50.8(7)(C) of this title (relating to Threshold Criteria) will be utilized in calculating Eligible Basis.

(4) **Direct Construction Costs**. Sometimes referred to as "Building Costs" are those cost of materials and labor required for the vertical construction or rehabilitation of buildings and amenity structures.

(A) **New Construction and Reconstruction**. The Underwriter will use the Marshall and Swift Residential Cost Handbook, other comparable published third-party cost estimating data sources, historical final cost certifications of previous Housing Tax Credit developments and other acceptable cost data available to the Underwriter to estimate Building Cost. Generally, the "Average Quality" multiple, townhouse, or single family costs, as appropriate, from the Marshall and Swift Residential Cost Handbook or other comparable published third-party data source, will be used based upon details provided in the Application and particularly building plans and elevations. The Underwriter will consider amenities, specifications and types of development not included in the Average Quality standard.

(B) **Rehabilitation and Adaptive Reuse**. The Underwriter will use cost data provided by the Property Condition Assessment (PCA). In the case where the Applicant has provided a PCA which is inconsistent with the Applicant's estimate as proposed in the Total Housing Development Cost schedule and/or the Applicant's scope of work, the Underwriter may request a supplement executed by the PCA provider reconciling the Applicant's estimate and detailing the difference in costs. If said supplement is not provided or the Underwriter determines that the reasons for the initial difference in costs are not well-documented, the Underwriter utilizes the initial PCA estimations.

(5) **Contingency**. All contingencies identified in the Applicant's project cost schedule including any soft cost contingency will be limited to a maximum of 7% of Building Cost plus site work and off-sites for New Construction and Reconstruction developments and 10% of Building Cost plus site work and off-sites for Rehabilitation and Adaptive Reuse developments. For Housing Tax Credit developments, the percentage is applied to the sum of the eligible Building Cost, eligible site work costs and eligible off-site costs in calculating the eligible contingency cost. The Applicant's estimate is used by the Underwriter if less than the 7% or 10% limit, as applicable.

(6) **Contractor Fee**. Contractor fees include general requirements, contractor overhead, and contractor profit. General requirements include, but are not limited to: on-site supervision or construction management, off-site supervision and overhead, jobsite security, equipment rental, storage, temporary utilities and other indirect costs (consistent with costs outlined in Division 1 of the Construction Specifications Institute's MasterFormat system). Contractor fees are limited to a total of 14% on developments with Hard Costs of $3 million or greater, the lesser of $420,000 or 16% on developments with Hard Costs less than $3 million and greater than $2 million, and the lesser of $320,000 or 18% on developments with Hard Costs at $2 million or less. For tax credit developments, the percentages are applied to the sum of the Eligible Hard Costs in calculating the eligible contractor fees. For developments also receiving financing from TRDO-USDA, the combination of builder's general requirements, builder's overhead, and builder's profit should not exceed the lower of TDHCA or TRDO-USDA requirements. Additional fees for ineligible costs will be limited to the same percentage of ineligible Hard Costs but will not be included in Eligible Basis.

(7) **Developer Fee**. Developer fee is multiplied by the appropriate Applicable Percentage depending whether it is attributable to acquisition or rehabilitation basis. Additional fees for ineligible costs will be limited to the same percentage of ineligible Hard Costs (15% for developments with 50 or more units, or 20% for developments with 49 or fewer units) but will not be included in Eligible Basis. All fees to Affiliates and/or Related Parties for work determined by the Underwriter to be typically completed by the developer will be considered part of developer fee.

(A) For Housing Tax Credit developments, the development cost associated with developer fees and Development Consultant fees included in Eligible Basis cannot exceed 15% of the project's eligible costs less developer fees for developments proposing 50 units or more and 20% of the project's eligible costs less developer fees for developments proposing 49 units or less, as defined in the QAP.

(B) In the case of a transaction requesting acquisition Tax Credits:

(i) the allocation of eligible developer fee in calculating Rehabilitation/New Construction Housing Tax Credits will not exceed 15% of the Rehabilitation/New Construction eligible costs less developer fees for developments proposing 50 units

or more and 20% of the Rehabilitation/New Construction eligible costs less developer fees for developments proposing 49 units or less; and

(ii) no developer fee attributable to an identity of interest acquisition of the Development will be included.

(C) For non-Housing Tax Credit developments, the percentage can be up to 15% but is based upon Total Housing Development Cost less the sum of the fee itself, land costs, the costs of permanent financing, excessive construction period financing described in paragraph (8) of this subsection, reserves, and any identity of interest acquisition cost.

(8) **Financing Costs**. Eligible construction period interest is limited to the lesser of actual eligible construction period interest, or the interest on one (1) year's fully drawn construction period loan funds at the construction period interest rate indicated in the term sheet(s). Any excess over this amount will not be included in Eligible Basis. Construction period interest on Related-Party construction loans are not included in Eligible Basis.

(9) **Reserves**. The Underwriter will utilize the amount described in the Applicant's project cost schedule if it is within the range of two (2) to six (6) months of stabilized operating expenses less management fees and reserve for replacements plus debt service. Alternatively, the Underwriter may consider a greater amount proposed by the first lien lender or syndicator if the detail for such greater amount is well documented in the first lien lender or syndicator term sheet(s).

(10) **Other Soft Costs**. For Housing Tax Credit developments, all other soft costs are divided into eligible and ineligible costs. Eligible costs are defined by Internal Revenue Code but generally are costs that can be capitalized in the basis of the Development for tax purposes. Ineligible costs are those that tend to fund future operating activities and operating reserves. The Underwriter will evaluate and apply the allocation of these soft costs in accordance with the Department's prevailing interpretation of the Internal Revenue Code. If the Underwriter questions the amount or eligibility of any soft costs, the Applicant will be given an opportunity to clarify and address the concern prior to completion of the Report.

(f) **Development Team Capacity and Development Plan.**

(1) The Underwriter will evaluate and report on the overall capacity of the Development Team by reviewing:

(A) Personal credit reports for development sponsors, developer fee recipients and those individuals anticipated to provide guarantee(s). The Underwriter will evaluate the credit report and identify any bankruptcy, state or federal tax liens or other relevant credit risks for compliance with eligibility and debarment requirements in the QAP;

(B) Quality of construction, Rehabilitation, and ongoing maintenance of previously awarded housing developments by review of construction inspection reports, compliance on-site visits, findings of UPCS violations and other information available to the Underwriter;

(C) For Housing Tax Credit developments, repeated or ongoing failure to timely submit cost certifications, requests for and clearance of final inspections, and timely response to deficiencies in the cost certification process;

(D) Adherence to obligations on existing or prior TDHCA funded developments with respect to program rules and documentation.

(2) While all components of the development plan may technically meet the other individual requirements of this section, a confluence of serious concerns and unmitigated risks identified during the underwriting process will result in an Application being referred to the Committee. The Committee will review any recommendation made under this subsection to deny an Application for a Grant, loan and/or Housing Credit Allocation prior to completion of the Report and posting to the Department's website.

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

(1) **Floodplains**. The Underwriter evaluates the site plan, floodplain map, survey and other information provided to determine if any of the buildings, drives, or parking areas reside within the 100-year floodplain. If such a determination is made by the Underwriter, the Report will include a condition that:

(A) The Applicant must pursue and receive a Letter of Map Amendment (LOMA) or Letter of Map Revision (LOMR-F); or

(B) The Applicant must identify the cost of flood insurance for the buildings and for the tenant's contents for buildings within the 100-year floodplain and certify that the flood insurance will be obtained; and

(C) The Development must be designed to comply with the QAP, as proposed.

(2) The Underwriter will identify in the Report any developments funded or known and anticipated to be eligible for funding within one linear mile of the subject.

(3) **Supportive Housing**. The unique development and operating characteristics of Supportive Housing developments may require special consideration in the following areas:

(A) **Operating Income**. The extremely-low-income tenant population typically targeted by a Supportive Housing Development may include deep-skewing of rents to well below the 50% AMI level or other maximum rent limits established by the Department. The Underwriter should utilize the Applicant's proposed rents in the Report as long as such rents are at or below the maximum rent limit proposed for the units and equal to any project based rental subsidy rent to be utilized for the Development;

(B) **Operating Expenses**. A Supportive Housing development may have significantly higher expenses for payroll, management fee, security, resident support services, or other items than typical Affordable Housing developments. The Underwriter will rely heavily upon the historical operating expenses of other Supportive Housing developments provided by the Applicant or otherwise available to the Underwriter;

(C) **DCR and Long Term Feasibility**. Supportive Housing developments may be exempted from the DCR requirements of subsection (d)(4)(D) of this section if the Development is anticipated to operate without conventional or “must-pay” debt. Applicants must provide evidence of sufficient financial resources to offset any projected 15-year cumulative negative Cash Flow. Such evidence will be evaluated by the Underwriter on a case-by-case basis to satisfy the Department's long term feasibility requirements and may take the form of one or a combination of the following: executed subsidy commitment(s); set-aside of Applicant's financial resources to be substantiated by current financial statements evidencing sufficient resources; and/or proof of annual fundraising success sufficient to fill anticipated operating losses. If either a set aside of financial resources or annual fundraising are used to evidence the long term feasibility of a Supportive Housing development, a resolution from the Applicant's governing board must be provided confirming their irrevocable commitment to the provision of these funds and activities; and/or

(D) **Total Housing Development Costs**. For Supportive Housing designed with only Efficiency Units, the Underwriter may use "Average Quality" dormitory costs, or costs of other appropriate design styles from the Marshall & Swift Valuation Service, with adjustments for amenities and/or quality as evidenced in the Application, as a base cost in evaluating the reasonableness of the Applicant's Building Cost estimate for New Construction Developments.

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

(i) **Feasibility Conclusion**. An infeasible Development will not be recommended for a Grant, loan or Housing Credit Allocation unless the Underwriter can determine an alternative structure and/or conditions the recommendations of the Report upon receipt of documentation supporting an alternative structure. A Development will be characterized as infeasible if paragraph (1) or (2) of this subsection applies. The Development will be characterized as infeasible if one or more of paragraphs (3) - (5) of this subsection applies unless paragraph (6)(B) of this subsection also applies.

(1) **Gross Capture Rate**. The method for determining the Gross Capture Rate for a Development is defined in §1.33(d)(11)(F) of this subchapter. The Underwriter will independently verify all components and conclusions of the Gross Capture Rate and may at their discretion use

independently acquired demographic data to calculate demand and may make a determination of the effective Gross Capture Rate based upon an analysis of the Sub-market. The Development:

(A) is characterized as a Qualified Elderly Development and the Gross Capture Rate exceeds 10% for the total proposed units; or

(B) is outside a Rural Area and targets the general population, and the Gross Capture Rate exceeds 10% for the total proposed units; or

(C) is in a Rural Area and targets the general population, and the Gross Capture Rate exceeds 30%; or

(D) targets Persons with Disabilities and the Gross Capture Rate exceeds 30%.

(E) Developments meeting the requirements of subparagraph (A), (B), (C), or (D) of this paragraph may avoid being characterized as infeasible if clause (i) or (ii) of this subparagraph apply.

(i) Replacement Housing. The proposed Development is comprised of Affordable Housing which replaces previously existing Affordable Housing within the Primary Market Area as defined in §1.33 of this subchapter on a Unit for Unit basis, and gives the displaced tenants of the previously existing Affordable Housing a leasing preference.

(ii) Existing Housing. The proposed Development is comprised of existing Affordable Housing which is at least 50% occupied and gives displaced existing tenants a leasing preference as stated in a relocation plan.

(2) **Deferred Developer Fee**. Applicants requesting an allocation of tax credits where the estimated deferred developer fee, based on the Underwriter's recommended financing structure, is not repayable from Cash Flow within the first fifteen (15) years of the long term pro forma as described in subsection (d)(5) of this section.

(3) **Pro Forma Rent**. The Pro Forma Rent for units with rents restricted at 60% of AMGI is less than the Net Program Rent for units with rents restricted at or below 50% of AMGI unless the Applicant accepts the Underwriter's recommendation, if any, that all restricted units have rents and incomes restricted at or below the 50% of AMGI level.

(4) **Initial Feasibility**. The first year stabilized pro forma operating expense divided by the first year stabilized pro forma Effective Gross Income is greater than 68% for rural developments 36 units or less and 65% for all other developments.

(5) **Long Term Feasibility**. Any year in the first fifteen (15) years of the Long Term Pro forma, as defined in subsection (d)(5) of this section, reflects:

(A) negative Cash Flow; or

(B) a Debt Coverage Ratio below 1.15.

(6) **Exceptions**. The infeasibility conclusions may be excepted where either of the following apply.

(A) The requirements in this subsection may be waived by the Executive Director of the Department or by the Committee if documentation is submitted by the Applicant to support unique circumstances that would provide mitigation.

(B) Developments meeting the requirements of one of more of paragraphs (3) - (5) of this subsection will be re-characterized as feasible if one or more of clauses (i) - (v) of this subparagraph apply.

(i) The Development will receive Project-based Section 8 Rental Assistance for at least 50% of the units and a firm commitment with terms including Contract Rent and number of units is submitted at application.

(ii) The Development will receive rental assistance for at least 50% of the units in association with TRDO-USDA financing.

(iii) The Development will be characterized as public housing as defined by HUD for at least 50% of the units.

(iv) The Development will be characterized as Supportive Housing for at least 50% of the units and evidence of adequate financial support for the long term viability of the Development is provided.

(v) The Development has other long term project based restrictions on rents for at least 50% of the units that allow rents to increase based upon expenses and the Applicant's proposed rents are at least 10% lower than both the Net Program Rent and Market Rent.

§1.33. Market Analysis Rules and Guidelines.

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

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

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

(1) If not listed as approved by the Department, Market Analysts must submit subparagraphs (A) - (F) of this paragraph at least thirty (30) days prior to the first day of the Application Acceptance Period for which the Market Analyst must be approved. To maintain status as an approved Qualified Market Analyst, updates to the items described in subparagraphs (A) - (C) of this paragraph must be submitted annually on the first Monday in February for review by the Department.
   (A) Documentation of good standing from the Texas Comptroller of Public Accounts.
   (B) A current organization chart or list reflecting all members of the firm who may author or sign the Market Analysis.
   (C) Resumes for all members of the firm or subcontractors who may author or sign the Market Analysis.
   (D) General information regarding the firm's experience including references, the number of previous similar assignments and time frames in which previous assignments were completed.
   (E) Certification from an authorized representative of the firm that the services to be provided will conform to the Department's Market Analysis Rules and Guidelines, as described in this section, in effect for the application round in which each Market Analysis is submitted.
   (F) A sample Market Analysis that conforms to the Department's Market Analysis Rules and Guidelines, as described in this section, in effect for the year in which the sample Market Analysis is submitted.

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

(3) The list of approved Qualified Market Analysts is posted on the Department's web site and updated within seventy-two (72) hours of a change in the status of a Market Analyst.

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

(1) **Title Page**. Include Property address or location, effective date of analysis, date report completed, name and address of person authorizing report, and name and address of Market Analyst.
(2) **Letter of Transmittal**. The date of the letter must be the date the report was completed. Include Property address or location, description of Property, statement as to purpose and scope of analysis, reference to accompanying Market Analysis report with effective date of analysis and summary of conclusions, date of Property inspection, name of persons inspecting subject Property, and signatures of all Market Analysts authorized to work on the assignment. Include a statement that the report preparer has read and understood the requirements of this section.
(3) **Table of Contents**. Number the exhibits included with the report for easy reference.
(4) **Summary Sheet**. Include the Department's Market Analysis Summary exhibit.
(5) **Assumptions and Limiting Conditions**. Include a description of all assumptions, both general and specific, made by the Market Analyst concerning the Property.
(6) **Identification of the Property**. Provide a statement to acquaint the reader with the Development. Such information includes street address, tax assessor's parcel number(s), and Development characteristics.
(7) **Statement of Ownership**. Disclose the current owners of record and provide a three (3) year history of ownership for the subject Property.
(8) **Secondary Market Area**. All of the Market Analyst's conclusions specific to the subject Development must be based on only one Secondary Market Area definition. The entire PMA, as described in this paragraph, must be contained within the Secondary Market boundaries. The Market Analyst must adhere to the methodology described in this paragraph when determining the secondary market area. (§2306.67055)
    (A) The Secondary Market Area will be defined by the Market Analyst with:
        (i) size based on a base year population of no more than 250,000 people inclusive of the Primary Market Area; and
        (ii) boundaries based on U.S. census tracts, ZIP codes, or place, as defined by the U.S. Census Bureau.
    (B) The Market Analyst's definition of the Secondary Market Area must include:
        (i) a detailed description of why the subject Development is expected to draw a significant number of tenants or homebuyers from the defined SMA;
        (ii) a complete demographic report for the defined SMA; and
        (iii) a scaled distance map indicating the SMA boundaries as well as the location of the subject Development and all comparable Developments.
(9) **Primary Market Area**. All of the Market Analyst's conclusions specific to the subject Development must be based on only one Primary Market Area definition. The Market Analyst must adhere to the methodology described in this paragraph when determining the market area. (§2306.67055)
    (A) The Primary Market Area will be defined by the Market Analyst with:
        (i) size based on a base year population of no more than 100,000 people;
        (ii) boundaries based on U.S. census tracts, ZIP codes, or place, as defined by the U.S. Census Bureau; and
        (iii) the population of the PMA may exceed 100,000 if the amount over the limit is contained within a single census tract or ZIP code, and if the PMA is defined by census tract or ZIP code.
    (B) The Market Analyst's definition of the Primary Market Area must include:
        (i) a detailed description of why the subject Development is expected to draw a majority of its prospective tenants or homebuyers from the defined PMA;
        (ii) a complete demographic report for the defined PMA; and
        (iii) a scaled distance map indicating the PMA boundaries as well as the location of the subject Development and all comparable Developments.

(C) **Comparable Units**. Identify Developments in the PMA with Comparable Units. In Primary Market Areas lacking sufficient rent comparables, it may be necessary for the Market Analyst to collect data from markets with similar characteristics and make quantifiable location adjustments. Provide a data sheet for each Development consisting of:
  (i) Development name;
  (ii) Address;
  (iii) Year of construction and year of Rehabilitation, if applicable;
  (iv) Property condition;
  (v) Population target;
  (vi) Unit mix specifying number of Bedrooms, number of baths, net rentable square footage; and
    (I) monthly rent and Utility Allowance; or
    (II) sales price with terms, marketing period and date of sale;
  (vii) Description of concessions;
  (viii) List of unit amenities;
  (ix) Utility structure;
  (x) List of common amenities; and
  (xi) For rental developments only;
    (I) occupancy; and
    (II) turnover.

(10) **Market Information:**

(A) For each of the defined market areas, identify the number of units for each of the categories in clauses (i) - (vi) of this subparagraph; the data must be clearly labeled as relating to either the PMA or the SMA, if applicable:
  (i) total housing;
  (ii) rental developments (all multi-family);
  (iii) Affordable Housing;
  (iv) Comparable Units;
  (v) Unstabilized Comparable Units; and
  (vi) proposed Comparable Units.

(B) **Occupancy**. The occupancy rate indicated in the Market Analysis may be used to support both the overall demand conclusion for the proposed Development and the vacancy rate assumption used in underwriting the Development (§1.32(d)(1)(C) of this subchapter relating to Underwriting Rules and Guidelines). State the overall physical occupancy rate for the proposed housing tenure (renter or owner) within the defined market areas by:
  (i) number of Bedrooms;
  (ii) quality of construction (class);
  (iii) Targeted Population; and
  (iv) Comparable Units.

(C) **Absorption**. State the absorption trends by quality of construction (class) and absorption rates for Comparable Units.

(D) **Demographic Reports**.
  (i) All demographic reports must include population and household data for a five (5) year period with the year of application as the base year;
  (ii) All demographic reports must provide sufficient data to enable calculation of income-eligible, age-, size-, and tenure-appropriate household populations;
  (iii) For Developments targeting seniors, all demographic reports must provide a detailed breakdown of households by age and by income; and
  (iv) A complete copy of all demographic reports relied upon for the demand analysis, including the reference index that indicates the census tracts or ZIP codes on which the report is based.

(E) **Demand**. Provide a comprehensive evaluation of the need for the proposed housing for the Development as a whole and each Unit type by number of Bedrooms proposed and rent restriction category within the defined market areas using the most current census and demographic data available.
  (i) **Demographics**. The Market Analyst should use demographic data specific to the characteristics of the households that will be living in the proposed Development.

For example, the Market Analyst should use demographic data specific to elderly population for an elderly Development, if available, and should avoid making adjustments from more general demographic data. If adjustment rates are used based on more general data for any of the following they should be clearly identified and documented as to their source in the report.

(I) Population. Provide population and household figures, supported by actual demographics, for a five (5) year period with the year of application as the base year.

(II) Target. If applicable, adjust the household projections for the Qualified Elderly or special needs population targeted by the proposed Development.

(III) Household Size-Appropriate. Adjust the household projections or target household projections, as applicable, for the appropriate household size for the proposed Unit type by number of Bedrooms proposed and rent restriction category based on 1.5 persons per Bedroom (round up).

(IV) Income Eligible. Adjust the household size appropriate projections for income eligibility based on the income bands for the proposed Unit type by number of Bedrooms proposed and rent restriction category with:

(-a-) the lower end of each income band calculated based on the lowest gross rent proposed divided by 35% for the general population and 50% for Qualified Elderly households; and

(-b-) the upper end of each income band equal to the applicable gross median income limit for the largest appropriate household size based on 1.5 persons per Bedroom (round up) or one person for efficiency units.

(V) **Tenure-Appropriate**. Adjust the income-eligible household projections for tenure (renter or owner). If tenure appropriate income eligible target household data is available, a tenure appropriate adjustment is not necessary.

(ii) **Gross Demand.** Gross Demand is defined as the sum of Potential Demand from the PMA, Demand from Other Sources, and Potential Demand from a Secondary Market Area (SMA) to the extent that SMA demand does not exceed 25% of Gross Demand.

(iii) **Potential Demand.** Potential Demand is defined as the number of income-eligible, age-, size-, and tenure-appropriate target households in the designated market area at the proposed placed in service date.

(I) Maximum eligible income is equal to the applicable gross median income limit for the largest appropriate household size based on 1.5 persons per Bedroom (round up) or one person for efficiency units.

(II) For Developments targeting the general population:

(-a-) Minimum eligible income is based on a 35% rent to income ratio;

(-b-) Appropriate household size is defined as 1.5 persons per Bedroom (rounded up); and

(-c-) The tenure-appropriate population for a rental Development is limited to the population of renter households.

(III) For Developments consisting solely of single family residences on separate lots with all units having three (3) or more bedrooms:

(-a-) Minimum eligible income is based on a 35% rent to income ratio;

(-b-) Appropriate household size is defined as 1.5 persons per bedroom (rounded up); and

(-c-) Gross Demand includes both renter and owner households.

(IV) For Developments targeting the senior population:

(-a-) Minimum eligible income is based on a 50% rent to income ratio; and

(-b-) Gross Demand includes all household sizes and both renter and owner households.

(iv) **Demand from Secondary Market Area:**

(I) Potential Demand from an SMA should be calculated in the same way as Potential Demand from the PMA;
(II) Potential Demand from an SMA may be included in Gross Demand to the extent that SMA demand does not exceed 25% of Gross Demand; and
(III) The supply of proposed and unstabilized Comparable Units in the SMA must be included in the calculation of the capture rate at the same proportion that Potential Demand from the SMA is included in Gross Demand.

(v) **Demand from Other Sources:**
(I) The source of additional demand and the methodology used to calculate the additional demand must be clearly stated;
(II) Consideration of Demand from Other Sources is at the discretion of the Underwriter;
(III) Demand from Other Sources must be limited to households that are not included in Potential Demand; and
(IV) If households with Section 8 vouchers are identified as a source of demand, the Market Study must include:
(-a-) Documentation of the number of vouchers administered by the local Housing Authority; and
(-b-) A complete demographic report for the area in which the vouchers are distributed.

(11) **Conclusions**. Include a comprehensive evaluation of the subject Property, separately addressing each housing type and specific population to be served by the Development in terms of items in subparagraphs (A) - (I) of this paragraph. All conclusions must be consistent with the data and analysis presented throughout the Market Analysis.
(A) **Unit Mix**. Provide a best possible unit mix conclusion based on the occupancy rates by Bedroom type within the PMA and target, income-eligible, size-appropriate and tenure-appropriate household demand within the PMA.
(B) **Rents**. Provide a separate Market Rent conclusion for each proposed Unit type by number of Bedrooms and rent restriction category. Conclusions of Market Rent below the maximum Net Program Rent limit must be well documented as the conclusions may impact the feasibility of the Development under §1.32(i) of this subchapter. In support of the Market Rent conclusions, provide a separate attribute adjustment matrix for each proposed unit type by number of Bedrooms and rental restriction category.
(i) The Department recommends use of HUD Form 92273.
(ii) A minimum of three developments must be represented on each attribute adjustment matrix.
(iii) Adjustments for concessions must be included, if applicable.
(iv) Total adjustments in excess of 15% must be supported with additional narrative.
(v) Total adjustments in excess of 25% indicate the Units are not comparable for the purposes of determining Market Rent conclusions.
(C) **Effective Gross Income**. Provide rental income, secondary income, and vacancy and collection loss projections for the subject derived independent of the Applicant's estimates.
(D) **Demand:**
(i) State the Gross Demand for each Unit type by number of Bedrooms proposed and rent restriction category (e.g. one-Bedroom units restricted at 50% of AMFI; two-Bedroom units restricted at 60% of AMFI); and
(ii) State the Gross Demand for the proposed Development as a whole. If some households are eligible for more than one unit due to overlapping eligible ranges for income or household size, Gross Demand should be adjusted to avoid including households more than once.
(E) **Relevant Supply**. The Relevant Supply of proposed and unstabilized Comparable Units includes:
(i) The proposed subject Units;
(ii) Comparable Units with priority over the subject that have made application to TDHCA and have not been presented to the TDHCA Board for decision;
(iii) Comparable Units in previously approved but Unstabilized Developments in the PMA; and

(iv) Comparable Units in previously approved but Unstabilized Developments in the SMA, in the same proportion as the proportion of Potential Demand from the SMA that is included in Gross Demand.

(F) **Gross Capture Rate**. The Gross Capture Rate is defined as the Relevant Supply divided by the Gross Demand. The Market Analyst must calculate a Gross Capture Rate for the subject Development as a whole, as well as for each Unit type by number of Bedrooms and rent restriction categories, and market rate Units, if applicable. Refer to §1.32(i) of this subchapter for feasibility criteria.

(G) A complete demand and capture rate analysis is required in every Market Study, regardless of the current occupancy level of an existing Development.

(H) **Absorption**. Project an absorption period for the subject Development to achieve Breakeven Occupancy. State the absorption rate.

(I) **Market Impact**. Provide an assessment of the impact the subject Development, as completed, will have on existing Developments supported by Housing Tax Credits in the Primary Market. (§2306.67055)

(12) **Photographs**. Provide labeled color photographs of the subject Property, the neighborhood, street scenes, and comparables. An aerial photograph is desirable but not mandatory.

(13) **Appendices**. Any Third Party reports including demographics relied upon by the Market Analyst must be provided in appendix form. A list of works cited including personal communications also must be provided, and the Modern Language Association (MLA) format is suggested.

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

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

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

§1.34. Appraisal Rules and Guidelines.

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

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

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

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

(1) **Title Page**. Include a statement identifying the Department as the client, acknowledging that the Department is granted full authority to rely on the findings of the report, and name and address of person authorizing report.

(2) **Letter of Transmittal**. Include reference to accompanying appraisal report, reference to all person(s) that provided significant assistance in the preparation of the report, date of report, effective date of appraisal, date of property inspection, name of person(s) inspecting the property, tax assessor's parcel number(s) of the site, estimate of marketing period, and signatures of all appraisers authorized to work on the assignment including the appraiser who inspected the property. Include a statement indicating the report preparer has read and understood the requirements of this section.

(3) **Table of Contents**. Number the exhibits included with the report for easy reference.

(4) **Disclosure of Competency**. Include appraiser's qualifications, detailing education and experience.

(5) **Statement of Ownership of the Subject Property**. Discuss all prior sales of the subject property which occurred within the past three (3) years. Any pending agreements of sale, options to buy, or listing of the subject property must be disclosed in the appraisal report.

(6) **Property Rights Appraised**. Include a statement as to the property rights (e.g., fee simple interest, leased fee interest, leasehold, etc.) being considered. The appropriate interest must be defined in terms of current appraisal terminology with the source cited.

(7) **Site/Improvement Description**. Discuss the site characteristics including subparagraphs (A) - (E) of this paragraph.

(A) **Physical Site Characteristics**. Describe dimensions, size (square footage, acreage, etc.), shape, topography, corner influence, frontage, access, ingress-egress, etc. associated with the site. Include a plat map and/or survey.

(B) **Floodplain**. Discuss floodplain (including flood map panel number) and include a floodplain map with the subject clearly identified.

(C) **Zoning**. Report the current zoning and description of the zoning restrictions and/or deed restrictions, where applicable, and type of Development permitted. Any probability of change in zoning should be discussed. A statement as to whether or not the improvements conform to the current zoning should be included. A statement addressing whether or not the improvements could be rebuilt if damaged or destroyed, should be included. If current zoning is not consistent with the highest and best use, and zoning changes are reasonable to expect, time and expense associated with the proposed zoning change should be considered and documented. A zoning map should be included.

(D) **Description of Improvements**. Provide a thorough description and analysis of the improvements including size (net rentable area, gross building area, etc.), number of stories, number of buildings, type/quality of construction, condition, actual age, effective age, exterior and interior amenities, items of deferred maintenance, energy efficiency measures, etc. All applicable forms of depreciation should be addressed along with the remaining economic life.

(E) **Environmental Hazards**. It is recognized appraisers are not experts in such matters and the impact of such deficiencies may not be quantified; however, the report should disclose any potential environmental hazards (e.g., discolored vegetation, oil residue, asbestos-containing materials, lead-based paint etc.) noted during the inspection.

(8) **Highest and Best Use**. Market Analysis and feasibility study is required as part of the highest and best use. The highest and best use analysis should consider paragraph (7)(A) - (E) of this subsection as well as a supply and demand analysis.

(A) The appraisal must inform the reader of any positive or negative market trends which could influence the value of the appraised property. Detailed data must be included to support the appraiser's estimate of stabilized income, absorption, and occupancy.

(B) The highest and best use section must contain a separate analysis "as if vacant" and "as improved" (or "as proposed to be improved/renovated"). All four elements (legally permissible, physically possible, feasible, and maximally productive) must be considered.

(9) **Appraisal Process**. It is mandatory that all three approaches, Cost Approach, Sales Comparison Approach and Income Approach, are considered in valuing the property. If an approach is not applicable to a particular property an adequate explanation must be provided. A land value estimate must be provided if the cost approach is not applicable.

(A) **Cost Approach**. This approach should give a clear and concise estimate of the cost to construct the subject improvements. The source(s) of the cost data should be reported.

(i) Cost comparables are desirable; however, alternative cost information may be obtained from Marshall & Swift Valuation Service or similar publications. The section, class, page, etc. should be referenced. All soft costs and entrepreneurial profit must be addressed and documented.

(ii) All applicable forms of depreciation must be discussed and analyzed. Such discussion must be consistent with the description of the improvements.

(iii) The land value estimate should include a sufficient number of sales which are current, comparable, and similar to the subject in terms of highest and best use. Comparable sales information should include address, legal description, tax assessor's parcel number(s), sales price, date of sale, grantor, grantee, three (3) year sales history, and adequate description of property transferred. The final value estimate should fall within the adjusted and unadjusted value ranges. Consideration and appropriate cash equivalent adjustments to the comparable sales price for subclauses (I) - (VII) of this clause should be made when applicable.

(I) Property rights conveyed.
(II) Financing terms.
(III) Conditions of sale.
(IV) Location.
(V) Highest and best use.
(VI) Physical characteristics (e.g., topography, size, shape, etc.).
(VII) Other characteristics (e.g., existing/proposed entitlements, special assessments, etc.).

(B) **Sales Comparison Approach**. This section should contain an adequate number of sales to provide the reader with a description of the current market conditions concerning this property type. Sales data should be recent and specific for the property type being appraised. The sales must be confirmed with buyer, seller, or an individual knowledgeable of the transaction.

(i) Sales information should include address, legal description, tax assessor's parcel number(s), sales price, financing considerations and adjustment for cash equivalency, date of sale, recordation of the instrument, parties to the transaction, three (3) year sale history, complete description of the property and property rights conveyed, and discussion of marketing time. A scaled distance map clearly identifying the subject and the comparable sales must be included.

(ii) The method(s) used in the Sales Comparison Approach must be reflective of actual market activity and market participants.

(I) Sale Price/Unit of Comparison. The analysis of the sale comparables must identify, relate, and evaluate the individual adjustments applicable for property rights, terms of sale, conditions of sale, market conditions, and physical features. Sufficient narrative must be included to permit the reader to understand the direction and magnitude of the individual adjustments, as well as a unit of comparison value indicator for each comparable.

(II) Net Operating Income/Unit of Comparison. The Net Operating Income statistics or the comparables must be calculated in the same manner. It should be disclosed if reserves for replacement have been included in this method of analysis. At least one other method should accompany this method of analysis.

(C) **Income Approach**. This section must contain an analysis of both the actual historical and projected income and expense aspects of the subject property.

(i) **Market Rent Estimate/Comparable Rental Analysis**. This section of the report should include an adequate number of actual market transactions to inform the reader of current market conditions concerning rental units. The comparables must indicate current research for this specific property type. The comparables must be confirmed with the landlord, tenant or agent and individual data sheets must be included. The individual data sheets should include property address, lease terms,

description of the property (e.g., unit type, unit size, unit mix, interior amenities, exterior amenities, etc.), physical characteristics of the property, and location of the comparables. Analysis of the Market Rents should be sufficiently detailed to permit the reader to understand the appraiser's logic and rationale. Adjustment for lease rights, condition of the lease, location, physical characteristics of the property, etc. must be considered.

(ii) **Comparison of Market Rent to Contract Rent**. Actual income for the subject along with the owner's current budget projections must be reported, summarized, and analyzed. If such data is unavailable, a statement to this effect is required and appropriate assumptions and limiting conditions should be made. The Contract Rents should be compared to the market-derived rents. A determination should be made as to whether the Contract Rents are below, equal to, or in excess of market rates. If there is a difference, its impact on value must be qualified.

(iii) **Vacancy/Collection Loss**. Historical occupancy data and current occupancy level for the subject should be reported and compared to occupancy data from the rental comparables and overall occupancy data for the subject's Primary Market.

(iv) **Expense Analysis**. Actual expenses for the subject, along with the owner's projected budget, must be reported, summarized, and analyzed. If such data is unavailable, a statement to this effect is required and appropriate assumptions and limiting conditions should be made. Historical expenses should be compared to comparables expenses of similar property types or published survey data (e.g., IREM, BOMA, etc.). Any expense differences should be reconciled. Include historical data regarding the subject's assessment and tax rates and a statement as to whether or not any delinquent taxes exist.

(v) **Capitalization**. The appraiser should present the capitalization method(s) reflective of the subject market and explain the omission of any method not considered in the report.

(I) **Direct Capitalization**. The primary method of deriving an overall rate (OAR) is through market extraction. If a band of investment or mortgage equity technique is utilized, the assumptions must be fully disclosed and discussed.

(II) **Yield Capitalization (Discounted Cash Flow Analysis)**. This method of analysis should include a detailed and supportive discussion of the projected holding/investment period, income and income growth projections, occupancy projections, expense and expense growth projections, reversionary value and support for the discount rate.

(10) **Value Estimates**. Reconciliation of final value estimates is required. The Underwriter may request additional valuation information based on unique existing circumstances that are relevant for deriving the market value of the property.

(A) All appraisals shall contain a separate estimate of the "as vacant" market value of the underlying land, based upon current sales comparables. The appraiser should consider the fee simple or leased fee interest as appropriate.

(B) For existing developments with any project-based rental assistance that will remain with the property after the acquisition, the appraisal must include an “as-is as-currently-restricted value” inclusive of the value associated with the rental assistance. If the rental assistance has an impact on the value, such as use of a lower capitalization rate due to the lower risk associated with rental rates and/or occupancy rates on project-based developments, this must be fully explained and supported to the satisfaction of the Underwriter.

(C) For existing developments with rent restrictions, the appraisal must include the “as-is as-restricted” value. In particular, the restricted rents should be contemplated when deriving the value based on the income approach.

(D) For all other existing developments, the appraisal must include the “as-is” value.

(E) For any development with favorable financing (generally below market debt) that will remain in place and transfer to the new owner, the appraisal must include a separate value for the existing favorable financing with supporting information.

(F) If required the appraiser must include a separate assessment of personal property, furniture, fixtures, and equipment (FF&E) and/or intangible items. If personal property, FF&E, or intangible items are not part of the transaction or value estimate, a statement to such effect should be included.

(11) **Marketing Time**. Given property characteristics and current market conditions, the appraiser(s) should employ a reasonable marketing period. The report should detail existing market conditions and assumptions considered relevant.

(12) **Photographs**. Provide good quality color photographs of the subject property (front, rear, and side elevations, on-site amenities, interior of typical units if available). Photographs should be properly labeled. Photographs of the neighborhood, street scenes, and comparables should be included. An aerial photograph is desirable but not mandatory.

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

§1.35.Environmental Site Assessment Rules and Guidelines.

(a) **General Provisions.** The Environmental Site Assessments (ESA) prepared for the Department should be conducted and reported in conformity with the standards of the American Society for Testing and Materials. The initial report should conform with the Standard Practice for Environmental Site Assessments: Phase I Assessment Process (ASTM Standard Designation: E1527-05). Any subsequent reports should also conform to ASTM standards and such other recognized industry standards as a reasonable person would deem relevant in view of the Property's anticipated use for human habitation. The environmental assessment shall be conducted by a Third Party environmental professional at the expense of the Applicant, and addressed to TDHCA as a User of the report (as defined by ASTM standards). Copies of reports provided to TDHCA which were commissioned by other financial institutions should address TDHCA as a co-recipient of the report, or letters from both the provider and the recipient of the report should be submitted extending reliance on the report to TDHCA. The ESA report should also include a statement that the person or company preparing the ESA report will not materially benefit from the Development in any other way than receiving a fee for performing the Environmental Site Assessment, and that the fee is in no way contingent upon the outcome of the assessment. The ESA report must contain a statement indicating the report preparer has read and understood the requirements of this section.

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

(1) State if a noise study is recommended for a property in accordance with current HUD guidelines and identify its proximity to industrial zones, major highways, active rail lines, civil and military airfields, or other potential sources of excessive noise;

(2) Provide a copy of a current survey, if available, or other drawing of the site reflecting the boundaries and adjacent streets, all improvements on the site, and any items of concern described in the body of the environmental site assessment or identified during the physical inspection;

(3) Provide a copy of the current FEMA Flood Insurance Rate Map showing the panel number and encompassing the site with the site boundaries precisely identified and superimposed on the map;

(4) If the subject site includes any improvements or debris from pre-existing improvements, state if testing for asbestos containing materials (ACMs) would be required pursuant to local, state, and federal laws, or recommended due to any other consideration;

(5) If the subject site includes any improvements or debris from pre-existing improvements, state if testing for Lead Based Paint would be required pursuant to local, state, and federal laws, or recommended due to any other consideration;

(6) State if testing for lead in the drinking water would be required pursuant to local, state, and federal laws, or recommended due to any other consideration such as the age of pipes and solder in existing improvements; and

(7) Assess the potential for the presence of Radon on the property, and recommend specific testing if necessary.

(c) If the report recommends further studies or establishes that environmental hazards currently exist on the Property, or are originating off-site but would nonetheless affect the Property, the Development Owner must

act on such a recommendation or provide a plan for either the abatement or elimination of the hazard. Evidence of action or a plan for the abatement or elimination of the hazard must be presented upon Application submittal.

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

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

§1.36. Property Condition Assessment Guidelines.

(a) **General Provisions.** The objective of the Property Condition Assessment for Rehabilitation Developments is to provide cost estimates for repairs and replacements, and new construction of additional buildings or amenities, which are: immediately necessary repairs and replacements; improvements proposed by the Applicant as outlined in a scope of work narrative submitted by the Applicant to the PCA provider that is consistent with the scope of work provided in the Application; and expected to be required throughout the term of the regulatory period and not less than thirty (30) years. The PCA prepared for the Department should be conducted and reported in conformity with the American Society for Testing and Materials "Standard Guide for Property Condition Assessments. Baseline Property Condition Assessment Process (ASTM Standard Designation: E 2018") except as provided for in subsections (b) and (c) of this section. The PCA report must contain a statement indicating the report preparer has read and understood the requirements of this section. The PCA must include the Department's PCA Cost Schedule Supplement which details all Rehabilitation costs and projected repairs and replacements through at least fifteen (15) years. The PCA must also include discussion and analysis of the following:

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

(2) **Code Compliance**. The PCA should review and document any known violations of any applicable federal, state, or local codes. In developing the cost estimates specified herein, it is the responsibility of the Housing Sponsor or Applicant to ensure that the PCA adequately considers any and all applicable federal, state, and local laws and regulations which may govern any work performed to the subject property;

(3) **Program Rules**. The PCA should assess the extent to which any systems or components must be modified, repaired, or replaced in order to comply with any specific requirements of the housing program under which the Development is proposed to be financed, particular consideration being given to accessibility requirements, the Department's Housing Quality Standards, and any scoring criteria for which the Applicant may claim points;

(4) **Statement of Acknowledgement**. The PCA provider must affirm in the report that the Applicant's scope of work for improvements and the immediate needs of the Rehabilitation are considered and reconciled within the PCA report and the PCA Cost Schedule Supplement; and

(5) **Cost Estimates for Repair and Replacement**. It is the responsibility of the Housing Sponsor or Applicant to ensure that the PCA provider is apprised of all development activities associated with the proposed transaction and consistency of the total immediately necessary and proposed repair and replacement cost estimates with the Total Housing Development Cost schedule and scope of work submitted as an exhibit of the Application.

(A) **Immediately Necessary Repairs and Replacement**. Systems or components which are expected to have a remaining useful life of less than one (1) year, which are found to be in violation of any applicable codes, which must be modified, repaired or replaced in order to satisfy program rules, or which are otherwise in a state of deferred maintenance or pose health and safety hazards should be considered immediately necessary repair and replacement. The PCA must provide a separate estimate of the costs associated with the repair, replacement, or maintenance of each system or component which is identified as being an immediate need, citing the basis or the source from which such cost estimate is derived.

(B) **Proposed Repair, Replacement, or New Construction**. If the development plan calls for additional repair, replacement, or New Construction above and beyond the immediate repair and replacement described in subparagraph (A) of this paragraph, such items must be identified and the nature or source of obsolescence or improvement to the operations of the Property discussed. The PCA must provide a separate estimate of the costs associated with the repair, replacement, or new construction which is identified as being above and beyond the immediate need, citing the basis or the source from which such cost estimate is derived.

(C) **Expected Repair and Replacement Over Time**. The term during which the PCA should estimate the cost of expected repair and replacement over time must equal the longest term of any land use or regulatory restrictions which are, or will be, associated with the provision of housing on the property. The PCA must estimate the periodic costs which are expected to arise for repairing or replacing each system or component or the property, based on the estimated remaining useful life of such system or component as described in paragraph (1) of this subsection adjusted for completion of repair and replacement immediately necessary and proposed as described in subparagraphs (A) and (B) of this paragraph. The PCA must include a separate table of the estimated long term costs which identifies in each line the individual component of the property being examined, and in each column the year during the term in which the costs are estimated to be incurred and no less than fifteen (15) years. The estimated costs for future years should be given in both present dollar values and anticipated future dollar values assuming a reasonable inflation factor of not less than 2.5% per annum.

(b) If a copy of such standards or a sample report have been provided for the Department's review, if such standards are widely used, and if all other criteria and requirements described in this section are satisfied, the Department will also accept copies of reports commissioned or required by the primary lender for a proposed transaction, which have been prepared in accordance with:
(1) Fannie Mae's criteria for Physical Needs Assessments;
(2) Federal Housing Administration's criteria for Project Capital Needs Assessments;
(3) Freddie Mac's guidelines for Engineering and Property Condition Reports;
(4) TRDO-USDA guidelines for Capital Needs Assessment; or
(5) Standard and Poor's Property Condition Assessment Criteria: Guidelines for Conducting Property Condition Assessments, Multifamily Buildings.

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

(d) The PCA shall be conducted by a Third Party at the expense of the Applicant, and addressed to TDHCA as the client. Copies of reports provided to TDHCA which were commissioned by other financial institutions should address TDHCA as a co-recipient of the report, or letters from both the provider and the recipient of the report should be submitted extending reliance on the report to TDHCA. The PCA report should also include a statement that the person or company preparing the PCA report will not materially benefit from the Development in any other way than receiving a fee for performing the PCA. The PCA report must contain a statement indicating the report preparer has read and understood the requirements of this section. The PCA should be signed and dated by the report provider not more than six (6) months prior to the date of the Application.

§1.37. Reserve for Replacement Rules and Guidelines.

(a**) General Provisions.** The Department will require Development Owners to provide regular maintenance to keep housing sanitary, safe and decent by maintaining a reserve for replacement in accordance with §2306.186 of the Texas Government Code. The reserve must be established for each unit in a Development of 25 or more rental units, regardless of the amount of rent charged for the unit. The Department shall, through cooperation of its divisions responsible for asset management and compliance, ensure compliance with this section.

(b) The First Lien Lender shall maintain the Reserve Account through an escrow agent acceptable to the First Lien Lender to hold reserve funds in accordance with an executed escrow agreement and the rules set forth in this section and §2306.186 of the Texas Government Code.

(1) Where there is a First Lien Lender other than the Department or a Bank Trustee as a result of a bond indenture or tax credit syndication, the Department shall:
  (A) Be a required signatory party in all escrow agreements for the maintenance of reserve funds;
  (B) Be given notice of any asset management findings or reports, transfer of money in Reserve Accounts to fund necessary repairs, and any financial data and other information pursuant to the oversight of the Reserve Account within thirty (30) days of any receipt or determination thereof; and
  (C) Subordinate its rights and responsibilities under the escrow agreement, including those described in this subsection, to the First Lien Lender or Bank Trustee through a subordination agreement subject to its ability to do so under the law and normal and customary limitations for fraud and other conditions contained in the Department's standard subordination clause agreements as modified from time to time, to include subsection (c) of this section.
(2) The escrow agreement and subordination agreement, if applicable, shall further specify the time and circumstances under which the Department can exercise its rights under the escrow agreement in order to fulfill its obligations under §2306.186 Texas Government Code and as described in this section.
(3) Where the Department is the First Lien Lender and there is no Bank Trustee as a result of a bond indenture or tax credit syndication or where there is no First Lien Lender but the allocation of funds by the Department and §2306.186 Texas Government Code requires that the Department oversee a Reserve Account, the Owner shall provide at their sole expense for appointment of an escrow agent acceptable to the Department to act as Bank Trustee as necessary under this section. The Department shall retain the right to replace the escrow agent with another Bank Trustee or act as escrow agent at a cost plus fee payable by the Owner due to breach of the escrow agent's responsibilities or otherwise with thirty (30) days prior notice of all parties to the escrow agreement.

(c) If the Department is not the First Lien Lender with respect to the Development, each Development Owner receiving Department assistance for multifamily rental housing shall submit on an annual basis within the Department's required Owner's Financial Certification packet a signed certification by the First Lien Lender including:

(1) Reserve for replacement requirements under the first lien loan agreement;
(2) Monitoring standards established by the First Lien Lender to ensure compliance with the established reserve for replacement requirements; and
(3) A statement by the First Lien Lender:
  (A) That the Development Owner has met all established reserve for replacement requirements; or
  (B) Of the plan of action to bring the Development in compliance with all established reserve for replacement requirements, if necessary.

(d) If the Development meets the minimum unit size described in subsection (a) of this section and the establishment of a Reserve Account for repairs has not been required by the First Lien Lender or Bank Trustee, each Owner receiving Department assistance for multifamily rental housing shall set aside the repair reserve amount as described in subsection (e)(1) - (3) of this section through the date described in subsection (f)(2) of this section through the appointment of an escrow agent as further described in subsection (b)(3) of this section.

(e) If the Department is the First Lien Lender with respect to the Development, each Development Owner receiving Department assistance for multifamily rental housing shall deposit annually into a Reserve Account through the date described in subsection (f)(2) of this section.

(1) For new construction Developments:
(A) Not less than $150 per unit per year for units one (1) to five (5) years old; and
(B) Not less than $200 per unit per year for units six (6) or more years old.
(2) For Rehabilitation and Reconstruction Developments:
(A) An amount per unit per year established by the Department's division responsible for credit underwriting based on the information presented in a Property Condition Assessment in conformance with §1.36 of this subchapter (relating to Property Condition Assessment Guidelines); and
(B) Not less than $300 per unit per year.
(3) For either new construction, Rehabilitation or Reconstruction Developments, the Development Owner of a multifamily rental housing Development shall contract for a third-party Property Condition Assessment meeting the requirements of §1.36 of this subchapter and the Department will reanalyze the annual reserve requirement based on the findings and other support documentation.
(A) A Property Condition Assessment will be conducted:
(i) At appropriate intervals that are consistent with requirements of the First Lien Lender, other than the Department; or
(ii) At least once during each five-year period beginning with the 11th year after the awarding of any financial assistance for the Development by the Department, if the Department is the First Lien Lender or the First Lien Lender does not require a third-party Property Condition Assessment.
(B) Submission by the Owner to the Department will occur within thirty (30) days of completion of the Property Condition Assessment and must include:
(i) The complete Property Condition Assessment;
(ii) First Lien Lender and/or Owner response to the findings of the Property Condition Assessment;
(iii) Documentation of repairs made as a result of the Property Condition Assessment; and
(iv) Documentation of adjustments to the amounts held in the replacement Reserve Account based upon the Property Condition Assessment.

(f) A Land Use Restriction Agreement or restrictive covenant between the Owner and the Department must require:

(1) The Owner to begin making annual deposits to the Reserve Account on the later of:
(A) The date that occupancy of the Development stabilizes as defined by the First Lien Lender or in the absence of a First Lien Lender other than the Department, the date the property is at least 90% occupied; or
(B) The date that permanent financing for the Development is completely in place as defined by the First Lien Lender or in the absence of a First Lien Lender other than the Department, the date when the permanent loan is executed and funded.
(2) The Owner to continue making deposits until the earliest of the following dates:
(A) The date on which the Owner suffers a total casualty loss with respect to the Development;
(B) The date on which the Development becomes functionally obsolete, if the Development cannot be or is not restored;
(C) The date on which the Development is demolished;
(D) The date on which the Development ceases to be used as a multifamily rental property; or
(E) The later of:
(i) The end of the affordability period specified by the Land Use Restriction Agreement or restrictive covenant; or
(ii) The end of the repayment period of the first lien loan.

(g) The duties of the Owner of a multifamily rental housing Development under this section cease on the date of a change in ownership of the Development; however, the subsequent Owner of the Development is subject to the requirements of this section.

(h) If the Department is the First Lien Lender with respect to the Development or the First Lien Lender does not require establishment of a Reserve Account, the Owner receiving Department assistance for multifamily rental housing shall submit on an annual basis within the Department's required Owner's Financial Certification packet:

(1) Financial statements, audited if available, with clear identification of the replacement Reserve Account balance and all capital improvements to the Development within the fiscal year;
(2) Identification of costs other than capital improvements funded by the replacement Reserve Account; and
(3) Signed statement of cause for:
(A) Use of replacement Reserve Account for expenses other than necessary repairs, including property taxes or insurance;
(B) Deposits to the replacement Reserve Account below the Department's or First Lien Lender's mandatory levels as defined in subsections (c), (d) and (e) of this section; and
(C) Failure to make a required deposit.

(i) If a request for extension or waiver is not approved by the Department, Department action, including a penalty of up to $200 per dwelling unit in the Development and/or characterization of the Development as Materially Non-Compliant, as defined in §60.102 of this title (relating to Definitions), may be taken when:

(1) A Reserve Account, as described in this section, has not been established for the Development;
(2) The Department is not a party to the escrow agreement for the Reserve Account;
(3) Money in the Reserve Account:
(A) Is used for expenses other than necessary repairs, including property taxes or insurance; or
(B) Falls below mandatory deposit levels;
(4) Owner fails to make a required deposit;
(5) Owner fails to contract for the third party Property Condition Assessment as required under subsection (e)(3) of this section; or
(6) Owner fails to make necessary repairs, as defined in subsection (k) of this section.

(j) On a case by case basis, the Department may determine that the money in the Reserve Account may:

(1) Be used for expenses other than necessary repairs, including property taxes or insurance, if:
(A) Development income before payment of return to Owner or deferred developer fee is insufficient to meet operating expense and debt service requirements; and
(B) The funds withdrawn from the Reserve Account are replaced as Cash Flow after payment of expenses, but before payment of return to Owner or developer fee is available;
(2) Fall below mandatory deposit levels without resulting in Department action, if:
(A) Development income after payment of operating expenses, but before payment of return to Owner or deferred developer fee is insufficient to fund the mandatory deposit levels; and
(B) Subsequent deposits to the Reserve Account exceed mandatory deposit levels as Cash Flow after payment of operating expenses, but before payment of return to Owner or deferred developer fee is available until the Reserve Account has been replenished to the mandatory deposit level less capital expenses to date.

(k) The Department or its agent may make repairs to the Development if the Owner fails to complete necessary repairs indicated in the submitted Property Condition Assessment or identified by physical inspection. Repairs may be deemed necessary if the Development is notified of the Owner's failure to comply with federal, state and/or local health, safety, or building code.

(1) Payment for necessary repairs must be made directly by the Owner or through a replacement Reserve Account established for the Development under this section.
(2) The Department or its agent will produce a Request for Bids to hire a contractor to complete and oversee necessary repairs.

(l) This section does not apply to a Development for which the Owner is required to maintain a Reserve Account under any other provision of federal or state law.

GOVERNMENT CODE
TITLE 10. GENERAL GOVERNMENT
SUBTITLE G. ECONOMIC DEVELOPMENT PROGRAMS INVOLVING BOTH STATE AND LOCAL GOVERNMENTS
CHAPTER 2306. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

TABLE OF CONTENTS

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SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2306.001. PURPOSES. The purposes of the department are to:

(1) assist local governments in:

(A) providing essential public services for their residents; and

(B) overcoming financial, social, and environmental problems;

(2) provide for the housing needs of individuals and families of low, very low, and extremely low income and families of moderate income;

(3) contribute to the preservation, development, and redevelopment of neighborhoods and communities, including cooperation in the preservation of government-assisted housing occupied by individuals and families of very low and extremely low income;

(4) assist the governor and the legislature in coordinating federal and state programs affecting local government;

(5) inform state officials and the public of the needs of local government;

(6) serve as the lead agency for:

(A) addressing at the state level the problem of homelessness in this state;

(B) coordinating interagency efforts to address homelessness; and

(C) addressing at the state level and coordinating interagency efforts to address any problem associated with homelessness, including hunger; and

(7) serve as a source of information to the public regarding all affordable housing resources and community support services in the state.

Sec. 2306.002. POLICY. (a) The legislature finds that:

(1) every resident of this state should have a decent, safe, and affordable living environment;

(2) government at all levels should be involved in assisting individuals and families of low income in obtaining a decent, safe, and affordable living environment; and

(3) the development and diversification of the economy, the elimination of unemployment or underemployment, and the development or expansion of commerce in this state should be encouraged.

(b) The highest priority of the department is to provide assistance to individuals and families of low and very low income who are not assisted by private enterprise or other governmental programs so that they may obtain affordable housing or other services and programs offered by the department.

Sec. 2306.003. PUBLIC PURPOSE. The duties imposed and activities authorized by this chapter serve public purposes, and public money may be borrowed, spent, advanced, loaned, granted, or appropriated for those purposes.

Sec. 2306.004. DEFINITIONS. In this chapter:

(1) "Board" means the governing board of the department.

(2) "Bond" means an evidence of indebtedness or other obligation, regardless of the source of payment, issued by the department under Subchapter P, including a bond, note, or bond or revenue anticipation note, regardless of whether the obligation is general or special, negotiable or nonnegotiable, in

bearer or registered form, in certified or book-entry form, in temporary or permanent form, or with or without interest coupons.

(3) "Contract for Deed" means a seller-financed contract for the conveyance of real property under which:

(A) legal title does not pass to the purchaser until the consideration of the contract is fully paid to the seller; and

(B) the seller's remedy for nonpayment is recision or forfeiture or acceleration of any remaining payments rather than judicial or nonjudicial foreclosure.

(4) "Department" means the Texas Department of Housing and Community Affairs or any successor agency.

(4-a) "Development funding" means:

(A) a loan or grant; or

(B) an in-kind contribution, including a donation of real property, a fee waiver for a building permit or for water or sewer service, or a similar contribution that:

(i) provides an economic benefit; and

(ii) results in a quantifiable cost reduction for the applicable development.

(5) "Director" means the executive director of the department.

(6) "Economically depressed or blighted area" means an area:

(A) that is a qualified census tract as defined by Section 143(j), Internal Revenue Code of 1986 (26 U.S.C. Section 143(j)) or has been determined by the housing finance division to be an area of chronic economic distress under Section 143, Internal Revenue Code of 1986 (26 U.S.C. Section 143);

(B) established in a municipality that has a substantial number of substandard, slum, deteriorated, or deteriorating structures and that suffers from a high relative rate of unemployment; or

(C) that has been designated as a reinvestment zone under Chapter 311, Tax Code.

(7) "Elderly individual" means an individual 62 years of age or older or of an age specified by the applicable federal program.

(8) "Family of moderate income" means a family:

(A) that is determined by the board to require assistance, taking into account:

(i) the amount of the total income available for housing needs of the individuals and families;

(ii) the size of the family;

(iii) the cost and condition of available housing facilities;

(iv) the ability of the individuals and families to compete successfully in the private housing market and to pay the amounts required by private enterprise for sanitary, decent, and safe housing; and

(v) standards established for various federal programs determining eligibility based on income; and

(B) that does not qualify as a family of low income.

(9) "Federal government" means the United States of America and includes any corporate or other instrumentality of the United States of America, including the Resolution Trust Corporation.

(10) "Federal mortgage" means a mortgage loan for residential housing:

(A) that is made by the federal government; or

(B) for which a commitment to make has been given by the federal government.

(11) "Federally assisted new communities" means federally assisted areas that receive or will receive assistance in the form of loan guarantees under Title X of the National Housing Act (12 U.S.C. Section 1701 et seq.), and a portion of that federally assisted area has received grants under Section 107(a)(1) of the Housing and Community Development Act of 1974, as amended (42 U.S.C. Section 5301 et seq.).

(12) "Federally insured mortgage" means a mortgage loan for residential housing that:

(A) is insured or guaranteed by the federal government; or

(B) the federal government has committed to insure or guarantee.

(12-a) "Grant" means financial assistance that is awarded in the form of money to a housing sponsor for a specific purpose and that is not required to be repaid. For purposes of this chapter, a grant includes a forgivable loan.

(13) "Housing development" means property or work or a project, building, structure, facility, or undertaking, whether existing, new construction, remodeling, improvement, or rehabilitation, that meets or is designed to meet minimum property standards required by the department and that is financed under the provisions of this chapter for the primary purpose of providing sanitary, decent, and safe dwelling accommodations for rent, lease, use, or purchase by individuals and families of low and very low income and families of moderate income in need of housing. The term includes:

(A) buildings, structures, land, equipment, facilities, or other real or personal properties that are necessary, convenient, or desirable appurtenances, including streets, water, sewers, utilities, parks, site preparation, landscaping, stores, offices, and other nonhousing facilities, such as administrative, community, and recreational facilities the department determines to be necessary, convenient, or desirable appurtenances; and

(B) single and multifamily dwellings in rural and urban areas.

(14) "Housing sponsor" means an individual, joint venture, partnership, limited partnership, trust, firm, corporation, limited liability company, other form of business organization, or cooperative that is approved by the department as qualified to own, construct, acquire, rehabilitate, operate, manage, or maintain a housing development, subject to the regulatory powers of the department and other terms and conditions in this chapter.

(15) "Individuals and families of low income" means individuals and families earning not more than 80 percent of the area median income or applicable federal poverty line, as determined under Section 2306.123 or Section 2306.1231.

(16) "Individuals and families of very low income" means individuals and families earning not more than 60 percent of the area median income or applicable federal poverty line, as determined under Section 2306.123 or Section 2306.1231.

(17) "Individuals and families of extremely low income" means individuals and families earning not more than 30 percent of the area median income or applicable federal poverty line, as determined under Section 2306.123 or Section 2306.1231.

(18) "Land development" means:

(A) acquiring land for residential housing construction; and

(B) making, installing, or constructing nonresidential improvements that the department determines are necessary or desirable for a housing development to be financed by the department, including:

(i) waterlines and water supply installations;

(ii) sewer lines and sewage disposal installations;

(iii) steam, gas, and electric lines and installations; and

(iv) roads, streets, curbs, gutters, and sidewalks, whether on or off the site.

(19) "Local government" means a county, municipality, special district, or any other political subdivision of the state, a public, nonprofit housing finance corporation created under Chapter 394, Local Government Code, or a combination of those entities.

(20) "Mortgage" means an obligation, including a mortgage, mortgage deed, bond, note, deed of trust, or other instrument, that is a lien:

(A) on real property; or

(B) on a leasehold under a lease having a remaining term that, at the time the lien is acquired, does not expire until after the maturity date of the obligation secured by the lien.

(21) "Mortgage lender" means a bank, trust company, savings bank, mortgage company, mortgage banker, credit union, national banking association, savings and loan association, life insurance company, or other financial institution authorized to transact business in this state and approved as a mortgage lender by the department.

(22) "Mortgage loan" means an obligation secured by a mortgage.

(23) "Municipality" includes only a municipality in this state.

(23-a) "Neighborhood organization" means an organization that is composed of persons living near one another within the organization's defined boundaries for the neighborhood and that has a primary purpose of working to maintain or improve the general welfare of the neighborhood. A neighborhood organization includes a homeowners' association or a property owners' association.

(23-b) "New construction" means any construction to a development or a portion of a development that does not meet the definition of rehabilitation under this section.

(24) "Public agency" means the department or any agency, board, authority, department, commission, political subdivision, municipal corporation, district, public corporation, body politic, or instrumentality of this state, including a county, municipality, housing authority, state-supported institution of higher education, school district, junior college, other district or authority, or other type of governmental entity of this state.

(25) "Real estate owned contractor" means a person required to meet the obligations of a contract with the department for managing and marketing foreclosed property.

(26) "Real property" means land, including improvements and fixtures on the land, property of any nature appurtenant to the land or used in connection with the land, and a legal or equitable estate, interest, or right in land, including leasehold interests, terms for years, and a judgment, mortgage, or other lien.

(26-a) "Rehabilitation" means the improvement or modification of an existing residential development through an alteration, addition, or enhancement. The term includes the demolition of an existing residential development and the reconstruction of any development units, but does not include the improvement or modification of an existing residential development for the purpose of an adaptive reuse of the development.

(27) "Reserve fund" means any reserve fund established by the department.

(28) "Residential housing" means a specific work or improvement undertaken primarily to provide dwelling accommodations, including the acquisition, construction, reconstruction, remodeling,

improvement, or rehabilitation of land and buildings and improvements to the buildings for residential housing and other incidental or appurtenant nonhousing facilities.

(28-a) "Rural area" means an area that is located:

(A) outside the boundaries of a primary metropolitan statistical area or a metropolitan statistical area;

(B) within the boundaries of a primary metropolitan statistical area or a metropolitan statistical area, if the statistical area has a population of 25,000 or less and does not share a boundary with an urban area; or

(C) in an area that is eligible for funding by the Texas Rural Development Office of the United States Department of Agriculture, other than an area that is located in a municipality with a population of more than 50,000.

(28-b) "Rural development" means a development or proposed development that is located in a rural area, other than rural new construction developments with more than 80 units.

(29) "Servicer" means a person required to meet contractual obligations with the housing finance division or with a mortgage lender relating to a loan financed under Subchapter J, including:

(A) purchasing mortgage certificates backed by mortgage loans;

(B) collecting principal and interest from the borrower;

(C) sending principal and interest payments to the division;

(D) preparing periodic reports;

(E) notifying the primary mortgage and pool insurers of delinquent and foreclosed loans; and

(F) filing insurance claims on foreclosed property.

(30) "State low income housing plan" means the comprehensive and integrated plan for the state assessment of housing needs and allocation of housing resources.

(31) "Economic submarket" means a group of borrowers who have common home mortgage loan market eligibility characteristics, including income level, credit history or credit score, and employment characteristics, that are similar to Standard and Poor's credit underwriting criteria.

(32) "Geographic submarket" means a geographic region in the state, including a county, census tract, or municipality, that shares similar levels of access to home mortgage credit from the private home mortgage lending industry, as determined by the department based on home mortgage lending data published by federal and state banking regulatory agencies.

(33) "Rural county" means a county that is outside the boundaries of a primary metropolitan statistical area or a metropolitan statistical area.

(34) "Subprime loan" means a loan that is originated by a lender designated as a subprime lender on the subprime lender list maintained by the United States Department of Housing and Urban Development or identified as a lender primarily engaged in subprime lending under Section 2306.143.

(35) "Uniform application and funding cycle" means an application and funding cycle established under Section 2306.1111.

(36) "Urban area" means the area that is located within the boundaries of a primary metropolitan statistical area or a metropolitan statistical area other than an area described by Subdivision (28-a)(B) or eligible for funding as described by Subdivision (28-a)(C).

Sec. 2306.005. REFERENCES TO FORMER LAW. A reference in law to the Texas Housing Agency or the Texas Department of Community Affairs means the Texas Department of Housing and Community Affairs.

Sec. 2306.006. RULES OF ABOLISHED AGENCIES. Rules of the abolished Texas Housing Agency and the Texas Department of Community Affairs continue in effect as rules of the Texas Department of Housing and Community Affairs until amended or repealed by the department.

Sec. 2306.007. ESTABLISHING ECONOMICALLY DEPRESSED OR BLIGHTED AREAS. (a) To establish an economically depressed or blighted area under Section 2306.004(6)(B) or (C), the governing body of a municipality must hold a public hearing and find that the area:

(1) substantially impairs or arrests the sound growth of the municipality; or

(2) is an economic or social liability and is a menace to the public health, safety, morals, or welfare in its present condition and use.

(b) The governing body of a municipality holding a hearing under this section must give notice as provided by Chapter 551, except that notice must be published not less than 10 days before the date of the hearing.

Sec. 2306.008. PRESERVATION OF AFFORDABLE HOUSING. (a) The department shall support in the manner described by Subsection (b) the preservation of affordable housing for individuals with special needs, as defined by Section 2306.511, and individuals and families of low income at any location considered necessary by the department.

(b) The department shall support the preservation of affordable housing under this section by:

(1) making low interest financing and grants available to private for-profit and nonprofit buyers who seek to acquire, preserve, and rehabilitate affordable housing; and

(2) prioritizing available funding and financing resources for affordable housing preservation activities.

SUBCHAPTER B. GOVERNING BOARD AND DEPARTMENT

Sec. 2306.022. APPLICATION OF SUNSET ACT. The Texas Department of Housing and Community Affairs is subject to Chapter 325 (Texas Sunset Act). Unless continued in existence as provided by that chapter, the department is abolished and this chapter expires September 1, 2013.

Sec. 2306.024. BOARD MEMBERS: APPOINTMENT AND COMPOSITION. The board consists of seven public members appointed by the governor.

Sec. 2306.025. TERMS OF BOARD MEMBERS. Members of the board hold office for staggered terms of six years, with the terms of two or three members expiring on January 31 of each odd-numbered year.

Sec. 2306.027. ELIGIBILITY. (a) The governor shall appoint to the board public members who have a demonstrated interest in issues related to housing and community support services. A person appointed to the board must be a registered voter in the state and may not hold another public office.

(b) Appointments to the board shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees and shall be made in a manner that produces representation on the board of the different geographical regions of this state. Appointments to the board must broadly reflect the geographic, economic, cultural, and social diversity of the state, including ethnic minorities, persons with disabilities, and women.

(c) A person may not be a member of the board if the person or the person's spouse:

(1) is employed by or participates in the management of a business entity or other organization regulated by or receiving money from the department;

(2) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by or receiving money from the department; or

(3) uses or receives a substantial amount of tangible goods, services, or money from the department other than compensation or reimbursement authorized by law for board membership, attendance, or expenses.

Sec. 2306.028. TRAINING. (a) A person who is appointed to and qualifies for office as a member of the board may not vote, deliberate, or be counted as a member in attendance at a meeting of the board until the person completes a training program that complies with this section.

(b) The training program must provide the person with information regarding:

(1) the legislation that created the department and the board;

(2) the programs operated by the department;

(3) the role and functions of the department;

(4) the rules of the department, with an emphasis on the rules that relate to disciplinary and investigatory authority;

(5) the current budget for the department;

(6) the results of the most recent formal audit of the department;

(7) the requirements of:

(A) the open meetings law, Chapter 551;

(B) the public information law, Chapter 552;

(C) the administrative procedure law, Chapter 2001; and

(D) other laws relating to public officials, including conflict-of-interest laws;

(8) the requirements of:

(A) state and federal fair housing laws, including Chapter 301, Property Code, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. Section 3601 et seq.), and the Fair Housing Amendments Act of 1988 (42 U.S.C. Section 3601 et seq.);

(B) the Civil Rights Act of 1964 (42 U.S.C. Section 2000a et seq.);

(C) the Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq.); and

(D) the Rehabilitation Act of 1973 (29 U.S.C. Section 701 et seq.); and

(9) any applicable ethics policies adopted by the department or the Texas Ethics Commission.

(c) A person appointed to the board is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

Sec. 2306.030. PRESIDING OFFICER; OTHER OFFICERS. (a) The governor shall designate a member of the board as the presiding officer of the board to serve in that capacity at the will of the governor. The presiding officer presides at meetings of the board and performs other duties required by this chapter.

(b) The board shall elect the following officers:

(1) from the members of the board, an assistant presiding officer to perform the duties of the presiding officer when the presiding officer is not present or is incapable of performing duties of the presiding officer;

(2) a secretary to be the official custodian of the minutes, books, records, and seal of the board and to perform other duties assigned by the board; and

(3) a treasurer to perform duties assigned by the board.

(c) The offices of secretary and treasurer may be held by one individual, and the holder of each of these offices need not be a board member. The board may appoint one or more individuals who are not members to be assistant secretaries to perform any duty of the secretary.

(d) Officers of the board shall be elected at the first meeting of the board on or after January 31 of each odd-numbered year and at any other time as necessary to fill a vacancy.

Sec. 2306.031. MEMBERS' COMPENSATION. Members of the board serve without compensation but are entitled to reimbursement for actual expenses incurred in attending board meetings and in performing the duties of a board member.

Sec. 2306.032. BOARD MEETINGS. (a) The board may hold meetings when called by the presiding officer, the director, or three of the members.

(b) The board shall keep minutes and complete transcripts of board meetings. The department shall post the transcripts on its website and shall otherwise maintain all accounts, minutes, and other records related to the meetings.

(c) All materials provided to the board that are relevant to a matter proposed for discussion at a board meeting must be posted on the department's website not later than the third day before the date of the meeting.

(d) Any materials made available to the board by the department at a board meeting must be made available in hard copy format to the members of the public in attendance at the meeting.

(e) The board shall conduct its meetings in accordance with Chapter 551, except as otherwise required by this chapter.

(f) For each item on the board's agenda at the meeting, the board shall provide for public comment after the presentation made by department staff and the motions made by the board on that topic.

(g) The board shall adopt rules that give the public a reasonable amount of time for testimony at meetings.

Sec. 2306.0321. APPEAL OF BOARD AND DEPARTMENT DECISIONS. (a) The board shall adopt rules outlining a formal process for appealing board and department decisions.

(b) The rules must specify the requirements for appealing a board or department decision, including:

(1) the persons eligible to appeal;

(2) the grounds for an appeal;

(3) the process for filing an appeal, including the information that must be submitted with an appeal;

(4) a reasonable period in which an appeal must be filed, heard, and decided;

(5) the process by which an appeal is heard and a decision is made;

(6) the possible outcomes of an appeal; and

(7) the process by which notification of a decision and the basis for a decision is given.

Sec. 2306.033. REMOVAL OF MEMBERS. (a) It is a ground for removal from the board that a member:

(1) does not have at the time of taking office the qualifications required by Section 2306.027;

(2) does not maintain during service on the board the qualifications required by Section 2306.027;

(3) is ineligible for membership under Section 2306.027(c), 2306.034, or 2306.035;

(4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term;

(5) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the board; or

(6) engages in misconduct or unethical or criminal behavior.

(b) The validity of an action of the board is not affected by the fact that it is taken when a ground for removal of a board member exists.

(c) If the director has knowledge that a potential ground for removal exists, the director shall notify the presiding officer of the board of the potential ground. The presiding officer shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the director shall notify the next highest ranking officer of the board, who shall then notify the governor and the attorney general that a potential ground for removal exists.

Sec. 2306.034. DISQUALIFICATION OF MEMBERS AND CERTAIN EMPLOYEES. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not be a member of the board and may not be a department employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.) if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of banking, real estate, housing development, or housing construction; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of banking, real estate, housing development, or housing construction.

Sec. 2306.035. LOBBYIST RESTRICTION. A person may not be a member of the board or act as the director of the department or the general counsel to the board or the department if the person is required to register as a lobbyist under Chapter 305 because of the person's activities for compensation on behalf of a profession related to the operation of the department.

Sec. 2306.036. EMPLOYMENT OF DIRECTOR. (a) With the approval of the governor, the board shall employ a director to serve at the pleasure of the board.

(b) After the election of a governor who did not approve the director's employment under Subsection (a), that governor may remove the director and require the board to employ a new director in accordance with Subsection (a). The governor must act under this subsection before the 90th day after the date the governor takes office.

Sec. 2306.037. DIRECTOR'S COMPENSATION. The board shall set the salary of the director.

Sec. 2306.038. ACTING DIRECTOR. The board shall establish a procedure for designating an acting director and shall, with the approval of the governor, immediately designate an acting director or a new permanent director if the position becomes vacant because of absence or disability. A director designated under this section serves at the pleasure of the board but is subject to removal by a newly elected governor in accordance with Section 2306.036(b).

Sec. 2306.039. OPEN MEETINGS AND OPEN RECORDS. (a) Except as provided by Subsections (b) and (c), the department and the Texas State Affordable Housing Corporation are subject to Chapters 551 and 552.

(b) Chapters 551 and 552 do not apply to the personal or business financial information, including social security numbers, taxpayer identification numbers, or bank account numbers, submitted by a housing sponsor or an individual or family to receive a loan, grant, or other housing assistance under a program administered by the department or the Texas State Affordable Housing Corporation or from bonds issued by the department, except that the department and the corporation are permitted to disclose information about any applicant in a form that does not reveal the identity of the sponsor, individual, or family for purposes of determining eligibility for programs and in preparing reports required under this chapter.

(c) The department's internal auditor, fraud prevention coordinator, or ethics advisor may meet in an executive session of the board to discuss issues related to fraud, waste, or abuse.

Sec. 2306.040. DEPARTMENT PARTICIPATION IN LEGISLATIVE HEARING. On request, the department shall participate in any public hearing conducted by a legislator to discuss a rule to be adopted by the department.

Sec. 2306.041. IMPOSITION OF PENALTY. The board may impose an administrative penalty on a person who violates this chapter or a rule or order adopted under this chapter.

Sec. 2306.042. AMOUNT OF PENALTY. (a) The amount of an administrative penalty may not exceed $1,000 for each violation. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(b) The amount of the penalty shall be based on:

(1) the seriousness of the violation, including:

(A) the nature, circumstance, extent, and gravity of any prohibited act; and

(B) the hazard or potential hazard created to the health, safety, or economic welfare of the public;

(2) the history of previous violations;

(3) the amount necessary to deter a future violation;

(4) efforts made to correct the violation; and

(5) any other matter that justice may require.

(c) The board by rule or through procedures adopted by the board and published in the Texas Register shall develop a standardized penalty schedule based on the criteria listed in Subsection (b).

Sec. 2306.043. REPORT AND NOTICE OF VIOLATION AND PENALTY. (a) If the director determines that a violation occurred, the director shall issue to the board a report stating:

(1) the facts on which the determination is based; and

(2) the director's recommendation on the imposition of the penalty, including a recommendation on the amount of the penalty.

(b) Not later than the 14th day after the date the report is issued, the director shall give written notice of the report to the person.

(c) The notice must:

(1) include a brief summary of the alleged violation;

(2) state the amount of the recommended penalty; and

(3) inform the person of the person's right to a hearing before the board on the occurrence of the violation, the amount of the penalty, or both.

Sec. 2306.044. PENALTY TO BE PAID OR HEARING REQUESTED. (a) Not later than the 20th day after the date the person receives the notice, the person in writing may:

(1) accept the determination and recommended penalty of the director; or

(2) make a request for a hearing before the board on the occurrence of the violation, the amount of the penalty, or both.

(b) If the person accepts the determination and recommended penalty of the director, the board by order shall approve the determination and impose the recommended penalty.

Sec. 2306.045. HEARING. (a) If the person requests a hearing before the board or fails to respond in a timely manner to the notice, the director shall set a hearing and give written notice of the hearing to the person.

(b) The board shall hold the hearing and make findings of fact and conclusions of law about the occurrence of the violation and the amount of a proposed penalty.

Sec. 2306.046. DECISION BY BOARD. (a) Based on the findings of fact and conclusions of law, the board by order may:

(1) find that a violation occurred and impose a penalty; or

(2) find that a violation did not occur.

(b) The notice of the board's order given to the person must include a statement of the right of the person to judicial review of the order.

Sec. 2306.047. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. Not later than the 30th day after the date the board's order becomes final, the person shall:

(1) pay the penalty; or

(2) file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both.

Sec. 2306.048. STAY OF ENFORCEMENT OF PENALTY. (a) Within the 30-day period prescribed by Section 2306.047, a person who files a petition for judicial review may:

(1) stay enforcement of the penalty by:

(A) paying the penalty to the court for placement in an escrow account; or

(B) giving the court a supersedeas bond approved by the court that:

(i) is for the amount of the penalty; and

(ii) is effective until all judicial review of the board's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) sending a copy of the affidavit to the director by certified mail.

(b) If the director receives a copy of an affidavit under Subsection (a)(2), the director may file with the court, not later than the fifth day after the date the copy is received, a contest to the affidavit.

(c) The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty and to give a supersedeas bond.

Sec. 2306.049. DECISION BY COURT. (a) Judicial review of a board order imposing an administrative penalty is by trial de novo.

(b) If the court sustains the finding that a violation occurred, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty.

(c) If the court does not sustain the finding that a violation occurred, the court shall order that a penalty is not owed and may award the person reasonable attorney's fees.

Sec. 2306.050. REMITTANCE OF PENALTY AND INTEREST. (a) If the person paid the penalty and if the amount of the penalty is reduced or the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, that the appropriate amount plus accrued interest be remitted to the person.

(b) The interest accrues at the rate charged on loans to depository institutions by the New York Federal Reserve Bank.

(c) The interest shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

Sec. 2306.0501. RELEASE OF BOND. (a) If the person gave a supersedeas bond and the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, the release of the bond.

(b) If the person gave a supersedeas bond and the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the reduced amount.

Sec. 2306.0502. COLLECTION OF PENALTY. (a) If the person does not pay the penalty and the enforcement of the penalty is not stayed, the penalty may be collected.

(b) The attorney general may sue to collect the penalty.

Sec. 2306.0503. ADMINISTRATIVE PROCEDURE. A proceeding to impose the penalty is considered to be a contested case under Chapter 2001.

SUBCHAPTER C. POWERS AND DUTIES

Sec. 2306.051. SEPARATION OF RESPONSIBILITIES. The board shall develop and implement policies that clearly separate the policy-making responsibilities of the board and the management responsibilities of the director and staff of the department.

Sec. 2306.052. DIRECTOR'S POWERS AND DUTIES. (a) The director is the administrator and the head of the department and must be an individual qualified by training and experience to perform the duties of the office.

(b) The director shall:

(1) administer and organize the work of the department consistent with this chapter and with sound organizational management that promotes efficient and effective operation;

(2) appoint and remove personnel employed by the department;

(3) submit, through and with the approval of the governor, requests for appropriations and other money to operate the department;

(4) administer all money entrusted to the department;

(5) administer all money and investments of the department subject to:

(A) department indentures and contracts;

(B) Sections 2306.118 through 2306.120; and

(C) an action of the board under Section 2306.351; and

(6) perform other functions that may be assigned by the board or the governor.

(c) The director shall develop and implement the policies established by the board that define the responsibilities of each division in the department.

(d) Repealed by Acts 2001, 77th Leg., ch. 1367, Sec. 1.45, eff. Sept. 1, 2001.

(e) The board shall adopt rules and the director shall develop and implement a program to train employees on the public information requirements of Chapter 552. The director shall monitor the compliance of employees with those requirements.

(f) The director shall use existing department resources to provide the board with any administrative support necessary for the board to exercise its duties regarding the implementation of this chapter, including:

(1) assigning personnel to assist the board;

(2) providing office space, equipment, and documents and other information to the board; and

(3) making in-house legal counsel available to the board.

Sec. 2306.0521. ORGANIZATIONAL FLEXIBILITY OF DEPARTMENT. (a) Notwithstanding Section 2306.021(b) or any other provision of this chapter, the director, with the approval of the board, may:

(1) create divisions in addition to those listed in Section 2306.021(b) and assign to the newly created divisions any duties and powers imposed on or granted to an existing division or the department generally;

(2) eliminate any division listed in Section 2306.021(b) or created under this section and assign any duties or powers previously assigned to the eliminated division to another division listed in Section 2306.021(b) or created under this section; or

(3) eliminate all divisions listed in Section 2306.021(b) or created under this section and reorganize the distribution of powers and duties granted to or imposed on a division in any manner the director determines appropriate for the proper administration of the department.

(b) This section does not apply to the manufactured housing division.

Sec. 2306.053. DEPARTMENT POWERS AND DUTIES. (a) The department shall maintain suitable headquarters and other offices in this state that the director determines are necessary.

(b) The department may:

(1) sue and be sued, or plead and be impleaded;

(2) act for and on behalf of this state;

(3) adopt an official seal or alter it;

(4) adopt and enforce bylaws and rules;

(5) contract with the federal government, state, any public agency, mortgage lender, person, or other entity;

(6) designate mortgage lenders to act for the department for the origination, processing, and servicing of the department's mortgage loans under conditions agreed to by the parties;

(7) provide, contract, or arrange for consolidated processing of a housing development to avoid duplication;

(8) encourage homeless individuals and individuals of low or very low income to attend the department's educational programs and assist those individuals in attending the programs;

(9) appoint and determine the qualifications, duties, and tenure of its agents, counselors, and professional advisors, including accountants, appraisers, architects, engineers, financial consultants, housing construction and financing experts, and real estate consultants;

(10) administer federal housing, community affairs, or community development programs, including the low income housing tax credit program;

(11) establish eligibility criteria for individuals and families of low, very low, and families of moderate income to participate in and benefit from programs administered by the department;

(12) execute funding agreements;

(13) obtain, retain, and disseminate records and other documents in electronic form; and

(14) do all things necessary, convenient, or desirable to carry out the powers expressly granted or necessarily implied by this chapter.

Sec. 2306.054. SPECIAL ADVISORY COUNCILS. (a) The governor or director may appoint special advisory councils to:

(1) assist the department in reviewing basic policy; or

(2) offer advice on technical aspects of certain programs.

(b) A special advisory council is dissolved on completion of its stated purpose unless continued by the governor or director.

(c) A special advisory council is subject to Chapter 2110, including Section 2110.008(a) but not including Section 2110.008(b).

Sec. 2306.055. TRANSFERS FROM GOVERNOR. The governor may transfer to any division personnel, equipment, records, obligations, appropriations, functions, and duties of appropriate divisions of the governor's office.

Sec. 2306.056. COMMITTEES. (a) The presiding officer may appoint a committee composed of board members to carry out the board's duties.

(b) The board may consider a recommendation of a committee in making a decision under this chapter.

Sec. 2306.057. COMPLIANCE ASSESSMENT REQUIRED FOR PROJECT APPROVAL BY BOARD. (a) Before the board approves any project application submitted under this chapter, the department, through the division with responsibility for compliance matters, shall:

(1) assess:

(A) the compliance history in this state of the applicant and any affiliate of the applicant with respect to all applicable requirements; and

(B) the compliance issues associated with the proposed project; and

(2) provide to the board a written report regarding the results of the assessments described by Subdivision (1).

(b) The written report described by Subsection (a)(2) must be included in the appropriate project file for board and department review.

(c) The board shall fully document and disclose any instances in which the board approves a project application despite any noncompliance associated with the project, applicant, or affiliate.

(d) In assessing the compliance of the project, applicant, or affiliate, the board shall consider any relevant compliance information in the department's database created under Section 2306.081, including compliance information provided to the department by the Texas State Affordable Housing Corporation.

SUBCHAPTER D. GENERAL ADMINISTRATIVE PROVISIONS

Sec. 2306.061. STANDARDS OF CONDUCT. The director or the director's designee shall become aware of and provide to members of the board and to department employees, as often as necessary, information regarding the requirements for office or employment under this chapter, including information regarding a person's responsibilities under applicable laws relating to standards of conduct for state officers or employees.

Sec. 2306.063. PERFORMANCE EVALUATIONS. The director or the director's designee shall develop a system of annual performance evaluations. All merit pay for department employees must be based on the system established under this section.

Sec. 2306.064. EQUAL EMPLOYMENT OPPORTUNITIES. (a) The director or the director's designee shall prepare and maintain a written policy statement to ensure implementation of a program of equal employment opportunity under which all personnel transactions are made without regard to race, color, disability, sex, religion, age, or national origin. The policy statement must include:

(1) a comprehensive analysis of the department work force that meets federal and state guidelines;

(2) personnel policies, including policies relating to recruitment, evaluation, selection, appointment, training, and promotion of personnel;

(3) procedures by which a determination can be made of significant underuse in the department work force of all persons for whom federal or state guidelines encourage a more equitable balance; and

(4) reasonable methods to appropriately address those areas of significant underuse.

(b) A policy statement prepared under Subsection (a) must cover an annual period, be updated at least annually, and be filed with the governor's office.

(c) The governor's office shall deliver a biennial report to the legislature based on the information received under Subsection (b). The report may be made separately or as a part of other biennial reports made to the legislature.

Sec. 2306.065. DISCRIMINATION PROHIBITED. An individual may not, because of that individual's race, color, national origin, or sex, be excluded from participation, be denied benefits, or be subjected to discrimination in any program or activity funded in whole or in part with funds made available under this chapter.

Sec. 2306.066. INFORMATION AND COMPLAINTS. (a) The department shall prepare information of public interest describing the functions of the department and the procedures by which complaints are filed with and resolved by the department. The department shall make the information available to the public and appropriate state agencies.

(b) The department shall maintain a file on each written complaint filed with the department. The file must include:

(1) the name of the person who filed the complaint;

(2) the date the complaint is received by the department;

(3) the subject matter of the complaint;

(4) the name of each person contacted in relation to the complaint;

(5) a summary of the results of the review or investigation of the complaint; and

(6) an explanation of the reason the file was closed, if the department closed the file without taking action other than to investigate the complaint.

(c) The department shall provide to the person filing the complaint and to each person who is a subject of the complaint a copy of the department's policies and procedures relating to complaint investigation and resolution. The department, at least quarterly until final disposition of the complaint, shall notify the person filing the complaint and each person who is a subject of the complaint of the status of the investigation unless the notice would jeopardize an undercover investigation.

(d) The board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the jurisdiction of the board.

(e) The director shall prepare and maintain a written plan that describes how an individual who does not speak English or who has a physical, mental, or developmental disability may be provided reasonable access to and participation in the department's programs.

Sec. 2306.067. LOANED EMPLOYEES. (a) The director may enter into reciprocal agreements with a state agency or instrumentality or local government to loan or assign department employees to that entity.

(b) A state agency or instrumentality or local government may loan or assign employees to the department, with or without reimbursement, by agreement between the department and the other party. The department may contract to reimburse all costs incidental to loaning or assigning employees.

(c) An employee loaned or assigned to the department is an employee of the lending agency or unit for purposes of salary, leave, retirement, and other personnel benefits. The loaned or assigned employee is under the supervision of personnel of the department and is an employee of the department for all other purposes.

(d) The director may enter into an agreement with the manufactured housing division to loan or assign department employees, equipment, and facilities to that division.

Sec. 2306.068. INTERAGENCY COOPERATION. An agency or institution of the state shall cooperate with the department by providing personnel, information, and technical advice as the department assists the governor in:

(1) the coordination of federal and state activities affecting local government; and

(2) providing affordable housing for individuals and families of low and very low income and families of moderate income.

Sec. 2306.069. LEGAL COUNSEL. (a) With the approval of the attorney general, the department may hire appropriate outside legal counsel.

(b) The department may hire in-house legal counsel. The director shall prescribe the duties of the legal counsel.

Sec. 2306.070. BUDGET. (a) In preparing the department's legislative appropriations request, the department shall also prepare:

(1) a report detailing the fees received, on a cash basis, for each activity administered by the department during each of the three preceding years;

(2) an operating budget for the housing finance division; and

(3) an explanation of any projected increase or decrease of three percent or more in fees estimated for the operating budget as compared to the fees received in the most recent budget year.

(b) The department shall submit the report, operating budget, and explanation to the Legislative Budget Board, the Senate Finance Committee, and the House Appropriations Committee.

Sec. 2306.0705. GENERAL APPROPRIATIONS ACT. Except as specifically provided by this chapter, the department is subject to the General Appropriations Act.

Sec. 2306.071. FUNDS. (a) The department may request, contract for, receive, and spend for its purposes an appropriation, grant, allocation, subsidy, rent supplement, guarantee, aid, contribution, gift, service, labor, or material from this state, the federal government, or another public or private source.

(b) The funds and revenues of the housing finance division shall be kept separate from the funds and revenues of the other divisions, and the other divisions may use funds and revenues of the housing finance division only to administer housing-related programs.

(c) Except for legislative appropriations, funds necessary for the operation of the housing finance division, and trustee-held funds of the department under a multifamily bond indenture, all funds and revenue received by the housing finance division are to be kept outside the state treasury.

(d) Legislative appropriations to the housing finance division and the operating funds of the division shall be kept in the state treasury. Trustee-held funds of the department under a multifamily bond indenture are held by the trustee as provided by the indenture.

Sec. 2306.072. ANNUAL LOW INCOME HOUSING REPORT. (a) Not later than March 18 of each year, the director shall prepare and submit to the board an annual report of the department's housing activities for the preceding year.

(b) Not later than the 30th day after the date the board receives and approves the report, the board shall submit the report to the governor, lieutenant governor, speaker of the house of representatives, and members of any legislative oversight committee.

(c) The report must include:

(1) a complete operating and financial statement of the department;

(2) a comprehensive statement of the activities of the department during the preceding year to address the needs identified in the state low income housing plan prepared as required by Section 2306.0721, including:

(A) a statistical and narrative analysis of the department's performance in addressing the housing needs of individuals and families of low and very low income;

(B) the ethnic and racial composition of individuals and families applying for and receiving assistance from each housing-related program operated by the department; and

(C) the department's progress in meeting the goals established in the previous housing plan;

(3) an explanation of the efforts made by the department to ensure the participation of individuals of low income and their community-based institutions in department programs that affect them;

(4) a statement of the evidence that the department has made an affirmative effort to ensure the involvement of individuals of low income and their community-based institutions in the allocation of funds and the planning process;

(5) a statistical analysis, delineated according to each ethnic and racial group served by the department, that indicates the progress made by the department in implementing the state low income housing plan in each of the uniform state service regions;

(6) an analysis, based on information provided by the fair housing sponsor reports required under Section 2306.0724 and other available data, of fair housing opportunities in each housing development that receives financial assistance from the department that includes the following information for each housing development that contains 20 or more living units:

(A) the street address and municipality or county in which the property is located;

(B) the telephone number of the property management or leasing agent;

(C) the total number of units, reported by bedroom size;

(D) the total number of units, reported by bedroom size, designed for individuals who are physically challenged or who have special needs and the number of these individuals served annually;

(E) the rent for each type of rental unit, reported by bedroom size;

(F) the race or ethnic makeup of each project;

(G) the number of units occupied by individuals receiving government-supported housing assistance and the type of assistance received;

(H) the number of units occupied by individuals and families of extremely low income, very low income, low income, moderate income, and other levels of income;

(I) a statement as to whether the department has been notified of a violation of the fair housing law that has been filed with the United States Department of Housing and Urban Development, the Commission on Human Rights, or the United States Department of Justice; and

(J) a statement as to whether the development has any instances of material noncompliance with bond indentures or deed restrictions discovered through the normal monitoring activities and procedures that include meeting occupancy requirements or rent restrictions imposed by deed restriction or financing agreements;

(7) a report on the geographic distribution of low income housing tax credits, the amount of unused low income housing tax credits, and the amount of low income housing tax credits received from the federal pool of unused funds from other states; and

(8) a statistical analysis, based on information provided by the fair housing sponsor reports required by Section 2306.0724 and other available data, of average rents reported by county.

(d) Repealed by Acts 2003, 78th Leg., ch. 330, Sec. 31(1).

Sec. 2306.0721. LOW INCOME HOUSING PLAN. (a) Not later than March 18 of each year, the director shall prepare and submit to the board an integrated state low income housing plan for the next year.

(b) Not later than the 30th day after the date the board receives and approves the plan, the board shall submit the plan to the governor, lieutenant governor, and the speaker of the house of representatives.

(c) The plan must include:

(1) an estimate and analysis of the housing needs of the following populations in each uniform state service region:

(A) individuals and families of moderate, low, very low, and extremely low income;

(B) individuals with special needs; and

(C) homeless individuals;

(2) a proposal to use all available housing resources to address the housing needs of the populations described by Subdivision (1) by establishing funding levels for all housing-related programs;

(3) an estimate of the number of federally assisted housing units available for individuals and families of low and very low income and individuals with special needs in each uniform state service region;

(4) a description of state programs that govern the use of all available housing resources;

(5) a resource allocation plan that targets all available housing resources to individuals and families of low and very low income and individuals with special needs in each uniform state service region;

(6) a description of the department's efforts to monitor and analyze the unused or underused federal resources of other state agencies for housing-related services and services for homeless individuals and the department's recommendations to ensure the full use by the state of all available federal resources for those services in each uniform state service region;

(7) strategies to provide housing for individuals and families with special needs in each uniform state service region;

(8) a description of the department's efforts to encourage in each uniform state service region the construction of housing units that incorporate energy efficient construction and appliances;

(9) an estimate and analysis of the housing supply in each uniform state service region;

(10) an inventory of all publicly and, where possible, privately funded housing resources, including public housing authorities, housing finance corporations, community housing development organizations, and community action agencies;

(11) strategies for meeting rural housing needs;

(12) a biennial action plan for colonias that:

(A) addresses current policy goals for colonia programs, strategies to meet the policy goals, and the projected outcomes with respect to the policy goals; and

(B) includes information on the demand for contract-for-deed conversions, services from self-help centers, consumer education, and other colonia resident services in counties some part of which is within 150 miles of the international border of this state;

(13) a summary of public comments received at a hearing under this chapter or from another source that concern the demand for colonia resident services described by Subdivision (12); and

(14) any other housing-related information that the state is required to include in the one-year action plan of the consolidated plan submitted annually to the United States Department of Housing and Urban Development.

(d) The priorities and policies in another plan adopted by the department must be consistent to the extent practical with the priorities and policies established in the state low income housing plan.

(e) To the extent consistent with federal law, the preparation and publication of the state low income housing plan shall be consistent with the filing and publication deadlines required of the department for the consolidated plan.

(f) The director may subdivide the uniform state service regions as necessary for purposes of the state low income housing plan.

(g) The department shall include the plan developed by the Texas State Affordable Housing Corporation under Section 2306.566 in the department's resource allocation plan under Subsection (c)(5).

(h) Repealed by Acts 2007, 80th Leg., R.S., Ch. 1341, Sec. 42, eff. September 1, 2007.

Sec. 2306.0722. PREPARATION OF PLAN AND REPORT. (a) Before preparing the annual low income housing report under Section 2306.072 and the state low income housing plan under Section 2306.0721, the department shall meet with regional planning commissions created under Chapter 391, Local Government Code, representatives of groups with an interest in low income housing, nonprofit housing organizations, managers, owners, and developers of affordable housing, local government officials, residents of low income housing, and members of the Colonia Resident Advisory Committee. The department shall obtain the comments and suggestions of the representatives, officials, residents, and members about the prioritization and allocation of the department's resources in regard to housing.

(b) In preparing the annual report under Section 2306.072 and the state low income housing plan under Section 2306.0721, the director shall:

(1) coordinate local, state, and federal housing resources, including tax exempt housing bond financing and low income housing tax credits;

(2) set priorities for the available housing resources to help the neediest individuals;

(3) evaluate the success of publicly supported housing programs;

(4) survey and identify the unmet housing needs of individuals the department is required to assist;

(5) ensure that housing programs benefit an individual without regard to the individual's race, ethnicity, sex, or national origin;

(6) develop housing opportunities for individuals and families of low and very low income and individuals with special housing needs;

(7) develop housing programs through an open, fair, and public process;

(8) set priorities for assistance in a manner that is appropriate and consistent with the housing needs of the populations described by Section 2306.0721(c)(1);

(9) incorporate recommendations that are consistent with the consolidated plan submitted annually by the state to the United States Department of Housing and Urban Development;

(10) identify the organizations and individuals consulted by the department in preparing the annual report and state low income housing plan and summarize and incorporate comments and suggestions provided under Subsection (a) as the board determines to be appropriate;

(11) develop a plan to respond to changes in federal funding and programs for the provision of affordable housing;

(12) use the following standardized categories to describe the income of program applicants and beneficiaries:

(A) 0 to 30 percent of area median income adjusted for family size;

(B) more than 30 to 60 percent of area median income adjusted for family size;

(C) more than 60 to 80 percent of area median income adjusted for family size;

(D) more than 80 to 115 percent of area median income adjusted for family size; or

(E) more than 115 percent of area median income adjusted for family size;

(13) use the most recent census data combined with existing data from local housing and community service providers in the state, including public housing authorities, housing finance corporations, community housing development organizations, and community action agencies; and

(14) provide the needs assessment information compiled for the report and plan to the Texas State Affordable Housing Corporation.

Sec. 2306.0723. REPORT CONSIDERED AS RULE. The department shall consider the annual low income housing report to be a rule and in developing the report shall follow rulemaking procedures required by Chapter 2001.

Sec. 2306.0724. FAIR HOUSING SPONSOR REPORT. (a) The department shall require the owner of each housing development that receives financial assistance from the department and that contains 20 or more living units to submit an annual fair housing sponsor report. The report must include the relevant information necessary for the analysis required by Section 2306.072(c)(6). In compiling the information for the report, the owner of each housing development shall use data current as of January 1 of the reporting year.

(b) The department shall adopt rules regarding the procedure for filing the report.

(c) The department shall maintain the reports in electronic and hard-copy formats readily available to the public at no cost.

(d) A housing sponsor who fails to file a report in a timely manner is subject to the following sanctions, as determined by the department:

(1) denial of a request for additional funding; or

(2) an administrative penalty in an amount not to exceed $1,000, assessed in the manner provided for an administrative penalty under Section 2306.6023.

Sec. 2306.073. INTERNAL AUDIT. (a) The director, with the approval of the board, shall appoint an internal auditor who reports directly to the board and serves at the pleasure of the board.

(b) The internal auditor shall:

(1) prepare an annual audit plan using risk assessment techniques to rank high-risk functions in the department; and

(2) submit the annual audit plan to the director and board for consideration and approval or change as necessary or advisable.

(c) The internal auditor may bring before the director or board an issue outside the annual audit plan that requires the immediate attention of the director or board.

(d) The internal auditor may not be assigned any operational or management responsibilities that impair the ability of the internal auditor to make an independent examination of the department's operations.

(e) The department shall give the internal auditor unrestricted access to activities and records of the department unless restricted by other law.

Sec. 2306.074. AUDIT. (a) The department's books and accounts must be audited each fiscal year by a certified public accountant or, if requested by the department and if the legislative audit committee approves including the audit in the audit plan under Section 321.013(c), by the state auditor. A copy of the audit must be filed with the governor, the comptroller, and the legislature not later than the 30th day after the submission date for the annual financial report as required by the General Appropriations Act. If the state auditor is conducting the audit and it is not available by the 30th day after the submission date as required by the General Appropriations Act for annual financial reporting, it must be filed as soon as it is available.

(b) The department shall pay for the audit.

Sec. 2306.075. TAX EXEMPTION. The property of the department, its income, and its operations are exempt from all taxes and assessments imposed by this state and all public agencies on property acquired or used by the department under this chapter.

Sec. 2306.076. INSURANCE. (a) The board may purchase from department funds liability insurance for the director, board members, officers, and employees of the department.

(b) The board may purchase the insurance in an amount the board considers reasonably necessary to:

(1) insure against reasonably foreseeable liabilities; and

(2) provide for all costs of defending against those liabilities, including court costs and attorney's fees.

Sec. 2306.077. INTERNET AVAILABILITY. (a) In this section, "Internet" means the largest, nonproprietary, nonprofit, cooperative, public computer network, popularly known as the Internet.

(b) The department, to the extent it considers it to be feasible and appropriate, shall make information on the department's programs, public hearings, and scheduled public meetings available to the public on the Internet.

(c) The access to information allowed by this section is in addition to the public's free access to the information through other electronic or print distribution of the information and does not alter, diminish, or relinquish any copyright or other proprietary interest or entitlement of this state or a private entity under contract with this state.

(d) The department shall provide for annual housing sponsor reports required by Section 2306.0724 to be filed through the Internet.

(e) The department shall provide for reports regarding housing units designed for persons with disabilities made under Section 2306.078 to be filed through the Internet.

Sec. 2306.078. INFORMATION REGARDING HOUSING FOR PERSONS WITH DISABILITIES. (a) The department shall establish a system that requires owners of state or federally assisted housing developments with 20 or more housing units to report information regarding housing units designed for persons with disabilities.

(b) The system must provide for each owner of a development described by Subsection (a) with at least one housing unit designed for a person with a disability to enter the following information on the department's Internet site:

(1) the name, if any, of the development;

(2) the street address of the development;

(3) the number of housing units in the development that are designed for persons with disabilities and that are available for lease;

(4) the number of bedrooms in each housing unit designed for a person with a disability;

(5) the special features that characterize each housing unit's suitability for a person with a disability;

(6) the rent for each housing unit designed for a person with a disability; and

(7) the telephone number and name of the development manager or agent to whom inquiries by prospective tenants may be made.

(c) The department shall require each owner to maintain updated contact information under Subsection (b)(7) and shall solicit the owner's voluntary provision of updated information under Subsections (b)(3) and (6).

(d) The department shall make information provided under this section available to the public in electronic and hard-copy formats at no cost.

Sec. 2306.080. DATABASE INFORMATION SPECIALIST. The director shall appoint a database information specialist. The primary responsibility of the database information specialist is to provide for the effective and efficient dissemination to the public of information related to affordable housing and community development in a form that is accessible, widely available, and easily used.

Sec. 2306.081. PROJECT COMPLIANCE; DATABASE. (a) The department, through the division with responsibility for compliance matters, shall monitor for compliance with all applicable requirements the entire construction phase associated with any project under this chapter. The monitoring level for each project must be based on the amount of risk associated with the project.

(b) After completion of a project's construction phase, the department shall periodically review the performance of the project to confirm the accuracy of the department's initial compliance evaluation during the construction phase.

(c) The department shall use the division responsible for credit underwriting matters and the division responsible for compliance matters to determine the amount of risk associated with each project.

(d) The department shall create an easily accessible database that contains all project compliance information developed under this chapter, including project compliance information provided to the department by the Texas State Affordable Housing Corporation.

(e) Repealed by Acts 2007, 80th Leg., R.S., Ch. 1341, Sec. 42, eff. September 1, 2007.

Sec. 2306.082. NEGOTIATED RULEMAKING; ALTERNATIVE DISPUTE RESOLUTION. (a) The department shall develop and implement a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008 for the adoption of department rules; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009 to assist in the resolution of internal and external disputes under the department's jurisdiction.

(b) The department's procedures relating to alternative dispute resolution must designate the State Office of Administrative Hearings as the primary mediator and, to the extent practicable, conform to any guidelines or rules issued by that office.

(c) The department shall designate a person employed by or appointed to the office of the director but who is not in the legal division to coordinate and process requests for the alternative dispute resolution procedures. The person must receive training from an independent source in alternative dispute resolution not later than the 180th day after the date the person was designated to coordinate and process requests for the alternative dispute resolution procedures.

(d) The department shall notify a person requesting the alternative dispute resolution procedures that:

(1) an alternative dispute resolution decision is not binding on the state; and

(2) the department will mediate in good faith.

(e) The alternative dispute resolution procedures may be requested before the board makes a final decision.

(f) Notwithstanding any other provision of this section, the alternative dispute resolution procedures may not be used to unnecessarily delay a proceeding under this chapter.

Sec. 2306.083. REPORT TO SECRETARY OF STATE. (a) In this section, "colonia" means a geographic area that:

(1) is an economically distressed area as defined by Section 17.921, Water Code;

(2) is located in a county any part of which is within 62 miles of an international border; and

(3) consists of 11 or more dwellings that are located in close proximity to each other in an area that may be described as a community or neighborhood.

(b) To assist the secretary of state in preparing the report required under Section 405.021, the board on a quarterly basis shall provide a report to the secretary of state detailing any projects funded by the department that provide assistance to colonias.

(c) The report must include:

(1) a description of any relevant projects;

(2) the location of each project;

(3) the number of colonia residents served by each project;

(4) the exact amount spent or the anticipated amount to be spent on each colonia served by each project;

(5) a statement of whether each project is completed and, if not, the expected completion date of the project; and

(6) any other information, as determined appropriate by the secretary of state.

(d) The department shall require an applicant for funds administered by the department to submit to the department a colonia classification number, if one exists, for each colonia that may be served by the project proposed in the application. If a colonia does not have a classification number, the department may contact the secretary of state or the secretary of state's representative to obtain the classification number. On request of the department, the secretary of state or the secretary of state's representative shall assign a classification number to the colonia.

SUBCHAPTER E. COMMUNITY AFFAIRS AND COMMUNITY DEVELOPMENT PROGRAMS

Sec. 2306.092. DUTIES REGARDING CERTAIN PROGRAMS CREATED UNDER FEDERAL LAW. The department shall administer, as appropriate under policies established by the board:

(1) state responsibilities for programs created under the federal Economic Opportunity Act of 1964 (42 U.S.C. Section 2701 et seq.);

(2) programs assigned to the department under the Omnibus Budget Reconciliation Act of 1981 (Pub.L. No. 97-35); and

(3) other federal acts creating economic opportunity

Sec. 2306.093. HOUSING ASSISTANCE GOAL. By action of the board the community affairs division shall have a goal to apply a minimum of 25 percent of the division's total housing-related funds toward housing assistance for individuals and families of very low income.

Sec. 2306.094. SERVICES FOR THE HOMELESS. The department shall administer the state's allocation of federal funds provided under the Emergency Shelter Grants Program (42 U.S.C. Section 11371 et seq.), as amended, or its successor program, and any other federal funds provided for the benefit of homeless individuals and families.

Sec. 2306.097. ENERGY SERVICES PROGRAM FOR LOW-INCOME INDIVIDUALS. (a) The Energy Services Program for Low-Income Individuals shall operate in conjunction with the community services block grant program and has jurisdiction and responsibility for administration of the following elements of the State Low-Income Energy Assistance Program, from whatever sources funded:

(1) the Energy Crisis Intervention Program;

(2) the weatherization program; and

(3) the Low-Income Home Energy Assistance Program.

(b) Applications, forms, and educational materials for a program administered under Subsection (a)(1), (2), or (3) must be

Sec. 2306.0985. RECOVERY OF FUNDS FROM CERTAIN SUBDIVISIONS. (a) It is the intent of the legislature that a private developer not unduly benefit from the expenditure by the state of public funds on infrastructure for public benefit.

(b) This section applies only to property located in:

(1) the unincorporated area of an affected county, as defined by Section 16.341, Water Code; and

(2) an economically distressed area, as defined by Section 16.341, Water Code.

(c) As a condition for the receipt of state funds, and to the extent permitted by law, federal funds, the department may require a political entity with authority to tax and place a lien on property to place a lien or assessment on property that benefits from the expenditure of state or federal funds for water, wastewater, or drainage improvements affecting the property. The lien or assessment may not exceed an amount equal to the cost of making the improvements as those costs relate to the property. The lien or assessment expires 10 years after the date the improvements are completed.

(d) If property subject to a lien or assessment under Subsection (c) is sold, the seller must pay to the political entity from the proceeds of the sale an amount equal to the value of the lien or assessment. This subsection does not apply if:

(1) the reason for the sale is:

(A) the disposition of the estate following the death of the owner of the property; or

(B) the owner because of physical condition must reside in a continuous care facility and no longer resides on the property; or

(2) the owner of the property is a person of low or moderate income.

(e) If property subject to a lien or assessment under Subsection (c) is repossessed by the holder of a note or a contract for deed, the holder must pay to the political entity an amount equal to the value of the lien or assessment before taking possession of the property.

(f) Subject to rules adopted by the department, a political entity shall collect payments made under this section and remit the funds for deposit in the treasury to the credit of a special account in the general revenue fund that may be appropriated only to the department for use in administering a program under Section 2306.098.

(g) After public notice and comment, the department shall adopt rules to administer this section. The department may provide by rule for the reduction or waiver of a fee authorized by this section.

SUBCHAPTER F. HOUSING FINANCE DIVISION: GENERAL PROVISIONS

Sec. 2306.111. HOUSING FUNDS. (a) The department, through the housing finance division, shall administer all federal housing funds provided to the state under the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. Section 12704 et seq.) or any other affordable housing program.

(b) The housing finance division shall adopt a goal to apply an aggregate minimum of 25 percent of the division's total housing funds toward housing assistance for individuals and families of extremely low and very low income.

(c) In administering federal housing funds provided to the state under the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. Section 12701 et seq.), the department shall expend:

(1) 95 percent of these funds for the benefit of non-participating small cities and rural areas that do not qualify to receive funds under the Cranston-Gonzalez National Affordable Housing Act directly from the United States Department of Housing and Urban Development; and

(2) five percent of these funds for the benefit of persons with disabilities who live in any area of this state.

(c-1) The following entities are eligible to apply for set-aside funds under Subsection (c):

(1) nonprofit providers of affordable housing, including community housing development organizations; and

(2) for-profit providers of affordable housing.

(c-2) In allocating set-aside funds under Subsection (c), the department may not give preference to nonprofit providers of affordable housing, except as required by federal law.

(d) The department shall allocate housing funds provided to the state under the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. Section 12701 et seq.), housing trust funds administered by the department under Sections 2306.201-2306.206, and commitments issued under the federal low income housing tax credit program administered by the department under Subchapter DD to all urban areas and rural areas of each uniform state service region based on a formula developed by the department under Section 2306.1115. If the department determines under the formula that an insufficient number of eligible applications for assistance out of funds or credits allocable under this subsection are submitted to the department from a particular uniform state service region, the department shall use the unused funds or credits allocated to that region for all urban areas and rural areas in other uniform state service regions based on identified need and financial feasibility.

(d-1) In allocating low income housing tax credit commitments under Subchapter DD, the department shall, before applying the regional allocation formula prescribed by Section 2306.1115, set aside for at-risk developments, as defined by Section 2306.6702, not less than the minimum amount of

housing tax credits required under Section 2306.6714. Funds or credits are not required to be allocated according to the regional allocation formula under Subsection (d) if:

(1) the funds or credits are reserved for contract-for-deed conversions or for set-asides mandated by state or federal law and each contract-for-deed allocation or set-aside allocation equals not more than 10 percent of the total allocation of funds or credits for the applicable program;

(2) the funds or credits are allocated by the department primarily to serve persons with disabilities; or

(3) the funds are housing trust funds administered by the department under Sections 2306.201-2306.206 that are not otherwise required to be set aside under state or federal law and do not exceed $3 million for each programmed activity during each application cycle.

(d-2) In allocating low income housing tax credit commitments under Subchapter DD, the department shall allocate five percent of the housing tax credits in each application cycle to developments that receive federal financial assistance through the Texas Rural Development Office of the United States Department of Agriculture. Any funds allocated to developments under this subsection that involve rehabilitation must come from the funds set aside for at-risk developments under Section 2306.6714 and any additional funds set aside for those developments under Subsection (d-1). This subsection does not apply to a development financed wholly or partly under Section 538 of the Housing Act of 1949 (42 U.S.C. Section 1490p-2) unless the development involves the rehabilitation of an existing property that has received and will continue to receive as part of the financing of the development federal financial assistance provided under Section 515 of the Housing Act of 1949 (42 U.S.C. Section 1485).

(d-3) In allocating low income tax credit commitments under Subchapter DD, the department shall allocate to developments in rural areas 20 percent or more of the housing tax credits in the state in the application cycle, with $500,000 or more in housing tax credits being reserved for each uniform state service region under this subsection. Any amount of housing tax credits set aside for developments in a rural area in a specific uniform state service region under this subsection that remains after the initial allocation of housing tax credits is available for allocation to developments in any other rural area first, and then is available to developments in urban areas of any uniform state service region.

(e) The department shall include in its annual low income housing plan under Section 2306.0721:

(1) the formula developed by the department under Section 2306.1115; and

(2) the allocation targets established under the formula for the urban areas and rural areas of each uniform state service region.

(f) The department shall include in its annual low income housing report under Section 2306.072 the amounts of funds and credits allocated to the urban areas and rural areas of each uniform state service region in the preceding year for each federal and state program affected by the requirements of Subsection (d).

(g) For all urban areas and rural areas of each uniform state service region, the department shall establish funding priorities to ensure that:

(1) funds are awarded to project applicants who are best able to meet recognized needs for affordable housing, as determined by department rule;

(2) when practicable and when authorized under Section 42, Internal Revenue Code of 1986 (26 U.S.C. Section 42), the least restrictive funding sources are used to serve the lowest income residents; and

(3) funds are awarded based on a project applicant's ability, when consistent with Section 42, Internal Revenue Code of 1986 (26 U.S.C. Section 42), practicable, and economically feasible, to:

(A) provide the greatest number of quality residential units;

(B) serve persons with the lowest percent area median family income;

(C) extend the duration of the project to serve a continuing public need;

(D) use other local funding sources to minimize the amount of state subsidy needed to complete the project; and

(E) provide integrated, affordable housing for individuals and families with different levels of income.

(h) The department by rule shall adopt a policy providing for the reallocation of financial assistance administered by the department, including financial assistance related to bonds issued by the department, if the department's obligation with respect to that assistance is prematurely terminated.

(i) The director shall designate an employee of the department to act as the information officer and as a liaison with the public regarding each application seeking an allocation of housing funds described by this section.

Sec. 2306.1111. UNIFORM APPLICATION AND FUNDING CYCLES. (a) Notwithstanding any other state law and to the extent consistent with federal law, the department shall establish uniform application and funding cycles for all competitive single-family and multifamily housing programs administered by the department under this chapter, other than programs involving the issuance of private activity bonds.

(b) Wherever possible, the department shall use uniform threshold requirements for single-family and multifamily housing program applications, including uniform threshold requirements relating to market studies and environmental reports.

Sec. 2306.1112. EXECUTIVE AWARD AND REVIEW ADVISORY COMMITTEE. (a) The department shall establish an executive award and review advisory committee to make recommendations to the board regarding funding and allocation decisions.

(b) The advisory committee must include representatives from the department's underwriting and compliance functions and from the divisions responsible for administering federal housing funds provided to the state under the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. Section 12701 et seq.) and for administering low income housing tax credits.

(c) The advisory committee is not subject to Chapter 2110.

Sec. 2306.1113. EX PARTE COMMUNICATIONS. (a) During the period beginning on the date project applications are filed in an application cycle and ending on the date the board makes a final decision with respect to the approval of any application in that cycle, a member of the board may not communicate with the following persons:

(1) an applicant or a related party, as defined by state law, including board rules, and federal law; and

(2) any person who is:

(A) active in the construction, rehabilitation, ownership, or control of a proposed project, including:

(i) a general partner or contractor; and

(ii) a principal or affiliate of a general partner or contractor; or

(B) employed as a consultant, lobbyist, or attorney by an applicant or a related party.

(a-1) Subject to Subsection (a-2), during the period beginning on the date project applications are filed in an application cycle and ending on the date the board makes a final decision with respect to the approval of any application in that cycle, an employee of the department may communicate about an application with the following persons:

(1) the applicant or a related party, as defined by state law, including board rules, and federal law; and

(2) any person who is:

(A) active in the construction, rehabilitation, ownership, or control of the proposed project, including:

(i) a general partner or contractor; and

(ii) a principal or affiliate of a general partner or contractor; or

(B) employed as a consultant, lobbyist, or attorney by the applicant or a related party.

(a-2) A communication under Subsection (a-1) may be oral or in any written form, including electronic communication through the Internet, and must satisfy the following conditions:

(1) the communication must be restricted to technical or administrative matters directly affecting the application;

(2) the communication must occur or be received on the premises of the department during established business hours; and

(3) a record of the communication must be maintained and included with the application for purposes of board review and must contain the following information:

(A) the date, time, and means of communication;

(B) the names and position titles of the persons involved in the communication and, if applicable, the person's relationship to the applicant;

(C) the subject matter of the communication; and

(D) a summary of any action taken as a result of the communication.

(b) Notwithstanding Subsection (a) or (a-1), a board member or department employee may communicate without restriction with a person listed in Subsection (a) or (a-1) during any board meeting or public hearing held with respect to the application, but not during a recess or other nonrecord portion of the meeting or hearing.

(c) Subsection (a) does not prohibit the board from participating in social events at which a person with whom communications are prohibited may or will be present, provided that all matters related to applications to be considered by the board will not be discussed.

Sec. 2306.1114. NOTICE OF RECEIPT OF APPLICATION OR PROPOSED APPLICATION. (a) Not later than the 14th day after the date an application or a proposed application for housing funds described by Section 2306.111 has been filed, the department shall provide written notice of the filing of the application or proposed application to the following persons:

(1) the United States representative who represents the community containing the development described in the application;

(2) members of the legislature who represent the community containing the development described in the application;

(3) the presiding officer of the governing body of the political subdivision containing the development described in the application;

(4) any member of the governing body of a political subdivision who represents the area containing the development described in the application;

(5) the superintendent and the presiding officer of the board of trustees of the school district containing the development described in the application; and

(6) any neighborhood organizations on record with the state or county in which the development described in the application is to be located and whose boundaries contain the proposed development site.

(b) The notice provided under Subsection (a) must include the following information:

(1) the relevant dates affecting the application, including:

(A) the date on which the application was filed;

(B) the date or dates on which any hearings on the application will be held; and

(C) the date by which a decision on the application will be made;

(2) a summary of relevant facts associated with the development;

(3) a summary of any public benefits provided as a result of the development, including rent subsidies and tenant services; and

(4) the name and contact information of the employee of the department designated by the director to act as the information officer and liaison with the public regarding the application.

Sec. 2306.1115. REGIONAL ALLOCATION FORMULA. (a) To allocate housing funds under Section 2306.111(d), the department shall develop a formula that:

(1) includes as a factor the need for housing assistance and the availability of housing resources in an urban area or rural area;

(2) provides for allocations that are consistent with applicable federal and state requirements and limitations; and

(3) includes other factors determined by the department to be relevant to the equitable distribution of housing funds under Section 2306.111(d).

(b) The department shall use information contained in its annual state low income housing plan and other appropriate data to develop the formula under this section.

Sec. 2306.112. PREPARATION AND CONTENT OF ANNUAL BUDGET. (a) On or before August 1 of each year, the director shall file with the board a proposed annual budget for the housing finance division for the succeeding fiscal year.

(b) The budget shall state:

(1) the general categories of expected expenditures from revenues and income of the housing finance division;

(2) the amount of expected expenditures for each category;

(3) expected operating expenses of the housing finance division; and

(4) the proposed use of projected year-end unencumbered balances.

(c) The budget may include a provision or reserve for contingencies or overexpenditures.

Sec. 2306.113. BOARD CONSIDERATION OF ANNUAL BUDGET. On or before September 1 of each year, the board shall consider the director's proposed annual budget for the housing finance division and shall approve or change the budget as the board determines necessary or advisable.

Sec. 2306.114. FILING OF ANNUAL BUDGET. (a) Copies of the annual budget certified by the presiding officer of the board shall be filed promptly with the governor and the legislature.

(b) The annual budget is not effective until filed.

Sec. 2306.115. FAILURE TO ADOPT ANNUAL BUDGET. If the board does not adopt the annual budget on or before September 1, the budget for the preceding year remains in effect until a new budget is adopted.

Sec. 2306.116. AMENDED ANNUAL BUDGET. (a) The board may adopt an amended annual budget during the fiscal year.

(b) An amended annual budget does not supersede a prior budget until it is filed with the governor and the legislature.

Sec. 2306.117. PAYMENT OF EXPENSES; INDEBTEDNESS. (a) The expenses incurred in carrying out the functions of the housing finance division may be paid only from revenues or funds provided under this chapter.

(b) This chapter does not authorize the housing finance division to incur debt or liability on behalf of or payable by the state, except as provided by this chapter or other law.

Sec. 2306.118. DEPOSIT OF FUNDS WITH TEXAS TREASURY SAFEKEEPING TRUST COMPANY. Except as provided by Section 2306.120, revenue and funds of the department received by or payable through the programs and functions of the housing finance division, other than funds necessary for the operation of the housing finance division and appropriated funds, shall be deposited outside the treasury with the Texas Treasury Safekeeping Trust Company.

Sec. 2306.119. SELECTION OF DEPOSITORY FOR OPERATING FUNDS. (a) The department shall choose a depository for the operating funds of the housing finance division after inviting bids for favorable interest rates.

(b) The housing finance division shall publish notice in at least one newspaper of general circulation in this state no later than the 14th day before the last day set for the receipt of the bids.

(c) Notice published under this section must state the:

(1) types of deposits planned;

(2) last day on which bids will be received; and

(3) time and place for opening bids.

(d) Sealed bids must be:

(1) identified on the envelope as bids; and

(2) submitted to the housing finance division before the deadline for receiving bids.

(e) The housing finance division shall provide a tabulation of all submitted bids for public inspection.

(f) The department shall choose the depository submitting the bid with the most favorable financial terms to the department, considering the security and efficiency with which the depository is capable of managing the department's funds.

Sec. 2306.120. SELECTION OF DEPOSITORY UNDER COVENANTS OF BONDS OR TRUST INDENTURES. (a) If covenants related to the department's bonds or the trust indentures governing the bonds specify one or more depositories or set out a method of selecting depositories different from the method required by this subchapter, the covenants prevail regarding the funds to which they apply and the funds are not required to be deposited with the Texas Treasury Safekeeping Trust Company.

(b) Bonds of the housing finance division issued under trust indentures executed or resolutions adopted on or after September 1, 1991, may not include a covenant that interferes with the deposit of funds in the Texas Treasury Safekeeping Trust Company.

Sec. 2306.121. RECORDS. The housing finance division shall keep complete records and accounts of its business transactions according to generally accepted accounting principles.

Sec. 2306.123. AREA MEDIAN INCOME. The department may determine the median income of an individual or family for an area by using a source or methodology acceptable under federal law or rule.

Sec. 2306.1231. FEDERAL POVERTY LINE. The department shall use the applicable federal poverty line in determining eligibility for each federal or state program administered by the department that requires poverty instead of area median income to be used as a criterion of program eligibility.

Sec. 2306.124. RULES REGARDING HOUSING DEVELOPMENTS. The department may adopt and publish rules regarding the:

(1) making of mortgage loans under this subchapter;

(2) regulation of borrowers;

(3) construction of ancillary commercial facilities; and

(4) resale and disposition of real property, or an interest in the property, that is financed by the department.

Sec. 2306.125. COURT ACTIONS. (a) The department may institute a judicial action or proceeding against a housing sponsor receiving a loan or owning a housing development under this chapter to:

(1) enforce this chapter;

(2) enforce the terms and provisions of an agreement or contract between the department and the recipient of a loan under this chapter, including provisions regarding rental or carrying charges and income limits as applied to tenants or occupants;

(3) foreclose its mortgage; or

(4) protect:

(A) the public interest;

(B) individuals and families of low and very low income or families of moderate income;

(C) stockholders; or

(D) creditors of the sponsor.

(b) In an action or proceeding under this section, the department may apply for the appointment of a trustee or receiver to assume the management and operation of the affairs of a housing sponsor.

(c) The department, through its designated agent, may accept appointment as trustee or receiver of a housing sponsor when appointed by a court of competent jurisdiction.

Sec. 2306.126. EXEMPTION FROM PROPERTY TAX. (a) The department may, under its terms, conditions, and rules, pay public agencies in lieu of ad valorem taxes on property that the department acquires through foreclosure or sale under a deed of trust.

(b) The department shall make payments under this section instead of paying taxes whenever practicable with money lawfully available for this purpose, subject to the provisions of any bond resolution.

Sec. 2306.127. PRIORITY FOR CERTAIN COMMUNITIES. In a manner consistent with the regional allocation formula described under Section 2306.111(d), the department shall give priority through its housing program scoring criteria to communities that are located wholly or partly in:

(1) a federally designated urban enterprise community;

(2) an urban enhanced enterprise community; or

(3) an economically distressed area or colonia.

SUBCHAPTER G. HOUSING FINANCE DIVISION: GENERAL POWERS AND DUTIES OF BOARD

Sec. 2306.141. RULES. The board shall have the specific duty and power to adopt rules governing the administration of the housing finance division and its programs.

Sec. 2306.142. AUTHORIZATION OF BONDS. (a) Subject to the requirements of this section, the board shall authorize all bonds issued by the department.

(b) If the issuance is authorized by the board, the department shall issue single-family mortgage revenue bonds to make home mortgage credit available for the purchase of newly constructed or previously owned single-family homes to economic and geographic submarkets of borrowers who are not served or who are substantially underserved by the conventional, Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, or Federal Housing Administration home mortgage lending industry or by housing finance corporations organized under Chapter 394, Local Government Code.

(c) The board by rule shall adopt a methodology for determining through a market study the home mortgage credit needs in underserved economic and geographic submarkets in the state. In conducting the market study required by this subsection, the department or its designee shall analyze for the underserved economic and geographic submarkets, at a minimum, the following factors:

(1) home ownership rates;

(2) loan volume;

(3) loan approval ratios;

(4) loan interest rates;

(5) loan terms;

(6) loan availability;

(7) type and number of dwelling units; and

(8) use of subprime mortgage loan products, comparing the volume amount of subprime loans and interest rates to "A" paper mortgage loans as defined by Standard and Poor's credit underwriting criteria.

(d) The department or its designee shall analyze the potential market demand, loan availability, and private sector home mortgage lending rates available to extremely low, very low, low, and moderate income borrowers in the rural counties of the state, in census tracts in which the median family income is less than 80 percent of the median family income for the county in which the census tract is located, and in the region of the state adjacent to the international border of the state. The department or its designee shall establish a process for serving those counties, census tracts, and regions through the single-family mortgage revenue bond program in a manner proportionate to the credit needs of those areas as determined through the department's market study.

(e) Using the market study and the analysis required by this section, the board shall evaluate the feasibility of a single-family mortgage revenue bond program with loan marketing, eligibility, underwriting, structuring, collection, and foreclosure criteria and with loan services practices that are designed to meet the credit needs of the underserved economic and geographic submarkets of the state, including those submarkets served disproportionately by subprime lenders.

(f) In evaluating a proposed bond program under this section, the board shall consider, consistent with the reasonable financial operation of the department, specific set-asides or reservations of mortgage loans for underserved economic and geographic submarkets in the state, including the reservation of funds to serve borrowers who have "A-" to "B-" credit according to Standard and Poor's credit underwriting criteria.

(g) The department may use any source of funds or subsidy available to the department to provide credit enhancement, down payment assistance, pre-homebuyer and post-homebuyer counseling, interest rate reduction, and payment of incentive lender points to accomplish the purposes of this section in a manner considered by the board to be consistent with the reasonable financial operation of the department.

(h) In allocating funds under Subsection (g), the department's highest priority is to provide assistance to borrowers in underserved economic and geographic submarkets in the state. If the board determines that sufficient funds are available after fully meeting the credit needs of borrowers in those submarkets, the department may provide assistance to other borrowers.

(i) The board shall certify that each single-family mortgage revenue bond issued by the department under this section is structured in a manner that serves the credit needs of borrowers in underserved economic and geographic submarkets in the state.

(j) After any board approval and certification of a single-family mortgage revenue bond issuance, the department shall submit the proposed bond issuance to the Bond Review Board for review.

(k) In the state fiscal year beginning on September 1, 2001, the department shall:

(1) adopt by rule a market study methodology as required by Subsection (c);

(2) conduct the market study;

(3) propose for board review a single-family mortgage revenue bond program, including loan feature details, a program for borrower subsidies as provided by Subsections (g) and (h), and origination and servicing infrastructure;

(4) identify reasonable capital markets financing;

(5) conduct a public hearing on the market study results and the proposed bond program; and

(6) submit for review by the Bond Review Board the market study results and, if approved and certified by the board, the proposed bond program.

(l) In the state fiscal year beginning on September 1, 2002, and in each subsequent state fiscal year, the department shall allocate not less than 40 percent of the total single-family mortgage revenue bond loan volume to meet the credit needs of borrowers in underserved economic and geographic submarkets in the state, subject to the identification of a satisfactory market volume demand through the market study.

(m) On completion of the market study, if the board determines in any year that bonds intended to be issued to achieve the purposes of this section are unfeasible or would damage the financial condition of the department, the board may formally appeal to the Bond Review Board the requirements of Subsection (k) or (l), as applicable. The Bond Review Board has sole authority to modify or waive the required allocation levels.

(n) In addition to any other loan originators selected by the department, the department shall authorize colonia self-help centers and any other community-based, nonprofit institutions considered appropriate by the board to originate loans on behalf of the department. All non-financial institutions acting as loan originators under this subsection must undergo adequate training, as prescribed by the department, to participate in the bond program. The department may require lenders to participate in ongoing training and underwriting compliance audits to maintain good standing to participate in the bond program. The department may require that lenders meet appropriate eligibility standards as prescribed by the department.

(o) The department shall structure all single-family mortgage revenue bond issuances in a manner designed to recover the full costs associated with conducting the activities required by this section.

Sec. 2306.143. ALTERNATIVE TO SUBPRIME LENDER LIST. (a) If the United States Department of Housing and Urban Development ceases to prepare or make public a subprime lender list, the market study required by Section 2306.142 must annually survey the 100 largest refinancing lenders and the 100 largest home purchase loan lenders in the state to identify lenders primarily engaged in subprime lending.

(b) The lenders included in the survey must be identified on the basis of home mortgage loan data reported by lenders under the Home Mortgage Disclosure Act of 1975 (12 U.S.C. Section 2801 et seq.) and the Community Reinvestment Act of 1977 (12 U.S.C. Section 2901 et seq.).

Sec. 2306.144. FEES FOR SERVICES AND FACILITIES; PAYMENT OF DEPARTMENT OBLIGATIONS AND EXPENSES. (a) It is the duty of the board to establish and collect sufficient fees for services and facilities.

(b) The board shall use available sources of revenue, income, and receipts to:

(1) pay all expenses of the department's operation and maintenance;

(2) pay the principal and interest on department bonds; and

(3) create and maintain the reserves or funds provided by each resolution authorizing the issuance of department bonds.

Sec. 2306.145. LOAN PROCEDURES. The board shall have the specific duty and power to adopt procedures for approving loans, purchases of loans and interests in loans, and commitments to purchase loans under this chapter.

Sec. 2306.146. INTEREST RATES AND AMORTIZATION SCHEDULES. The board shall have the specific duty and power to establish interest rates and amortization schedules for loans made or financed under this chapter.

Sec. 2306.147. FEES AND PENALTIES. (a) The board shall have the specific duty and power to establish a schedule of fees and penalties relating to the operation of the housing finance division and authorized by this chapter, including application, processing, loan commitment, origination, servicing, and administrative fees.

(b) The department shall waive grant application fees for nonprofit organizations that offer expanded services such as child care, nutrition programs, job training assistance, health services, or human services.

Sec. 2306.148. UNDERWRITING STANDARDS. The board shall have the specific duty and power to adopt underwriting standards for loans made or financed by the housing finance division.

Sec. 2306.149. APPROVED MORTGAGE LENDERS. The board shall have the specific duty and power to compile a list of approved mortgage lenders.

Sec. 2306.150. PROPERTY STANDARDS. The board shall have the specific duty and power to adopt minimum property standards for housing developments financed or acquired under this chapter.

Sec. 2306.151. TARGET STRATEGY FOR BOND PROCEEDS. The board shall have the specific duty and power to adopt a target strategy for the percentage of mortgage revenue bond proceeds to be made available to individuals and families of low and very low income.

Sec. 2306.152. ELIGIBILITY CRITERIA. The board shall have the specific duty and power to establish eligibility criteria for participation in the housing finance division's programs for individuals and families of low and very low income and families of moderate income.

SUBCHAPTER H. HOUSING FINANCE DIVISION: GENERAL POWERS AND DUTIES OF DEPARTMENT

Sec. 2306.171. GENERAL DUTIES OF DEPARTMENT RELATING TO PURPOSES OF HOUSING FINANCE DIVISION. The department shall:

(1) develop policies and programs designed to increase the number of individuals and families of extremely low, very low, and low income and families of moderate income that participate in the housing finance division's programs;

(2) work with municipalities, counties, public agencies, housing sponsors, and nonprofit and for profit corporations to provide:

(A) information on division programs; and

(B) technical assistance to municipalities, counties, and nonprofit corporations;

(3) encourage private for profit and nonprofit corporations and state organizations to match the division's funds to assist in providing affordable housing to individuals and families of low and very low income and families of moderate income;

(4) provide matching funds to municipalities, counties, public agencies, housing sponsors, and nonprofit developers who qualify under the division's programs; and

(5) administer the state's allocation of federal funds provided under the rental rehabilitation grant program authorized by Section 17, Title I, of the United States Housing Act of 1937 (42 U.S.C. Section 1437o).

Sec. 2306.1711. RULEMAKING PROCEDURES FOR CERTAIN PROGRAMS. (a) The department shall adopt rules outlining formal rulemaking procedures for the low income housing tax credit program and the multifamily housing mortgage revenue bond program in accordance with Chapter 2001.

(b) The rules adopted under Subsection (a) must include:

(1) procedures for allowing interested parties to petition the department to request the adoption of a new rule or the amendment of an existing rule;

(2) notice requirements and deadlines for taking certain actions; and

(3) a provision for a public hearing.

(c) The department shall provide for public input before adopting rules for programs with requests for proposals and notices of funding availability.

Sec. 2306.172. ACQUISITION AND USE OF MONEY; DEPOSITORIES. The department may:

(1) acquire, hold, invest, deposit, use, and spend its income and money from every source; and

(2) select its depository or depositories, subject only to the provisions of:

(A) this chapter; and

(B) a covenant relating to the department's bonds issued by the housing finance division.

Sec. 2306.173. INVESTMENTS. Subject to a resolution authorizing issuance of its bonds, the department may:

(1) invest its money in bonds, obligations, or other securities; or

(2) place its money in demand or time deposits, whether or not evidenced by certificates of deposit.

Sec. 2306.174. ACQUISITION AND DISPOSITION OF PROPERTY. The department may:

(1) acquire, own, rent, lease, accept, hold, or dispose of any real, personal, or mixed property, or any interest in property, including a right or easement, in performing its duties and exercising its powers under this chapter, by purchase, exchange, gift, assignment, transfer, foreclosure, sale, lease, or otherwise;

(2) hold, manage, operate, or improve real, personal, or mixed property, except that:

(A) the department is restricted in acquiring property under Section 2306.251 unless it is required to foreclose on a delinquent loan and elects to acquire the property at foreclosure;

(B) the department shall make a diligent effort to sell a housing development acquired through foreclosure to a purchaser who will be required to pay ad valorem taxes on the housing development or, if such a purchaser cannot be found, to another purchaser; and

(C) the department shall sell a housing development acquired through foreclosure not later than the third anniversary of the date of acquisition unless the board adopts a resolution stating that a purchaser cannot be found after diligent search by the housing finance division, in which case the department shall continue to try to find a purchaser and shall sell the housing development when a purchaser is found; and

(3) lease or rent land or a dwelling, house, accommodation, building, structure, or facility from a private party to carry out the housing finance division's purposes.

Sec. 2306.175. TRANSFER AND DISPOSITION OF PROPERTY; MANNER OF SALE. (a) The department may:

(1) sell, assign, lease, encumber, mortgage, or otherwise dispose of real, personal, or mixed property, or an interest in property, or a deed of trust or mortgage lien interest owned by it or in its control, custody, or possession; and

(2) release or relinquish a right, title, claim, lien, interest, easement, or demand acquired in any manner, including an equity or right of redemption in property foreclosed by it.

(b) Notwithstanding any other law, the department may, under this section, conduct a public or private sale, with or without public bidding.

Sec. 2306.176. FEES. The department may set, charge, and collect fees relating to loans made or other services provided by the department under this chapter.

Sec. 2306.177. HEARINGS. The department may:

(1) conduct hearings; and

(2) take testimony and proof, under oath, at public hearings, on matters necessary to carry out the department's purposes.

Sec. 2306.178. INSURANCE. The department may acquire, and pay premiums on, insurance of any kind in amounts and from insurers that the board considers necessary or advisable.

Sec. 2306.179. INVESTIGATION. The department may:

(1) investigate housing conditions and means for improving those conditions; and

(2) determine the location of slum or blighted areas.

Sec. 2306.180. ENCOURAGING HOME OWNERSHIP. The department may encourage individual or cooperative home ownership among individuals and families of low and very low income and families of moderate income.

Sec. 2306.181. TARGETING BOND PROCEEDS. The department may target the proceeds from housing bonds issued by it to a geographic area or areas of the state.

Sec. 2306.182. LOANS TO LENDERS. The department may make loans to mortgage lenders, public agencies, or other housing sponsors and use the proceeds to make loans for multifamily housing developments that will be substantially occupied by individuals and families of low and very low income or families of moderate income.

Sec. 2306.183. NEEDS OF QUALIFYING INDIVIDUALS AND FAMILIES IN RURAL AREAS AND SMALL MUNICIPALITIES. The department may adopt a target strategy to ensure that the credit and housing needs of qualifying individuals and families who reside in rural areas and small municipalities are equitably served by the housing finance division.

Sec. 2306.184. DISCLOSURE OF FEES. (a) This section does not apply to an application submitted by an individual or family for a loan, grant, or other assistance under a program administered by the department or the Texas State Affordable Housing Corporation or from bonds issued by the department.

(b) An application for a loan, grant, or other assistance for an eligible affordable housing project or activity under a program administered by the department or the Texas State Affordable Housing Corporation or from bonds issued by the department must include:

(1) the name of each person expected to charge the applicant a project development fee or project operation fee;

(2) the nature and amount of each project development fee and project operation fee the applicant is expected to pay; and

(3) any interlocking interests of persons listed under Subdivision (1).

(c) On completion of the project, the applicant shall cost certify the project and include the following:

(1) the name of each person to whom the recipient paid a project development fee or project operation fee during the term of the project;

(2) the nature and amount of each project development fee and project operation fee paid by the recipient during the term of the project; and

(3) any interlocking interests of persons listed under Subdivision (1).

(d) The department shall adopt rules governing penalties and sanctions under this section for a person who:

(1) does not provide the information required by this section; or

(2) knowingly discloses false information.

(e) In this section:

(1) "Project development fee" means a fee charged in connection with the planning, design, or development of an affordable housing project, including an application fee, tax credit consulting fee, development consulting fee, mortgage brokerage fee, and financial advising fee.

(2) "Project operation fee" means a fee charged in connection with the operation, construction, management, or administration of an affordable housing project, including a management fee, asset management fee, incentive management fee, general partner fee, construction supervision fee, and construction management fee.

Sec. 2306.185. LONG-TERM AFFORDABILITY AND SAFETY OF MULTIFAMILY RENTAL HOUSING DEVELOPMENTS. (a) The department shall adopt policies and procedures to ensure that, for a multifamily rental housing development funded through loans, grants, or tax credits under this chapter, the owner of the development:

(1) keeps the rents affordable for low income tenants for the longest period that is economically feasible; and

(2) provides regular maintenance to keep the development sanitary, decent, and safe and otherwise complies with the requirements of Section 2306.186.

(b) In implementing Subsection (a)(1) and in developing underwriting standards and application scoring criteria for the award of loans, grants, or tax credits to multifamily developments, the department shall ensure that the economic benefits of longer affordability terms, for specific terms of years as established by the board, and below market rate rents are accurately assessed and considered.

(c) The department shall require that a recipient of funding maintains the affordability of the multifamily housing development for households of extremely low, very low, low, and moderate incomes for the greater of a 30-year period from the date the recipient takes legal possession of the housing or the remaining term of the existing federal government assistance. In addition, the agreement between the department and the recipient shall require the renewal of rental subsidies if available and if the subsidies are sufficient to maintain the economic viability of the multifamily development.

(d) The development restrictions provided by Subsection (a) and Section 2306.269 are enforceable by the department, by tenants of the development, or by private parties against the initial owner or any subsequent owner. The department shall require a land use restriction agreement providing for enforcement of the restrictions by the department, a tenant, or a private party that includes the right to recover reasonable attorney's fees if the party seeking enforcement of the restriction is successful.

(e) Subsections (c) and (d) and Section 2306.269 apply only to multifamily rental housing developments to which the department is providing one or more of the following forms of assistance:

(1) a loan or grant in an amount greater than 33 percent of the market value of the development on the date the recipient completed the construction of the development;

(2) a loan guarantee for a loan in an amount greater than 33 percent of the market value of the development on the date the recipient took legal title to the development; or

(3) a low income housing tax credit.

(f) An owner of the housing development who intends to sell, lease, prepay the loan insured by the United States Department of Housing and Urban Development, opt out of a housing assistance payments contract under Section 8, United States Housing Act of 1937 (42 U.S.C. Section 1437f), or otherwise dispose of the development shall agree to provide notice to the department at least 12 months before the date of any attempt to dispose of the development, prepay the loan, or opt out of the Section 8 contract to enable the department to attempt to locate a buyer who will conform to the development restrictions provided by this section.

(g) Repealed by Acts 2003, 78th Leg., ch. 330, Sec. 31(1).

(h) The department shall monitor a development owner's compliance with this section.

Sec. 2306.186. MANDATORY DEPOSITS TO FUND NECESSARY REPAIRS. (a) In this section:

(1) "Bank trustee" means a bank authorized to do business in this state, with the power to act as trustee.

(2) "Department assistance" means any state or federal assistance administered by or through the department, including low income housing tax credits.

(3) "First lien lender" means a lender whose lien has first priority.

(4) "Reserve account" means an individual account:

(A) created to fund any necessary repairs for a multifamily rental housing development; and

(B) maintained by a first lien lender or bank trustee.

(b) If the department is the first lien lender with respect to the development, each owner who receives department assistance for a multifamily rental housing development that contains 25 or more rental units shall deposit annually into a reserve account:

(1) for the year 2004:

(A) not less than $150 per unit per year for units one to five years old; and

(B) not less than $200 per unit per year for units six or more years old; and

(2) for each year following the year 2004, the amounts per unit per year as described by Subdivision (1).

(c) A land use restriction agreement or restrictive covenant between the owner and the department must require the owner to begin making annual deposits to the reserve account on the date that occupancy of the multifamily rental housing development stabilizes or the date that permanent financing for the development is completely in place, whichever occurs later, and shall continue making deposits until the earliest of the following dates:

(1) the date of any involuntary change in ownership of the development;

(2) the date on which the owner suffers a total casualty loss with respect to the development or the date on which the development becomes functionally obsolete, if the development cannot be or is not restored;

(3) the date on which the development is demolished;

(4) the date on which the development ceases to be used as multifamily rental property; or

(5) the end of the affordability period specified by the land use restriction agreement or restrictive covenant.

(d) With respect to multifamily rental developments, if the establishment of a reserve fund for repairs has not been required by the first lien lender, the development owner shall set aside the repair reserve amount as a reserve for capital improvements. The reserve must be established for each unit in the development, regardless of the amount of rent charged for the unit.

(e) Beginning with the 11th year after the awarding of any financial assistance for the development by the department, the owner of a multifamily rental housing development shall contract for a third-party physical needs assessment at appropriate intervals that are consistent with lender requirements with respect to the development. If the first lien lender does not require a third-party physical needs assessment or if the department is the first lien lender, the owner shall contract with a third party to conduct a physical needs assessment at least once during each five-year period beginning with the 11th year after the awarding of any financial assistance for the development by the department. The owner of the development shall submit to the department copies of the most recent third-party physical needs assessment conducted on the development, any response by the owner to the assessment, any repairs made in response to the assessment, and information on any necessary changes to the required reserve based on the assessment.

(f) The department may complete necessary repairs if the owner fails to complete the repairs as required by Subsection (e). Payment for those repairs must be made directly by the owner of the development or through a reserve account established for the development under this section.

(g) If notified of the development owner's failure to comply with a local health, safety, or building code, the department may enter on the property and complete any repairs necessary to correct a violation of that code, as identified in the applicable violation report, and may pay for those repairs through a reserve account established for the development under this section.

(h) The duties of the owner of a multifamily rental housing development under this section cease on the date of a voluntary change in ownership of the development, but the subsequent owner of the development is subject to the deposit, inspection, and notification requirements of Subsections (b), (c), (d), and (e).

(i) The first lien lender shall maintain the reserve account. In the event there is no longer a first lien lender, then Subsections (b) and (d) no longer apply.

(j) The department shall adopt rules that:

(1) establish requirements and standards regarding:

(A) for first lien lenders and bank trustees:

(i) maintenance of reserve accounts and reasonable costs of that maintenance;

(ii) asset management;

(iii) transfer of money in reserve accounts to the department to fund necessary repairs; and

(iv) oversight of reserve accounts and the provision of financial data and other information to the department; and

(B) for owners, inspections of the multifamily rental housing developments and identification of necessary repairs, including requirements and standards regarding construction, rehabilitation, and occupancy that may enable quicker identification of those repairs;

(2) identify circumstances in which money in the reserve accounts may:

(A) be used for expenses other than necessary repairs, including property taxes or insurance; and

(B) fall below mandatory deposit levels without resulting in department action;

(3) define the scope of department oversight of reserve accounts and the repair process;

(4) provide the consequences of any failure to make a required deposit, including a definition of good cause, if any, for a failure to make a required deposit;

(5) specify or create processes and standards to be used by the department to obtain repairs for developments;

(6) define for purposes of Subsection (c) the date on which occupancy of a development is considered to have stabilized and the date on which permanent financing is considered to be completely in place; and

(7) provide for appointment of a bank trustee as necessary under this section.

(k) The department shall assess an administrative penalty on development owners who fail to contract for the third-party physical needs assessment and make the identified repairs as required by this section. The department may assess the administrative penalty in the same manner as an administrative penalty assessed under Section 2306.6023. The penalty is computed by multiplying $200 by the number of

dwelling units in the development and must be paid to the department. The office of the attorney general shall assist the department in the collection of the penalty and the enforcement of this subsection.

(l) This section does not apply to a development for which an owner is required to maintain a reserve account under any other provision of federal or state law.

Sec. 2306.187. ENERGY EFFICIENCY STANDARDS FOR CERTAIN SINGLE AND MULTIFAMILY DWELLINGS. (a) A newly constructed single or multifamily dwelling that is constructed with assistance awarded by the department, including state or federal money, housing tax credits, or multifamily bond financing, must include energy conservation and efficiency measures specified by the department. The department by rule shall establish a minimum level of energy efficiency measures that must be included in a newly constructed single or multifamily dwelling as a condition of eligibility to receive assistance awarded by the department for housing construction. The measures adopted by the department may include:

(1) the installation of Energy Star-labeled ceiling fans in living areas and bedrooms;

(2) the installation of Energy Star-labeled appliances;

(3) the installation of Energy Star-labeled lighting in all interior units;

(4) the installation of Energy Star-labeled ventilation equipment, including power-vented fans, range hoods, and bathroom fans;

(5) the use of energy efficient alternative construction material, including structural insulated panel construction;

(6) the installation of central air conditioning or heat pump equipment with a better Seasonal Energy Efficiency Rating (SEER) than that required by the energy code adopted under Section 388.003, Health and Safety Code; and

(7) the installation of the air ducting system inside the conditioned space.

(b) A single or multifamily dwelling must include energy conservation and efficiency measures specified by the department if:

(1) the dwelling is rehabilitated with assistance awarded by the department, including state or federal money, housing tax credits, or multifamily bond financing; and

(2) any portion of the rehabilitation includes alterations that will replace items that are identified as required efficiency measures by the department.

(c) The energy conservation and efficiency measures the department requires under Subsection (b) may not be more stringent than the measures the department requires under Subsection (a).

(d) The department shall review the measures required to meet the energy efficiency standards at least annually to determine if additional measures are desirable and to ensure that the most recent energy efficiency technology is considered.

(e) Subsections (a) and (b) do not apply to a single or multifamily dwelling that receives weatherization assistance money from the department or money provided under the first-time homebuyer program.

Sec. 2306.188. ESTABLISHING HOME OWNERSHIP IN DISASTER AREA. (a) An applicant for federally provided financial assistance administered by the department to repair or rebuild a home damaged by a natural disaster may establish ownership of the home through nontraditional documentation of title. The department shall process an application for that assistance as if the applicant is the record title holder of the affected real property if the applicant provides to the department:

(1) on a form prescribed by the department, an affidavit summarizing the basis on which the applicant claims to be the holder of record title or, if applicable, a successor in interest to the holder of record title and stating that:

(A) there is no other person entitled to claim any ownership interest in the property; or

(B) each person who may be entitled to claim an ownership interest in the property has given consent to the application or cannot be located after a reasonable effort; and

(2) other documentation, including tax receipts, utility bills, or evidence of insurance for the home, that indicates that the applicant exercised ownership over the property at the time of the natural disaster.

(b) This section does not establish record ownership or otherwise alter legal ownership of real property.

(c) The department is not liable to any claimed owner of an interest in real property for administering financial assistance as permitted by this section.

SUBCHAPTER I. HOUSING FINANCE DIVISION: FUNDS

Sec. 2306.201. HOUSING TRUST FUND. (a) The housing trust fund is a fund:

(1) administered by the department through the housing finance division; and

(2) placed with the Texas Treasury Safekeeping Trust Company.

(b) The fund consists of:

(1) appropriations or transfers made to the fund;

(2) unencumbered fund balances;

(3) public or private gifts, grants, or donations;

(4) investment income, including all interest, dividends, capital gains, or other income from the investment of any portion of the fund;

(5) repayments received on loans made from the fund; and

(6) funds from any other source.

(c) The department may accept gifts, grants, or donations for the housing trust fund. All funds received for the housing trust fund under Subsection (b) shall be deposited or transferred into the Texas Treasury Safekeeping Trust Company.

Sec. 2306.202. USE OF HOUSING TRUST FUND. (a) The department, through the housing finance division, shall use the housing trust fund to provide loans, grants, or other comparable forms of assistance to local units of government, public housing authorities, nonprofit organizations, and income-eligible individuals, families, and households to finance, acquire, rehabilitate, and develop decent, safe, and sanitary housing. In each biennium the first $2.6 million available through the housing trust fund for loans, grants, or other comparable forms of assistance shall be set aside and made available exclusively for local units of government, public housing authorities, and nonprofit organizations. Any additional funds may also be made available to for-profit organizations provided that at least 45 percent of available funds, as determined on September 1 of each state fiscal year, in excess of the first $2.6 million shall be made available to nonprofit organizations for the purpose of acquiring, rehabilitating, and developing decent,

safe, and sanitary housing. The remaining portion shall be distributed to nonprofit organizations, for-profit organizations, and other eligible entities. Notwithstanding any other section of this chapter, but subject to the limitations in Section 2306.251(c), the department may also use the fund to acquire property to endow the fund.

(b) Use of the fund is limited to providing:

(1) assistance for individuals and families of low and very low income;

(2) technical assistance and capacity building to nonprofit organizations engaged in developing housing for individuals and families of low and very low income; and

(3) security for repayment of revenue bonds issued to finance housing for individuals and families of low and very low income.

Sec. 2306.203. RULES REGARDING ADMINISTRATION OF HOUSING TRUST FUND. The board shall adopt rules to administer the housing trust fund, including rules providing:

(1) that the division give priority to programs that maximize federal resources;

(2) for a process to set priorities for use of the fund, including the distribution of fund resources in accordance with a plan that is developed and approved by the board and included in the department's annual report regarding the housing trust fund as described in the General Appropriations Act;

(3) that the criteria used to evaluate a proposed activity will include the:

(A) leveraging of resources;

(B) cost-effectiveness of the proposed activity; and

(C) extent to which individuals and families of very low income are served by the proposed activity;

(4) that funds may not be made available for a proposed activity that permanently and involuntarily displaces individuals and families of low income;

(5) that the board attempt to allocate funds to achieve a broad geographical distribution with:

(A) special emphasis on equitably serving rural and nonmetropolitan areas; and

(B) consideration of the number and percentage of income-qualified families in different geographical areas; and

(6) that multifamily housing developed or rehabilitated through the fund remain affordable to income-qualified households for at least 20 years.

Sec. 2306.204. INDEPENDENT AUDIT OF HOUSING TRUST FUND. (a) An independent auditor shall annually conduct an audit of the housing trust fund to determine the amount of unencumbered fund balances that is greater than the amount required for the reserve fund.

(b) The independent auditor shall submit the audit report to the board not later than December 31 of each year.

Sec. 2306.205. TRANSFER OF MONEY TO HOUSING TRUST FUND. (a) Except as provided by Subsections (c), (d), and (e), not later than January 10 of each year the housing finance division shall transfer to the housing trust fund an amount, as determined by the audit report prepared under Section 2306.204, equal to one-half of the housing finance division's unencumbered fund balances in excess of two percent of the division's total bonded indebtedness that is not rated on its own merits in the highest long-term debt rating category by one or more nationally recognized rating agencies.

(b) The department shall determine the unencumbered fund balance under Subsection (a) according to the debt rating criteria established for housing finance agencies by one or more nationally recognized rating agencies.

(c) If, at the time an annual audit required by Section 2306.204 is concluded, the housing finance division's unencumbered fund balances exceed four percent of its total bonded indebtedness that is not rated on its own merits in the highest long-term debt rating category, the department shall transfer not later than January 10 of the next year all amounts in excess of that four percent.

(d) If, at the time an annual audit required by Section 2306.204 is concluded, a nationally recognized rating agency has recommended that the housing finance division maintain unencumbered fund balances in excess of the amount permitted by Subsection (a) to achieve or maintain a rating of at least Aa/A+ on all or a portion of the bonded indebtedness of the housing finance division that is issued under an open indenture or an open flow of funds, the department shall transfer not later than January 10 of the next year all amounts in excess of the amount required by the rating agency to be held as unencumbered fund balances.

(e) If, at the time an annual audit required by Section 2306.204 is concluded, a nationally recognized rating agency has recommended that the housing finance division increase the amount of its unencumbered fund balances to achieve or maintain a financially sound condition or to prevent a decrease in the long-term debt rating maintained on all or a portion of the housing finance division's bonded indebtedness, the housing finance division may not make further annual transfers to the housing trust fund until all requirements and conditions of the rating agency have been met.

(f) In addition to the money transferred into the housing trust fund under this section, and subject to Subsection (e), the department shall transfer into the fund the amount of any origination fee, asset oversight fee, and servicing fee the department or the Texas State Affordable Housing Corporation receives in relation to the administration of its 501(c)(3) bond program established pursuant to Section 2306.358 that exceeds the amount needed by the department or the Texas State Affordable Housing Corporation to pay its operating and overhead costs and fund reserves, including an insurance reserve or credit enhancement reserve established by the board in administering the program.

Sec. 2306.206. HOUSING TRUST FUND NOT SUBJECT TO TEXAS TRUST CODE. The housing trust fund provided for by this subchapter is not subject to Subtitle B, Title 9, Property Code.

Sec. 2306.207. RESERVE FUND. (a) The department may create a reserve fund with the comptroller out of:

(1) proceeds from the sale of the department's bonds; or

(2) other resources.

(b) The reserve fund is additional security for the division's bonds.

SUBCHAPTER J. HOUSING FINANCE DIVISION: LOAN TERMS AND CONDITIONS

Sec. 2306.221. HOUSING DEVELOPMENT LOANS. To finance the purchase, construction, remodeling, improvement, or rehabilitation of housing developments for residential housing designed and

planned for individuals and families of low and very low income and families of moderate income, the department, on the terms and conditions stated in this chapter, may:

(1) make, commit to make, and participate in the making of mortgage loans, including federally insured loans to housing sponsors; and

(2) make temporary loans and advances in anticipation of permanent mortgage loans.

Sec. 2306.222. CONTRACTS AND AGREEMENTS REGARDING HOUSING DEVELOPMENTS. The department may enter into agreements and contracts with housing sponsors and mortgage lenders under this chapter to make or participate in mortgage loans for residential housing for individuals and families of low and very low income and families of moderate income.

Sec. 2306.223. CRITERIA FOR FINANCING HOUSING DEVELOPMENT OF HOUSING SPONSOR. Notwithstanding any other provision of this chapter, the department may not finance a housing development undertaken by a housing sponsor under this chapter, unless the department first determines that:

(1) the housing development is necessary to provide needed decent, safe, and sanitary housing at rentals or prices that individuals or families of low and very low income or families of moderate income can afford;

(2) the housing sponsor undertaking the proposed housing development will supply well-planned and well-designed housing for individuals or families of low and very low income or families of moderate income;

(3) the housing sponsor is financially responsible;

(4) the housing sponsor is not, or will not enter into a contract for the proposed housing development with, a housing developer that:

(A) is on the department's debarred list, including any parts of that list that are derived from the debarred list of the United States Department of Housing and Urban Development;

(B) breached a contract with a public agency; or

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

(5) the financing of the housing development is a public purpose and will provide a public benefit; and

(6) the housing development will be undertaken within the authority granted by this chapter to the housing finance division and the housing sponsor.

Sec. 2306.224. LOAN TERMS AND CONDITIONS. A loan financed through a program of the housing finance division under this subchapter is subject to the terms and conditions provided by this subchapter.

Sec. 2306.225. RATIO OF LOAN TO DEVELOPMENT COST; AMORTIZATION PERIOD. (a) Except as provided by Subsection (b), the ratio of loan to total housing development cost and the amortization period of a loan insured or guaranteed by the federal government is governed by the federal government mortgage insurance commitment or federal guarantee for each housing development.

(b) The amortization period for a loan may not exceed 40 years.

Sec. 2306.226. INTEREST RATES. (a) The board shall set the interest rates at which the housing finance division makes loans and loan commitments.

(b) The interest rates shall be set to produce, when combined with other available funds, at least the amounts required to pay for the housing finance division's costs of operation and to meet its covenants with and responsibilities to the holders of its bonds.

Sec. 2306.227. PREPAYMENT OF MORTGAGE LOANS. A mortgage loan made under this chapter may be prepaid to maturity after the period of years and under the terms and conditions determined by the board.

Sec. 2306.228. LOAN FEES. The department shall make and collect loan fees that the department determines are reasonable, including:

(1) fees to reimburse the housing finance division's financing costs;
(2) service charges;
(3) insurance premiums;
(4) mortgage insurance premiums; and
(5) fees for administrative costs.

Sec. 2306.229. DOCUMENTS SUPPORTING MORTGAGE LOANS. (a) A mortgage loan shall be evidenced by a mortgage or deed of trust note or bond and by a mortgage that creates a lien on the housing development and on all real property that constitutes the site of or that relates to the housing development.

(b) A note or bond and a mortgage or deed of trust:

(1) must contain provisions satisfactory to the department;
(2) must be in a form satisfactory to the department; and
(3) may contain exculpatory provisions relieving the borrower or its principal from personal liability if the department agrees.

(c) For each loan made for the development of multifamily housing with funds provided to the state under the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. Section 12701 et seq.), the department shall obtain a mortgagee's title policy in the amount of the loan. The department may not designate a specific title insurance company to provide the mortgagee title policy or require the borrower to provide the policy from a specific title insurance company. The borrower shall select the title insurance company to close the loan and to provide the mortgagee title policy.

Sec. 2306.230. AGREEMENTS REGARDING CERTAIN LIMITATIONS ON HOUSING SPONSORS. A mortgage loan is subject to an agreement between the department and the housing sponsor that subjects the sponsor and its principals or stockholders to limitations established by the department regarding:

(1) rentals and other charges;
(2) builders' and developers' profits and fees;
(3) the disposition of its property; and
(4) the real property that constitutes the site of or relates to the housing development.

Sec. 2306.231. LOAN CONDITIONS RELATING TO DEPARTMENT POWERS. As a condition of each loan, the department, acting through the housing finance division, may at any time during the construction, rehabilitation, or operation of a housing development:

(1) enter and inspect the housing development to:

(A) investigate the development's:

(i) physical and financial condition;

(ii) construction;

(iii) rehabilitation;

(iv) operation;

(v) management; and

(vi) maintenance; and

(B) examine all books and records relating to:

(i) capitalization;

(ii) income; and

(iii) other matters regarding capitalization or income;

(2) impose charges that are required to cover the cost of inspections and examinations under Subdivision (1);

(3) order alterations, changes, or repairs necessary to protect:

(A) the security of the department's investment in a housing development; or

(B) the health, safety, and welfare of the occupants of a housing development;

(4) order a managing agent, housing development manager, or housing development owner to do whatever is necessary to comply with or refrain from violating an applicable law, ordinance, department rule, or term of an agreement regarding the housing development; and

(5) file and prosecute a complaint against a managing agent, housing development manager, or housing development owner for a violation of any applicable law or ordinance.

Sec. 2306.232. TEXAS HOUSING AGENCY LOAN OR GUARANTEE. A loan or guarantee made by the Texas Housing Agency becomes a loan or guarantee of the department.

SUBCHAPTER K. HOUSING PROGRAMS

Sec. 2306.251. PROPERTY OWNERSHIP PROGRAM. (a) While it is not the intent of the legislature that the department compete with the private sector by becoming a long-term owner of real property merely for the purpose of owning, managing, and operating tenant properties, the department may acquire, own, reconstruct, rehabilitate, manage, or operate real property:

(1) on an interim basis for sale or rental to:

(A) individuals and families of low and very low income and families of moderate income; and

(B) nonprofit housing organizations and other housing organizations to serve the needs of individuals and families of low and very low income and families of moderate income;

(2) for a period of time not to exceed 10 years for the purposes of:

(A) preserving publicly financed or subsidized housing; or

(B) participating in a risk-sharing program entered into with the United States Department of Housing and Urban Development, any other insurer or guarantor of any United States Department of Housing and Urban Development-related indebtedness, a government sponsored enterprise, a housing finance agency or corporation, or a public housing authority.

(b) The department may use money from the housing trust fund, unencumbered fund balances, fees received by the housing finance division, proceeds from the sale or rental of real property, distribution of earnings under Section 2306.557, or appropriations, allocations, grants, or gifts from any public or private source to purchase property under this section.

(c) If the department uses the housing trust fund to finance real property acquisitions, it may not use more than 10 percent of the yearly balance of the fund to acquire the real property.

(d) If the department acquires property under this section, the department shall submit an annual report to the board that includes an analysis of the property ownership program's:

(1) financial stability;

(2) cost-effectiveness; and

(3) effectiveness in serving individuals and families of low and very low income and families of moderate income.

Sec. 2306.252. HOUSING RESOURCE CENTER. (a) The board shall establish a housing resource center in the housing finance division.

(b) The department, through the center, shall:

(1) provide educational material prepared in plain language to housing advocates, housing sponsors, borrowers, and tenants;

(2) provide technical assistance to nonprofit housing sponsors;

(3) assist in the development of housing policy, including the annual state low income housing plan and report and the consolidated plan; and

(4) provide, in cooperation with the state energy conservation office, the Texas Commission on Environmental Quality, and other governmental entities, information on the use of sustainable and energy efficient housing construction products and assist local governments and nonprofits in identifying information on sustainable and energy efficient housing construction and energy efficient resources and techniques.

(c) The housing resource center is intended to assist individuals, local organizations, and local governments in providing for the housing needs of individuals and families in their communities by providing information available to the center to housing contractors, nonprofit housing sponsors, community-based organizations, and local governments on:

(1) local housing needs;

(2) housing programs;

(3) available funding sources; and

(4) programs that affect the creation, improvement, or preservation of housing affordable to individuals and families of low and very low income.

(d) The center shall serve as a housing and community services clearinghouse to provide information to the public, local communities, housing providers, and other interested parties regarding:

(1) the performance of each department program;

(2) the number of people served;

(3) the income of people served;
(4) the funding amounts distributed;
(5) allocation decisions;
(6) regional impact of department programs; and
(7) any other relevant information.

(e) The center shall compile the department's reports into an integrated format and shall compile and maintain a list of all affordable housing resources in the state, organized by community.

(f) The information required under Subsections (d) and (e) must be readily available in:
(1) a hard-copy format; and
(2) a user-friendly format on the department's website.

(g) The center shall provide information regarding the department's housing and community affairs programs to the Texas Information and Referral Network for inclusion in the statewide information and referral network as required by Section 531.0312.

Sec. 2306.253. HOMEBUYER EDUCATION PROGRAM. (a) The department shall develop and implement a statewide homebuyer education program designed to provide information and counseling to prospective homebuyers about the home buying process.

(b) The department shall develop the program in cooperation with the Texas Agricultural Extension Service, the Texas Department of Human Services, the Real Estate Research Center at Texas A&M University, the Texas Workforce Commission, experienced homebuyer education providers, community-based organizations, and advocates of affordable housing. The department shall implement the program through self-help centers when feasible.

(c) The department shall make full use of existing training and informational materials available from sources such as the United States Department of Housing and Urban Development, the cooperative extension system, the Neighborhood Reinvestment Corporation, and existing homebuyer education providers.

(d) In order to implement this section, the department may use money available to the department for housing purposes that the department is not prohibited from spending on the homebuyer education program, including:
(1) the amount of administrative or service fees the department receives from the issuance or refunding of bonds that exceeds the amount the department needs to pay its overhead costs in administering its bond programs; and
(2) money the department receives from other entities by gift or grant under a contract.

Sec. 2306.255. CONTRACT FOR DEED CONVERSION PROGRAM. (a) In this section, "office" means the office established by the department to promote initiatives for colonias.

(b) The office shall establish a program to guarantee loans made by private lenders to convert a contract for deed into a warranty deed. To the extent possible, the office shall encourage conversion of a contract for deed under the program into a general warranty deed.

(c) The office shall make agreements with private lenders that will issue loans for contract conversions under the guarantee of the department. The office and the lender must agree on the criteria for issuing a deed conversion loan, including the percentage of the guarantee to be issued by the department.

(d) The office may not make an agreement with a lender unless the agreement allows the office to annually renegotiate the guarantee percentage for a loan issued by the lender. The office shall renegotiate the terms of a guarantee when possible to obtain a better guarantee percentage for the state from the lender.

(e) The office may establish eligibility criteria for a holder of a contract for deed who participates in this program. The criteria must include a priority for homeowners and owners of residential real property who are individuals or families of low, very low, or extremely low income.

(f) The office shall use funds allocated to the department under the federal HOME Investment Partnerships program established under Title II of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. Section 12701 et seq.) for a guarantee issued under this section.

(g) The office may use the services of the Texas State Affordable Housing Corporation when necessary to accomplish the purposes of this section.

(h) The office shall:

(1) compose an annual report that evaluates the repayment history and coinciding guarantee percentages for guarantees issued under this section; and

(2) deliver a copy of the report to the governor, the lieutenant governor, and the speaker of the house of representatives.

(i) The department may adopt rules necessary to accomplish the purposes of this section.

Sec. 2306.256. AFFORDABLE HOUSING PRESERVATION PROGRAM. (a) The department shall develop and implement a program to preserve affordable housing in this state.

(b) Through the program, the department shall:

(1) maintain data on housing projected to lose its affordable status;

(2) develop policies necessary to ensure the preservation of affordable housing in this state;

(3) advise other program areas with respect to the policies; and

(4) assist those other program areas in implementing the policies.

Sec. 2306.2561. AFFORDABLE HOUSING PRESERVATION PROGRAM: LOANS AND GRANTS. (a) The department, through the housing finance division, shall provide loans and grants to political subdivisions, housing finance corporations, public housing authorities, for-profit organizations, nonprofit organizations, and income-eligible individuals, families, and households for purposes of rehabilitating housing to preserve affordability of the housing.

(b) The department may use any available revenue, including legislative appropriations, to provide loans and grants under this section.

Sec. 2306.257. APPLICANT COMPLIANCE WITH STATE AND FEDERAL LAWS PROHIBITING DISCRIMINATION: CERTIFICATION AND MONITORING. (a) The department may provide assistance through a housing program under this chapter only to an applicant who certifies the applicant's compliance with:

(1) state and federal fair housing laws, including Chapter 301, Property Code, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. Section 3601 et seq.), and the Fair Housing Amendments Act of 1988 (42 U.S.C. Section 3601 et seq.);

(2) the Civil Rights Act of 1964 (42 U.S.C. Section 2000a et seq.);

(3) the Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq.); and

(4) the Rehabilitation Act of 1973 (29 U.S.C. Section 701 et seq.).

(b) Repealed by Acts 2007, 80th Leg., R.S., Ch. 1341, Sec. 42, eff. September 1, 2007.

(c) Repealed by Acts 2007, 80th Leg., R.S., Ch. 1341, Sec. 42, eff. September 1, 2007.

(d) Repealed by Acts 2007, 80th Leg., R.S., Ch. 1341, Sec. 42, eff. September 1, 2007.

Sec. 2306.258. TRANSITIONAL HOUSING PILOT PROGRAM. (a) If funds are available, the department shall operate a transitional housing pilot program in four areas of the state.

(b) The program must address the needs of the homeless for:

(1) interim housing;

(2) physical and mental health services;

(3) literacy training;

(4) job training;

(5) family counseling;

(6) credit counseling;

(7) education services; and

(8) other services that will prevent homelessness.

Sec. 2306.2585. HOMELESS HOUSING AND SERVICES PROGRAM. (a) The department may administer a homeless housing and services program in each municipality in this state with a population of 285,500 or more to:

(1) provide for the construction, development, or procurement of housing for homeless persons; and

(2) provide local programs to prevent and eliminate homelessness.

(b) The department may adopt rules to govern the administration of the program, including rules that:

(1) provide for the allocation of any available funding; and

(2) provide detailed guidelines as to the scope of the local programs in the municipalities described by Subsection (a).

(c) The department may use any available revenue, including legislative appropriations, appropriation transfers from the trusteed programs within the office of the governor, including authorized appropriations from the Texas Enterprise Fund, available federal funds, and any other statutorily authorized and appropriate funding sources transferred from the trusteed programs within the office of the governor, for the purposes of this section. The department shall solicit and accept gifts and grants for the purposes of this section. The department shall use gifts and grants received for the purposes of this section before using any other revenue.

Sec. 2306.259. AFFORDABLE HOUSING RESEARCH AND INFORMATION PROGRAM. With money available under Section 1372.006(a), the department shall establish an affordable housing research and information program in which the department shall contract for:

(1) periodic market studies to determine the need for housing for families of extremely low, very low, and low income in census tracts throughout the state;

(2) research from qualified professionals to determine the effect of affordable housing developments on property values, social conditions, and quality of life in surrounding neighborhoods;

(3) independent research in affordable housing design and development approaches that enhance community acceptance of affordable housing and improve the quality of life for the residents of the housing; and

(4) public education and outreach efforts to assist the public in understanding the nature and purpose of affordable housing and the process for public participation in the administration of affordable housing programs.

SUBCHAPTER L. HOUSING FINANCE DIVISION: REGULATION OF HOUSING SPONSORS

Sec. 2306.261. SUPERVISING HOUSING SPONSORS. The housing finance division may, as provided by this subchapter, supervise:

(1) housing sponsors, including limited profit housing sponsors, of housing developments that are financed under this chapter and rented or leased to tenants; and

(2) real and personal property of sponsors.

Sec. 2306.262. UNIFORM SYSTEMS OF ACCOUNTS AND RECORDS. The department may require uniform systems of accounts and records for housing sponsors.

Sec. 2306.263. REPORTING. The department may require housing sponsors to:

(1) make reports and certifications of their expenditures; and

(2) answer specific questions on forms whenever necessary for the purposes of this chapter.

Sec. 2306.2631. REPORTS BY SPONSORS OF CERTAIN MULTIFAMILY HOUSING DEVELOPMENTS. (a) This section applies only to a housing sponsor of a multifamily housing development that:

(1) receives financial assistance from the state;

(2) receives financial assistance from the federal government, including an allocation of low income housing tax credits; or

(3) is subject to a land use restriction agreement.

(b) The department by rule shall require the housing sponsor of a multifamily housing development to submit a quarterly report to the department. The report must include information that identifies:

(1) the number of vacant units in the development at the time of the report; and

(2) the number of days that each unit has been vacant.

(c) The department shall provide to each member of the legislature, on request of that member, a report that disaggregates the information collected under Subsection (b) by zip code in the member's district.

Sec. 2306.264. INSPECTIONS AND EXAMINATIONS. The department, through its agents or employees, may:

(1) enter and inspect, in whole or in part, the land, buildings, and equipment of a housing sponsor; and

(2) examine all records showing the capital structure, income, expenditures, and other payments of a housing sponsor.

Sec. 2306.265. OPERATION, MAINTENANCE, AND REPAIR. The department may:

(1) supervise the operation and maintenance of a housing development; and

(2) order necessary repairs to protect the public interest or the health, welfare, or safety of the housing development occupants.

Sec. 2306.266. FEES RELATING TO REGULATION. The department may require a housing sponsor to pay the housing finance division fees for the cost of regulating the housing sponsor, including the cost of:

(1) examination;

(2) inspection;

(3) supervision; and

(4) auditing.

Sec. 2306.267. COMPLIANCE WITH APPLICABLE LAWS, RULES, AND CONTRACT TERMS. The department may order a housing sponsor to perform or refrain from performing certain acts in order to comply with the law, department rules, or terms of a contract or agreement to which the housing sponsor is a party.

Sec. 2306.268. RENTS AND CHARGES. The department shall approve and may change from time to time a schedule of rents and charges for a housing development operated by the department under Section 2306.251.

Sec. 2306.269. TENANT AND MANAGER SELECTION. (a) The department shall set standards for tenant and management selection by a housing sponsor.

(b) The department shall prohibit a multifamily rental housing development funded or administered by the department, including a development supported with a housing tax credit allocation under Subchapter DD, from:

(1) excluding an individual or family from admission to the development because the individual or family participates in the housing choice voucher program under Section 8, United States Housing Act of 1937 (42 U.S.C. Section 1437f); and

(2) using a financial or minimum income standard for an individual or family participating in the voucher program described by Subdivision (1) that requires the individual or family to have a monthly income of more than 2-1/2 times the individual's or family's share of the total monthly rent payable to the owner of the development.

Sec. 2306.270. REGULATION OF RETIREMENT OF CAPITAL INVESTMENT OR REDEMPTION OF STOCK. The department shall regulate the retirement of a capital investment or the redemption of stock of a limited profit housing sponsor if the retirement or redemption, when added to a

dividend or other distribution, exceeds in any one fiscal year the permitted percentage, as allowed by the department, of the original face amount of the limited profit housing sponsor's investment or equity in a housing development.

Sec. 2306.271. COST CONTROLS. (a) The housing finance division by rule shall specify the categories of costs allowable in the construction, reconstruction, remodeling, improvement, or rehabilitation of a housing development.

(b) The housing finance division shall require a housing sponsor to certify the actual housing development costs on completion of the housing development, subject to audit and determination by the department.

(c) The department may accept, instead of certification of housing development costs under Subsection (b), other assurances of the costs, in any form, that will enable the housing finance division to determine with reasonable accuracy the amount of the costs.

(d) In this section, "housing development costs" means the total of all costs incurred in financing, creating, or purchasing a housing development, including a single-family dwelling, approved by the department as reasonable and necessary. The costs may include:

(1) the value of land and buildings on the land owned by the sponsor or the cost of acquiring land and buildings on the land, including payments for options, deposits, or contracts to purchase properties on the proposed housing site;

(2) costs of site preparation, demolition, and development;

(3) expenses relating to the issuance of bonds;

(4) fees paid or payable in connection with the planning, execution, and financing of the housing development, including fees to:

(A) architects;

(B) engineers;

(C) attorneys;

(D) accountants; or

(E) the housing finance division on the department's behalf;

(5) costs of necessary studies, surveys, plans, permits, insurance, interest, financing, tax and assessment costs, and other operating and carrying costs during construction;

(6) costs of construction, rehabilitation, reconstruction, fixtures, furnishings, equipment, machinery, and apparatus related to the real property;

(7) costs of land improvements, including landscaping and off-site improvements, whether or not the costs have been paid in cash or in a form other than cash;

(8) necessary expenses for the initial occupancy of the housing development;

(9) a reasonable profit and risk fee in addition to job overhead to the general contractor or limited profit housing sponsor;

(10) an allowance established by the department for working capital and contingency reserves and reserves for anticipated operating deficits during the first two years of occupancy; and

(11) the cost of other items, including tenant relocation if tenant relocation costs are not otherwise provided for, that the department determines are reasonable and necessary for the development of the housing development, less net rents and other net revenues received from the operation of the real and personal property on the development site during construction.

Sec. 2306.272. HOUSING SPONSOR INVESTMENTS. (a) A principal or stockholder of a housing sponsor may not earn, accept, or receive a per annum return on an investment in a housing development financed by the department greater than that allowed by department rule.

(b) A housing sponsor's equity in a housing development is the difference between the mortgage loan and the total housing development cost.

(c) The department shall establish a housing sponsor's equity when the final mortgage advance is made.

(d) For the purposes of this section, the amount established under Subsection (c) remains constant during the life of the department's mortgage on the development, except for additional equity investment made by the sponsor with the department's approval or at its order.

(e) In this section, "housing development costs" has the meaning assigned by Section 2306.271(d).

Sec. 2306.273. LIMITATION ON APPLICATION OF CERTAIN PROVISIONS OF SUBCHAPTER. Sections 2306.261 through 2306.271 do not apply to a housing development:

(1) for which individuals or families of low and very low income or families of moderate income receive a mortgage loan under this chapter; and

(2) that initially is intended for occupancy by those individuals or families.

SUBCHAPTER M. HOUSING FINANCE DIVISION: PURCHASE AND SALE OF MORTGAGE LOANS

Sec. 2306.291. PURCHASE AND SALE OF MORTGAGE LOANS. (a) The department may purchase and take assignments from mortgage lenders or the federal government of notes and other obligations, including contracts for deed and mortgages, evidencing loans or interest in loans for the construction, remodeling, improvement, rehabilitation, purchase, leasing, or refinancing of housing developments for individuals and families of low and very low income and families of moderate income.

(b) The department may sell, at public or private sale, with or without public bidding, a mortgage or other obligation held by the department.

Sec. 2306.292. ELIGIBILITY OF MORTGAGE LOANS FOR PURCHASE. A mortgage loan or interest in a mortgage loan is not eligible for purchase by or on behalf of the department from a mortgage lender unless the mortgage lender certifies that the mortgage loan or interest in the mortgage loan is for a housing development for individuals or families of low and very low income or for families of moderate income.

Sec. 2306.293. FEDERALLY ASSISTED MORTGAGE LOANS. A mortgage loan or interest in a mortgage loan purchased or sold under this subchapter may include a mortgage loan that is insured, guaranteed, or assisted by the federal government or a mortgage loan that the federal government has committed to insure, guarantee, or assist.

Sec. 2306.294. MORTGAGE LOAN PURCHASE PRICE. (a) On purchasing a mortgage loan or interest in a mortgage loan from a mortgage lender, the department shall pay a purchase price equal to the outstanding principal balance, except that a discount from the principal balance or the payment of a premium may be used to produce a fair rate of return consistent with the obligations of the department and the purposes of this chapter.

(b) In addition to payment of the outstanding principal balance, the department shall pay the accrued interest due to the date on which the mortgage loan is delivered against payment.

Sec. 2306.295. RULES GOVERNING PURCHASE AND SALE OF MORTGAGE LOANS. The department shall adopt rules governing the purchase and sale of mortgage loans and the application of sale proceeds, including rules governing:

(1) procedures for submitting requests or inviting proposals for the purchase and sale of mortgage loans or interest in the mortgage loans;

(2) restrictions on the number of family units, location, or other qualifications of residences to be financed by residential mortgage loans;

(3) income limits of individuals and families of low and very low income or families of moderate income occupying a residence financed by a residential mortgage loan;

(4) restrictions relating to the interest rates on mortgage loans or the return realized by mortgage lenders;

(5) requirements for commitments by mortgage lenders relating to mortgage loans;

(6) schedules of fees and charges necessary for expenses and reserves of the housing finance division;

(7) resale of the housing development; and

(8) any other matter related to the power of the department to purchase and sell mortgage loans or interests in mortgage loans.

Sec. 2306.296. REVIEW AND SUBSTITUTION OF PURCHASED MORTGAGE LOANS. (a) The department shall review each mortgage loan purchased or financed by the department to determine if the loan meets:

(1) the conditions of this chapter;

(2) the department's rules; and

(3) any commitment made with the mortgage lender to purchase mortgage loans.

(b) The department may require the substitution of another mortgage loan if it determines that a loan does not comply with the criteria of Subsection (a).

Sec. 2306.297. APPLICATION OF PROVISIONS RELATING TO LOAN TERMS AND CONDITIONS. Sections 2306.225 through 2306.229 apply to the purchase of mortgage loans.

SUBCHAPTER P. HOUSING FINANCE DIVISION BONDS: ISSUANCE OF BONDS

Sec. 2306.351. ISSUANCE OF BONDS. (a) The department may issue bonds under this chapter, including qualified 501(c)(3) bonds under Section 145, Internal Revenue Code of 1986 (26 U.S.C. Section 145), and may:

(1) provide for and secure payment of the bonds;

(2) provide for the rights of the holders of the bonds, as permitted by this chapter and the Texas Constitution; and

(3) purchase, hold, cancel, resell, or otherwise dispose of its bonds, subject to restrictions in a resolution authorizing issuance of its bonds.

(b) In connection with or incidental to issuing and selling its bonds, the department may enter into contracts that the board considers necessary or appropriate for the department's obligation, as represented by the bonds and incidental contracts, to be placed, in whole or in part, on the basis desired by the board, including interest rate, currency, or cash flow.

(c) Contracts that may be entered into under Subsection (b) include contracts:

(1) commonly known as interest rate swap agreements, currency swap agreements, or forward payment conversion agreements;

(2) providing for payments based on levels of or changes in interest rates or currency exchange rates;

(3) to exchange cash flows or a series of payments; or

(4) that include options, puts or calls to hedge payment, currency, rate, spread, or similar exposure.

(d) A contract entered into under this section shall be on terms and conditions approved by the board.

Sec. 2306.352. TEXAS HOUSING BONDS. (a) The board by resolution may provide for the issuance of negotiable bonds as authorized by the Texas Constitution.

(b) The bonds shall be on a parity and shall be called Texas Housing Bonds.

(c) The board:

(1) may issue the bonds in one or several installments; and

(2) shall date the bonds of each issue.

Sec. 2306.353. REVENUE BONDS. (a) In addition to issuing general obligation bonds under Section 2306.352, the department may issue revenue bonds to provide money to carry out a purpose, power, or duty of the housing finance division under this chapter.

(b) The bonds may be issued from time to time in one or more series or issues.

(c) The bonds shall be payable as to principal, interest, and redemption premium, if any, from, and secured by, a first or subordinate lien on, and pledge of, all or part of the revenues, income, or other resources of the housing finance division, including:

(1) the repayments of mortgage loans;

(2) the earnings from investment or deposit of the reserve fund and other funds of the housing finance division;

(3) the fees, charges, and other amounts or payments received under this chapter; and

(4) appropriations, grants, allocations, subsidies, rent supplements, guaranties, aid, contribution, or donations.

Sec. 2306.354. DEFINITIVE REFUNDING BONDS. (a) The department may issue definitive refunding bonds if the bonds are issued and delivered to refund:

(1) other department bonds; or

(2) the obligations of:

(A) the department's predecessor; or

(B) a local housing finance corporation.

(b) The bonds must be payable as to principal, interest, and redemption premium, if any, from the refunding bonds and other revenues, income, or resources of the department.

(c) The department may contract to issue, sell, and deliver the definitive refunding bonds in a manner that will provide the money necessary to pay a required part of the principal, interest, and redemption premium, if any, on the refunded bonds or obligations when due.

(d) The refunded bonds or obligations may be refunded in another manner permitted by this chapter or other state law, including Chapter 1207.

Sec. 2306.355. ISSUANCE OF ADDITIONAL PARITY OR SUBORDINATE LIEN BONDS. The department may issue additional parity bonds or subordinate lien bonds under terms or conditions in the resolution authorizing issuance of the bonds.

Sec. 2306.356. ISSUANCE OF BONDS TO FUND DEPARTMENT RESERVES OR FUNDS. The department may issue bonds to provide all or part of the money required for funding or increasing the department's reserves or funds.

Sec. 2306.357. BONDS ISSUED BY TEXAS HOUSING AGENCY. A general obligation or revenue bond issued by the Texas Housing Agency becomes a general obligation or revenue bond of the department.

Sec. 2306.358. ISSUANCE OF QUALIFIED 501(C)(3) BONDS. (a) Of the total qualified 501(c)(3) bonds issued under Section 145 of the Internal Revenue Code of 1986 (26 U.S.C. Section 145) in each fiscal year, it is the express intent of the legislature that the department shall allocate qualified 501(c)(3) bonding authority as follows:

(1) not more than 25 percent of the total annual issuance amount authorized through the memorandum of understanding provided for in Subsection (b) may be used for projects in any one metropolitan area; and

(2) at least 15 percent of the annual issuance amount authorized through the memorandum of understanding provided for in Subsection (b) is reserved for projects in rural areas.

(a-1) For the purposes of Subsection (a), "rural area" and "metropolitan area" shall be defined through the memorandum of understanding provided for in Subsection (b).

(b) A qualified 501(c)(3) bond may not be issued unless approved by the Bond Review Board. In addition, the Bond Review Board shall enter into a memorandum of understanding with the department specifying the amount of bonds to be issued in each fiscal year. The department and the Bond Review Board shall review the memorandum of understanding annually to determine the specific amount of bonds to be issued in each fiscal year. The Bond Review Board may not approve a proposal to issue qualified 501(c)(3) bonds unless they meet the requirements of this section, including the memorandum of understanding, and all other laws that may apply.

(c) In addition to the requirements of Section 145 of the Internal Revenue Code of 1986 (26 U.S.C. Section 145), a qualified 501(c)(3) organization must:

(1) demonstrate to the department that the project is carefully and conservatively underwritten to:

(A) ensure that the project is well run, well maintained, and financially viable; and

(B) minimize the risk of the organization's default;

(2) ensure that at least 60 percent of the housing to be provided under the project is affordable housing provided to individuals and families of low and very low income and:

(A) at least 40 percent of the units in a multifamily development are affordable to individuals and families with incomes at or below 60 percent of the median family income, adjusted for family size; or

(B) at least 20 percent of the units in a multifamily development are affordable to individuals and families with incomes at or below 50 percent of the median family income, adjusted for family size; and

(3) enter into an agreement with the department in which the 501(c)(3) organization:

(A) agrees during the term of the agreement to reserve at least 60 percent of the housing to be provided under the project for individuals and families of low and very low income;

(B) ensures that the reserved housing will remain affordable to individuals and families of low and very low income during the term of the agreement;

(C) agrees to not discriminate against a tenant applicant solely because the applicant receives public rental assistance payments, except if at least 15 percent of the housing units provided under the project are occupied by tenants who receive public rental assistance payments; and

(D) agrees to restrict the rents charged on those units reserved for individuals and families of low and very low income at 30 percent of the area median income adjusted for family size and utility allowance, unless this requirement is waived or modified on a case-by-case basis by the board, and approved by the Bond Review Board, if both boards determine that the waiver or modification is necessary for an area of the state because the area's median income would prevent the construction of new affordable projects.

(d) Subsection (c)(3)(C) does not prohibit an organization from requiring a tenant applicant who receives public assistance to meet the organization's standard criteria for occupancy, including such criteria as satisfactory creditworthiness and lack of criminal history.

(e) The agreement provided for in Subsection (c)(3) may provide for the lease or sale of the project to a nonprofit corporation approved by the department subject to the conditions specified in Subsection (c).

(f) Neither the department nor the Texas State Affordable Housing Corporation may use state or federal money to provide for credit enhancement of a bond issued under this section unless the credit enhancement would facilitate the issuance of bonds for the purpose of financing the creation or preservation of affordable housing by 501(c)(3) nonprofit entities.

(g) In lieu of complying with the set-aside requirements specified in Subsection (c)(2), a qualified 501(c)(3) organization may comply with such other set-asides or restrictions as are approved by the Internal Revenue Service as a basis for the determination letter addressed to the qualified 501(c)(3) organization.

(h) For purposes of this section, "rural area" and "metropolitan area" shall be defined through the memorandum of understanding provided for in Subsection (b) of this section.

Sec. 2306.359. ISSUANCE OF PRIVATE ACTIVITY BONDS. (a) In evaluating an application for an issuance of private activity bonds, the department shall score and rank the application using a point system based on criteria that are adopted by the department, including criteria regarding:

(1) the income levels of tenants of the development, consistent with the funding priorities provided by Section 1372.0321;

(2) the rent levels of the units;

(3) the level of community support for the application;

(4) the period of guaranteed affordability for low income tenants;

(5) the cost per unit of the development;

(6) the size, quality, and amenities of the units;

(7) the services to be provided to tenants of the development; and

(8) other criteria as developed by the board.

(b) The department shall make available on its website details of the scoring system used by the department to score applications.

(c) The department shall underwrite the applications by determining:

(1) that the general contractor's profit, overhead, and general requirements are within the maximum limit published by the department;

(2) that the developer fee for the proposed project does not exceed the maximum amount allowed by the department; and

(3) if applicable, the amount of tax credits available to the proposed development.

(d) In adopting criteria for underwriting applications under this section, the department shall attach additional weight to criteria that will determine the maximum amount that can be awarded that will:

(1) result in an issuance of private activity bonds for developments serving the lowest income tenants; and

(2) produce the greatest number of high-quality units committed to remaining affordable to qualified tenants for extended periods.

SUBCHAPTER Q. HOUSING FINANCE DIVISION BONDS: BOARD ACTION ON BONDS

Sec. 2306.371. BOARD AUTHORIZATION OF BONDS. Bonds issued by the department must be authorized by board resolution.

Sec. 2306.372. DEPARTMENT PROCEDURES. In a resolution authorizing the issuance of department bonds, the board may prescribe the systems and procedures under which the department shall function.

Sec. 2306.373. USE OF BOND PROCEEDS. The board may provide in a resolution authorizing the issuance of department bonds that part of the proceeds from the sale of the bonds may be used to:

(1) pay the costs and expenses of issuing the bonds;

(2) pay interest on the bonds during a period required by the board;

(3) pay or repay the department's operation and maintenance expenses to the extent and for the period specified in the resolution; and

(4) fund, increase, or restore any depletions of the reserve fund or of other reserves or funds for any purpose.

Sec. 2306.374. FACSIMILE SIGNATURES AND SEALS. (a) The board may state in a resolution authorizing the issuance of an installment or series of bonds the extent to which the presiding officer of the board or any other officer may use a facsimile signature or facsimile seal instead of a manual signature or manually impressed seal to execute or attest the bonds and appurtenant coupons.

(b) An interest coupon may be signed by the facsimile signature of the presiding officer of the board.

Sec. 2306.375. PERSONAL LIABILITY OF BOARD MEMBER OR DIRECTOR. A member of the board or the director is not liable personally for bonds issued or contracts executed by the department or for any other action taken in accordance with the powers and duties authorized by this chapter.

SUBCHAPTER R. HOUSING FINANCE DIVISION BONDS: FORM; TERMS

Sec. 2306.391. FORM. The department's bonds may be issued as:

(1) serial bonds;

(2) term bonds; or

(3) a combination of serial and term bonds as determined by the board.

Sec. 2306.392. DENOMINATION. (a) The department's bonds may be issued:

(1) in coupon form payable to bearer;

(2) in fully registered form;

(3) as coupon bonds payable to bearer but registrable as to principal alone or as to both principal and interest; or

(4) in another form, including a registered uncertificated obligation not represented by written instruments, commonly known as a book-entry obligation.

(b) The department shall provide for the registration of ownership and transfer of a book-entry obligation under a system of books and records maintained by a bank serving as trustee, paying agent, or bond registrar.

Sec. 2306.393. MANNER, PRICE, AND TERMS. The department's bonds may be sold in a manner, at a price, and under terms and conditions determined by the board under a contractual arrangement approved by the board.

Sec. 2306.394. PLACE OF PAYMENT; MEDIUM OF EXCHANGE. (a) The department's bonds may be payable at a place inside or outside the United States.

(b) The bonds may be made payable in any currency or medium of exchange, including United States dollars and currencies of other nations.

Sec. 2306.395. INTEREST ON BONDS. The department's bonds may be issued to bear interest at a rate determined by the board.

Sec. 2306.396. MATURITY OF BONDS. The department's bonds may mature within a period determined by the board.

Sec. 2306.397. REDEMPTION BEFORE MATURITY; CONVERSION. (a) Department bonds may be made redeemable before maturity.

(b) The board may provide and covenant for the:

(1) conversion of one form of bond to another form; and

(2) reconversion of a bond to another form.

(c) Except as provided by Subsection (d), a replacement, converted, or reconverted bond must be approved and registered as provided by Sections 2306.431 and 2306.432, under procedures established by the resolution authorizing the bonds.

(d) If the duty of replacement, conversion, or reconversion of a bond is imposed on a place of payment (paying agent) or a corporate trustee under a trust agreement or trust indenture, the replacement, converted, or reconverted bond does not need to be reapproved by the attorney general or reregistered by the comptroller as provided by Sections 2306.431 and 2306.432.

SUBCHAPTER S. HOUSING FINANCE DIVISION BONDS: SECURITY FOR BONDS

Sec. 2306.411. SECURITY FOR PAYMENT OF PRINCIPAL, INTEREST, AND REDEMPTION PREMIUM. (a) In addition to other security for the department's bonds authorized by this chapter, payment of the principal and interest and redemption premium, if any, on the department's bonds may be secured by a first or subordinate lien on and pledge of all or part of:

(1) the department's assets and real, personal, or mixed property, including:

(A) mortgages or other obligations securing the assets of property;

(B) investments; and

(C) trust agreements or trust indentures administered by one or more corporate trustees as allowed by the board; and

(2) the reserves or funds of the department.

(b) The form of a mortgage, trust agreement, or trust indenture securing department bonds must be authorized under the resolution authorizing the issuance of the bonds.

Sec. 2306.412. VALIDITY OF LIENS AND PLEDGES. (a) A lien on or pledge of revenues, income, assets, reserves, funds, or other resources of the department, as authorized by this chapter, is

valid and binding from the time of payment for and delivery of the bonds authorized by the board resolution creating or confirming the lien or pledge.

(b) A lien or pledge is fully effective as to revenues, income, assets, reserves, funds, or other resources on hand or later received, and those items are subject to the lien or pledge without physical delivery of the item or any further act.

(c) A lien or pledge is valid and binding against a party who has a claim in tort, contract, or otherwise against the department or another party, regardless of whether the party has notice of the lien or pledge.

(d) A resolution authorizing the issuance of department bonds or any other instrument creating or confirming a lien or pledge is not required to be filed or recorded, except that:

(1) the resolution or instrument must be filed in the department's records; and

(2) each department bond resolution must be submitted to the attorney general under Section 2306.431.

SUBCHAPTER T. HOUSING FINANCE DIVISION BONDS: APPROVAL, REGISTRATION, AND EXECUTION

Sec. 2306.431. APPROVAL OF BONDS. (a) Bonds issued by the department and the appropriate proceedings authorizing the bonds' issuance shall be submitted to the attorney general for examination.

(b) The attorney general shall approve the bonds if the attorney general finds that the bonds have been authorized as provided by this chapter.

(c) Any bonds submitted by the department to the attorney general under this section must include a certification by the board that home mortgage loans made using the proceeds of the bonds do not include a mandatory arbitration requirement.

Sec. 2306.432. REGISTRATION. On approval of the attorney general under Section 2306.431, the comptroller shall register the department's bonds.

Sec. 2306.433. EXECUTION. Bonds authorized by Section 2306.352 shall be executed on the board's behalf as general obligations of the state as follows:

(1) the presiding officer of the board shall sign the bonds;

(2) the board shall impress its seal on the bonds;

(3) the governor shall sign the bonds; and

(4) the secretary of state shall attest the bonds and impress on them the state seal.

SUBCHAPTER U. HOUSING FINANCE DIVISION BONDS: RIGHTS AND REMEDIES OF BONDHOLDERS AND PARTIES IN INTEREST

Sec. 2306.451. STATE PLEDGE REGARDING BONDHOLDER RIGHTS AND REMEDIES. (a) The state pledges to and agrees with the holders of bonds issued under this chapter that it will not limit or alter the rights vested in the department under this chapter to fulfill the terms of an agreement made with a bondholder or impair the rights and remedies of a bondholder until the following obligations are fully discharged:

(1) the bonds;

(2) interest on the bonds;

(3) interest on any unpaid installment of interest; and

(4) all costs and expenses related to an action or proceeding by or on behalf of the holders.

(b) The department may include the state's pledge and agreement under Subsection (a) in an agreement with the holders of the department's bonds.

Sec. 2306.452. PAYMENT ENFORCEABLE BY MANDAMUS. A writ of mandamus and any other legal or equitable remedy are available to a party in interest to require the department, the comptroller, or another party to carry out an agreement or to perform a function or duty under:

(1) this chapter;

(2) the Texas Constitution; or

(3) the department's bond resolutions.

SUBCHAPTER V. HOUSING FINANCE DIVISION BONDS: OBLIGATIONS OF DEPARTMENT AND STATE

Sec. 2306.471. GENERAL OBLIGATION BONDS. General obligation bonds issued under Section 2306.352 and approved and registered under this chapter are general obligations of the state.

Sec. 2306.472. DEPARTMENT'S BONDS OTHER THAN GENERAL OBLIGATION BONDS NOT OBLIGATIONS OF THE STATE. Except for bonds authorized by the Texas Constitution and issued under Section 2306.352, the department's bonds:

(1) are solely obligations of the department and are payable solely from funds of the housing finance division;

(2) are not an obligation, debt, or liability of the state; and

(3) do not create or constitute a pledge, giving, or lending of the faith, credit, or taxing power of the state.

Sec. 2306.473. STATE NOT OBLIGATED TO PAY; FAITH AND CREDIT NOT PLEDGED. A department bond not authorized by Section 2306.352 must contain a statement on the face of the bond that:

(1) the state is not obligated to pay the principal or interest on the bond; and

(2) the faith, credit, or taxing power of the state is not pledged, given, or loaned to payment of the bond's principal or interest.

SUBCHAPTER W. HOUSING FINANCE DIVISION BONDS: MISCELLANEOUS PROVISIONS

Sec. 2306.491. BONDS NEGOTIABLE INSTRUMENTS. Notwithstanding any other statute, a bond and interest coupon issued and delivered by the department is a negotiable instrument under the Uniform Commercial Code, except that the bond may be registered or subject to registration under this chapter.

Sec. 2306.492. BONDS INCONTESTABLE. Department bonds are incontestable for any reason in a court or other forum after approval by the attorney general and registration by the comptroller and are valid and binding obligations for all purposes under the terms of the bonds.

Sec. 2306.493. SIGNATURE OF FORMER OFFICER. If an officer whose manual or facsimile signature appears on a bond or whose facsimile signature appears on a coupon is not an officer at the time the bond is delivered, the signature is valid and sufficient for all purposes as if the officer had remained in office until delivery.

Sec. 2306.494. BONDS NOT TAXABLE. The following are free from taxation or assessment by this state or a public agency:

(1) department bonds issued under this chapter;

(2) interest and income from department bonds, including a profit from the sale of the bonds; and

(3) all fees, charges, gifts, grants, revenues, receipts, and other money received or pledged to pay or secure the payment of the department's bonds.

Sec. 2306.495. AUTHORIZED INVESTMENTS. Bonds issued by the department under this chapter are legal and authorized investments for:

(1) banks;
(2) savings banks;
(3) trust companies;
(4) savings and loan associations;
(5) insurance companies;
(6) fiduciaries;
(7) trustees;
(8) guardians; or
(9) sinking or other public funds of:
    (A) this state;
    (B) a municipality;
    (C) a county;
    (D) a school district; or
    (E) another political subdivision or public agency of this state.

Sec. 2306.496. SECURITY FOR DEPOSIT OF FUNDS. Department bonds are eligible and lawful security for a deposit of public funds of the state or a public agency to the extent of the greater of the bonds' par or market value when accompanied by appurtenant unmatured interest coupons.

Sec. 2306.497. MUTILATED, LOST, STOLEN, OR DESTROYED BONDS. The board may provide procedures for the replacement of a mutilated, lost, stolen, or destroyed bond or interest coupon.

Sec. 2306.498. NO GAIN ALLOWED. (a) The director or a board member may not have or attempt to have a pecuniary interest in a transaction to which the department is a party for purposes of personal pecuniary gain.

(b) A board member or department employee may not purchase department bonds in the open secondary market for municipal securities.

SUBCHAPTER X. INDIVIDUALS WITH SPECIAL NEEDS

Sec. 2306.511. DEFINITION. In this subchapter, "individual with special needs" means an individual who:

(1) is considered to be an individual having a disability under a state or federal law;

(2) is elderly;

(3) is designated by the board as experiencing a unique need for decent, safe housing that is not being met adequately by private enterprise; or

(4) is legally responsible for caring for an individual described by Subdivision (1), (2), or (3) and meets the income guidelines established by the board.

Sec. 2306.512. SPECIAL NEEDS. The department may adopt a strategy to serve the needs of individuals with special needs

Sec. 2306.513. HOUSING FOR INDIVIDUALS WITH SPECIAL NEEDS. (a) The board shall adopt rules to achieve occupancy by individuals with special needs of at least five percent of the units in each multifamily housing development.

(b) Subsection (a) applies only to a multifamily housing development that contains at least 20 units and is financed by bonds issued under this chapter.

(c) If a survey that is conducted by the housing sponsor and verified by the housing finance division reveals that there is not sufficient need for housing for individuals with special needs in the area in which the development will be built or renovated to justify building or renovating and reserving at least five percent of the units for individuals with special needs, the department may, on a showing of good cause by the housing sponsor, lower the requirements to correspond to the amount of need found by the housing sponsor.

(d) Repealed by Acts 1995, 74th Leg., ch. 76, Sec. 5.78, eff. Sept. 1, 1995.

(e) Repealed by Acts 1997, 75th Leg., ch. 980, Sec. 54, eff. Sept. 1, 1997.

Sec. 2306.514. CONSTRUCTION REQUIREMENTS FOR SINGLE FAMILY AFFORDABLE HOUSING. (a) If a person is awarded state or federal funds by the department to construct single family affordable housing for individuals and families of low and very low income, the affordable housing identified on the person's funding application must be constructed so that:

(1) at least one entrance door, whether located at the front, side, or back of the building:

(A) is on an accessible route served by a ramp or no-step entrance; and

(B) has at least a standard 36-inch door;

(2) on the first floor of the building:

(A) each interior door is at least a standard 32-inch door, unless the door provides access only to a closet of less than 15 square feet in area;

(B) each hallway has a width of at least 36 inches and is level, with ramped or beveled changes at each door threshold;

(C) each bathroom wall is reinforced for potential installation of grab bars;

(D) each electrical panel, light switch, or thermostat is not higher than 48 inches above the floor; and

(E) each electrical plug or other receptacle is at least 15 inches above the floor; and

(3) if the applicable building code or codes do not prescribe another location for the breaker boxes, each breaker box is located not higher than 48 inches above the floor inside the building on the first floor.

(b) A person who builds single family affordable housing to which this section applies may obtain a waiver from the department of the requirement described by Subsection (a)(1)(A) if the cost of grading the terrain to meet the requirement is prohibitively expensive.

SUBCHAPTER X-2. NATURAL DISASTER HOUSING RECONSTRUCTION INITIATIVE

Sec. 2306.541. NATURAL DISASTER HOUSING RECONSTRUCTION ADVISORY COMMITTEE. (a) The director shall appoint a natural disaster housing reconstruction advisory committee composed of representatives from appropriate local, state, and federal entities and organizations and nonprofit organizations.

(b) The advisory committee shall develop a natural disaster housing reconstruction plan. In developing this plan, the advisory committee shall:

(1) evaluate existing systems of providing temporary housing to victims of natural disasters and develop alternative systems to increase efficiency and cost-effectiveness;

(2) evaluate existing models for providing permanent replacement housing to victims of natural disasters;

(3) design alternatives to existing models to improve the sustainability, affordability, desirability, and quality of housing rebuilt in the event of future natural disasters;

(4) evaluate economic circumstances of elderly, disabled, and low-income victims of natural disasters and develop models for providing affordable replacement housing;

(5) recommend programs for the rapid and efficient large-scale production of temporary and permanent replacement housing following a natural disaster; and

(6) encourage the participation, coordination, and involvement of appropriate federal organizations.

(c) Chapter 2110 does not apply to the advisory committee.

Sec. 2306.542. HOUSING RECONSTRUCTION DEMONSTRATION PILOT PROGRAM. (a) Using the natural disaster housing reconstruction plan developed under this subchapter, the director and advisory committee shall develop, for implementation under Subsections (b) and (c), housing reconstruction demonstration pilot programs for three areas, each of which was affected by one of the three most recent federally declared natural disasters. The pilot programs must provide for the replacement of at least 20 houses in each area to test the feasibility of implementing the plan in the large-scale production of replacement housing for victims of federally declared natural disasters.

(b) The department shall provide to an interested council of government, county, or local government eligible for funding for disaster recovery under the community development block grant program:

(1) information regarding a pilot program developed under Subsection (a); and

(2) assistance in implementing a pilot program developed under Subsection (a).

(c) At the discretion of the board, the department may implement a pilot program in any of the three most recently federally declared disaster areas in which a pilot program has not been implemented by a council of government, county, or local government. The department may use any available funds to implement the pilot program.

SUBCHAPTER Y. TEXAS STATE AFFORDABLE HOUSING CORPORATION

Sec. 2306.551. DEFINITION. In this subchapter, "corporation" means the Texas State Affordable Housing Corporation.

Sec. 2306.552. CREATION. (a) The existence of the Texas State Affordable Housing Corporation, or any similarly named corporation, begins on the date that the secretary of state issues the certificate of incorporation.

(b) The charter of the corporation must establish the corporation as nonprofit and specifically dedicate the corporation's activities to the public purpose authorized by this subchapter.

(c) The creation of the corporation does not limit or impair the rights, powers, and duties of the department under this chapter.

Sec. 2306.5521. SUNSET PROVISION. The Texas State Affordable Housing Corporation is subject to Chapter 325 (Texas Sunset Act). Unless continued in existence as provided by that chapter, the corporation is abolished and this subchapter expires September 1, **2023**.

Sec. 2306.553. PURPOSES. (a) The public purpose of the corporation is to perform activities and services that the corporation's board of directors determines will promote the public health, safety,

and welfare through the provision of adequate, safe, and sanitary housing primarily for individuals and families of low, very low, and extremely low income and for persons who are eligible for loans under the home loan programs provided by Sections 2306.562 and 2306.5621. The activities and services shall include engaging in mortgage banking activities and lending transactions and acquiring, holding, selling, or leasing real or personal property.

(b) The corporation's primary public purpose is to facilitate the provision of housing by issuing qualified 501(c)(3) bonds and qualified residential rental project bonds and by making affordable loans to individuals and families of low, very low, and extremely low income and to persons who are eligible for loans under the home loan programs provided by Sections 2306.562 and 2306.5621. The corporation may make first lien, single family purchase money mortgage loans for single family homes only to individuals and families of low, very low, and extremely low income if the individual's or family's household income is not more than the greater of 60 percent of the median income for the state, as defined by the United States Department of Housing and Urban Development, or 60 percent of the area median family income, adjusted for family size, as defined by that department. The corporation may make loans for multifamily developments if:

(1) at least 40 percent of the units in a multifamily development are affordable to individuals and families with incomes at or below 60 percent of the median family income, adjusted for family size; or

(2) at least 20 percent of the units in a multifamily development are affordable to individuals and families with incomes at or below 50 percent of the median family income, adjusted for family size.

(c) To the extent reasonably practicable, the corporation shall use the services of banks, community banks, savings banks, thrifts, savings and loan associations, private mortgage companies, nonprofit organizations, and other lenders for the origination of all loans contemplated by this subchapter and assist the lenders in providing credit primarily to individuals and families of low, very low, and extremely low income.

Sec. 2306.554. BOARD OF DIRECTORS AND OFFICERS. (a) The board of directors of the corporation consists of five members appointed by the governor. One member must represent the interests of individuals and families served by the corporation's single-family mortgage loan programs, one member must represent nonprofit housing organizations, and the remaining three members must represent one or more of the following areas:

(1) state or federal savings banks or savings and loan associations;
(2) community banks with assets of $200 million or less;
(3) large metropolitan banks with assets of more than $1 billion;
(4) asset management companies;
(5) mortgage servicing companies;
(6) builders;
(7) real estate developers;
(8) real estate brokers;
(9) community or economic development organizations;
(10) private mortgage companies;
(11) nonprofit housing development companies;
(12) attorneys;

(13) investment bankers;
(14) underwriters;
(15) private mortgage insurance companies;
(16) appraisers;
(17) property management companies;
(18) financial advisors;
(19) nonprofit foundations;
(20) financial advisors; or
(21) any other area of expertise that the governor finds necessary for the successful operation of the corporation.

(b) The governor shall designate a member of the corporation's board of directors as the presiding officer of the board of directors to serve in that capacity at the pleasure of the governor.

(c) A member of the corporation's board of directors is not entitled to compensation, but is entitled to reimbursement of travel expenses incurred by the member while conducting the business of the board to the same extent provided by the General Appropriations Act for a member of a state board.

(d) The corporation shall employ, for compensation to be determined by the corporation's board of directors, a qualified individual to serve as president of the corporation.

(e) The corporation may purchase, with corporation funds, liability insurance for each of the members of the corporation's board of directors, officers, and other employees of the corporation in an amount that the corporation's board of directors considers reasonably necessary to:

(1) insure against foreseeable liabilities; and

(2) provide for all costs of defending against those liabilities, including, without limitation, court costs and attorney's fees.

(f) Appointments to the board of directors of the corporation shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.

Sec. 2306.5541. TERMS OF MEMBERS. The members of the board of directors of the corporation serve staggered six-year terms, with the terms of one or two members expiring on February 1 of each odd-numbered year.

Sec. 2306.5542. REMOVAL OF MEMBERS. (a) It is a ground for removal from the board of directors of the corporation that a member:

(1) does not have at the time of taking office the qualifications required by Section 2306.554;

(2) does not maintain during service on the board of directors of the corporation the qualifications required by Section 2306.554;

(3) is ineligible for membership under Sections 2306.554 and 2306.5545;

(4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or

(5) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the board of directors.

(b) The validity of an action of the board of directors of the corporation is not affected by the fact that it is taken when a ground for removal of a board member exists.

(c) If the president of the corporation has knowledge that a potential ground for removal exists, the president shall notify the presiding officer of the board of directors of the potential ground. The presiding officer shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the president shall notify the next highest ranking officer of the board of directors, who shall then notify the governor and the attorney general that a potential ground for removal exists.

Sec. 2306.5543. TRAINING. (a) A person who is appointed to and qualifies for office as a member of the corporation's board of directors may not vote, deliberate, or be counted as a member in attendance at a meeting of the board until the person completes a training program that complies with this section.

(b) The training program must provide the person with information regarding:

(1) the legislation that created the corporation;

(2) the programs, functions, rules, and budget of the corporation;

(3) the results of the most recent formal audit of the corporation;

(4) the requirements of laws relating to; and

(5) any applicable ethics policies adopted by the corporation or the Texas Ethics Commission.

(c) A person appointed to the corporation's board of directors is entitled to reimbursement, to the same extent provided by the General Appropriations Act for a member of a state board, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

Sec. 2306.5545. CONFLICT OF INTEREST POLICIES. (a) The board of directors of the corporation shall develop and implement policies relating to employee conflicts of interest that are substantially similar to comparable policies that govern state employees.

(b) A person may not be a member of the corporation's board of directors and may not be a corporation employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.), and its subsequent amendments, if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of banking, mortgage lending, real estate, housing development, or housing construction; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of banking, mortgage lending, real estate, housing development, or housing construction.

(c) A person may not be a member of the corporation's board of directors or act as the general counsel to the board of directors or the corporation if the person is required to register as a lobbyist under Chapter 305 because of the person's activities for compensation on behalf of a profession related to the operation of the corporation.

(d) In this section, "Texas trade association" means a cooperative and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

Sec. 2306.5546. STANDARDS OF CONDUCT. The president of the corporation or the president's designee shall provide to members of the board of directors of the corporation and to corporation employees, as often as necessary, information regarding the requirements for office or employment under this subchapter, including information regarding a person's responsibilities under applicable laws relating to standards of conduct for state officers or employees.

Sec. 2306.5547. DIVISION OF RESPONSIBILITY. The board of directors of the corporation shall develop and implement policies that clearly separate the policymaking responsibilities of the board of directors and the management responsibilities of the president and the staff of the corporation.

Sec. 2306.5548. EQUAL EMPLOYMENT OPPORTUNITY POLICY. (a) The president of the corporation or the president's designee shall prepare and maintain a written policy statement that implements a program of equal employment opportunity to ensure that all personnel decisions are made without regard to race, color, disability, sex, religion, age, or national origin.

(b) The policy statement must include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, training, and promotion of personnel, that show the intent of the corporation to avoid the unlawful employment practices described by Chapter 21, Labor Code; and

(2) an analysis of the extent to which the composition of the corporation's personnel is in accordance with state and federal law and a description of reasonable methods to achieve compliance with state and federal law.

(c) The policy statement must be:

(1) updated annually; and

(2) filed with the governor's office.

Sec. 2306.5549. MEETINGS OF THE CORPORATION'S BOARD. (a) The corporation's board may hold meetings when called by the presiding officer, the president, or three of the members.

(b) The corporation's board shall keep minutes and complete transcripts of its meetings. The corporation shall post the transcripts on its Internet website and shall otherwise maintain all accounts, minutes, and other records related to the meetings.

(c) All materials provided to the corporation's board that are relevant to a matter proposed for discussion at a meeting of that board must be posted on the corporation's Internet website not later than the third day before the date of the meeting.

(d) Any materials made available to the corporation's board by the corporation at a meeting of that board must be made available in hard-copy format to the members of the public in attendance at the meeting.

(e) The corporation's board shall conduct its meetings in accordance with Chapter 551, except as otherwise required by this chapter.

(f) For each item on the agenda at a meeting of the corporation's board, the corporation's board shall provide for public comment after the presentation made by corporation staff and the motions made by the corporation's board on that topic.

(g) The corporation's board shall adopt rules that give the public a reasonable amount of time for testimony at meetings.

Sec. 2306.555. POWERS. (a) The corporation has the powers provided for the department under this chapter.

(b) In addition to the powers granted by Subsection (a), the corporation has all rights and powers necessary to accomplish its public purpose, including the powers to:

(1) purchase, service, sell, lend on the security of, or otherwise transact in:

(A) mortgages, including federal mortgages and federally insured mortgages;

(B) mortgage loans;

(C) deeds of trust; and

(D) loans or other advances of credit secured by liens against manufactured housing;

(2) guarantee or insure timely payment of mortgage loans and loans or other advances of credit secured by liens against manufactured housing, provided that the corporation's liability on that guaranty or insurance is limited to the assets of a guaranty fund or self-insurance fund established and maintained by the corporation;

(3) make mortgage loans and loans or other advances of credit secured by liens against manufactured housing to individuals and families of low income;

(4) make mortgage loans to provide temporary or permanent financing or refinancing for housing or land developments, including refunding outstanding obligations, mortgages, or advances issued for those purposes;

(5) borrow, give security, pay interest or other return, or issue bonds or other obligations, including notes, debentures, or mortgage-backed securities, provided that each bond or other obligation issued by the corporation must contain a statement that the state is not obligated to pay the principal of or any premium or interest on the bond or other obligation and that the full faith and credit and the taxing power of the state are not pledged, given, or loaned to the payment;

(6) acquire, hold, invest, use, pledge, reserve, and dispose of its assets, revenues, income, receipts, funds, and money from every source and to select one or more depositories, inside or outside the state, subject to the terms of any resolution, indenture, or other contract under which any bonds or other obligations are issued or any guaranty or insurance is provided;

(7) establish, charge, and collect fees, charges, and penalties in connection with the programs, services, and activities of the corporation;

(8) procure insurance and pay premiums on insurance of any type, in amounts, and from insurers as the corporation's board of directors considers necessary and advisable to further the corporation's public purpose, including, subject to Section 2306.554(e), liability insurance for the members of the corporation's board of directors and the officers and other employees of the corporation;

(9) make, enter into, and enforce contracts, agreements, leases, indentures, mortgages, deeds, deeds of trust, security agreements, pledge agreements, credit agreements, and other instruments with any person, including a mortgage lender, servicer, housing sponsor, the federal government, or any public agency, on terms the corporation determines may be acceptable;

(10) own, rent, lease, or otherwise acquire, accept, or hold real, personal, or mixed property, or any interest in property, by purchase, exchange, gift, assignment, transfer, foreclosure, mortgage, sale, lease, or otherwise and hold, manage, operate, or improve real, personal, or mixed property, regardless of location;

(11) sell, lease, encumber, mortgage, exchange, donate, convey, or otherwise dispose of any or all of its properties or any interest in its properties, deeds of trust, or mortgage lien interest owned

by it or under its control or custody, or in its possession, and release or relinquish any right, title, claim, lien, interest, easement, or demand, however acquired, including any equity or right of redemption in property foreclosed by it, by public or private sale, with or without public bidding;

(12) lease or rent any improvements, lands, or facilities from any person;

(13) request, accept, and use gifts, loans, donations, aid, guaranties, allocations, subsidies, grants, or contributions of any item of value to further its public purpose; and

(14) exercise the rights and powers of a nonprofit corporation incorporated under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes).

(c) In exercising the foregoing powers granted to it under this chapter, the corporation shall not actively compete with private lenders and shall not originate or make a loan that would be made under the same circumstances by a private lender on substantially the same or better terms within the submarket in which the loan is proposed to be made.

(d) All of the mortgage banking operations shall be dedicated to the furtherance of facilitating affordable housing finance primarily for the benefit of individuals and families of low, very low, and extremely low income who, generally, are not afforded housing finance options through conventional lending channels.

(e) The corporation may contract with the department and with bond counsel, financial advisors, underwriters, or other providers of professional or consulting services.

(f) The corporation shall pay its expenses from any available fund without resort to the general revenues of the state, except as specifically appropriated by the legislature.

(g) The department may not transfer any funds to the corporation to support the administration of the corporation or to subsidize its operations in any way. The department shall be fully compensated by the corporation for any property or employees that are shared by the corporation and the department, and it is the intent of the legislature that no employees be shared beyond the time at which such sharing is absolutely necessary. This subsection does not prohibit the corporation from receiving grants, loans, or other program funds of a kind that are available to other nonprofit corporations, or from using that portion of the program funds that are allowed for administration of the program for administrative purposes.

(h) Transfers of property from the department to the corporation shall be fully compensated.

Sec. 2306.5551. BOARD DELEGATION OF AUTHORITY TO ISSUE BONDS OR OTHER OBLIGATIONS. (a) The board of directors of the corporation may delegate to a member of the board or to an employee of the corporation the authority to enter into a contract to issue bonds or other obligations for the corporation.

(b) The person to whom contract authority is delegated under this section shall report to the board as frequently as considered necessary by the board all of the person's activities relating to the issuance of bonds or other obligations.

Sec. 2306.5552. TECHNICAL AND FINANCIAL ASSISTANCE PROVIDED TO NONPROFIT ORGANIZATIONS. The corporation shall supplement the technical and financial capacity of other appropriate nonprofit organizations to provide for the multifamily and single-family housing needs of individuals and families of low, very low, and extremely low income.

Sec. 2306.5553. HISTORICALLY UNDERUTILIZED BUSINESSES. (a) The corporation shall make a good faith effort to provide contracting opportunities for, and to increase contract awards to,

historically underutilized businesses for all services that may be required by the corporation, including professional and consulting services and commodities purchases.

(b) In accordance with Subchapter B, Chapter 20, Title 34, Texas Administrative Code, a good faith effort under Subsection (a) must include awarding historically underutilized businesses at least a portion of the total contract value of all contracts the corporation expects to award in a state fiscal year.

(c) The corporation may achieve annual procurement goals under this section by contracting directly with historically underutilized businesses or by contracting indirectly with those businesses through the provision of subcontracting opportunities.

Sec. 2306.5555. PUBLIC ACCESS. The board of directors of the corporation shall develop and implement policies that provide the public with a reasonable opportunity to appear before the board of directors and to speak on any issue under the jurisdiction of the corporation.

Sec. 2306.556. EXEMPT FROM TAXATION AND REGISTRATION. (a) The corporation is exempt from all taxation by the state or a political subdivision of the state, including a municipality.

(b) A bond or other obligation issued by the corporation is an exempt security under The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes), and unless specifically provided otherwise, under any subsequently enacted securities act. Any contract, guaranty, or other document executed in connection with the issuance of the bond or other obligation is not an exempt security under that Act, and unless specifically provided otherwise, under any subsequently enacted securities act.

Sec. 2306.557. DISTRIBUTION OF EARNINGS. Any part of earnings remaining after payment of expenses and any establishment of reserves by the corporation's board of directors may not inure to any person except that the corporation shall use these excess earnings to further the corporation's new or existing affordable housing initiatives if the corporation's board of directors determines that sufficient provision has been made for the full payment of the expenses, bonds, and other obligations of the corporation and for any establishment of reserves by the corporation's board of directors.

Sec. 2306.558. ALTERATION AND TERMINATION. (a) Subject to this subchapter and the prohibition on the impairment of contracts in the law of this state, the corporation's board of directors by written resolution may alter the structure, organization, programs, or activities of the corporation or terminate and dissolve the corporation.

(b) The corporation's board of directors shall dissolve the corporation if the board by resolution determines that:

(1) the purposes for which the corporation was formed have been substantially fulfilled; and

(2) all bonds and other obligations issued by the corporation and all guaranties and insurance and other contractual obligations have been fully paid or provision for that payment has been made.

(c) On dissolution, the title to funds and properties previously owned by the corporation shall be transferred to the department.

Sec. 2306.559. REPORTING REQUIREMENTS. (a) The corporation shall file an annual report of the financial activity of the corporation with the department. The corporation's board of directors shall

submit the report to the governor, lieutenant governor, speaker of the house of representatives, comptroller, and Legislative Budget Board.

(b) The corporation shall file the report by the date established in the General Appropriations Act.

(c) The corporation shall prepare the report in accordance with generally accepted accounting principles.

(d) The report must include:

(1) a statement of support, revenue, and expenses and change in fund balances;

(2) a statement of functional expenses;

(3) balance sheets for all funds;

(4) the number, amount, and purpose of private gifts, grants, donations, or other funds applied for and received;

(5) the number, amount, and purpose of loans provided to affordable housing developers, regardless of whether the corporation provides those loans directly to the developers or administers the loans from another source;

(6) the amount and source of funds deposited into any fund created by the corporation for the purpose of providing grants and the number, amount, and purpose of any grants provided; and

(7) the total amount of annual revenue generated by the corporation in excess of its expenditures.

(e) The corporation shall file quarterly performance reports with the department.

(f) Promptly on receipt, the corporation shall file with the Bond Review Board a report for the preceding fiscal year. The report must contain the status of all outstanding debts and obligations of the corporation, the status of collateral pledged as security for those debts and obligations, and a maturity and payment schedule for those debts and obligations.

Sec. 2306.560. AUDIT. (a) The corporation shall hire an independent certified public accountant to audit the corporation's books and accounts for each fiscal year. The corporation shall file a copy of the audit with the department and shall submit the audit report to the governor, lieutenant governor, speaker of the house of representatives, comptroller, Bond Review Board, State Auditor's Office, and Legislative Budget Board not later than the 30th day after the submission date established in the General Appropriations Act for the annual financial report.

(b) The corporation is subject to audit by the state auditor.

(c) The corporation shall submit budget and financial information to the legislative budget office as required by the director of the legislative budget office.

(d) All transfers of funds, personnel, or in-kind contributions from the department to the corporation must be reported to the Legislative Budget Board.

Sec. 2306.561. LIABILITY. (a) The directors, officers, and employees of the corporation are not personally liable for bonds or other obligations issued or contracts, guaranties, or insurance executed by the corporation, or for any other action taken in accordance with the powers and duties authorized by this subchapter or in the good faith belief that that action was taken in accordance with the powers and duties authorized by this subchapter.

(b) The directors and officers of the corporation are immune from civil liability to the same extent that a volunteer who serves as an officer, director, or trustee of a charitable organization is immune from civil liability under Chapter 84, Civil Practice and Remedies Code.

(c) The civil liability of an employee of the corporation is limited to the same extent that the civil liability of an employee of a charitable organization is limited under Chapter 84, Civil Practice and Remedies Code.

(d) The limitations on liability contained in this section do not limit or impair the limitations on liability otherwise available to the corporation's directors, officers, and employees.

Sec. 2306.562. PROFESSIONAL EDUCATORS HOME LOAN PROGRAM. (a) In this section:

(1) "Allied health program faculty member" means a full-time member of the faculty of an undergraduate or graduate allied health program of a public or private institution of higher education in this state.

(1-a) "Graduate allied health program" means a postbaccalaureate certificate or master's or doctoral degree program in an allied health profession that is accredited by an accrediting entity recognized by the United States Department of Education.

(1-b) "Graduate professional nursing program" and "undergraduate professional nursing program" have the meanings assigned by Section 54.355, Education Code.

(2) "Home" means a dwelling in this state in which a professional educator intends to reside as the professional educator's principal residence.

(3) "Mortgage lender" has the meaning assigned by Section 2306.004.

(4) "Professional educator" means a classroom teacher, full-time paid teacher's aide, full-time librarian, full-time counselor certified under Subchapter B, Chapter 21, Education Code, full-time school nurse, or allied health or professional nursing program faculty member.

(5) "Professional nursing program faculty member" means a full-time member of the faculty of either an undergraduate or graduate professional nursing program.

(6) "Program" means the professional educators home loan program.

(7) "Undergraduate allied health program" means an undergraduate degree or certificate program that:

(A) prepares students for licensure, certification, or registration in an allied health profession; and

(B) is accredited by an accrediting entity recognized by the United States Department of Education.

(b) The corporation shall establish a program to provide low-interest home mortgage loans to eligible professional educators whose income does not exceed the greater of:

(1) 115 percent of area median family income, adjusted for family size; or

(2) the maximum amount permitted by Section 143(f), Internal Revenue Code of 1986.

(c) To be eligible for a loan under this section, a professional educator must:

(1) reside in this state on the application date; and

(2) be employed by a school district or be an allied health or professional nursing program faculty member in this state on the application date.

(d) The corporation may contract with other agencies of the state or with private entities to determine whether applicants qualify as professional educators under this section or otherwise to administer all or part of this section.

(e) The board of directors of the corporation may set and collect from each applicant any fees the board considers reasonable and necessary to cover the expenses of administering the program.

(f) The board of directors of the corporation shall adopt rules governing:

(1) the administration of the program;

(2) the making of loans under the program;

(3) the criteria for approving mortgage lenders;

(4) the use of insurance on the loans and the homes financed under the program, as considered appropriate by the board to provide additional security for the loans;

(5) the verification of occupancy of the home by the professional educator as the professional educator's principal residence; and

(6) the terms of any contract made with any mortgage lender for processing, originating, servicing, or administering the loans.

(g) The corporation shall ensure that a loan under this section is structured in a way that complies with any requirements associated with the source of the funds used for the loan.

(h) In addition to funds set aside for the program under Section 1372.0221, the corporation may solicit and accept funding for the program from the following sources:

(1) gifts and grants for the purposes of this section;

(2) available money in the housing trust fund established under Section 2306.201, to the extent available to the corporation;

(3) federal block grants that may be used for the purposes of this section, to the extent available to the corporation;

(4) other state or federal programs that provide money that may be used for the purposes of this section; and

(5) amounts received by the corporation in repayment of loans made under this section.

(i) This section expires September 1, 2012.

Sec. 2306.5621. FIRE FIGHTER, LAW ENFORCEMENT OR SECURITY OFFICER, AND EMERGENCY MEDICAL SERVICES PERSONNEL HOME LOAN PROGRAM. (a) In this section:

(1) "Fire fighter" means a member of a fire department who performs a function listed in Section 419.021(3)(C), Government Code.

(2) "Home" means a dwelling in this state in which a fire fighter, corrections officer, county jailer, public security officer, peace officer, or person defined as emergency medical services personnel under this section intends to reside as the borrower's principal residence.

(3) "Mortgage lender" has the meaning assigned by Section 2306.004.

(4) "Peace officer" has the meaning assigned by Section 1.07(a)(36), Penal Code.

(5) "Program" means the fire fighter, law enforcement or security officer, and emergency medical services personnel home loan program.

(6) "Corrections officer" means a corrections officer employed by the Texas Department of Criminal Justice or a juvenile correctional officer employed by the Texas Youth Commission.

(7) "County jailer" has the meaning assigned by Section 1701.001, Occupations Code.

(8) "Public security officer" has the meaning assigned by Section 1701.001, Occupations Code.

(9) "Emergency medical services personnel" has the meaning assigned by Section 773.003, Health and Safety Code.

(b) The corporation shall establish a program to provide eligible fire fighters, corrections officers, county jailers, public security officers, peace officers, and emergency medical services personnel with low-interest home mortgage loans.

(c) To be eligible for a loan under this section, at the time a person files an application for the loan, the person must:

(1) be a fire fighter, corrections officer, county jailer, public security officer, peace officer, or person defined as emergency medical services personnel under this section;

(2) reside in this state; and

(3) have an income of not more than 115 percent of area median family income, adjusted for family size, or the maximum amount permitted by Section 143(f), Internal Revenue Code of 1986, whichever is greater.

(d) The corporation may contract with other agencies of the state or with private entities to determine whether applicants qualify as fire fighters, corrections officers, county jailers, public security officers, peace officers, or emergency medical services personnel under this section or otherwise to administer all or part of this section.

(e) The board of directors of the corporation may set and collect from each applicant any fees the board considers reasonable and necessary to cover the expenses of administering the program.

(f) The board of directors of the corporation shall adopt rules governing:

(1) the administration of the program;

(2) the making of loans under the program;

(3) the criteria for approving mortgage lenders;

(4) the use of insurance on the loans and the homes financed under the program, as considered appropriate by the board to provide additional security for the loans;

(5) the verification of occupancy of the home by the fire fighter, corrections officer, county jailer, public security officer, peace officer, or person defined as emergency medical services personnel as the borrower's principal residence; and

(6) the terms of any contract made with any mortgage lender for processing, originating, servicing, or administering the loans.

(g) The corporation shall ensure that a loan under this section is structured in a way that complies with any requirements associated with the source of the funds used for the loan.

(h) In addition to funds set aside for the program under Section 1372.0222, the corporation may solicit and accept funding for the program from the following sources:

(1) gifts and grants for the purposes of this section;

(2) available money in the housing trust fund established under Section 2306.201, to the extent available to the corporation;

(3) federal block grants that may be used for the purposes of this section, to the extent available to the corporation;

(4) other state or federal programs that provide money that may be used for the purposes of this section; and

(5) amounts received by the corporation in repayment of loans made under this section.

(h-1) To fund home mortgage loans for eligible fire fighters, corrections officers, county jailers, public security officers, peace officers, and emergency medical services personnel under this section, the corporation may use any proceeds received from the sale of bonds, notes, or other obligations issued under the home loan program provided by this section, regardless of any amendments to the eligibility standards for loans made under the program and regardless of when the corporation received the proceeds from those bonds, notes, or other obligations issued under the program.

(i) This section expires September 1, 2014.

Sec. 2306.563. PUBLIC BENEFIT REQUIREMENT. (a) The corporation shall implement a requirement that a community housing development organization that receives an issuance of qualified 501(c)(3) bonds from the corporation to develop property must invest at least one dollar in projects and services that benefit income-eligible persons for each dollar of taxes that is not imposed on the property as a result of a property tax exemption received under Section 11.182, Tax Code.

(b) The projects and services must benefit income-eligible persons in the county in which the property supported with the tax exemption is located.

(c) The projects and services must consist of:

(1) rent reduction;

(2) capital improvement projects; or

(3) social, educational, or economic development services.

(d) The corporation and the organization may determine on a case-by-case basis the specific projects and services in which the organization must invest under this section.

(e) The dollar-for-dollar public benefit requirement imposed by this section shall be reduced by an amount equal to each dollar that, in lieu of taxes, a community housing development organization pays to a taxing unit for which the property receives an exemption under Section 11.182, Tax Code.

(f) In implementing the public benefit requirement, the corporation shall adopt guidelines for reasonable rent reductions, capital improvement projects, and social, educational, and economic development services.

Sec. 2306.564. REVIEW OF QUALIFIED 501(C)(3) BOND ISSUANCE POLICIES. (a) The corporation shall review annually its qualified 501(c)(3) bond issuance policies, including the public benefit requirement implemented under Section 2306.563.

(b) The corporation shall give to the secretary of state for publication in the Texas Register any proposed policy revisions and allow a reasonable period for public comment.

(c) The board of directors of the corporation must approve any change to the bond issuance policies.

Sec. 2306.565. ISSUANCE OF QUALIFIED RESIDENTIAL RENTAL PROJECT BONDS; ALLOCATION OF BOND FUNDS. (a) The corporation shall direct the Bond Review Board on the issuance of the portion of state ceiling set aside for the corporation under Section 1372.0231(a).

(b) The board of directors of the corporation shall adopt guidelines governing the method by which the corporation identifies target areas for the allocation of qualified residential rental project bond funds. The guidelines must include a clear demonstration of local need and community support for a housing development.

(c) The corporation shall research the state's strategic housing needs by coordinating with the department and reviewing relevant needs assessment information, as required by Section 2306.566. The corporation shall also solicit information regarding housing needs from local and regional housing organizations.

(d) The board of directors of the corporation shall adopt criteria governing the method by which the corporation solicits proposals for housing developments in areas targeted by the corporation. The guidelines must state the criteria to be included in the corporation's requests for proposals. The requests for proposals must comply with any relevant federal requirements.

(e) The board of directors of the corporation shall adopt criteria governing the method by which the staff of the corporation scores and ranks applications for an allocation under this section that are received in response to a request for proposals. The criteria must include:

(1) the cost per unit of the housing development;

(2) the proposed rent for a unit; and

(3) the income ranges of individuals and families to be served by the housing development.

(f) The board of directors of the corporation shall identify housing developments with respect to which the board anticipates directing the Bond Review Board to allocate bond funds under this section, based on the highest scores received in the scoring and ranking process described by Subsection (e).

(g) After the board of directors of the corporation has identified housing developments under Subsection (f), the corporation shall hold public hearings, as required by federal law, on the housing developments identified by the board.

(h) Following the public hearings, the staff shall prepare final evaluations and recommendations for the board, incorporating any public comments received at the hearings. The board shall consider the staff's recommendations in making its final decisions regarding the allocation of bond funds for housing developments under this section and shall inform the Bond Review Board of those decisions.

(i) The corporation shall pay the department a reasonable fee for underwriting an application for an allocation of low income housing tax credits if the housing development proposed in the application is or will be supported by an allocation of bond funds under this section.

(j) The decisions made by the corporation regarding the allocation of bond funds under this section are not subject to the restrictions in Section 1372.0321, as added by Chapter 1367 or 1420, Acts of the 77th Legislature, Regular Session, 2001.

Sec. 2306.566. COORDINATION REGARDING STATE LOW INCOME HOUSING PLAN. (a) The corporation shall review the needs assessment information provided to the corporation by the department under Section 2306.0722(b).

(b) The corporation shall develop a plan to meet the state's most pressing housing needs identified in the needs assessment information and provide the plan to the department for incorporation into the state low income housing plan.

(c) The corporation's plan must include specific proposals to help serve rural and other underserved areas of the state.

Sec. 2306.567. COMPLIANCE INFORMATION. (a) The corporation shall provide to the department electronic copies of all compliance information compiled by the corporation.

(b) Before approving an application regarding a housing development, the corporation shall consider any relevant compliance information in the department's database created under Section 2306.081.

Sec. 2306.5671. COMPLIANCE WITH TERMS OF CERTAIN CONTRACTS OR AGREEMENTS. A compliance contract or agreement between the corporation and a housing sponsor that receives bond financing by or through the corporation for the purpose of providing affordable multifamily housing must contain a provision stating that if the housing sponsor fails to comply with the terms of the contract or agreement, the corporation may, at a minimum and as appropriate:

(1) assess penalties;

(2) remove the manager of the affected property and select a new manager;

(3) withdraw reserve funds to make needed repairs and replacements to the property; or

(4) appoint the corporation as a receiver to protect and operate the property.

Section 2306.5671, Government Code, as added by this Act, does not affect the terms of a compliance contract or agreement entered into before the effective date of this Act, except that if the contract or agreement is renewed, modified, or extended on or after the effective date of this Act, Section 2306.5671 applies to the contract or agreement beginning on the date of renewal, modification, or extension.

Sec. 2306.568. RECORD OF COMPLAINTS. (a) The corporation shall maintain a system to promptly and efficiently act on complaints filed with the corporation. The corporation shall maintain information about parties to the complaint, the subject matter of the complaint, a summary of the results of the review or investigation of the complaint, and its disposition.

(b) The corporation shall make information available describing its procedures for complaint investigation and resolution.

(c) The corporation shall periodically notify the complaint parties of the status of the complaint until final disposition.

Sec. 2306.569. EFFECTIVE USE OF TECHNOLOGY. The corporation's board of directors shall develop and implement a policy requiring the president of the corporation and corporation employees to research and propose appropriate technological solutions to improve the corporation's ability to perform its functions. The technological solutions must:

(1) ensure that the public is able to easily find information about the corporation on the Internet;

(2) ensure that persons who want to use the corporation's services are able to:

(A) interact with the corporation through the Internet; and

(B) access any service that can be provided effectively through the Internet; and

(3) be cost-effective and developed through the corporation's planning processes.

SUBCHAPTER Z. COLONIAS

Sec. 2306.581. DEFINITION. In this subchapter:

(1) "Colonia" means a geographic area that is located in a county some part of which is within 150 miles of the international border of this state, that consists of 11 or more dwellings that are located in close proximity to each other in an area that may be described as a community or neighborhood, and that:

(A) has a majority population composed of individuals and families of low income and very low income, based on the federal Office of Management and Budget poverty index, and meets the qualifications of an economically distressed area under Section 17.921, Water Code; or

(B) has the physical and economic characteristics of a colonia, as determined by the department.

(2) "Community action agency" means a political subdivision, combination of political subdivisions, or nonprofit organization that qualifies as an eligible entity under 42 U.S.C.

Sec. 2306.582. COLONIA SELF-HELP CENTERS: ESTABLISHMENT. (a) The department shall establish colonia self-help centers in El Paso, Hidalgo, Starr, and Webb counties, and in Cameron County to serve Cameron and Willacy counties. If the department determines it necessary and appropriate, the department may establish a self-help center in any other county if the county is designated as an economically distressed area under Chapter 17, Water Code, for purposes of eligibility to receive funds from the Texas Water Development Board.

(b) The department shall attempt to secure contributions, services, facilities, or operating support from the commissioners court of the county in which the self-help center is located to support the operation of the self-help center.

Sec. 2306.583. SELF-HELP CENTERS: DESIGNATION. (a) The department shall designate a geographic area for the services provided by each self-help center.

(b) In consultation with the colonia resident advisory committee and the appropriate self-help center, the department shall designate five colonias in each service area to receive concentrated attention from that center.

(c) In consultation with the colonia resident advisory committee and the appropriate self-help center, the department may change the designation of colonias made under Subsection (b).

Sec. 2306.584. COLONIA RESIDENT ADVISORY COMMITTEE. (a) The board shall appoint not fewer than five persons who are residents of colonias to serve on the Colonia Resident Advisory Committee. The members of the advisory committee shall be selected from lists of candidates submitted to the board by local nonprofit organizations and the commissioners court of a county in which a self-help center is located.

(b) The board shall appoint one committee member to represent each of the counties in which self-help centers are located. Each committee member:

(1) must be a resident of a colonia in the county the member represents; and

(2) may not be a board member, contractor, or employee of or have any ownership interest in an entity that is awarded a contract under this subchapter.

Sec. 2306.585. DUTIES OF COLONIA RESIDENT ADVISORY COMMITTEE. (a) The Colonia Resident Advisory Committee shall advise the board regarding:

(1) the needs of colonia residents;

(2) appropriate and effective programs that are proposed or are operated through the self-help centers; and

(3) activities that may be undertaken through the self-help centers to better serve the needs of colonia residents.

(b) The advisory committee shall meet before the 30th day preceding the date on which a contract is scheduled to be awarded for the operation of a self-help center and may meet at other times.

(c) The advisory committee shall advise the colonia initiatives coordinator as provided by Section 775.005.

Sec. 2306.586. SELF-HELP CENTER: PURPOSE AND SERVICES. (a) The purpose of a self-help center is to assist individuals and families of low income and very low income to finance, refinance, construct, improve, or maintain a safe, suitable home in the colonias' designated service area or in another area the department has determined is suitable.

(b) A self-help center shall set a goal to improve the living conditions of residents in the colonias designated under Section 2306.583(a)(2) within a two-year period after a contract is awarded under this subchapter.

(c) A self-help center may serve individuals and families of low income and very low income by:

(1) providing assistance in obtaining loans or grants to build a home;

(2) teaching construction skills necessary to repair or build a home;

(3) providing model home plans;

(4) operating a program to rent or provide tools for home construction and improvement for the benefit of property owners in colonias who are building or repairing a residence or installing necessary residential infrastructure;

(5) helping to obtain, construct, access, or improve the service and utility infrastructure designed to service residences in a colonia, including potable water, wastewater disposal, drainage, streets, and utilities;

(6) surveying or platting residential property that an individual purchased without the benefit of a legal survey, plat, or record;

(7) providing credit and debt counseling related to home purchase and finance;

(8) applying for grants and loans to provide housing and other needed community improvements;

(9) providing other services that the self-help center, with the approval of the department, determines are necessary to assist colonia residents in improving their physical living conditions, including help in obtaining suitable alternative housing outside of a colonia's area;

(10) providing assistance in obtaining loans or grants to enable an individual or a family to acquire fee simple title to property that originally was purchased under a contract for a deed, contract for sale, or other executory contract; and

(11) providing monthly programs to educate individuals and families on their rights and responsibilities as property owners.

(d) A self-help center may not provide grants, financing, or mortgage loan services to purchase, build, rehabilitate, or finance construction or improvements to a home in a colonia if water service and suitable wastewater disposal are not available.

(e) Through a self-help center, a colonia resident may apply for any direct loan or grant program operated by the department.

Sec. 2306.587. OPERATION OF SELF-HELP CENTER; MONITORING. (a) To operate a self-help center, the department shall, subject to the availability of revenue for that purpose, enter into a four-year contract directly with a local nonprofit organization, including a local community action agency that qualifies as an eligible entity under 42 U.S.C. Section 9902, or a local housing authority that has demonstrated the ability to carry out the functions of a self-help center under this subchapter.

(b) The department is solely responsible for contract oversight and for the monitoring of self-help centers under this subchapter.

(c) The department and the self-help centers may apply for and receive public or private gifts or grants to enable the centers to achieve their purpose.

Sec. 2306.588. DEPARTMENT LIAISON TO SELF-HELP CENTERS. (a) The department shall designate appropriate staff in the department to act as liaison to the self-help centers to assist the centers in obtaining funding to enable the centers to carry out the centers' programs.

(b) The department shall make a reasonable effort to secure an adequate level of funding to provide the self-help centers with funds for low-interest mortgage financing, grants for self-help programs, a revolving loan fund for septic tanks, a tool-lending program, and other activities the department determines are necessary.

Sec. 2306.589. COLONIA SET-ASIDE FUND. (a) The department shall establish a fund in the department designated as the colonia set-aside fund. The department may contribute money to the fund from any available source of revenue that the department considers appropriate to implement the purposes of this subchapter, except that the department may not use federal community development block grant money authorized by Title I of the Housing and Community Development Act of 1974 (42 U.S.C. Section 5301 et seq.) unless the money is specifically appropriated by the legislature for that purpose.

(b) The department by rule shall provide that an application for assistance in paying for residential service lines, hookups, and plumbing improvements associated with being connected to a water supply or sewer service system may be submitted after construction of a water supply or sewer service system begins. The department shall approve or disapprove a timely application before construction of the water supply or sewer service is completed in order to eliminate delay in hookups once construction is completed. The department and the Texas Water Development Board shall coordinate the application process for hookup funds under this subsection and under Subchapter L, Chapter 15, Water Code, and shall share information elicited by each agency's application procedure in order to avoid duplication of effort and to eliminate the need for applicants to complete different forms with similar information.

(c) The department may use money in the colonia set-aside fund for specific activities that assist colonias, including:

(1) the operation and activities of the self-help centers established under this subchapter;

(2) reimbursement of colonia resident advisory committee members for their reasonable expenses in the manner provided by Chapter 2110 or the General Appropriations Act; and

(3) funding for the provision of water and sewer service connections in accordance with Subsection (b).

(d) The department may review and approve an application for funding from the colonia set-aside fund that advances the policy and goals of the state in addressing problems in the colonias.

Sec. 2306.590. COLONIA INITIATIVES ADVISORY COMMITTEE. (a) The Colonia Initiatives Advisory Committee is composed of seven members appointed by the governor as follows:

(1) one colonia resident;

(2) one representative of a nonprofit organization that serves colonia residents;

(3) one representative of a political subdivision that contains all or part of a colonia;

(4) one person to represent private interests in banking or land development;

(5) one representative of a nonprofit utility;

(6) one representative of an engineering consultant firm involved in economically distressed areas program projects under Subchapter K, Chapter 17, Water Code; and

(7) one public member.

(b) Each committee member, except the public member, must reside within 150 miles of the Texas-Mexico border.

(c) The secretary of state is an ex officio member of the committee.

(d) The committee shall:

(1) review the progress of colonia water and wastewater infrastructure projects managed by the Texas Water Development Board and the state agency responsible for administering the portion of the federal community development block grant nonentitlement program that addresses the infrastructure needs of colonias;

(2) present an update and make recommendations to the board and the Texas Water Development Board annually at the joint meeting required by Section 6.060(d), Water Code, regarding:

(A) efforts to ensure that colonia residents are connected to the infrastructure funded by state agencies;

(B) the financial, managerial, and technical capabilities of project owners and operators;

(C) the agencies' management of their colonia programs and the effectiveness of their policies regarding underperforming projects; and

(D) any other issues related to the effect of state-managed infrastructure programs on colonia residents;

(3) review public comments regarding the colonia needs assessment incorporated into the state low income housing plan under Section 2306.0721; and

(4) based on the public comments reviewed under Subdivision (3), recommend to the board new colonia programs or improvements to existing colonia programs.

Sec. 2306.591. MANUFACTURED HOMES INSTALLED IN COLONIAS. (a) For a manufactured home to be approved for installation and use as a dwelling in a colonia:

(1) the home must be a HUD-code manufactured home, as defined by Section 1201.003, Occupations Code;

(2) the home must be habitable, as described by Section 1201.453, Occupations Code; and

(3) ownership of the home must be properly recorded with the manufactured housing division of the department.

(b) An owner of a manufactured home is not eligible to participate in a grant loan program offered by the department, including the single-family mortgage revenue bond program under Section 2306.142, unless the owner complies with Subsection (a).

SUBCHAPTER AA. MANUFACTURED HOUSING DIVISION

Sec. 2306.6001. DEFINITIONS. In this subchapter:

(1) "Division" means the manufactured housing division.

(2) "Division director" means the executive director of the division.

(3) "Manufactured Housing Board" means the governing board of the division.

Sec. 2306.6002. REGULATION AND ENFORCEMENT. The department shall administer and enforce Chapter 1201, Occupations Code, through the division. The Manufactured Housing Board and the division director shall exercise authority and responsibilities assigned to them under that chapter.

Sec. 2306.6003. MANUFACTURED HOUSING BOARD. (a) The Manufactured Housing Board is an independent entity within the department, is administratively attached to the department, and is not an advisory body to the department.

(b) The Manufactured Housing Board shall carry out the functions and duties conferred on the Manufactured Housing Board by this subchapter and by other law.

Sec. 2306.6004. MANUFACTURED HOUSING BOARD MEMBERSHIP. (a) The Manufactured Housing Board consists of five public members appointed by the governor.

(b) A person is eligible to be appointed as a public member of the Manufactured Housing Board if the person is a citizen of the United States and a resident of this state.

(c) A person may not be a member of the Manufactured Housing Board if the person or the person's spouse:

(1) is registered, certified, or licensed by a regulatory agency in the field of manufactured housing;

(2) is employed by or participates in the management of a business entity or other organization regulated by or receiving money from the division;

(3) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by or receiving money from the division; or

(4) uses or receives a substantial amount of tangible goods, services, or money from the division other than compensation or reimbursement authorized by law for Manufactured Housing Board membership, attendance, or expenses.

(d) Appointments to the Manufactured Housing Board shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.

Sec. 2306.6005. CONFLICT OF INTEREST. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not be a member of the Manufactured Housing Board and may not be a division employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.), if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of manufactured housing; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of manufactured housing.

(c) A person may not be a member of the Manufactured Housing Board or act as the general counsel to the Manufactured Housing Board or the division if the person is required to register as a lobbyist

under Chapter 305 because of the person's activities for compensation on behalf of a profession related to the operation of the division.

Sec. 2306.6006. TERMS; VACANCY. (a) The members of the Manufactured Housing Board serve staggered six-year terms, with the terms of one or two members expiring on January 31 of each odd-numbered year.

(b) A person may not serve two consecutive full six-year terms as a member of the Manufactured Housing Board.

(c) If a vacancy occurs during a member's term, the governor shall appoint a new member to fill the unexpired term.

Sec. 2306.6007. PRESIDING OFFICER. The governor shall designate a member of the Manufactured Housing Board as the presiding officer of the Manufactured Housing Board to serve in that capacity at the will of the governor.

Sec. 2306.6008. GROUNDS FOR REMOVAL. (a) It is a ground for removal from the Manufactured Housing Board that a member:

(1) does not have at the time of taking office the qualifications required by Section 2306.6004(b);

(2) does not maintain during service on the Manufactured Housing Board the qualifications required by Section 2306.6004(b);

(3) is ineligible for membership under Section 2306.6004(c) or 2306.6005;

(4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or

(5) is absent from more than half of the regularly scheduled Manufactured Housing Board meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the Manufactured Housing Board.

(b) The validity of an action of the Manufactured Housing Board is not affected by the fact that it is taken when a ground for removal of a Manufactured Housing Board member exists.

(c) If the division director has knowledge that a potential ground for removal exists, the division director shall notify the presiding officer of the Manufactured Housing Board of the potential ground. The presiding officer shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the division director shall notify the next highest ranking officer of the Manufactured Housing Board, who shall then notify the governor and the attorney general that a potential ground for removal exists.

Sec. 2306.6009. REIMBURSEMENT. A Manufactured Housing Board member may not receive compensation, but may be reimbursed for actual travel expenses, including expenses for meals, lodging, and transportation. A Manufactured Housing Board member is entitled to reimbursement for transportation expenses as provided by the General Appropriations Act.

Sec. 2306.6010. MEETINGS. (a) The Manufactured Housing Board shall have regular meetings as the majority of the members may specify and special meetings at the request of the presiding officer, any two members, or the division director.

(b) Reasonable notice of all meetings shall be given as prescribed by Manufactured Housing Board rules.

(c) The presiding officer shall preside at all meetings of the Manufactured Housing Board. In the absence of the presiding officer, the members present shall select one of the members to preside at the meeting.

Sec. 2306.6011. TRAINING. (a) A person who is appointed to and qualifies for office as a member of the Manufactured Housing Board may not vote, deliberate, or be counted as a member in attendance at a meeting of the Manufactured Housing Board until the person completes a training program that complies with this section.

(b) The training program must provide the person with information regarding:

(1) the legislation that created the division and the Manufactured Housing Board;

(2) the programs operated by the division;

(3) the role and functions of the division;

(4) the rules of the division, with an emphasis on the rules that relate to disciplinary and investigatory authority;

(5) the current budget for the division;

(6) the results of the most recent formal audit of the division;

(7) the requirements of:

(A) the open meetings law, Chapter 551;

(B) the public information law, Chapter 552;

(C) the administrative procedure law, Chapter 2001; and

(D) other laws relating to public officials, including conflict-of-interest laws; and

(8) any applicable ethics policies adopted by the division or the Texas Ethics Commission.

(c) A person appointed to the Manufactured Housing Board is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

Sec. 2306.6012. APPROPRIATIONS; DONATIONS. (a) The legislature shall separately appropriate money to the Manufactured Housing Board within the appropriations to the department for all matters relating to the operation of the division.

(b) The Manufactured Housing Board may accept gifts and grants of money or property under this subchapter and shall spend the money and use the property for the purpose for which the donation was made, except that the expenditure of money or use of property must promote the acceptance of HUD-Code manufactured homes as a viable source of housing for very low, low, and moderate income families.

Sec. 2306.6013. BUDGET; SHARING OF DEPARTMENT PERSONNEL, EQUIPMENT, AND FACILITIES. (a) The Manufactured Housing Board shall develop a budget for the operations of the department relating to the division.

(b) The Manufactured Housing Board shall reduce administrative costs by entering into an agreement with the department to enable the sharing of department personnel, equipment, and facilities.

Sec. 2306.6014. DIVISION DIRECTOR. (a) The Manufactured Housing Board shall employ the division director. The division director is the Manufactured Housing Board's chief executive and administrative officer.

(b) The division director is charged with administering, enforcing, and carrying out the functions and duties conferred on the division director by this subchapter and by other law.

(c) The division director serves at the pleasure of the Manufactured Housing Board.

Sec. 2306.6015. PERSONNEL. The division director may employ staff as necessary to perform the work of the division and may prescribe their duties and compensation. Subject to applicable personnel policies and regulations, the division director may remove any division employee.

Sec. 2306.6016. SEPARATION OF RESPONSIBILITIES. The Manufactured Housing Board shall develop and implement policies that clearly separate the policy-making responsibilities of the Manufactured Housing Board and the management responsibilities of the division director and staff of the division.

Sec. 2306.6017. STANDARDS OF CONDUCT. The division director or the division director's designee shall provide to members of the Manufactured Housing Board and to division employees, as often as necessary, information regarding the requirements for office or employment under this subchapter, including information regarding a person's responsibilities under applicable laws relating to standards of conduct for state officers or employees.

Sec. 2306.6018. EQUAL EMPLOYMENT OPPORTUNITY. (a) The division director or the division director's designee shall prepare and maintain a written policy statement that implements a program of equal employment opportunity to ensure that all personnel decisions are made without regard to race, color, disability, sex, religion, age, or national origin.

(b) The policy statement must include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, training, and promotion of personnel, that show the intent of the division to avoid the unlawful employment practices described by Chapter 21, Labor Code; and

(2) an analysis of the extent to which the composition of the division's personnel is in accordance with state and federal law and a description of reasonable methods to achieve compliance with state and federal law.

(c) The policy statement must:

(1) be updated annually;

(2) be reviewed by the state Commission on Human Rights for compliance with Subsection (b)(1); and

(3) be filed with the governor's office.

Sec. 2306.6020. RULES. (a) The Manufactured Housing Board shall adopt rules as necessary to implement this subchapter and to administer and enforce the manufactured housing program through the division. Rules adopted by the Manufactured Housing Board are subject to Chapter 2001.

(b) The Manufactured Housing Board may not adopt rules restricting competitive bidding or advertising by a person regulated by the division except to prohibit false, misleading, or deceptive practices by that person.

(c) The Manufactured Housing Board may not include in the rules to prohibit false, misleading, or deceptive practices by a person regulated by the division a rule that:

(1) restricts the use of any advertising medium;

(2) restricts the person's personal appearance or the use of the person's voice in an advertisement;

(3) relates to the size or duration of an advertisement used by the person; or

(4) restricts the use of a trade name in advertising by the person.

Sec. 2306.6021. PUBLIC PARTICIPATION. The Manufactured Housing Board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the Manufactured Housing Board and to speak on any issue under the jurisdiction of the division.

Sec. 2306.6022. COMPLAINTS. (a) The division shall maintain a file on each written complaint filed with the division. The file must include:

(1) the name of the person who filed the complaint;

(2) the date the complaint is received by the division;

(3) the subject matter of the complaint;

(4) the name of each person contacted in relation to the complaint;

(5) a summary of the results of the review or investigation of the complaint; and

(6) an explanation of the reason the file was closed, if the division closed the file without taking action other than to investigate the complaint.

(b) The division shall make available on its website the division's policies and procedures relating to complaint investigation and resolution and shall provide copies of such information on request.

(c) The division, at least quarterly until final disposition of the complaint, shall notify the person filing the complaint and each person who is a subject of the complaint of the status of the investigation unless the notice would jeopardize an undercover investigation.

(d) Unless otherwise confidential by law, the records of a license holder or other person that are required or obtained by the division or its agents or employees in connection with the investigation of a complaint are subject to the requirements of Chapter 552.

SUBCHAPTER DD. LOW INCOME HOUSING TAX CREDIT PROGRAM

Sec. 2306.6701. PURPOSE. The department shall administer the low income housing tax credit program to:

(1) encourage the development and preservation of appropriate types of rental housing for households that have difficulty finding suitable, affordable rental housing in the private marketplace;

(2) maximize the number of suitable, affordable residential rental units added to the state's housing supply;

(3) prevent losses for any reason to the state's supply of suitable, affordable residential rental units by enabling the rehabilitation of rental housing or by providing other preventive financial support under this subchapter; and

(4) provide for the participation of for-profit organizations and provide for and encourage the participation of nonprofit organizations in the acquisition, development, and operation of affordable housing developments in urban and rural communities.

Sec. 2306.6702. DEFINITIONS. (a) In this subchapter:

(1) "Applicant" means any person or affiliate of a person who files an application with the department requesting a housing tax credit allocation.

(2) "Application" means an application filed with the department by an applicant and includes any exhibits or other supporting materials.

(3) "Application log" means a form containing at least the information required by Section 2306.6709.

(4) "Application round" means the period beginning on the date the department begins accepting applications and continuing until all available housing tax credits are allocated, but not extending past the last day of the calendar year.

(5) "At-risk development" means a development that:

(A) has received the benefit of a subsidy in the form of a below-market interest rate loan, interest rate reduction, rental subsidy, Section 8 housing assistance payment, rental supplement payment, rental assistance payment, or equity incentive under the following federal laws, as applicable:

(i) Sections 221(d)(3) and (5), National Housing Act (12 U.S.C. Section 1715l);

(ii) Section 236, National Housing Act (12 U.S.C. Section 1715z-1);

(iii) Section 202, Housing Act of 1959 (12 U.S.C. Section 1701q);

(iv) Section 101, Housing and Urban Development Act of 1965 (12 U.S.C. Section 1701s);

(v) the Section 8 Additional Assistance Program for housing developments with HUD-Insured and HUD-Held Mortgages administered by the United States Department of Housing and Urban Development;

(vi) the Section 8 Housing Assistance Program for the Disposition of HUD-Owned Projects administered by the United States Department of Housing and Urban Development;

(vii) Sections 514, 515, and 516, Housing Act of 1949 (42 U.S.C. Sections 1484, 1485, and 1486); or

(viii) Section 42, Internal Revenue Code of 1986 (26 U.S.C. Section 42); and

(B) is subject to the following conditions:

(i) the stipulation to maintain affordability in the contract granting the subsidy is nearing expiration; or

(ii) the federally insured mortgage on the development is eligible for prepayment or is nearing the end of its term.

(6) "Development" means a proposed qualified low income housing project, as defined by Section 42(g), Internal Revenue Code of 1986 (26 U.S.C. Section 42(g)), that consists of one or more buildings containing multiple units, that is financed under a common plan, and that is owned by the same person for federal tax purposes, including a project consisting of multiple buildings that:

(A) are located on scattered sites; and

(B) contain only rent-restricted units.

(7) "Development owner" means any person or affiliate of a person who owns or proposes a development or expects to acquire control of a development under a purchase contract approved by the department.

(8) "Housing tax credit" means a tax credit allocated under the low income housing tax credit program.

(9) "Land use restriction agreement" means an agreement between the department, the development owner, and the development owner's successors in interest that encumbers the development with respect to the requirements of this subchapter and the requirements of Section 42, Internal Revenue Code of 1986 (26 U.S.C. Section 42).

(10) "Qualified allocation plan" means a plan adopted by the board under this subchapter that:

(A) provides the threshold, scoring, and underwriting criteria based on housing priorities of the department that are appropriate to local conditions;

(B) consistent with Section 2306.6710(e), gives preference in housing tax credit allocations to developments that, as compared to the other developments:

(i) when practicable and feasible based on documented, committed, and available third-party funding sources, serve the lowest income tenants per housing tax credit; and

(ii) produce for the longest economically feasible period the greatest number of high quality units committed to remaining affordable to any tenants who are income-eligible under the low income housing tax credit program; and

(C) provides a procedure for the department, the department's agent, or another private contractor of the department to use in monitoring compliance with the qualified allocation plan and this subchapter.

(11) "Related party" means the following individuals or entities:

(A) the brothers, sisters, spouse, ancestors, and descendants of a person within the third degree of consanguinity, as determined by Chapter 573;

(B) a person and a corporation, if the person owns more than 50 percent of the outstanding stock of the corporation;

(C) two or more corporations that are connected through stock ownership with a common parent possessing more than 50 percent of:

(i) the total combined voting power of all classes of stock of each of the corporations that can vote;

(ii) the total value of shares of all classes of stock of each of the corporations; or

(iii) the total value of shares of all classes of stock of at least one of the corporations, excluding, in computing that voting power or value, stock owned directly by the other corporation;

(D) a grantor and fiduciary of any trust;

(E) a fiduciary of one trust and a fiduciary of another trust, if the same person is a grantor of both trusts;

(F) a fiduciary of a trust and a beneficiary of the trust;

(G) a fiduciary of a trust and a corporation if more than 50 percent of the outstanding stock of the corporation is owned by or for:

(i) the trust; or

(ii) a person who is a grantor of the trust;

(H) a person or organization and an organization that is tax-exempt under Section 501(a), Internal Revenue Code of 1986 (26 U.S.C. Section 501), and that is controlled by that person or the person's family members or by that organization;

(I) a corporation and a partnership or joint venture if the same persons own more than:

(i) 50 percent of the outstanding stock of the corporation; and

(ii) 50 percent of the capital interest or the profits' interest in the partnership or joint venture;

(J) an S corporation and another S corporation if the same persons own more than 50 percent of the outstanding stock of each corporation;

(K) an S corporation and a C corporation if the same persons own more than 50 percent of the outstanding stock of each corporation;

(L) a partnership and a person or organization owning more than 50 percent of the capital interest or the profits' interest in that partnership; or

(M) two partnerships, if the same person or organization owns more than 50 percent of the capital interests or profits' interests.

(12) "Rural area" means an area that is located:

(A) outside the boundaries of a primary metropolitan statistical area or a metropolitan statistical area;

(B) within the boundaries of a primary metropolitan statistical area or a metropolitan statistical area, if the statistical area has a population of 20,000 or less and does not share a boundary with an urban area; or

(C) in an area that is eligible for funding by the Texas Rural Development Office of the United States Department of Agriculture.

(13) "Rural development agency" means the state agency designated by the legislature as primarily responsible for rural area development in the state.

(14) "Set-aside" means a reservation of a portion of the available housing tax credits to provide financial support for specific types of housing or geographic locations or serve specific types of applicants as permitted by the qualified allocation plan on a priority basis.

(15) "Threshold criteria" means the criteria used to determine whether the development satisfies the minimum level of acceptability for consideration established in the department's qualified allocation plan.

(16) "Unit" means any residential rental unit in a development consisting of an accommodation, including a single room used as an accommodation on a non-transient basis, that contains complete physical facilities and fixtures for living, sleeping, eating, cooking, and sanitation.

(b) For purposes of Subsection (a)(11), the constructive ownership provisions of Section 267, Internal Revenue Code of 1986 (26 U.S.C. Section 267), apply. The board may lower in the qualified allocation plan the percentages described by Subsection (a)(11).

Sec. 2306.67021. APPLICABILITY OF SUBCHAPTER. Except as provided by Section 2306.6703, this subchapter does not apply to the allocation of housing tax credits to developments financed through the private activity bond program.

Sec. 2306.67022. QUALIFIED ALLOCATION PLAN; MANUAL. At least biennially, the board shall adopt a qualified allocation plan and a corresponding manual to provide information regarding the administration of and eligibility for the low income housing tax credit program. The board may adopt the plan and manual annually, as considered appropriate by the board.

Sec. 2306.6703. INELIGIBILITY FOR CONSIDERATION. (a) An application is ineligible for consideration under the low income housing tax credit program if:

(1) at the time of application or at any time during the two-year period preceding the date the application round begins, the applicant or a related party is or has been:

(A) a member of the board; or

(B) the director, a deputy director, the director of housing programs, the director of compliance, the director of underwriting, or the low income housing tax credit program manager employed by the department;

(2) the applicant proposes to replace in less than 15 years any private activity bond financing of the development described by the application, unless:

(A) at least one-third of all the units in the development are public housing units or Section 8 project-based units and the applicant proposes to maintain for a period of 30 years or more 100 percent of the units supported by housing tax credits as rent-restricted and exclusively for occupancy by individuals and families earning not more than 50 percent of the area median income, adjusted for family size;

(B) the applicable private activity bonds will be redeemed only in an amount consistent with their proportionate amortization; or

(C) if the redemption of the applicable private activity bonds will occur in the first five years of the operation of the development and complies with Section 42(h)(4), Internal Revenue Code of 1986:

(i) on the date the certificate of reservation is issued, the Bond Review Board determines that there is not a waiting list for private activity bonds in the same priority level established under Section 1372.0321 or, if applicable, in the same uniform state service region, as referenced in Section 1372.0231, that is served by the proposed development; and

(ii) the applicable private activity bonds will be redeemed according to underwriting criteria, if any, established by the department;

(3) the applicant proposes to construct a new development that is located one linear mile or less from a development that:

(A) serves the same type of household as the new development, regardless of whether the developments serve families, elderly individuals, or another type of household;

(B) has received an allocation of housing tax credits for new construction at any time during the three-year period preceding the date the application round begins; and

(C) has not been withdrawn or terminated from the low income housing tax credit program; or

(4) the development is located in a municipality or, if located outside a municipality, a county that has more than twice the state average of units per capita supported by housing tax credits or private activity bonds, unless the applicant:

(A) has obtained prior approval of the development from the governing body of the appropriate municipality or county containing the development; and

(B) has included in the application a written statement of support from that governing body referencing this section and authorizing an allocation of housing tax credits for the development.

(b) Subsection (a)(3) does not apply to a development:

(1) that is using:

(A) federal HOPE VI funds received through the United States Department of Housing and Urban Development;

(B) locally approved funds received from a public improvement district or a tax increment financing district;

(C) funds provided to the state under the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. Section 12701 et seq.); or

(D) funds provided to the state and participating jurisdictions under the Housing and Community Development Act of 1974 (42 U.S.C. Section 5301 et seq.);

(2) that is located in a county with a population of less than one million;

(3) that is located outside of a metropolitan statistical area; or

(4) that a local government where the project is to be located has by vote specifically allowed the construction of a new development located within one linear mile or less from a development under Subsection (a).

Sec. 2306.6704. PREAPPLICATION PROCESS. (a) To prevent unnecessary filing costs, the department by rule shall establish a voluntary preapplication process to enable a preliminary assessment of an application proposed for filing under this subchapter.

(b) The department shall award in the application evaluation process described by Section 2306.6710 an appropriate number of points as an incentive for participation in the preapplication process established under this section.

(b-1) The preapplication process must require the applicant to provide the department with evidence that the applicant has notified the following entities with respect to the filing of the application:

(1) any neighborhood organizations on record with the state or county in which the development is to be located and whose boundaries contain the proposed development site;

(2) the superintendent and the presiding officer of the board of trustees of the school district containing the development;

(3) the presiding officer of the governing body of any municipality containing the development and all elected members of that body;

(4) the presiding officer of the governing body of the county containing the development and all elected members of that body; and

(5) the state senator and state representative of the district containing the development.

(c) The department shall reject and return to the applicant any application assessed by the department under this section that fails to satisfy the threshold criteria required by the board in the qualified allocation plan.

(d) If feasible under Section 2306.67041, an application under this section must be submitted electronically.

Sec. 2306.67041. ON-LINE APPLICATION SYSTEM. (a) The department and the Department of Information Resources shall cooperate to evaluate the feasibility of an on-line application system for the low income housing tax credit program to provide the following functions:

(1) filing of preapplications and applications on-line;

(2) posting of on-line preapplication or application status and the application log detailing the status of, and department's evaluations and scores pertaining to, those applications; and

(3) posting of comments from applicants and the public regarding a preapplication or application.

(b) The department shall determine the process for allowing access to on-line preapplications and applications, information related to those applications, and department decisions relating to those applications.

(c) In the application cycle following the date any on-line application system becomes operational, the department shall require use of the system for submission of preapplications and applications under this subchapter.

(d) The department shall publish a status report on the implementation of the on-line application on the department's website not later than January 1, 2002.

(e) Before the implementation of the on-line application system, the department may implement the requirements of Section 2306.6717 in any manner the department considers appropriate.

Sec. 2306.6705. GENERAL APPLICATION REQUIREMENTS. An application must contain at a minimum the following written, detailed information in a form prescribed by the board:

(1) a description of:

(A) the financing plan for the development, including any nontraditional financing arrangements;

(B) the use of funds with respect to the development;

(C) the funding sources for the development, including:

(i) construction, permanent, and bridge loans; and

(ii) rents, operating subsidies, and replacement reserves; and

(D) the commitment status of the funding sources for the development;

(2) if syndication costs are included in the eligible basis, a justification of the syndication costs for each cost category by an attorney or accountant specializing in tax matters;

(3) from a syndicator or a financial consultant of the applicant, an estimate of the amount of equity dollars expected to be raised for the development in conjunction with the amount of housing tax credits requested for allocation to the applicant, including:

(A) pay-in schedules; and

(B) syndicator consulting fees and other syndication costs;

(4) if rental assistance, an operating subsidy, or an annuity is proposed for the development, any related contract or other agreement securing those funds and an identification of:

(A) the source and annual amount of the funds;

(B) the number of units receiving the funds; and

(C) the term and expiration date of the contract or other agreement;

(5) if the development is located within the boundaries of a political subdivision with a zoning ordinance, evidence in the form of a letter from the chief executive officer of the political subdivision or from another local official with jurisdiction over zoning matters that states that:

(A) the development is permitted under the provisions of the ordinance that apply to the location of the development; or

(B) the applicant is in the process of seeking the appropriate zoning and has signed and provided to the political subdivision a release agreeing to hold the political subdivision and all other parties harmless in the event that the appropriate zoning is denied;

(6) if an occupied development is proposed for rehabilitation:

(A) an explanation of the process used to notify and consult with the tenants in preparing the application;

(B) a relocation plan outlining:

(i) relocation requirements; and

(ii) a budget with an identified funding source; and

(C) if applicable, evidence that the relocation plan has been submitted to the appropriate local agency;

(7) a certification of the applicant's compliance with appropriate state and federal laws, as required by other state law or by the board;

(8) any other information required by the board in the qualified allocation plan; and

(9) evidence that the applicant has notified the following entities with respect to the filing of the application:

(A) any neighborhood organizations on record with the state or county in which the development is to be located and whose boundaries contain the proposed development site;

(B) the superintendent and the presiding officer of the board of trustees of the school district containing the development;

(C) the presiding officer of the governing body of any municipality containing the development and all elected members of that body;

(D) the presiding officer of the governing body of the county containing the development and all elected members of that body; and

(E) the state senator and state representative of the district containing the development.

Sec. 2306.67055. MARKET ANALYSIS. (a) A market analysis submitted in conjunction with an application for housing tax credits must:

(1) be prepared by a market analyst approved by the department; and

(2) include an assessment of other developments that are supported by housing tax credits within the market area.

(b) The department, through the qualified allocation plan, shall develop:

(1) a process for approving market analysts; and

(2) a methodology for determining the market area to be examined in a market analysis.

Sec. 2306.6706. ADDITIONAL APPLICATION REQUIREMENT: NONPROFIT SET-ASIDE ALLOCATION. (a) In addition to the information required by Section 2306.6705, an application for a housing tax credit allocation from the nonprofit set-aside, as defined by Section 42(h)(5), Internal Revenue Code of 1986 (26 U.S.C. Section 42(h)(5)), must contain the following written, detailed information with respect to each development owner and each general partner of a development owner:

(1) Internal Revenue Service documentation of designation as a Section 501(c)(3) or 501(c)(4) organization;

(2) evidence that one of the exempt purposes of the nonprofit organization is to provide low income housing;

(3) a description of the nonprofit organization's participation in the construction or rehabilitation of the development and in the ongoing operations of the development;

(4) evidence that the nonprofit organization prohibits a member of its board of directors, other than a chief staff member serving concurrently as a member of the board, from receiving material compensation for service on the board;

(5) a third-party legal opinion stating that the nonprofit organization is not affiliated with or controlled by a for-profit organization and the basis for that opinion;

(6) a copy of the nonprofit organization's most recent audited financial statement;

(7) a list of the names and home addresses of members of the board of directors of the nonprofit organization;

(8) a third-party legal opinion stating that the nonprofit organization is eligible under Subsection (b) for a housing tax credit allocation from the nonprofit set-aside and the basis for that opinion; and

(9) evidence that a majority of the members of the nonprofit organization's board of directors principally reside:

(A) in this state, if the development is located in a rural area; or

(B) not more than 90 miles from the development in the community in which the development is located, if the development is not located in a rural area.

(b) To be eligible for a housing tax credit allocation from the nonprofit set-aside, a nonprofit organization must:

(1) control a majority of the development;

(2) if the organization's application is filed on behalf of a limited partnership, be the managing general partner; and

(3) otherwise meet the requirements of Section 42(h)(5), Internal Revenue Code of 1986 (26 U.S.C. Section 42(h)(5)).

Sec. 2306.6707. ADDITIONAL APPLICATION REQUIREMENT: DISCLOSURE OF INTERESTED PERSONS. (a) The applicant must disclose in the application the names of any persons, including affiliates of those persons and related parties, providing developmental or operational services to the development, including:

(1) a development owner;

(2) an architect;

(3) an attorney;

(4) a tax professional;

(5) a property management company;

(6) a consultant;

(7) a market analyst;

(8) a tenant services provider;

(9) a syndicator;

(10) a real estate broker or agent or a person receiving a fee in connection with services usually provided by a real estate broker or agent;

(11) at the time the application is submitted, the owners of the property on which the development is located;

(12) a developer; and

(13) a builder or general contractor.

(b) For each person described by Subsection (a), the application must disclose any company name, company contact person, address, and telephone number.

Sec. 2306.6708. APPLICATION CHANGES OR SUPPLEMENTS. (a) Except as provided by Subsection (b), an applicant may not change or supplement an application in any manner after the filing deadline.

(b) This section does not prohibit an applicant from:

(1) at the request of the department, clarifying information in the application or correcting administrative deficiencies in the application; or

(2) amending an application after allocation of housing tax credits in the manner provided by Section 2306.6712.

Sec. 2306.6709. APPLICATION LOG. (a) In a form prescribed by the department, the department shall maintain for each application an application log that tracks the application from the date of its submission.

(b) The application log must contain at least the following information:

(1) the names of the applicant and related parties;

(2) the physical location of the development, including the relevant region of the state;

(3) the amount of housing tax credits requested for allocation by the department to the applicant;

(4) any set-aside category under which the application is filed;

(5) the score of the application in each scoring category adopted by the department under the qualified allocation plan;

(6) any decision made by the department or board regarding the application, including the department's decision regarding whether to underwrite the application and the board's decision regarding whether to allocate housing tax credits to the development;

(7) the names of persons making the decisions described by Subdivision (6), including the names of department staff scoring and underwriting the application, to be recorded next to the description of the applicable decision;

(8) the amount of housing tax credits allocated to the development; and

(9) a dated record and summary of any contact between the department staff, the board, and the applicant or any related parties.

Sec. 2306.6710. EVALUATION AND UNDERWRITING OF APPLICATIONS. (a) In evaluating an application, the department shall determine whether the application satisfies the threshold criteria required by the board in the qualified allocation plan. The department shall reject and return to the applicant any application that fails to satisfy the threshold criteria.

(b) If an application satisfies the threshold criteria, the department shall score and rank the application using a point system that:

(1) prioritizes in descending order criteria regarding:

(A) financial feasibility of the development based on the supporting financial data required in the application that will include a project underwriting pro forma from the permanent or construction lender;

(B) quantifiable community participation with respect to the development, evaluated on the basis of written statements from any neighborhood organizations on record with the state or county in which the development is to be located and whose boundaries contain the proposed development site;

(C) the income levels of tenants of the development;

(D) the size and quality of the units;

(E) the commitment of development funding by local political subdivisions;

(F) the level of community support for the application, evaluated on the basis of written statements from the state representative or the state senator that represents the district containing the proposed development site;

(G) the rent levels of the units;

(H) the cost of the development by square foot;

(I) the services to be provided to tenants of the development; and

(J) whether, at the time the complete application is submitted or at any time within the two-year period preceding the date of submission, the proposed development site is located in an area declared to be a disaster under Section 418.014;

(2) uses criteria imposing penalties on applicants or affiliates who have requested extensions of department deadlines relating to developments supported by housing tax credit allocations made in the application round preceding the current round or a developer or principal of the applicant that has been removed by the lender, equity provider, or limited partners for its failure to perform its obligations under the loan documents or limited partnership agreement; and

(3) encourages applicants to provide free notary public service to the residents of the developments for which the allocation of housing tax credits is requested.

(c) The department shall publish in the qualified allocation plan details of the scoring system used by the department to score applications.

(d) The department shall underwrite the applications ranked under Subsection (b) beginning with the applications with the highest scores in each region described by Section 2306.111(d) and in each set-aside category described in the qualified allocation plan. Based on application rankings, the department shall continue to underwrite applications until the department has processed enough applications satisfying the department's underwriting criteria to enable the allocation of all available housing tax credits according to regional allocation goals and set-aside categories. To enable the board to establish an applications waiting list under Section 2306.6711, the department shall underwrite as many additional applications as the board considers necessary to ensure that all available housing tax credits are allocated within the period required by law. The department shall underwrite an application to determine the financial feasibility of the development and an appropriate level of housing tax credits. In determining an appropriate level of housing tax credits, the department shall evaluate the cost of the development based on acceptable cost parameters as adjusted for inflation and as established by historical final cost certifications of all previous housing tax credit allocations for:

(1) the county in which the development is to be located;

(2) if certifications are unavailable under Subdivision (1), the metropolitan statistical area in which the development is to be located; or

(3) if certifications are unavailable under Subdivisions (1) and (2), the uniform state service region in which the development is to be located.

(e) In scoring applications for purposes of housing tax credit allocations, the department shall award, consistent with Section 42, Internal Revenue Code of 1986 (26 U.S.C. Section 42), preference points to a development that will:

(1) when practicable and feasible based on documented, committed, and available third-party funding sources, serve the lowest income tenants per housing tax credit, if the development is to be located outside a qualified census tract; and

(2) produce for the longest economically feasible period the greatest number of high quality units committed to remaining affordable to any tenants who are income-eligible under the low income housing tax credit program.

(f) In evaluating the level of community support for an application under Subsection (b)(1)(F), the department shall award:

(1) positive points for positive written statements received;

(2) negative points for negative written statements received; and

(3) zero points for neutral statements received.

(g) Repealed by Acts 2007, 80th Leg., R.S., Ch. 1341, Sec. 42, eff. September 1, 2007.

Sec. 2306.6711. ALLOCATION OF HOUSING TAX CREDITS. (a) The director shall provide the application scores to the board before the 30th day preceding the date the board begins to issue commitments for housing tax credits in the allocation round.

(b) Not later than the deadline specified in the qualified allocation plan, the board shall issue commitments for available housing tax credits based on the application evaluation process provided by Section 2306.6710. The board may not allocate to an applicant housing tax credits in any unnecessary amount, as determined by the department's underwriting policy and by federal law, and in any event may not allocate to the applicant housing tax credits in an amount greater than $3 million in a single application round or to an individual development more than $2 million in a single application round.

(c) Concurrently with the initial issuance of commitments for housing tax credits under Subsection (b), the board shall establish a waiting list of additional applications ranked by score in descending order of priority based on set-aside categories and regional allocation goals.

(d) The board shall issue commitments for housing tax credits with respect to applications on the waiting list as additional credits become available.

(e) Not later than the 120th day after the date of the initial issuance of commitments for housing tax credits under Subsection (b), the department shall provide to an applicant who did not receive a commitment under that subsection an opportunity to meet and discuss with the department the application's deficiencies and scoring.

(f) The board may allocate housing tax credits to more than one development in a single community, as defined by department rule, in the same calendar year only if the developments are or will be located more than two linear miles apart. This subsection applies only to communities contained within counties with populations exceeding one million.

Sec. 2306.6712. AMENDMENT OF APPLICATION SUBSEQUENT TO ALLOCATION BY BOARD. (a) If a proposed modification would materially alter a development approved for an allocation of a housing tax credit, the department shall require the applicant to file a formal, written amendment to the application on a form prescribed by the department.

(b) The director shall require the department staff assigned to underwrite applications to evaluate the amendment and provide an analysis and written recommendation to the board. The appropriate monitor under Section 2306.6719 shall also provide to the board an analysis and written recommendation regarding the amendment.

(c) The board must vote on whether to approve the amendment. The board by vote may reject an amendment and, if appropriate, rescind the allocation of housing tax credits and reallocate the credits to other applicants on the waiting list required by Section 2306.6711 if the board determines that the modification proposed in the amendment:

(1) would materially alter the development in a negative manner; or

(2) would have adversely affected the selection of the application in the application round.

(d) Material alteration of a development includes:

(1) a significant modification of the site plan;

(2) a modification of the number of units or bedroom mix of units;

(3) a substantive modification of the scope of tenant services;

(4) a reduction of three percent or more in the square footage of the units or common areas;

(5) a significant modification of the architectural design of the development;

(6) a modification of the residential density of the development of at least five percent; and

(7) any other modification considered significant by the board.

(e) In evaluating the amendment under this subsection, the department staff shall consider whether the need for the modification proposed in the amendment was:

(1) reasonably foreseeable by the applicant at the time the application was submitted; or

(2) preventable by the applicant.

(f) This section shall be administered in a manner that is consistent with Section 42, Internal Revenue Code of 1986 (26 U.S.C. Section 42).

Sec. 2306.6713. HOUSING TAX CREDIT AND OWNERSHIP TRANSFERS. (a) An applicant may not transfer an allocation of housing tax credits or ownership of a development supported with an allocation of housing tax credits to any person other than an affiliate unless the applicant obtains the director's prior, written approval of the transfer.

(b) The director may not unreasonably withhold approval of the transfer.

(c) An applicant seeking director approval of a transfer and the proposed transferee must provide to the department a copy of any applicable agreement between the parties to the transfer, including any third-party agreement with the department.

(d) On request, an applicant seeking director approval of a transfer must provide to the department:

(1) a list of the names of transferees and related parties; and

(2) detailed information describing the experience and financial capacity of transferees and related parties.

(e) The development owner shall certify to the director that the tenants in the development have been notified in writing of the transfer before the 30th day preceding the date of submission of the transfer request to the department.

(f) Not later than the fifth working day after the date the department receives all necessary information under this section, the department shall conduct a qualifications review of a transferee to determine:

(1) the transferee's past compliance with all aspects of the low income housing tax credit program, including land use restriction agreements; and

(2) the sufficiency of the transferee's experience with developments supported with housing tax credit allocations.

Sec. 2306.6714. AT-RISK DEVELOPMENT SET-ASIDE. (a) The department shall set aside for at-risk developments not less than 15 percent of the housing tax credits available for allocation in the calendar year.

(b) Any amount of housing tax credits set aside under this section that remains after the initial allocation of housing tax credits is available for allocation to any eligible applicant as provided by the qualified allocation plan.

Sec. 2306.6715. APPEAL. (a) In a form prescribed by the department in the qualified allocation plan, an applicant may appeal the following decisions made by the department in the application evaluation process provided by Section 2306.6710:

(1) a determination regarding the application's satisfaction of threshold and underwriting criteria;

(2) the scoring of the application; and

(3) a recommendation as to the amount of housing tax credits to be allocated to the application.

(b) An applicant may not appeal a decision made under Section 2306.6710 regarding an application filed by another applicant.

(c) An applicant must file a written appeal authorized by this section with the department not later than the seventh day after the date the department publishes the results of the application evaluation process provided by Section 2306.6710. In the appeal, the applicant must specifically identify the applicant's grounds for appeal, based on the original application and additional documentation filed with the original application.

(d) The director shall respond in writing to the appeal not later than the 14th day after the date of receipt of the appeal. If the applicant is not satisfied with the director's response to the appeal, the applicant may appeal directly in writing to the board, provided that an appeal filed with the board under this subsection must be received by the board before:

(1) the seventh day preceding the date of the board meeting at which the relevant allocation decision is expected to be made; or

(2) the third day preceding the date of the board meeting described by Subdivision (1), if the director does not respond to the appeal before the date described by Subdivision (1).

(e) Board review of an appeal under Subsection (d) is based on the original application and additional documentation filed with the original application. The board may not review any information

not contained in or filed with the original application. The decision of the board regarding the appeal is final.

Sec. 2306.6716. FEES. (a) A fee charged by the department for filing an application may not be excessive and must reflect the department's actual costs in processing the application, providing copies of documents to persons connected with the application process, and making appropriate information available to the public through the department's website.

(b) The department shall publish each year an updated schedule of application fees that specifies the amount to be charged at each stage of the application process.

(c) In accordance with the fee schedule, the department shall refund the balance of any fees collected for an application that is withdrawn by the applicant or that is not fully processed by the department. The department must provide the refund to the applicant not later than the 30th day after the date the last official action is taken with respect to the application.

(d) The department shall develop a sliding scale fee schedule for applications that encourages increased participation by community housing development organizations in the low income housing tax credit program.

Sec. 2306.6717. PUBLIC INFORMATION AND HEARINGS. (a) Subject to Section 2306.67041, the department shall make the following items available on the department's website:

(1) as soon as practicable, any proposed application submitted through the preapplication process established by this subchapter;

(2) before the 30th day preceding the date of the relevant board allocation decision, except as provided by Subdivision (3), the entire application, including all supporting documents and exhibits, the application log, a scoring sheet providing details of the application score, and any other document relating to the processing of the application;

(3) not later than the third working day after the date of the relevant determination, the results of each stage of the application process, including the results of the application scoring and underwriting phases and the allocation phase;

(4) before the 15th day preceding the date of board action on the amendment, notice of an amendment under Section 2306.6712 and the recommendation of the director and monitor regarding the amendment; and

(5) an appeal filed with the department or board under Section 2306.6715 or 2306.6721 and any other document relating to the processing of the appeal.

(b) The department shall make available on the department's website information regarding the low income housing tax credit program, including notice regarding public hearings, meetings, the opening and closing dates for applications, submitted applications, and applications approved for underwriting and recommended to the board, and shall provide that information to:

(1) locally affected community groups;

(2) local and state elected officials;

(3) local housing departments;

(4) any appropriate newspapers of general or limited circulation that serve the community in which the development is to be located;

(5) nonprofit and for-profit organizations;

(6) on-site property managers of occupied developments that are the subject of applications for posting in prominent locations in those developments; and

(7) any other interested persons and community groups that request the information.

(c) The department shall hold at least three public hearings in different regions of the state to receive public comments on applications and on other issues relating to the low income housing tax credit program.

(d) Notwithstanding any other provision of this section, the department may treat the financial statements of any applicant as confidential and may elect not to disclose those statements to the public.

Sec. 2306.67171. ELECTRONIC MAIL NOTIFICATION SERVICE. (a) The department shall maintain an electronic mail notification service to which any person in this state may electronically subscribe to receive information concerning the status of pre-applications and applications under this subchapter.

(b) The electronic mail notification service maintained under Subsection (a) must:

(1) allow a subscriber to request for a zip code notification of:

(A) the filing of any pre-application or application concerning a development that is or will be located in the zip code;

(B) the posting of the board materials for board approval of a list of approved applications or the issuance of final allocation commitments for applications described by Paragraph (A); and

(C) any public hearing to be held concerning an application or pre-application described by Paragraph (A); and

(2) respond to a subscriber via electronic mail not later than the later of:

(A) the 14th day after the date the department receives notice of an event described by Subdivision (1); or

(B) if applicable, the date or dates specified by Section 2306.6717(a).

(c) The department may include in an electronic mail notification sent to a subscriber any applicable information described by Section 2306.6717.

Sec. 2306.6718. ELECTED OFFICIALS. (a) The department shall provide written notice of the filing of an application to the following elected officials:

(1) members of the legislature who represent the community containing the development described in the application; and

(2) the chief executive officer of the political subdivision containing the development described in the application.

(b) The department shall provide the elected officials with an opportunity to comment on the application during the application evaluation process provided by Section 2306.6710 and shall consider those comments in evaluating applications under that section.

(c) A member of the legislature who represents the community containing the development may hold a community meeting at which the department shall provide appropriate representation.

(d) If the department receives written notice from the mayor or county judge of an affected municipality or county opposing an application, the department must contact the mayor or county judge and offer to conduct a physical inspection of the development site and consult with the mayor or county judge before the application is scored.

Sec. 2306.6719. MONITORING OF COMPLIANCE. (a) The department may contract with an independent third party to monitor a development during its construction or rehabilitation and during its operation for compliance with:

(1) any conditions imposed by the department in connection with the allocation of housing tax credits to the development; and

(2) appropriate state and federal laws, as required by other state law or by the board.

(b) The department may assign department staff other than housing tax credit division staff to perform the relevant monitoring functions required by this section in the construction or rehabilitation phase of a development.

Sec. 2306.6720. ENFORCEABILITY OF APPLICANT REPRESENTATIONS. Each representation made by an applicant to secure a housing tax credit allocation is enforceable by the department and the tenants of the development supported with the allocation.

Sec. 2306.6721. DEBARMENT FROM PROGRAM PARTICIPATION. (a) The board by rule shall adopt a policy providing for the debarment of a person from participation in the low income housing tax credit program as described by this section.

(b) The department may debar a person from participation in the program on the basis of the person's past failure to comply with any condition imposed by the department in connection with the allocation of housing tax credits.

(c) The department shall debar a person from participation in the program if the person:

(1) materially violates any condition imposed by the department in connection with the allocation of housing tax credits;

(2) is debarred from participation in federal housing programs by the United States Department of Housing and Urban Development; or

(3) is in material noncompliance with or has repeatedly violated a land use restriction agreement regarding a development supported with a housing tax credit allocation.

(d) A person debarred by the department from participation in the program may appeal the person's debarment to the board.

Sec. 2306.6722. DEVELOPMENT ACCESSIBILITY. Any development supported with a housing tax credit allocation shall comply with the accessibility standards that are required under Section 504, Rehabilitation Act of 1973 (29 U.S.C. Section 794), and specified under 24 C.F.R. Part 8, Subpart C.

Sec. 2306.6723. COORDINATION WITH RURAL DEVELOPMENT AGENCY. (a) The department shall jointly administer with the rural development agency any set-aside for rural areas to:

(1) ensure the maximum use and optimum geographic distribution of housing tax credits in rural areas; and

(2) provide for information sharing, efficient procedures, and fulfillment of development compliance requirements in rural areas.

(b) The rural development agency shall assist in developing all threshold, scoring, and underwriting criteria applied to applications eligible for the rural area set-aside. The criteria must be approved by that agency.

(c) To ensure that the rural area set-aside receives a sufficient volume of eligible applications, the department shall fund and, with the rural development agency, shall jointly implement outreach, training, and rural area capacity building efforts as directed by the rural development agency.

(d) The department and the rural development agency shall jointly adjust the regional allocation of housing tax credits described by Section 2306.111 to offset the under-utilization and over-utilization of multifamily private activity bonds and other housing resources in the different regions of the state.

(e) From application fees collected under this subchapter, the department shall reimburse the rural development agency for any costs incurred by the agency in carrying out the functions required by this section.

Sec. 2306.6724. DEADLINES FOR ALLOCATION OF LOW INCOME HOUSING TAX CREDITS. (a) Regardless of whether the board will adopt the plan annually or biennially, the department, not later than September 30 of the year preceding the year in which the new plan is proposed for use, shall prepare and submit to the board for adoption any proposed 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) Regardless of whether the board has adopted the plan annually or biennially, the board shall submit to the governor any proposed qualified allocation plan not later than November 15 of the year preceding the year in which the new plan is proposed for use.

The governor shall approve, reject, or modify and approve the proposed qualified allocation plan not later than December 1.

(d) An applicant for a low income housing tax credit to be issued a commitment during the initial allocation cycle in a calendar year must submit an application to the department not later than March 1.

(e) The board shall review the recommendations of department staff regarding applications and shall issue a list of approved applications each year in accordance with the qualified allocation plan not later than June 30.

(f) The board shall issue final commitments for allocations of housing tax credits each year in accordance with the qualified allocation plan not later than July 31.

Sec. 2306.6725. SCORING OF APPLICATIONS. (a) In allocating low income housing tax credits, the department shall score each application using a point system based on criteria adopted by the department that are consistent with the department's housing goals, including criteria addressing the ability of the proposed project to:

(1) provide quality social support services to residents;

(2) demonstrate community and neighborhood support as defined by the qualified allocation plan;

(3) consistent with sound underwriting practices and when economically feasible, serve individuals and families of extremely low income by leveraging private and state and federal resources, including federal HOPE VI grants received through the United States Department of Housing and Urban Development;

(4) serve traditionally underserved areas;

(5) remain affordable to qualified tenants for an extended, economically feasible period; and

(6) comply with the accessibility standards that are required under Section 504, Rehabilitation Act of 1973 (29 U.S.C. Section 794), and specified under 24 C.F.R. Part 8, Subpart C.

(b) The department shall provide appropriate incentives as determined through the qualified allocation plan to reward applicants who agree to:

(1) equip the property that is the basis of the application with energy saving devices that meet the standards established by the state energy conservation office or to provide to a qualified nonprofit organization or tenant organization a right of first refusal to purchase the property at the minimum price provided in, and in accordance with the requirements of, Section 42(i)(7), Internal Revenue Code of 1986 (26 U.S.C. Section 42(i)(7)); and

(2) locate the development in a census tract in which there are no other existing developments supported by housing tax credits.

(c) On awarding tax credit allocations, the board shall document the reasons for each project's selection, including an explanation of:

(1) all discretionary factors used in making its determination; and

(2) the reasons for any decision that conflicts with the recommendations of department staff under Section 2306.6731.

(d) For each scoring criterion, the department shall use a range of points to evaluate the degree to which a proposed project satisfies the criterion. The department may not award a number of points for a scoring criterion that is disproportionate to the degree to which a proposed project complies with that criterion.

Sec. 2306.6726. SALE OF CERTAIN LOW INCOME HOUSING TAX CREDIT PROPERTY. (a) Not later than two years before the expiration of the compliance period, a recipient of a low income housing tax credit who agreed to provide a right of first refusal under Section 2306.6725 and who intends to sell the property shall notify the department of the recipient's intent to sell. The recipient shall notify qualified nonprofit organizations and tenant organizations of the opportunity to purchase the property.

(b) The recipient may:

(1) during the first six-month period after notifying the department, negotiate or enter into a purchase agreement only with a qualified nonprofit organization that is also a community housing development organization as defined by the federal home investment partnership program;

(2) during the second six-month period after notifying the department, negotiate or enter into a purchase agreement with any qualified nonprofit organization or tenant organization; and

(3) during the year before the expiration of the compliance period, negotiate or enter into a purchase agreement with the department or any qualified nonprofit organization or tenant organization approved by the department.

(c) Notwithstanding an agreement under Section 2306.6725, a recipient of a low income housing tax credit may sell property to which the tax credit applies to any purchaser after the expiration of the compliance period if a qualified nonprofit organization or tenant organization does not offer to purchase the property at the minimum price provided by Section 42(i)(7), Internal Revenue Code of 1986 (26 U.S.C. Section 42(i)(7)), and the department declines to purchase the property.

(d) In this section, "compliance period" has the meaning assigned by Section 42(i)(1), Internal Revenue Code of 1986 (26 U.S.C. Section 42(i)(1)).

Sec. 2306.6727. DEPARTMENT PURCHASE OF LOW INCOME HOUSING TAX CREDIT PROPERTY. The board by rule may develop and implement a program to purchase low income housing tax credit property that is not purchased by a qualified nonprofit organization or tenant organization. The department may not purchase low income housing tax credit property if the board finds that the purchase is not in the best interest of the state.

Sec. 2306.6728. DEPARTMENT POLICY AND PROCEDURES REGARDING RECIPIENTS OF CERTAIN FEDERAL HOUSING ASSISTANCE. (a) The department by rule shall adopt a policy regarding the admittance to low income housing tax credit properties of income-eligible individuals and families receiving assistance under Section 8, United States Housing Act of 1937 (42 U.S.C. Section 1437f).

(b) The policy must provide a reasonable minimum income standard that is not otherwise prohibited by this chapter and that is to be used by owners of low income housing tax credit properties and must place reasonable limits on the use of any other factors that impede the admittance of individuals and families described by Subsection (a) to those properties, including credit histories, security deposits, and employment histories.

(c) The department by rule shall establish procedures to monitor low income housing tax credit properties that refuse to admit individuals and families described by Subsection (a). The department by rule shall establish enforcement mechanisms with respect to those properties, including a range of sanctions to be imposed against the owners of those properties.

Sec. 2306.6729. QUALIFIED NONPROFIT ORGANIZATION. (a) A qualified nonprofit organization may compete in any low income housing tax credit allocation pool, including:

(1) the nonprofit allocation pool;

(2) the rural projects/prison communities allocation pool; and

(3) the general projects allocation pool.

(b) A qualified nonprofit organization submitting an application under this subchapter must have a controlling interest in a project proposed to be financed with a low income housing tax credit from the nonprofit allocation pool.

Sec. 2306.6730. ACCESSIBILITY REQUIRED. A project to which a low income housing tax credit is allocated under this subchapter shall comply with the accessibility standards that are required under Section 504, Rehabilitation Act of 1973 (29 U.S.C. Section 794), as amended, and specified under 24 C.F.R. Part 8, Subpart C.

Sec. 2306.6731. ALLOCATION DECISION; REEVALUATION. (a) Department staff shall provide written, documented recommendations to the board concerning the financial or programmatic viability of each application for a low income housing tax credit before the board makes a decision relating to the allocation of tax credits. The board may not make without good cause an allocation decision that conflicts with the recommendations of department staff.

(b) Regardless of project stage, the board must reevaluate a project that undergoes a substantial change between the time of initial board approval of the project and the time of issuance of a tax credit commitment for the project. The board may revoke any tax credit commitment issued for a project that has been unfavorably reevaluated by the board under this subsection.

Sec. 2306.6733. REPRESENTATION BY FORMER BOARD MEMBER OR OTHER PERSON. (a) A former board member or a former director, deputy director, director of housing programs, director of compliance, director of underwriting, or low income housing tax credit program manager employed by the department may not:

(1) for compensation, represent an applicant for an allocation of low income housing tax credits or a related party before the second anniversary of the date that the board member's, director's, or manager's service in office or employment with the department ceases;

(2) represent any applicant or related party or receive compensation for services rendered on behalf of any applicant or related party regarding the consideration of a housing tax credit application in which the former board member, director, or manager participated during the period of service in office or employment with the department, either through personal involvement or because the matter was within the scope of the board member's, director's, or manager's official responsibility; or

(3) for compensation, communicate directly with a member of the legislative branch to influence legislation on behalf of an applicant or related party before the second anniversary of the date that the board member's, director's, or manager's service in office or employment with the department ceases.

(b) A person commits an offense if the person violates this section. An offense under this section is a Class A misdemeanor.

Sec. 2306.6734. MINORITY-OWNED BUSINESSES. (a) The department shall require a person who receives an allocation of housing tax credits to attempt to ensure that at least 30 percent of the construction and management businesses with which the person contracts in connection with the development are minority-owned businesses.

(b) A person who receives an allocation of housing tax credits must report to the department not less than once in each 90-day period following the date of allocation regarding the percentage of businesses with which the person has contracted that qualify as minority-owned businesses.

(c) In this section:

(1) "Minority-owned business" means a business entity at least 51 percent of which is owned by members of a minority group or, in the case of a corporation, at least 51 percent of the shares of which are owned by members of a minority group, and that is managed and controlled by members of a minority group in its daily operations.

(2) "Minority group" includes:

(A) women;

(B) African Americans;

(C) American Indians;

(D) Asian Americans; and

(E) Mexican Americans and other Americans of Hispanic origin.

Sec. 2306.6735. REQUIRED LEASE AGREEMENT PROVISIONS. A lease agreement with a tenant in a development supported with a housing tax credit allocation must:

(1) include any applicable federal or state standards identified by department rule that relate to the termination or nonrenewal of the lease agreement; and

(2) be consistent with state and federal law.

Sec. 2306.6736. LOW INCOME HOUSING TAX CREDITS FINANCED UNDER AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009. (a) To the extent the department receives federal funds under the American Recovery and Reinvestment Act of 2009 (Pub. L. No. 111-5) or any subsequent law (including any extension or renewal thereof) that requires the department to award the federal funds in the same manner and subject to the same limitations as awards of housing tax credits, the following provisions shall apply.

(b) Any reference in this chapter to the administration of the housing tax credit program shall apply equally to the administration of such federal funds, except:

(1) the department may establish a separate application procedure for such funds, outside of the uniform application cycle referred to in Section 2306.1111 and the deadlines established in Section 2306.6724, and any reference herein to the application period shall refer to the period beginning on the date the department begins accepting applications for such funds and continuing until all such available funds are awarded;

(2) unless reauthorized, this section is repealed on August 31, 2011.

Sec. 2306.6737. ASSISTANCE FROM AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009. If allowed by federal law, the department shall, under any federally funded program resulting from the American Recovery and Reinvestment Act of 2009 (Pub. L. No. 111-5), secure the interests of the state through bonds, an ownership interest in property, restrictive covenants filed in the real property records, and/or liens filed on a property for which the applicant has accepted funds until such a time as the department and the State of Texas do not have liability to repay or recapture such funds.

Section 2306.6736, Government Code, as added by Chapter 1423 (S.B. 1717), Acts of the 81st Legislature, Regular Session, 2009, is redesignated as Section 2306.6738, Government Code.

Sec. 2306.6738. PROHIBITED PRACTICES. (a) Notwithstanding any other law, a development owner of a development supported with a housing tax credit allocation may not:

(1) lock out or threaten to lock out any person residing in the development except by judicial process unless the exclusion results from:

(A) a necessity to perform bona fide repairs or construction work; or

(B) an emergency; or

(2) seize or threaten to seize the personal property of any person residing in the development except by judicial process unless the resident has abandoned the premises.

(b) Each development owner shall:

(1) include a conspicuous provision in the lease agreement prohibiting the owner from engaging in a practice described by Subsection (a); and

(2) remove in the manner specified by department rule any provisions in the lease agreement that are contrary to Subsection (a).

SUBCHAPTER FF. OWNER-BUILDER LOAN PROGRAM

Sec. 2306.751. DEFINITION. In this subchapter, "owner-builder" means a person, other than a person who owns or operates a construction business:

(1) who:

(A) owns or purchases a piece of real property through a warranty deed or a warranty deed and deed of trust; or

(B) is purchasing a piece of real property under a contract for deed entered into before January 1, 1999; and

(2) who undertakes to make improvements to that property.

Sec. 2306.752. OWNER-BUILDER LOAN PROGRAM. (a) To provide for the development of affordable housing in this state, the department, through the colonia self-help centers established under Subchapter Z or a nonprofit organization certified by the department as a nonprofit owner-builder housing program, shall make loans for owner-builders to enable them to:

(1) purchase or refinance real property on which to build new residential housing;

(2) build new residential housing; or

(3) improve existing residential housing.

(b) The department may adopt rules necessary to accomplish the purposes of this subchapter.

Sec. 2306.753. OWNER-BUILDER ELIGIBILITY. (a) Subject to this section, the department shall establish eligibility requirements for an owner-builder to receive a loan under this subchapter. The eligibility requirements must establish a priority for loans made under this subchapter to owner-builders with an annual income, as determined under Subsection (b)(1), of less than $17,500.

(b) To be eligible for a loan under this subchapter, an owner-builder:

(1) may not have an annual income that exceeds 60 percent, as determined by the department, of the greater of the state or local median family income, when combined with the income of any person who resides with the owner-builder;

(2) must have resided in this state for the preceding six months;

(3) must have successfully completed an owner-builder education class under Section 2306.756; and

(4) must agree to:

(A) provide through personal labor at least 65 percent of the labor necessary to build or rehabilitate the proposed housing by working through a state-certified owner-builder housing program;

(B) provide an amount of personal labor equivalent to the amount required under Paragraph (A) in connection with building or rehabilitating housing for others through a state-certified owner-builder housing program;

(C) provide through the noncontract labor of friends, family, or volunteers and through personal labor at least 65 percent of the labor necessary to build or rehabilitate the proposed housing by working through a state-certified owner-builder housing program; or

(D) if due to documented disability or other limiting circumstances as defined by department rule the owner-builder cannot provide the amount of personal labor otherwise required by this

subdivision, provide through the noncontract labor of friends, family, or volunteers at least 65 percent of the labor necessary to build or rehabilitate the proposed housing by working through a state-certified owner-builder housing program.

(c) The department may select nonprofit owner-builder housing programs to certify the eligibility of owner-builders to receive a loan under this subchapter. A nonprofit housing assistance organization selected by the department shall use the eligibility requirements established by the department to certify the eligibility of an owner-builder for the program.

(d) At least two-thirds of the dollar amount of loans made under this subchapter in each fiscal year must be made to borrowers whose property is in a census tract that has a median household income that is not greater than 75 percent of the median state household income for the most recent year for which statistics are available.

Sec. 2306.754. AMOUNT OF LOAN; LOAN TERMS. (a) The department may establish the minimum amount of a loan under this subchapter, but a loan made by the department may not exceed $45,000.

(b) If it is not possible for an owner-builder to purchase necessary real property and build or rehabilitate adequate housing for $45,000, the owner-builder must obtain the amount necessary that exceeds $45,000 from other sources of funds. The total amount of amortized, repayable loans made by the department and other entities to an owner-builder under this subchapter may not exceed $90,000.

(c) A loan made by the department under this subchapter:

(1) may not exceed a term of 30 years;

(2) may bear interest at a fixed rate of not more than three percent or bear interest in the following manner:

(A) no interest for the first two years of the loan;

(B) beginning with the second anniversary of the date the loan was made, interest at the rate of one percent a year;

(C) beginning on the third anniversary of the date the loan was made and ending on the sixth anniversary of the date the loan was made, interest at a rate that is one percent greater than the rate borne in the preceding year; and

(D) beginning on the sixth anniversary of the date the loan was made and continuing through the remainder of the loan term, interest at the rate of five percent; and

(3) shall be secured by:

(A) a first lien by the department on the real property if the loan is the largest amortized, repayable loan secured by the real property; or

(B) a co-first lien or subordinate lien as determined by department rule, if the loan is not the largest loan as described by Paragraph (A).

(d) If an owner-builder is purchasing real property under a contract for deed, the department may not disburse any portion of a loan made under this subchapter until the owner-builder:

(1) fully completes the owner-builder's obligation under the contract and receives a deed to the property; or

(2) refinances the owner-builder's obligation under the contract and converts the obligation to a note secured by a deed of trust.

Sec. 2306.755. NONPROFIT OWNER-BUILDER HOUSING PROGRAMS. (a) The department may certify nonprofit owner-builder housing programs operated by a tax-exempt organization listed under Section 501(c)(3), Internal Revenue Code of 1986, to:

(1) qualify potential owner-builders for loans under this subchapter;

(2) provide owner-builder education classes under Section 2306.756;

(3) assist owner-builders in building or rehabilitating housing; and

(4) originate or service loans made under this subchapter.

(b) The department by rule shall adopt procedures for the certification of nonprofit owner-builder housing programs under this section.

Sec. 2306.756. OWNER-BUILDER EDUCATION CLASSES. (a) A state-certified nonprofit owner-builder housing program shall offer owner-builder education classes to potential owner-builders. A class under this section must provide information on:

(1) the financial responsibilities of an owner-builder under this subchapter, including the consequences of an owner-builder's failure to meet those responsibilities;

(2) the building or rehabilitation of housing by owner-builders;

(3) resources for low-cost building materials available to owner-builders; and

(4) resources for building or rehabilitation assistance available to owner-builders.

(b) A nonprofit owner-builder housing program may charge a potential owner-builder who enrolls in a class under this section a reasonable fee not to exceed $50 to offset the program's costs in providing the class.

Sec. 2306.757. LOAN PRIORITY FOR WAIVER OF LOCAL GOVERNMENT FEES. In making loans under this subchapter, the department shall give priority to loans to owner-builders who will reside in counties or municipalities that agree in writing to waive capital recovery fees, building permit fees, inspection fees, or other fees related to the building or rehabilitation of the housing to be built or improved with the loan proceeds.

Sec. 2306.758. FUNDING. (a) The department shall solicit gifts and grants to make loans under this subchapter.

(b) The department may also make loans under this subchapter from:

(1) available funds in the housing trust fund established under Section 2306.201;

(2) federal block grants that may be used for the purposes of this subchapter; and

(3) the owner-builder revolving loan fund established under Section 2306.7581.

(c) In a state fiscal year, the department may use not more than 10 percent of the revenue available for purposes of this subchapter to enhance the ability of tax-exempt organizations described by Section 2306.755(a) to implement the purposes of this chapter and to enhance the number of such organizations that are able to implement those purposes. The department shall use that available revenue to provide financial assistance, technical training, and management support for the purposes of this subsection.

Sec. 2306.7581. OWNER-BUILDER REVOLVING LOAN FUND. (a) The department shall establish an owner-builder revolving loan fund in the department for the sole purpose of funding loans under this subchapter.

(a-1) Each state fiscal year the department shall transfer at least $3 million to the owner-builder revolving fund from money received under the federal HOME Investment Partnerships program established under Title II of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. Section 12701 et seq.), from money in the housing trust fund, or from money appropriated by the legislature to the department. This subsection expires August 31, 2020.

(b) The department shall deposit money received in repayment of a loan under this subchapter to the owner-builder revolving loan fund.

Sec. 2306.759. REPORTING DUTIES. *Repealed by the 82nd Legislative Session. SB 1179, Nelson*

SUBCHAPTER GG. COLONIA MODEL SUBDIVISION PROGRAM

Sec. 2306.781. DEFINITION. In this subchapter, "program" means the colonia model subdivision program established under this subchapter.

Sec. 2306.782. ESTABLISHMENT OF PROGRAM. The department shall establish the colonia model subdivision program to promote the development of new, high-quality, residential subdivisions that provide:

(1) alternatives to substandard colonias; and

(2) housing options affordable to individuals and families of extremely low and very low income who would otherwise move into substandard colonias.

Sec. 2306.783. COLONIA MODEL SUBDIVISION REVOLVING LOAN FUND. (a) The department shall establish a colonia model subdivision revolving loan fund in the department. Money in the fund may be used only for purposes of the program.

(b) The department shall deposit money received in repayment of loans under this subchapter to the colonia model subdivision revolving loan fund.

Sec. 2306.784. SUBDIVISION COMPLIANCE. Any subdivision created with assistance from the colonia model subdivision revolving loan fund must fully comply with all state and local laws, including any process established under state or local law for subdividing real property.

Sec. 2306.785. PROGRAM LOANS. (a) The department may make loans under the program only to:

(1) colonia self-help centers established under Subchapter Z; and

(2) community housing development organizations certified by the department.

(b) A loan made under the program may be used only for the payment of:

(1) costs associated with the purchase of real property;

(2) costs of surveying, platting, and subdividing or resubdividing real property;

(3) fees, insurance costs, or recording costs associated with the development of the subdivision;

(4) costs of providing proper infrastructure necessary to support residential uses;

(5) real estate commissions and marketing fees; and

(6) any other costs as the department by rule determines to be reasonable and prudent to advance the purposes of this subchapter.

(c) A loan made by the department under the program may not bear interest and may not exceed a term of 36 months.

(d) The department may offer a borrower under the program one loan renewal for each subdivision.

Sec. 2306.786. ADMINISTRATION OF PROGRAM; RULES. (a) In administering the program, the department by rule shall adopt:

(1) any subdivision standards in excess of local standards the department considers necessary;

(2) loan application procedures;

(3) program guidelines; and

(4) contract award procedures.

(b) The department shall adopt rules to:

(1) ensure that a borrower under the program sells real property under the program only to an individual borrower, nonprofit housing developer, or for-profit housing developer for the purposes of constructing residential dwelling units; and

(2) require a borrower under the program to convey real property under the program at a cost that is affordable to:

(A) individuals and families of extremely low income; or

(B) individuals and families of very low income.

SUBCHAPTER HH. AFFORDABLE HOUSING PRESERVATION

Sec. 2306.801. DEFINITION. In this subchapter, "federally subsidized" means receiving financial assistance through a federal program administered by the Secretary of Housing and Urban Development or the Secretary of Agriculture under which housing assistance is provided on the basis of income, including a program under:

(1) Section 221(d), National Housing Act (12 U.S.C. Section 1715l(d));

(2) Section 236, National Housing Act (12 U.S.C. Section 1715z-1);

(3) Section 202, Housing Act of 1959 (12 U.S.C. Section 1701q);

(4) Section 101, Housing and Urban Development Act of 1965 (12 U.S.C. Section 1701s);

(5) Section 514, 515, or 516, Housing Act of 1949 (42 U.S.C. Section 1484, 1485, or 1486); or

(6) Section 8, United States Housing Act of 1937 (42 U.S.C. Section 1437f).

Sec. 2306.802. MULTIFAMILY HOUSING PRESERVATION CLASSES. The department shall establish two classes of priorities of developments to preserve multifamily housing. The classes, in order of descending priority, are:

(1) Class A, which includes any federally subsidized multifamily housing development at risk because the contract granting a federal subsidy with a stipulation to maintain affordability is nearing expiration or because the government-insured mortgage on the property is eligible for prepayment or near the end of its mortgage term; and

(2) Class B, which includes any other multifamily housing development with low income use or rental affordability restrictions.

Sec. 2306.803. AT-RISK MULTIFAMILY HOUSING: IDENTIFICATION, PRIORITIZATION, AND PRESERVATION. (a) The department shall determine the name and location of and the number of units in each multifamily housing development that is at risk of losing its low income use restrictions and subsidies and that meets the requirements of a Class A priority described by Section 2306.802.

(b) The department shall maintain an accurate list of those developments on the department's website.

(c) The department shall develop cost estimates for the preservation and rehabilitation of the developments in priority Class A.

(d) The department shall contact owners of developments assigned a Class A priority under this section and shall attempt to negotiate with those owners to ensure continued affordability for individuals and families of low income under the federal housing assistance program for those developments.

Sec. 2306.804. USE OF HOUSING PRESERVATION RESOURCES. (a) To the extent possible, the department shall use available resources for the preservation and rehabilitation of the multifamily housing developments identified and listed under Section 2306.803.

(b) To the extent possible, the department shall allocate low income housing tax credits to applications involving the preservation of developments assigned a Class A priority under Section 2306.803 and in both urban and rural communities in approximate proportion to the housing needs of each uniform state service region.

(c) The department shall give priority to providing financing or funding to a buyer who is supported or approved by an association of residents of the multifamily housing development.

Sec. 2306.805. HOUSING PRESERVATION INCENTIVES PROGRAM. (a) The department shall establish and administer a housing preservation incentives program to provide incentives through loan guarantees, loans, and grants to political subdivisions, housing finance corporations, public housing authorities, for-profit organizations, and nonprofit organizations for the acquisition and rehabilitation of multifamily housing developments assigned a Class A or Class B priority under Section 2306.803.

(b) A loan issued by a lender participating in the program must be fully underwritten by the department.

(c) Consistent with the requirements of federal law, the department may guarantee loans issued under the program by obtaining a Section 108 loan guarantee from the United States Department of Housing and Urban Development under the Housing and Community Development Act of 1974 (42 U.S.C. Section 5308).

(d) Grants under this program may include direct subsidies offered as an equity contribution to enable an owner to acquire and rehabilitate a Class A or Class B priority property described by Section 2306.802. Grants may also be offered to provide consultation and technical assistance services to a nonprofit organization seeking to acquire and rehabilitate a Class A or Class B priority property.

(e) A housing development that benefits from the incentive program under this section is subject to the requirements concerning:

(1) long-term affordability and safety prescribed by Section 2306.185; and

(2) tenant and manager selection prescribed by Section 2306.269.

SUBCHAPTER II. MULTIFAMILY HOUSING DEVELOPMENTS: PRESERVATION OF AFFORDABILITY

Sec. 2306.851. APPLICATION. (a) This subchapter applies only to a property owner of a multifamily housing development that is insured or assisted under a program under Section 8, United States Housing Act of 1937 (42 U.S.C. Section 1437f), or that is:

(1) insured or assisted under a program under:

(A) Section 221(d)(3), National Housing Act (12 U.S.C. Section 1715l);

(B) Section 236, National Housing Act (12 U.S.C. Section 1715z-1); or

(C) Section 514, 515, or 516, Housing Act of 1949 (42 U.S.C. Section 1484, 1485, or 1486); and

(2) financed by a mortgage that is eligible for prepayment at the option of the property owner.

(b) This subchapter does not apply to the disposal of property because of:

(1) a governmental taking by eminent domain or negotiated purchase;

(2) a foreclosure action;

(3) a transfer by gift, devise, or operation of law; or

(4) a sale to a person who would be entitled to an interest in the property if the property owner died intestate.

(c) This subchapter does not apply to property included in a restructuring program with a participating administrative entity designated by the United States Department of Housing and Urban Development.

Sec. 2306.852. PROPERTY OWNER RESTRICTION. Except as provided by this subchapter, a property owner to whom this subchapter applies may not sell, lease, or otherwise dispose of a multifamily housing development described by Section 2306.851(a) or take any other action if that action will cause the disruption or discontinuance of:

(1) the development's federal insurance or assistance; or

(2) the provision of low income housing assistance to residents of the development.

Sec. 2306.853. NOTICE OF INTENT. (a) A property owner of a multifamily housing development may take an action, sell, lease, or otherwise dispose of the development subject to the restriction under Section 2306.852 if the property owner provides notice by mail of the owner's intent to the residents of the development and to the department.

(b) The notice required by Subsection (a) must indicate, as applicable, that the property owner intends to prepay a mortgage under a program described by Section 2306.851(a)(1) or that a contract

formed under a program under Section 8, United States Housing Act of 1937 (42 U.S.C. Section 1437f), will expire.

(c) The property owner shall provide the notice required by Subsection (a) before the 90th day preceding the date of mortgage prepayment or contract expiration, as applicable, and as otherwise required by federal law.

(d) The notice required by this section is sufficient if the notice meets the requirements of Section 8(c)(8), United States Housing Act of 1937 (42 U.S.C. Section 1437f(c)(8)).

SUBCHAPTER JJ. TEXAS AFFORDABLE HOUSING NEEDS ASSESSMENT

SUBCHAPTER KK. INTERAGENCY COUNCIL FOR THE HOMELESS

Sec. 2306.901. DEFINITION. In this subchapter, "council" means the Texas Interagency Council for the Homeless.

Sec. 2306.902. ADVISORY ROLE. (a) The Texas Interagency Council for the Homeless serves as an advisory committee to the department. The council may recommend policies to the board. The board must provide written justification for not accepting council recommendations and must consider council recommendations in preparing its low income housing plan under Section 2306.0721.

(b) The council is not subject to Chapter 2110.

Sec. 2306.903. MEMBERSHIP. (a) The Texas Interagency Council for the Homeless is composed of:

(1) one representative from each of the following agencies, appointed by the administrative head of that agency:

(A) the Texas Department of Health;
(B) the Texas Department of Human Services;
(C) the Texas Department of Mental Health and Mental Retardation;
(D) the Texas Department of Criminal Justice;
(E) the Texas Department on Aging;
(F) the Texas Rehabilitation Commission;
(G) the Texas Education Agency;
(H) the Texas Commission on Alcohol and Drug Abuse;
(I) the Department of Protective and Regulatory Services;
(J) the Health and Human Services Commission;
(K) the Texas Workforce Commission;
(L) the Texas Youth Commission; and
(M) the Texas Veterans Commission;

(2) two representatives from the department, one each from the community affairs division and the housing finance division, appointed by the director; and

(3) three members representing service providers to the homeless, one each appointed by the governor, the lieutenant governor, and the speaker of the house of representatives.

(b) A member of the council serves at the pleasure of the appointing official or until termination of the member's employment with the entity the member represents.

(c) A member of the council must have:

(1) administrative responsibility for programs for the homeless or related services provided by the agency that the member represents; and

(2) authority to make decisions for and commit resources of the agency, subject to the approval of the administrative head of the agency.

Sec. 2306.904. OPERATION OF COUNCIL. (a) The members of the council shall annually elect one member to serve as presiding officer.

(b) The council shall meet at least quarterly.

(c) An action taken by the council must be approved by a majority vote of the members present.

(d) The council may select and use advisors.

(e) The department shall provide clerical and advisory support staff to the council.

Sec. 2306.905. DUTIES OF COUNCIL. The council shall:

(1) survey current resources for services for the homeless in this state;

(2) initiate an evaluation of the current and future needs for the services;

(3) assist in coordinating and providing statewide services for all homeless individuals in this state;

(4) increase the flow of information among separate providers and appropriate authorities;

(5) develop guidelines to monitor the provision of services for the homeless and the methods of delivering those services;

(6) provide technical assistance to the housing finance division of the department in assessing the need for housing for individuals with special needs in different localities;

(7) coordinate with the Texas Workforce Commission, local workforce development boards, homeless shelters, and public and private entities to provide homeless individuals information on services available to assist them in obtaining employment and job training;

(8) establish a central resource and information center for the homeless in this state; and

(9) ensure that local or statewide nonprofit organizations perform the duties under this section that the council is unable to perform.

Sec. 2306.906. DUTIES OF STATE AGENCY COUNCIL MEMBERS. (a) Each agency represented on the council shall report to the department a standard set of performance data, as determined by the department, on the agency's outcomes related to homelessness.

(b) Each agency shall contribute resources to the council.

Sec. 2306.907. PUBLIC HEARINGS. (a) The council may hold, throughout the state, public hearings on homelessness issues.

(b) The department shall provide to the secretary of state for publication in the Texas Register a notice of the hearings and shall provide for the notice to be given in other appropriate sources, which may include:

(1) a newsletter published by a nonprofit organization addressing the problem of homelessness; or

(2) a local newspaper.

Sec. 2306.908. REPORT. The council shall submit annually a progress report to the governing bodies of the agencies represented on the council.

Sec. 2306.909. GIFTS AND GRANTS. The council may accept gifts and grants from a public or private source for use in carrying out the council's duties under this subchapter.

SUBCHAPTER LL. MIGRANT LABOR HOUSING FACILITIES

Sec. 2306.921. DEFINITIONS. In this subchapter:

(1) "Facility" means a structure, trailer, or vehicle, or two or more contiguous or grouped structures, trailers, or vehicles, together with the land appurtenant.

(2) "Migrant agricultural worker" means an individual who:

(A) is working or available for work seasonally or temporarily in primarily an agricultural or agriculturally related industry; and

(B) moves one or more times from one place to another to perform seasonal or temporary employment or to be available for seasonal or temporary employment.

(3) "Migrant labor housing facility" means a facility that is established, operated, or used for more than three days as living quarters for two or more seasonal, temporary, or migrant families or three or more seasonal, temporary, or migrant workers, whether rent is paid or reserved in connection with the use of the facility.

(4) "Person" means an individual, association, partnership, corporation, or political subdivision.

Sec. 2306.922. LICENSE REQUIRED. A person may not establish, maintain, or operate a migrant labor housing facility without obtaining a license from the department.

Sec. 2306.923. LICENSE APPLICATION; APPLICATION INSPECTION. (a) To receive a migrant labor housing facility license, a person must apply to the department according to rules adopted by the board and on a form prescribed by the board.

(b) The application must be made not later than the 45th day before the intended date of operation of the facility.

(c) The application must state:

(1) the location and ownership of the migrant labor housing facility;

(2) the approximate number of persons to be accommodated;

(3) the probable periods of use of the facility; and

(4) any other information required by the board.

(d) The application must be accompanied by the license fee.

Sec. 2306.924. INSPECTION. The department shall inspect the migrant labor housing facility not later than the 30th day after the date of receipt of a complete application and the fee.

Sec. 2306.925. FAILURE TO MEET STANDARDS; REINSPECTION. (a) If a migrant labor housing facility for which a license application is made does not meet the reasonable minimum standards of construction, sanitation, equipment, and operation required by rules adopted under this subchapter, the department at the time of inspection shall give the license applicant the reasons that the facility does not meet those standards. The applicant may request the department to reinspect the facility not later than the 60th day after the date on which the reasons are given.

(b) If a facility does not meet the standards on reinspection, the applicant must submit a new license application as provided by Section 2306.923.

Transferred from Health and Safety Code, Chapter 147 and amended by

Sec. 2306.926. LICENSE ISSUANCE; TERM; NOT TRANSFERABLE. (a) The department shall issue a license to establish, maintain, and operate a migrant labor housing facility if the facility meets the standards of construction, sanitation, equipment, and operation required by rules adopted under this subchapter.

(b) The license expires on the first anniversary of the date of issuance.

(c) The license issued under this subchapter is not transferable.

Sec. 2306.927. LICENSE POSTING. A person who holds a license issued under this subchapter shall post the license in the migrant labor housing facility at all times during the maintenance or operation of the facility.

Sec. 2306.928. INSPECTION OF FACILITIES. An authorized representative of the department, after giving or making a reasonable attempt to give notice to the operator of a migrant labor housing facility, may enter and inspect the facility during reasonable hours and investigate conditions, practices, or other matters as necessary or appropriate to determine whether a person has violated this subchapter or a rule adopted under this subchapter.

Sec. 2306.929. FEE. The board shall set the license fee in an amount not to exceed $250.

S**ec. 2306.930. SUSPENSION OR REVOCATION OF LICENSE.** (a) The department may suspend or revoke a license for a violation of this subchapter or a rule adopted under this subchapter.

(b) Chapter 2001 and department rules for holding a contested case hearing govern the procedures for the suspension or revocation of a license issued under this subchapter.

(c) A hearing conducted under this section must be held in the county in which the affected migrant labor housing facility is located.

Sec. 2306.931. ENFORCEMENT; ADOPTION OF RULES. (a) The department shall enforce this subchapter.

(b) The board shall adopt rules to protect the health and safety of persons living in migrant labor housing facilities.

(c) The board by rule shall adopt standards for living quarters at a migrant labor housing facility, including standards relating to:

(1) construction of the facility;
(2) sanitary conditions;
(3) water supply;
(4) toilets;
(5) sewage disposal;
(6) storage, collection, and disposal of refuse;
(7) light and air;
(8) safety requirements;
(9) fire protection;
(10) equipment;
(11) maintenance and operation of the facility; and
(12) any other matter appropriate or necessary for the protection of the health and safety of the occupants.

(d) An employee or occupant of a migrant labor housing facility who uses the sanitary or other facilities furnished for the convenience of employees or occupants shall comply with the rules adopted under Subsection (b) or (c).

(e) The board by rule shall adopt minimum standards for issuing, revoking, or suspending a license issued under this subchapter.

Sec. 2306.932. INJUNCTIVE RELIEF. (a) A district court for good cause shown in a hearing and on application by the department, a migrant agricultural worker, or the worker's representative may grant a temporary or permanent injunction to prohibit a person, including a person who owns or controls a migrant labor housing facility, from violating this subchapter or a rule adopted under this subchapter.

(b) A person subject to a temporary or permanent injunction under Subsection (a) may appeal to the supreme court as in other cases.

Sec. 2306.933. CIVIL PENALTY. (a) A person who violates this subchapter or a rule adopted under this subchapter is subject to a civil penalty of $200 for each day that the violation occurs.

(b) The county attorney for the county in which the violation occurred, or the attorney general, at the request of the department, shall bring an action in the name of the state to collect the penalty.

SUBCHAPTER MM. TEXAS FIRST-TIME HOMEBUYER PROGRAM

Sec. 2306.1071. DEFINITIONS. In this subchapter:

Text of subdivision as added by Acts 2007, 80th Leg., R.S., Ch. 1341, Sec. 2

(1) "First-time homebuyer" means a person who has not owned a home during the three years preceding the date on which an application under this subchapter is filed.

Text of subdivision as added by Acts 2007, 80th Leg., R.S., Ch. 1029, Sec. 1

(1) "First-time homebuyer" means a person who:

(A) resides in this state on the date on which an application is filed; and

(B) has not owned a home during the three years preceding the date on which an application under this subchapter is filed.

(2) "Home" means a dwelling in this state in which a first-time homebuyer intends to reside as the homebuyer's principal residence.

(3) "Mortgage lender" has the meaning assigned by Section 2306.004.

(4) "Program" means the Texas First-Time Homebuyer Program.

Sec. 2306.1072. TEXAS FIRST-TIME HOMEBUYER PROGRAM. (a) The Texas First-Time Homebuyer Program shall facilitate the origination of single-family mortgage loans for eligible first-time homebuyers.

(b) The program may include down payment and closing cost

Sec. 2306.1073. ADMINISTRATION OF PROGRAM; RULES. (a) The department shall administer the program.

(b) The board shall adopt rules governing:

(1) the administration of the program;

(2) the making of loans under the program;

(3) the criteria for approving participating mortgage lenders;

(4) the use of insurance on the loans and the homes financed under the program, as considered appropriate by the board to provide additional security for the loans;

(5) the verification of occupancy of the home by the homebuyer as the homebuyer's principal residence; and

(6) the terms of any contract made with any mortgage lender for processing, originating, servicing, or administering the loans.

Sec. 2306.1074. ELIGIBILITY. (a) To be eligible for a mortgage loan under this subchapter, a homebuyer must:

(1) qualify as a first-time homebuyer under this subchapter;

(2) have an income of not more than 115 percent of area median family income or 140 percent of area median family income in targeted areas; and

(3) meet any additional requirements or limitations prescribed by the department.

(b) To be eligible for a loan under this subchapter to assist a homebuyer with down payment and closing costs, a homebuyer must:

(1) qualify as a first-time homebuyer under this subchapter;

(2) have an income of not more than 80 percent of area median family income; and

(3) meet any additional requirements or limitations prescribed by the department.

(c) The department may contract with other agencies of the state or with private entities to determine whether applicants qualify as first-time homebuyers under this section or otherwise to administer all or part of this section.

Sec. 2306.1075. FEES. The board of directors of the department may set and collect from each applicant any fees the board considers reasonable and necessary to cover the expenses of administering the program.

Sec. 2306.1076. FUNDING. (a) The department shall ensure that a loan under this section is structured in a way that complies with any requirements associated with the source of the funds used for the loan.

(b) In addition to funds set aside for the program under Section 1372.023, the department may solicit and accept funding for the program from gifts and grants for the purposes of this section.

Amended by:

SUBCHAPTER NN. HOUSING AND HEALTH SERVICES COORDINATION COUNCIL

Sec. 2306.1091. DEFINITIONS. (a) In this subchapter, "council" means the housing and health services coordination council.

(b) With the advice and assistance of the council, the department by rule shall define "service-enriched housing" for the purposes of this subchapter.

Sec. 2306.1092. COMPOSITION. (a) The department shall establish a housing and health services coordination council.

(b) The council is composed of 16 members consisting of:

(1) the director;

(2) one representative from each of the following agencies, appointed by the head of that agency:

(A) the Office of Rural Affairs within the Department of Agriculture;

(B) the Texas State Affordable Housing Corporation;

(C) the Health and Human Services Commission;

(D) the Department of Assistive and Rehabilitative Services;

(E) the Department of Aging and Disability Services; and

(F) the Department of State Health Services;

(3) one representative from the Department of Agriculture who is:

(A) knowledgeable about the Texans Feeding Texans and Retire in Texas programs or similar programs; and

(B) appointed by the head of that agency;

(4) one member who is:

(A) a member of the Health and Human Services Commission Promoting Independence Advisory Committee; and

(B) appointed by the governor; and

(5) one representative from each of the following interest groups, appointed by the governor:

(A) financial institutions;

(B) multifamily housing developers;

(C) health services entities;

(D) nonprofit organizations that advocate for affordable housing and consumer-directed long-term services and support;

(E) consumers of service-enriched housing;

(F) advocates for minority issues; and

(G) rural communities.

(c) A member of the council appointed under Subsection (b)(2) must have, subject to the approval of the head of the agency, authority to make decisions for and commit resources of the agency that the member represents and must have:

(1) administrative responsibility for agency programs for older adults or persons with disabilities;

(2) knowledge or experience regarding the implementation of projects that coordinate integrated housing and health services; or

(3) knowledge or experience regarding services used by older adults or persons with disabilities.

(d) The director serves as the presiding officer of the council.

Sec. 2306.1093. TERMS. (a) A member of the council who represents a state agency serves at the pleasure of the head of that agency.

(b) Members of the council who are appointed by the governor serve staggered six-year terms, with the terms of two or three members expiring on September 1 of each odd-numbered year.

Sec. 2306.1094. OPERATION OF COUNCIL. (a) The council shall meet at least quarterly.

(b) The department shall provide clerical and advisory support staff to the council.

(c) Except as provided by Section 2306.1095, Chapter 2110 does not apply to the size, composition, or duration of the council.

Sec. 2306.1095. COMPENSATION AND REIMBURSEMENT. (a) A member of the council who is appointed by the governor may not receive compensation for service on the council. The member may receive reimbursement from the department for actual and necessary expenses incurred in performing council functions as provided by Section 2110.004.

(b) A member of the council who is not appointed by the governor may not receive compensation for service on the council or reimbursement for expenses incurred in performing council functions.

Sec. 2306.1096. DUTIES; BIENNIAL REPORT. (a) The council shall:

(1) develop and implement policies to coordinate and increase state efforts to offer service-enriched housing;

(2) identify barriers preventing or slowing service-enriched housing efforts, including barriers attributable to the following factors:

(A) regulatory requirements and limitations;

(B) administrative limitations;

(C) limitations on funding; and

(D) ineffective or limited coordination;

(3) develop a system to cross-educate selected staff in state housing and health services agencies to increase the number of staff with expertise in both areas and to coordinate relevant staff activities of those agencies;

(4) identify opportunities for state housing and health services agencies to provide technical assistance and training to local housing and health services entities about:

(A) the cross-education of staff;

(B) coordination among those entities; and

(C) opportunities to increase local efforts to create service-enriched housing; and

(5) develop suggested performance measures to track progress in:

(A) the reduction or elimination of barriers in creating service-enriched housing;

(B) increasing the coordination between state housing and health services agencies;

(C) increasing the number of state housing and health services staff who are cross-educated or who have expertise in both housing and health services programs; and

(D) the provision of technical assistance to local communities by state housing and health services staff to increase the number of service-enriched housing projects.

(b) The council shall develop a biennial plan to implement the goals described by Subsection (a).

(c) Not later than August 1 of each even-numbered year, the council shall deliver a report of the council's findings and recommendations to the governor and the Legislative Budget Board.

Sec. 2306.1097. GIFTS AND GRANTS. The council may solicit and accept gifts, grants, and donations for the purposes of this subchapter.

Sec. 2306.1098. DUTIES OF EMPLOYEES PROVIDING ADVISORY SUPPORT TO COUNCIL. Department employees assigned to provide advisory support to the council shall:

(1) identify sources of funding from this state and the federal government that may be used to provide integrated housing and health services;

(2) determine the requirements and application guidelines to obtain those funds;

(3) provide training materials that assist the development and financing of a service-enriched housing project;

(4) provide information regarding:

(A) effective methods to collaborate with governmental entities, service providers, and financial institutions; and

(B) the use of layered financing to provide and finance service-enriched housing;

(5) create a financial feasibility model that assists in making a preliminary determination of the financial viability of proposed service-enriched housing projects, including models that allow a person to analyze multiuse projects that facilitate the development of projects that will:

(A) address the needs of communities with different populations; and

(B) achieve economies of scale required to make the projects financially viable;

(6) facilitate communication between state agencies, sources of funding, service providers, and other entities to reduce or eliminate barriers to service-enriched housing projects;

(7) provide training about local, state, and federal funding sources and the requirements for those sources;

(8) develop a database to identify, describe, monitor, and track the progress of all service-enriched housing projects developed in this state with state or federal financial assistance;

(9) conduct a biennial evaluation and include in the council's report to the governor and the Legislative Budget Board under Section 2306.1096 information regarding:

(A) the capacity of statewide long-term care providers; and

(B) interest by housing developers in investing in service-enriched housing;

(10) to increase the consistency in housing regulations, recommend changes to home and community-based Medicaid waivers that are up for renewal;

(11) research best practices with respect to service-enriched housing projects subsidized by other states; and

(12) create and maintain a clearinghouse of information that contains tools and resources for entities seeking to create or finance service-enriched housing projects.

§42 Internal Revenue Code.

(a) In general. For purposes of section 38, the amount of the low-income housing credit determined under this section for any taxable year in the credit period shall be an amount equal to—

(1) the applicable percentage of

(2) the qualified basis of each qualified low-income building.

(b) Applicable percentage: 70 percent present value credit for certain new buildings; 30 percent present value credit for certain other buildings.

(1) Determination of applicable percentage.

(A [sic]) For purposes of this section, the term "applicable percentage" means, with respect to any building, the appropriate percentage prescribed by the Secretary for the earlier of—

(i) the month in which such building is placed in service, or

(ii) at the election of the taxpayer—

(I) the month in which the taxpayer and the housing credit agency enter into an agreement with respect to such building (which is binding on such agency, the taxpayer, and all successors in interest) as to the housing credit dollar amount to be allocated to such building, or

(II) in the case of any building to which subsection (h)(4)(B) applies, the month in which the tax-exempt obligations are issued.

A month may be elected under clause (ii) only if the election is made not later than the 5th day after the close of such month. Such an election, once made, shall be irrevocable.

(B) Method of prescribing percentages. The percentages prescribed by the Secretary for any month shall be percentages which will yield over a 10-year period amounts of credit under subsection (a) which have a present value equal to—

(i) 70 percent of the qualified basis of a new building which is not federally subsidized for the taxable year, and

(ii) 30 percent of the qualified basis of a building not described in clause (i) .

(C) Method of discounting. The present value under subparagraph (B) shall be determined—

(i) as of the last day of the 1st year of the 10-year period referred to in subparagraph (B) ,

(ii) by using a discount rate equal to 72 percent of the average of the annual Federal mid-term rate and the annual Federal long-term rate applicable under section 1274(d)(1) to the month applicable under clause (i) or (ii) of subparagraph (A) and compounded annually, and

(iii) by assuming that the credit allowable under this section for any year is received on the last day of such year.

(2) Temporary minimum credit rate for non-federally subsidized new buildings. In the case of any new building—

(A) which is placed in service by the taxpayer after the date of the enactment of this paragraph and before December 31, 2013, and

(B) which is not federally subsidized for the taxable year,

the applicable percentage shall not be less than 9 percent.

(3) Cross references.

(A) For treatment of certain rehabilitation expenditures as separate new buildings, see subsection (e).

(B) For determination of applicable percentage for increases in qualified basis after the 1st year of the credit period, see subsection (f)(3) .

(C) For authority of housing credit agency to limit applicable percentage and qualified basis which may be taken into account under this section with respect to any building, see subsection (h)(7).

(c) Qualified basis; qualified low-income building.

For purposes of this section —

(1) Qualified basis.

(A) Determination. The qualified basis of any qualified low-income building for any taxable year is an amount equal to—

(i) the applicable fraction (determined as of the close of such taxable year) of

(ii) the eligible basis of such building (determined under subsection (d)(5)).

(B) Applicable fraction. For purposes of subparagraph (A), the term "applicable fraction" means the smaller of the unit fraction or the floor space fraction.

(C) Unit fraction. For purposes of subparagraph (B), the term "unit fraction" means the fraction—

(i) the numerator of which is the number of low-income units in the building, and

(ii) the denominator of which is the number of residential rental units (whether or not occupied) in such building.

(D) Floor space fraction. For purposes of subparagraph (B), the term "floor space fraction" means the fraction—

(i) the numerator of which is the total floor space of the low-income units in such building, and

(ii) the denominator of which is the total floor space of the residential rental units (whether or not occupied) in such building.

(E) Qualified basis to include portion of building used to provide supportive services for homeless. In the case of a qualified low-income building described in subsection (i)(3)(B)(iii) , the qualified basis of such building for any taxable year shall be increased by the lesser of—

(i) so much of the eligible basis of such building as is used throughout the year to provide supportive services designed to assist tenants in locating and retaining permanent housing, or

(ii) 20 percent of the qualified basis of such building (determined without regard to this subparagraph).

(2) Qualified low-income building.

The term "qualified low-income building" means any building—

(A) which is part of a qualified low-income housing project at all times during the period—

(i) beginning on the 1st day in the compliance period on which such building is part of such a project, and

(ii) ending on the last day of the compliance period with respect to such building, and

(B) to which the amendments made by section 201(a) of the Tax Reform Act of 1986 apply.

(d) Eligible basis.

For purposes of this section —

(1) New buildings. The eligible basis of a new building is its adjusted basis as of the close of the 1st taxable year of the credit period.

(2) Existing buildings.

(A) In general. The eligible basis of an existing building is—

(i) in the case of a building which meets the requirements of subparagraph (B) , its adjusted basis as of the close of the 1st taxable year of the credit period, and

(ii) zero in any other case.

(B) Requirements. A building meets the requirements of this subparagraph if—

(i) the building is acquired by purchase (as defined in section 179(d)(2)),

(ii) there is a period of at least 10 years between the date of its acquisition by the taxpayer and the date the building was last placed in service,

(iii) the building was not previously placed in service by the taxpayer or by any person who was a related person

with respect to the taxpayer as of the time previously placed in service, and

(iv) except as provided in subsection (f)(5) , a credit is allowable under subsection (a) by reason of subsection (e) with respect to the building.

(C) Adjusted basis. For purposes of subparagraph (A), the adjusted basis of any building shall not include so much of the basis of such building as is determined by reference to the basis of other property held at any time by the person acquiring the building.

(D) Special rules for subparagraph (B).

(i) Special rules for certain transfers. For purposes of determining under subparagraph (B)(ii) when a building was last placed in service, there shall not be taken into account any placement in service—

(I) in connection with the acquisition of the building in a transaction in which the basis of the building in the hands of the person acquiring it is determined in whole or in part by reference to the adjusted basis of such building in the hands of the person from whom acquired,

(II) by a person whose basis in such building is determined under section 1014(a) (relating to property acquired from a decedent),

(III) by any governmental unit or qualified nonprofit organization (as defined in subsection (h)(5)) if the requirements of subparagraph (B)(ii) are met with respect to the placement in service by such unit or organization and all the income from such property is exempt from Federal income taxation,

(IV) by any person who acquired such building by foreclosure (or by instrument in lieu of foreclosure) of any purchase-money security interest held by such person if the requirements of subparagraph (B)(ii) are met with respect to the placement in service by such person and such building is resold within 12 months after the date such building is placed in service by such person after such foreclosure, or

(V) of a single-family residence by any individual who owned and used such residence for no other purpose than as his principal residence.

(ii) Related person. For purposes of subparagraph (B)(iii), a person (hereinafter in this subclause referred to as the “related person”) is related to any person if the related person bears a relationship to such person specified in section 267(b) or 707(b)(1) , or the related person and such person are engaged in trades or businesses under common control (within the meaning of subsections (a) and (b) of section 52).

(3) Eligible basis reduced where disproportionate standards for units.

(A) In general. Except as provided in subparagraph (B), the eligible basis of any building shall be reduced by an amount equal to the portion of the adjusted basis of the building which is attributable to residential rental units in the building which are not low-income units and which are above the average quality standard of the low-income units in the building.

(B) Exception where taxpayer elects to exclude excess costs.

(i) In general. Subparagraph (A) shall not apply with respect to a residential rental unit in a building which is not a low-income unit if—

(I) the excess described in clause (ii) with respect to such unit is not greater than 15 percent of the cost described in clause (ii)(II), and

(II) the taxpayer elects to exclude from the eligible basis of such building the excess described in clause (ii) with respect to such unit.

(ii) Excess. The excess described in this clause with respect to any unit is the excess of—

(I) the cost of such unit, over

(II) the amount which would be the cost of such unit if the average cost per square foot of low-income

units in the building were substituted for the cost per square foot of such unit.

The Secretary may by regulation provide for the determination of the excess under this clause on a basis other than square foot costs.

(4) Special rules relating to determination of adjusted basis.

For purposes of this subsection —

(A) In general. Except as provided in subparagraphs (B) and (C), the adjusted basis of any building shall be determined without regard to the adjusted basis of any property which is not residential rental property.

(B) Basis of property in common areas, etc., included. The adjusted basis of any building shall be determined by taking into account the adjusted basis of property (of a character subject to the allowance for depreciation) used in common areas or provided as comparable amenities to all residential rental units in such building.

(C) Inclusion of basis of property used to provide services for certain non-tenants.

(i) In general. The adjusted basis of any building located in a qualified census tract (as defined in paragraph (5)(C)) shall be determined by taking into account the adjusted basis of property (of a character subject to the allowance for depreciation and not otherwise taken into account) used throughout the taxable year in providing any community service facility.

(ii) Limitation. The increase in the adjusted basis of any building which is taken into account by reason of clause (i) shall not exceed the sum of—

(I) 25 percent of so much of the eligible basis of the qualified low-income housing project of which it is a part as does not exceed $15,000,000, plus

(II) 10 percent of so much of the eligible basis of such project as is not taken into account under subclause (I).

For purposes of the preceding sentence, all community service facilities which are part of the same qualified low-income housing project shall be treated as one facility.

(iii) Community service facility. For purposes of this subparagraph , the term “community service facility” means any facility designed to serve primarily individuals whose income is 60 percent or less of area median income (within the meaning of subsection (g)(1)(B)).

(D) No reduction for depreciation. The adjusted basis of any building shall be determined without regard to paragraphs (2) and (3) of section 1016(a).

(5) Special rules for determining eligible basis.

(A) Federal grants not taken into account in determining eligible basis. The eligible basis of a building shall not include any costs financed with the proceeds of a federally funded grant.

(B) Increase in credit for buildings in high cost areas.

(i) In general. In the case of any building located in a qualified census tract or difficult development area which is designated for purposes of this subparagraph —

(I) in the case of a new building, the eligible basis of such building shall be 130 percent of such basis determined without regard to this subparagraph, and

(II) in the case of an existing building, the rehabilitation expenditures taken into account under subsection (e) shall be 130 percent of such expenditures determined without regard to this subparagraph.

(ii) Qualified census tract.

(I) In general. The term “qualified census tract” means any census tract which is designated by the Secretary of Housing and Urban Development and, for the most recent year for which census data are available on household income in such tract, either in which 50 percent or more of the households have an

income which is less than 60 percent of the area median gross income for such year or which has a poverty rate of at least 25 percent. If the Secretary of Housing and Urban Development determines that sufficient data for any period are not available to apply this clause on the basis of census tracts, such Secretary shall apply this clause for such period on the basis of enumeration districts.

(II) Limit on MSA's designated. The portion of a metropolitan statistical area which may be designated for purposes of this subparagraph shall not exceed an area having 20 percent of the population of such metropolitan statistical area.

(III) Determination of areas. For purposes of this clause, each metropolitan statistical area shall be treated as a separate area and all nonmetropolitan areas in a State shall be treated as 1 area.

(iii) Difficult development areas.

(I) In general. The term "difficult development areas" means any area designated by the Secretary of Housing and Urban Development as an area which has high construction, land, and utility costs relative to area median gross income.

(II) Limit on areas designated. The portions of metropolitan statistical areas which may be designated for purposes of this subparagraph shall not exceed an aggregate area having 20 percent of the population of such metropolitan statistical areas. A comparable rule shall apply to nonmetropolitan areas.

(iv) Special rules and definitions. For purposes of this subparagraph —

(I) population shall be determined on the basis of the most recent decennial census for which data are available,

(II) area median gross income shall be determined in accordance with subsection (g)(4),

(III) the term "metropolitan statistical area" has the same meaning as when used in section 143(k)(2)(B), and

(IV) the term "nonmetropolitan area" means any county (or portion thereof) which is not within a metropolitan statistical area.

(v) Buildings designated by State housing credit agency. Any building which is designated by the State housing credit agency as requiring the increase in credit under this subparagraph in order for such building to be financially feasible as part of a qualified low-income housing project shall be treated for purposes of this subparagraph as located in a difficult development area which is designated for purposes of this subparagraph. The preceding sentence shall not apply to any building if paragraph (1) of subsection (h) does not apply to any portion of the eligible basis of such building by reason of paragraph (4) of such subsection.

(6) Credit allowable for certain buildings acquired during 10-year period described in paragraph (2)(B)(ii).

(A) In general. Paragraph (2)(B)(ii) shall not apply to any federally- or State-assisted building.

(B) Buildings acquired from insured depository institutions in default. On application by the taxpayer, the Secretary may waive paragraph (2)(B)(ii) with respect to any building acquired from an insured depository institution in default (as defined in section 3 of the Federal Deposit Insurance Act) or from a receiver or conservator of such an institution.

(C) Federally- or State-assisted building. For purposes of this paragraph —

(i) Federally-assisted building. The term "federally-assisted building" means any building which is substantially assisted, financed, or operated under section 8 of the United States Housing Act of 1937, section 221(d)(3), 221(d)(4), or 236 of the National Housing Act, section 515 of the Housing

Act of 1949, or any other housing program administered by the Department of Housing and Urban Development or by the Rural Housing Service of the Department of Agriculture.

(ii) State-assisted building. The term "State-assisted building" means any building which is substantially assisted, financed, or operated under any State law similar in purposes to any of the laws referred to in clause (i).

(7) Acquisition of building before end of prior compliance period.

(A) In general. Under regulations prescribed by the Secretary, in the case of a building described in subparagraph (B) (or interest therein) which is acquired by the taxpayer—

(i) paragraph (2)(B) shall not apply, but

(ii) the credit allowable by reason of subsection (a) to the taxpayer for any period after such acquisition shall be equal to the amount of credit which would have been allowable under subsection (a) for such period to the prior owner referred to in subparagraph (B) had such owner not disposed of the building.

(B) Description of building. A building is described in this subparagraph if—

(i) a credit was allowed by reason of subsection (a) to any prior owner of such building, and

(ii) the taxpayer acquired such building before the end of the compliance period for such building with respect to such prior owner (determined without regard to any disposition by such prior owner).

(e) Rehabilitation expenditures treated as separate new building.

(1) In general. Rehabilitation expenditures paid or incurred by the taxpayer with respect to any building shall be treated for purposes of this section as a separate new building.

(2) Rehabilitation expenditures.

For purposes of paragraph (1) —

(A) In general. The term "rehabilitation expenditures" means amounts chargeable to capital account and incurred for property (or additions or improvements to property) of a character subject to the allowance for depreciation in connection with the rehabilitation of a building.

(B) Cost of acquisition, etc, not included. Such term does not include the cost of acquiring any building (or interest therein) or any amount not permitted to be taken into account under paragraph (3) or (4) of subsection (d).

(3) Minimum expenditures to qualify.

(A) In general. Paragraph (1) shall apply to rehabilitation expenditures with respect to any building only if—

(i) the expenditures are allocable to 1 or more low-income units or substantially benefit such units, and

(ii) the amount of such expenditures during any 24-month period meets the requirements of whichever of the following subclauses requires the greater amount of such expenditures:

(I) The requirement of this subclause is met if such amount is not less than 20 percent of the adjusted basis of the building (determined as of the 1st day of such period and without regard to paragraphs (2) and (3) of section 1016(a)).

(II) The requirement of this subclause is met if the qualified basis attributable to such amount, when divided by the number of low-income units in the building, is $6,000 or more.

(B) Exception from 10 percent rehabilitation. In the case of a building acquired by the taxpayer from a governmental unit, at the election of the taxpayer, subparagraph (A)(ii)(I) shall not apply and the credit under this section for such rehabilitation expenditures shall be determined using the percentage applicable under subsection (b)(2)(B)(ii).

(C) Date of determination. The determination under subparagraph (A) shall be made as of the close of the 1st taxable year in the credit period with respect to such expenditures.

(D) Inflation adjustment. In the case of any expenditures which are treated under paragraph (4) as placed in service during any calendar year after 2009, the $6,000 amount in subparagraph (A)(ii)(II) shall be increased by an amount equal to—

(i) such dollar amount, multiplied by

(ii) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year by substituting "calendar year 2008" for "calendar year 1992" in subparagraph (B) thereof.

Any increase under the preceding sentence which is not a multiple of $100 shall be rounded to the nearest multiple of $100.

(4) Special rules.

For purposes of applying this section with respect to expenditures which are treated as a separate building by reason of this subsection-

(A) such expenditures shall be treated as placed in service at the close of the 24-month period referred to in paragraph (3)(A), and

(B) the applicable fraction under subsection (c)(1) shall be the applicable fraction for the building (without regard to paragraph (1)) with respect to which the expenditures were incurred.

Nothing in subsection (d)(2) shall prevent a credit from being allowed by reason of this subsection.

(5) No double counting.

Rehabilitation expenditures may, at the election of the taxpayer, be taken into account under this subsection or subsection (d)(2)(A)(i) but not under both such subsections.

(6) Regulations to apply subsection with respect to group of units in building.

The Secretary may prescribe regulations, consistent with the purposes of this subsection, treating a group of units with respect to which rehabilitation expenditures are incurred as a separate new building.

(f) Definition and special rules relating to credit period.

(1) Credit period defined.

For purposes of this section , the term "credit period" means, with respect to any building, the period of 10 taxable years beginning with—

(A) the taxable year in which the building is placed in service, or

(B) at the election of the taxpayer, the succeeding taxable year,

but only if the building is a qualified low-income building as of the close of the 1st year of such period. The election under subparagraph (B), once made, shall be irrevocable.

(2) Special rule for 1st year of credit period.

(A) In general. The credit allowable under subsection (a) with respect to any building for the 1st taxable year of the credit period shall be determined by substituting for the applicable fraction under subsection (c)(1) the fraction—

(i) the numerator of which is the sum of the applicable fractions determined under subsection (c)(1) as of the close of each full month of such year during which such building was in service, and

(ii) the denominator of which is 12.

(B) Disallowed 1st year credit allowed in 11th year. Any reduction by reason of subparagraph (A) in the credit allowable (without regard to subparagraph (A)) for the 1st taxable year of the credit period shall be allowable under subsection (a) for the 1st taxable year following the credit period.

(3) Determination of applicable percentage with respect to increases in qualified basis after 1st year of credit period.

(A) In general. In the case of any building which was a qualified low-income building as of the close of the 1st year of the credit period, if—

(i) as of the close of any taxable year in the compliance period (after the 1st year of the credit period) the qualified basis of such building exceeds

(ii) the qualified basis of such building as of the close of the 1st year of the credit period,

the applicable percentage which shall apply under subsection (a) for the taxable year to such excess shall be the percentage

equal to 2/3 of the applicable percentage which (after the application of subsection (h)) would but for this paragraph apply to such basis.

(B) 1st year computation applies. A rule similar to the rule of paragraph (2)(A) shall apply to any increase in qualified basis to which subparagraph (A) applies for the 1st year of such increase.

(4) Dispositions of property.

If a building (or an interest therein) is disposed of during any year for which credit is allowable under subsection (a) , such credit shall be allocated between the parties on the basis of the number of days during such year the building (or interest) was held by each. In any such case, proper adjustments shall be made in the application of subsection (j).

(5) Credit period for existing buildings not to begin before rehabilitation credit allowed.

(A) In general. The credit period for an existing building shall not begin before the 1st taxable year of the credit period for rehabilitation expenditures with respect to the building.

(B) Acquisition credit allowed for certain buildings not allowed a rehabilitation credit.

(i) In general. In the case of a building described in clause (ii) —

(I) subsection (d)(2)(B)(iv) shall not apply, and

(II) the credit period for such building shall not begin before the taxable year which would be the 1st taxable year of the credit period for rehabilitation expenditures with respect to the building under the modifications described in clause (ii)(II).

(ii) Building described. A building is described in this clause if—

(I) a waiver is granted under subsection (d)(6)(C) with respect to the acquisition of the building, and

(II) a credit would be allowed for rehabilitation expenditures with respect to such building if subsection (e)(3)(A)(ii)(I) did not apply and if the dollar amount in effect under subsection (e)(3)(A)(ii)(II) were two-thirds of such amount.

(g) Qualified low-income housing project.

For purposes of this section —

(1) In general.

The term “qualified low-income housing project” means any project for residential rental property if the project meets the requirements of subparagraph (A) or (B) whichever is elected by the taxpayer:

(A) 20-50 test. The project meets the requirements of this subparagraph if 20 percent or more of the residential units in such project are both rent-restricted and occupied by individuals whose income is 50 percent or less of area median gross income.

(B) 40-60 test. The project meets the requirements of this subparagraph if 40 percent or more of the residential units in such project are both rent-restricted and occupied by individuals whose income is 60 percent or less of area median gross income.

Any election under this paragraph, once made, shall be irrevocable. For purposes of this paragraph, any property shall not be treated as failing to be residential rental property merely because part of the building in which such property is located is used for purposes other than residential rental purposes.

(2) Rent-restricted units.

(A) In general. For purposes of paragraph (1), a residential unit is rent-restricted if the gross rent with respect to such unit does not exceed 30 percent of the imputed income limitation applicable to such unit. For purposes of the preceding sentence, the amount of the income limitation under paragraph (1) applicable for any period shall not be less than such limitation applicable for the earliest period the building (which contains the unit) was included in the determination of whether the project is a qualified low-income housing project.

(B) Gross rent. For purposes of subparagraph (A), gross rent—

(i) does not include any payment under section 8 of the United States Housing Act of 1937 or any comparable rental assistance program (with respect to such unit or occupants thereof),

(ii) includes any utility allowance determined by the Secretary after taking into account such determinations under section 8 of the United States Housing Act of 1937,

(iii) does not include any fee for a supportive service which is paid to the owner of the unit (on the basis of the low-income status of the tenant of the unit) by any governmental program of assistance (or by an organization described in section 501(c)(3) and exempt from tax under section 501(a)) if such program (or organization) provides assistance for rent and the amount of assistance provided for rent is not separable from the amount of assistance provided for supportive services, and

(iv) does not include any rental payment to the owner of the unit to the extent such owner pays an equivalent amount to the Farmers' Home Administration under section 515 of the Housing Act of 1949.

For purposes of clause (iii), the term “supportive service” means any service provided under a planned program of services designed to enable residents of a residential rental property to remain independent and avoid placement in a hospital, nursing home, or intermediate care facility for the mentally or physically handicapped. In the case of a single-room occupancy unit or a building described in subsection (i)(3)(B)(iii), such term includes any service provided to assist tenants in locating and retaining permanent housing.

(C) Imputed income limitation applicable to unit. For purposes of this paragraph , the imputed income limitation applicable to a unit is the income limitation which would apply under paragraph (1) to individuals occupying the unit if the number of individuals occupying the unit were as follows:

(i) In the case of a unit which does not have a separate bedroom, 1 individual.

(ii) In the case of a unit which has 1 or more separate bedrooms, 1.5 individuals for each separate bedroom.

In the case of a project with respect to which a credit is allowable by reason of this section and for which financing is provided by a bond described in section 142(a)(7) , the imputed income limitation shall apply in lieu of the otherwise applicable income limitation for purposes of applying section 142(d)(4)(B)(ii).

(D) Treatment of units occupied by individuals whose incomes rise above limit.

(i) In general. Except as provided in clause (ii), notwithstanding an increase in the income of the occupants of a low-income unit above the income limitation applicable under paragraph (1) , such unit shall continue to be treated as a low-income unit if the income of such occupants initially met such income limitation and such unit continues to be rent-restricted.

(ii) Next available unit must be rented to low-income tenant if income rises above 140 percent of income limit. If the income of the occupants of the unit increases above 140 percent of the income limitation applicable under paragraph (1), clause (i) shall cease to apply to such unit if any residential rental unit in the building (of a size comparable to, or smaller than, such unit) is occupied by a new resident whose income exceeds such income limitation. In the case of a project described in section 142(d)(4)(B), the preceding sentence shall be applied by substituting “170 percent” for “140 percent” and by substituting “any low-income unit in the building is occupied by a new resident whose income exceeds 40 percent of area median gross income” for “any residential unit in the building (of a size comparable to, or smaller than, such unit) is occupied by a new resident whose income exceeds such income limitation”.

(E) Units where federal rental assistance is reduced as tenant's income increases. If the gross rent with respect to a residential

unit exceeds the limitation under subparagraph (A) by reason of the fact that the income of the occupants thereof exceeds the income limitation applicable under paragraph (1), such unit shall, nevertheless, be treated as a rent-restricted unit for purposes of paragraph (1) if—

(i) a Federal rental assistance payment described in subparagraph (B)(i) is made with respect to such unit or its occupants, and

(ii) the sum of such payment and the gross rent with respect to such unit does not exceed the sum of the amount of such payment which would be made and the gross rent which would be payable with respect to such unit if—

(I) the income of the occupants thereof did not exceed the income limitation applicable under paragraph (1), and

(II) such units were rent-restricted within the meaning of subparagraph (A).

The preceding sentence shall apply to any unit only if the result described in clause (ii) is required by Federal statute as of the date of the enactment of this subparagraph and as of the date the Federal rental assistance payment is made.

(3) Date for meeting requirements.

(A) In general. Except as otherwise provided in this paragraph, a building shall be treated as a qualified low-income building only if the project (of which such building is a part) meets the requirements of paragraph (1) not later than the close of the 1st year of the credit period for such building.

(B) Buildings which rely on later buildings for qualification.

(i) In general. In determining whether a building (hereinafter in this subparagraph referred to as the "prior building") is a qualified low-income building, the taxpayer may take into account 1 or more additional buildings placed in service during the 12-month period described in subparagraph (A) with respect to the prior building only if the taxpayer elects to apply clause (ii) with respect to each additional building taken into account.

(ii) Treatment of elected buildings. In the case of a building which the taxpayer elects to take into account under clause (i) , the period under subparagraph (A) for such building shall end at the close of the 12-month period applicable to the prior building.

(iii) Date prior building is treated as placed in service. For purposes of determining the credit period and the compliance period for the prior building, the prior building shall be treated for purposes of this section as placed in service on the most recent date any additional building elected by the taxpayer (with respect to such prior building) was placed in service.

(C) Special rule. A building—

(i) other than the 1st building placed in service as part of a project, and

(ii) other than a building which is placed in service during the 12-month period described in subparagraph (A) with respect to a prior building which becomes a qualified low-income building,

shall in no event be treated as a qualified low-income building unless the project is a qualified low-income housing project (without regard to such building) on the date such building is placed in service.

(D) Projects with more than 1 building must be identified. For purposes of this section, a project shall be treated as consisting of only 1 building unless, before the close of the 1st calendar year in the project period (as defined in subsection (h)(1)(F)(ii)), each building which is (or will be) part of such project is identified in such form and manner as the Secretary may provide.

(4) Certain rules made applicable.

Paragraphs (2) (other than subparagraph (A) thereof), (3) , (4) , (5) , (6) , and (7) of section 142(d) , and section 6652(j) , shall apply for purposes of determining whether any project is a qualified low-income housing project and whether any unit is a low-income unit; except that, in applying such provisions for such purposes, the term "gross rent" shall have the

meaning given such term by paragraph (2)(B) of this subsection

(5) Election to treat building after compliance period as not part of a project.

For purposes of this section, the taxpayer may elect to treat any building as not part of a qualified low-income housing project for any period beginning after the compliance period for such building.

(6) Special rule where de minimis equity contribution.

Property shall not be treated as failing to be residential rental property for purposes of this section merely because the occupant of a residential unit in the project pays (on a voluntary basis) to the lessor a de minimis amount to be held toward the purchase by such occupant of a residential unit in such project if—

(A) all amounts so paid are refunded to the occupant on the cessation of his occupancy of a unit in the project, and

(B) the purchase of the unit is not permitted until after the close of the compliance period with respect to the building in which the unit is located.

Any amount paid to the lessor as described in the preceding sentence shall be included in gross rent under paragraph (2) for purposes of determining whether the unit is rent-restricted.

(7) Scattered site projects.

Buildings which would (but for their lack of proximity) be treated as a project for purposes of this section shall be so treated if all of the dwelling units in each of the buildings are rent-restricted (within the meaning of paragraph (2)) residential rental units.

(8) Waiver of certain de minimis errors and recertifications.

On application by the taxpayer, the Secretary may waive—

(A) any recapture under subsection (j) in the case of any de minimis error in complying with paragraph (1), or

(B) any annual recertification of tenant income for purposes of this subsection, if the entire building is occupied by low-income tenants.

(9) Clarification of general public use requirement.

A project does not fail to meet the general public use requirement solely because of occupancy restrictions or preferences that favor tenants—

(A) with special needs,

(B) who are members of a specified group under a Federal program or State program or policy that supports housing for such a specified group, or

(C) who are involved in artistic or literary activities.

(h) Limitation on aggregate credit allowable with respect to projects located in a state.

(1) Credit may not exceed credit amount allocated to building.

(A) In general. The amount of the credit determined under this section for any taxable year with respect to any building shall not exceed the housing credit dollar amount allocated to such building under this subsection.

(B) Time for making allocation. Except in the case of an allocation which meets the requirements of subparagraph (C), (D), (E), or (F) an allocation shall be taken into account under subparagraph (A) only if it is made not later than the close of the calendar year in which the building is placed in service.

(C) Exception where binding commitment. An allocation meets the requirements of this subparagraph if there is a binding commitment (not later than the close of the calendar year in which the building is placed in service) by the housing credit agency to allocate a specified housing credit dollar amount to such building beginning in a specified later taxable year.

(D) Exception where increase in qualified basis.

(i) In general. An allocation meets the requirements of this subparagraph if such allocation is made not later than the close of the calendar year in which ends the taxable year to which it will 1st apply but only to the extent the amount

of such allocation does not exceed the limitation under clause (ii).

(ii) Limitation. The limitation under this clause is the amount of credit allowable under this section (without regard to this subsection) for a taxable year with respect to an increase in the qualified basis of the building equal to the excess of—

(I) the qualified basis of such building as of the close of the 1st taxable year to which such allocation will apply, over

(II) the qualified basis of such building as of the close of the 1st taxable year to which the most recent prior housing credit allocation with respect to such building applied.

(iii) Housing credit dollar amount reduced by full allocation. Notwithstanding clause (i), the full amount of the allocation shall be taken into account under paragraph (2).

(E) Exception where 10 percent of cost incurred.

(i) In general. An allocation meets the requirements of this subparagraph if such allocation is made with respect to a qualified building which is placed in service not later than the close of the second calendar year following the calendar year in which the allocation is made.

(ii) Qualified building. For purposes of clause (i), the term “qualified building” means any building which is part of a project if the taxpayer's basis in such project (as of the date which is 1 year after the date that the allocation was made) is more than 10 percent of the taxpayer's reasonably expected basis in such project (as of the close of the second calendar year referred to in clause (i)). Such term does not include any existing building unless a credit is allowable under subsection (e) for rehabilitation expenditures paid or incurred by the taxpayer with respect to such building for a taxable year ending during the second calendar year referred to in clause (i) or the prior taxable year.

(F) Allocation of credit on a project basis.

(i) In general. In the case of a project which includes (or will include) more than 1 building, an allocation meets the requirements of this subparagraph if—

(I) the allocation is made to the project for a calendar year during the project period,

(II) the allocation only applies to buildings placed in service during or after the calendar year for which the allocation is made, and

(III) the portion of such allocation which is allocated to any building in such project is specified not later than the close of the calendar year in which the building is placed in service.

(ii) Project period. For purposes of clause (i), the term “project period” means the period—

(I) beginning with the 1st calendar year for which an allocation may be made for the 1st building placed in service as part of such project, and

(II) ending with the calendar year the last building is placed in service as part of such project.

(2) Allocated credit amount to apply to all taxable years ending during or after credit allocation year.

Any housing credit dollar amount allocated to any building for any calendar year—

(A) shall apply to such building for all taxable years in the compliance period ending during or after such calendar year, and

(B) shall reduce the aggregate housing credit dollar amount of the allocating agency only for such calendar year.

(3) Housing credit dollar amount for agencies.

(A) In general. The aggregate housing credit dollar amount which a housing credit agency may allocate for any calendar year is the portion of the State housing credit ceiling allocated under this paragraph for such calendar year to such agency.

(B) State ceiling initially allocated to state housing credit agencies. Except as provided in subparagraphs (D) and (E), the State housing credit ceiling for each calendar year shall be allocated to the housing credit agency of such State. If there is more than 1 housing credit agency of a State, all such agencies shall be treated as a single agency.

(C) State housing credit ceiling. The State housing credit ceiling applicable to any State for any calendar year shall be an amount equal to the sum of—

(i) the unused State housing credit ceiling (if any) of such State for the preceding calendar year,

(ii) the greater of—

(I) $1.75 ($1.50 for 2001) multiplied by the State population, or

(II) $2,000,000,

(iii) the amount of State housing credit ceiling returned in the calendar year, plus

(iv) the amount (if any) allocated under subparagraph (D) to such State by the Secretary.

For purposes of clause (i), the unused State housing credit ceiling for any calendar year is the excess (if any) of the sum of the amounts described in clauses (ii) through (iv) over the aggregate housing credit dollar amount allocated for such year. For purposes of clause (iii), the amount of State housing credit ceiling returned in the calendar year equals the housing credit dollar amount previously allocated within the State to any project which fails to meet the 10 percent test under paragraph (1)(E)(ii) on a date after the close of the calendar year in which the allocation was made or which does not become a qualified low-income housing project within the period required by this section or the terms of the allocation or to any project with respect to which an allocation is cancelled by mutual consent of the housing credit agency and the allocation recipient.

(D) Unused housing credit carryovers allocated among certain states.

(i) In general. The unused housing credit carryover of a State for any calendar year shall be assigned to the Secretary for allocation among qualified States for the succeeding calendar year.

(ii) Unused housing credit carryover. For purposes of this subparagraph, the unused housing credit carryover of a State for any calendar year is the excess (if any) of—

(I) the unused State housing credit ceiling for the year preceding such year, over

(II) the aggregate housing credit dollar amount allocated for such year.

(iii) Formula for allocation of unused housing credit carryovers among qualified states. The amount allocated under this subparagraph to a qualified State for any calendar year shall be the amount determined by the Secretary to bear the same ratio to the aggregate unused housing credit carryovers of all States for the preceding calendar year as such State's population for the calendar year bears to the population of all qualified States for the calendar year. For purposes of the preceding sentence, population shall be determined in accordance with section 146(j).

(iv) Qualified State. For purposes of this subparagraph, the term “qualified State” means, with respect to a calendar year, any State—

(I) which allocated its entire State housing credit ceiling for the preceding calendar year, and

(II) for which a request is made (not later than May 1 of the calendar year) to receive an allocation under clause (iii).

(E) Special rule for states with constitutional home rule cities. For purposes of this subsection —

(i) In general. The aggregate housing credit dollar amount for any constitutional home rule city for any calendar year shall be an amount which bears the same ratio to the State housing credit ceiling for such calendar year as—

(I) the population of such city, bears to

(II) the population of the entire State.

(ii) Coordination with other allocations. In the case of any State which contains 1 or more constitutional home rule cities, for purposes of applying this paragraph with respect to housing credit agencies in such State other than constitutional home rule cities, the State housing credit ceiling for any calendar year shall be reduced by the aggregate housing credit dollar amounts determined for such year for all constitutional home rule cities in such State.

(iii) Constitutional home rule city. For purposes of this paragraph, the term "constitutional home rule city" has the meaning given such term by section 146(d)(3)(C).

(F) State may provide for different allocation. Rules similar to the rules of section 146(e) (other than paragraph (2)(B) thereof) shall apply for purposes of this paragraph.

(G) Population. For purposes of this paragraph, population shall be determined in accordance with section 146(j).

(H) Cost-of-living adjustment.

(i) In general. In the case of a calendar year after 2002, the $2,000,000 and $1.75 amounts in subparagraph (C) shall each be increased by an amount equal to—

(I) such dollar amount, multiplied by

(II) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year by substituting "calendar year 2001" for "calendar year 1992" in subparagraph (B) thereof.

(ii) Rounding.

(I) In the case of the $2,000,000 amount, any increase under clause (i) which is not a multiple of $5,000 shall be rounded to the next lowest multiple of $5,000.

(II) In the case of the $1.75 amount, any increase under clause (i) which is not a multiple of 5 cents shall be rounded to the next lowest multiple of 5 cents.

(I) Increase in State housing credit ceiling for 2008 and 2009. In the case of calendar years 2008 and 2009—

(i) the dollar amount in effect under subparagraph (C)(ii)(I) for such calendar year (after any increase under subparagraph (H)) shall be increased by $0.20, and

(ii) the dollar amount in effect under subparagraph (C)(ii)(II) for such calendar year (after any increase under subparagraph (H)) shall be increased by an amount equal to 10 percent of such dollar amount (rounded to the next lowest multiple of $5,000).

(4) Credit for buildings financed by tax-exempt bonds subject to volume cap not taken into account.

(A) In general. Paragraph (1) shall not apply to the portion of any credit allowable under subsection (a) which is attributable to eligible basis financed by any obligation the interest on which is exempt from tax under section 103 if —

(i) such obligation is taken into account under section 146, and

(ii) principal payments on such financing are applied within a reasonable period to redeem obligations the proceeds of which were used to provide such financing or such financing is refunded as described in section 146(i)(6).

(B) Special rule where 50 percent or more of building is financed with tax-exempt bonds subject to volume cap. For purposes of subparagraph (A) , if 50 percent or more of the aggregate basis of any building and the land on which the building is located is financed by any obligation described in subparagraph (A) , paragraph (1) shall not apply to any portion of the credit allowable under subsection (a) with respect to such building.

(5) Portion of state ceiling set-aside for certain projects involving qualified nonprofit organizations.

(A) In general. Not more than 90 percent of the State housing credit ceiling for any State for any calendar year shall be allocated to projects other than qualified low-income housing projects described in subparagraph (B).

(B) Projects involving qualified nonprofit organizations. For purposes of subparagraph (A), a qualified low-income housing project is described in this subparagraph if a qualified nonprofit organization is to own an interest in the project (directly or through a partnership) and materially participate (within the meaning of section 469(h)) in the development and operation of the project throughout the compliance period.

(C) Qualified nonprofit organization. For purposes of this paragraph, the term "qualified nonprofit organization" means any organization if—

(i) such organization is described in paragraph (3) or (4) of section 501(c) and is exempt from tax under section 501(a),

(ii) such organization is determined by the State housing credit agency not to be affiliated with or controlled by a for-profit organization; and

(iii) 1 of the exempt purposes of such organization includes the fostering of low-income housing.

(D) Treatment of certain subsidiaries.

(i) In general. For purposes of this paragraph, a qualified nonprofit organization shall be treated as satisfying the ownership and material participation test of subparagraph (B) if any qualified corporation in which such organization holds stock satisfies such test.

(ii) Qualified corporation. For purposes of clause (i) , the term "qualified corporation" means any corporation if 100 percent of the stock of such corporation is held by 1 or more qualified nonprofit organizations at all times during the period such corporation is in existence.

(E) State may not override set-aside. Nothing in subparagraph (F) of paragraph (3) shall be construed to permit a State not to comply with subparagraph (A) of this paragraph.

(6) Buildings eligible for credit only if minimum long-term commitment to low-income housing.

(A) In general. No credit shall be allowed by reason of this section with respect to any building for the taxable year unless an extended low-income housing commitment is in effect as of the end of such taxable year.

(B) Extended low-income housing commitment. For purposes of this paragraph , the term "extended low-income housing commitment" means any agreement between the taxpayer and the housing credit agency—

(i) which requires that the applicable fraction (as defined in subsection (c)(1)) for the building for each taxable year in the extended use period will not be less than the applicable fraction specified in such agreement and which prohibits the actions described in subclauses (I) and (II) of subparagraph (E)(ii),

(ii) which allows individuals who meet the income limitation applicable to the building under subsection (g) (whether prospective, present, or former occupants of the building) the right to enforce in any State court the requirement and prohibitions of clause (i),

(iii) which prohibits the disposition to any person of any portion of the building to which such agreement applies unless all of the building to which such agreement applies is disposed of to such person,

(iv) which prohibits the refusal to lease to a holder of a voucher or certificate of eligibility under section 8 of the United States Housing Act of 1937 because of the status of the prospective tenant as such a holder,

(v) which is binding on all successors of the taxpayer, and

(vi) which, with respect to the property, is recorded pursuant to State law as a restrictive covenant.

(C) Allocation of credit may not exceed amount necessary to support commitment.

(i) In general. The housing credit dollar amount allocated to any building may not exceed the amount necessary to support the applicable fraction specified in the extended low-income housing commitment for such building, including any increase in such fraction pursuant to the application of subsection (f)(3) if such increase is reflected in an amended low-income housing commitment.

(ii) Buildings financed by tax-exempt bonds. If paragraph (4) applies to any building the amount of credit allowed in any taxable year may not exceed the amount necessary to support the applicable fraction specified in the extended low-income housing commitment for such building. Such commitment may be amended to increase such fraction.

(D) Extended use period. For purposes of this paragraph , the term “extended use period” means the period—

(i) beginning on the 1st day in the compliance period on which such building is part of a qualified low-income housing project, and

(ii) ending on the later of—

(I) the date specified by such agency in such agreement, or

(II) the date which is 15 years after the close of the compliance period.

(E) Exceptions if foreclosure or if no buyer willing to maintain low-income status.

(i) In general. The extended use period for any building shall terminate—

(I) on the date the building is acquired by foreclosure (or instrument in lieu of foreclosure) unless the Secretary determines that such acquisition is part of an arrangement with the taxpayer a purpose of which is to terminate such period, or

(II) on the last day of the period specified in subparagraph (I) if the housing credit agency is unable to present during such period a qualified contract for the acquisition of the low-income portion of the building by any person who will continue to operate such portion as a qualified low-income building.

Subclause (II) shall not apply to the extent more stringent requirements are provided in the agreement or in State law.

(ii) Eviction, etc. of existing low-income tenants not permitted. The termination of an extended use period under clause (i) shall not be construed to permit before the close of the 3-year period following such termination—

(I) the eviction or the termination of tenancy (other than for good cause) of an existing tenant of any low-income unit, or

(II) any increase in the gross rent with respect to such unit not otherwise permitted under this section .

(F) Qualified contract. For purposes of subparagraph (E), the term “qualified contract” means a bona fide contract to acquire (within a reasonable period after the contract is entered into) the non low-income portion of the building for fair market value and the low-income portion of the building for an amount not less than the applicable fraction (specified in the extended low-income housing commitment) of—

(i) the sum of—

(I) the outstanding indebtedness secured by, or with respect to, the building,

(II) the adjusted investor equity in the building, plus

(III) other capital contributions not reflected in the amounts described in subclause (I) or (II), reduced by

(ii) cash distributions from (or available for distribution from) the project.

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out this paragraph , including regulations to prevent the manipulation of the amount determined under the preceding sentence.

(G) Adjusted investor equity.

(i) In general. For purposes of subparagraph (E), the term “adjusted investor equity” means, with respect to any calendar year, the aggregate amount of cash taxpayers invested with respect to the project increased by the amount equal to—

(I) such amount, multiplied by

(II) the cost-of-living adjustment for such calendar year, determined under section 1(f)(3) by substituting the base calendar year for “calendar year 1987”.

An amount shall be taken into account as an investment in the project only to the extent there was an obligation to invest such amount as of the beginning of the credit period and to the extent such amount is reflected in the adjusted basis of the project.

(ii) Cost-of-living increases in excess of 5 percent not taken into account. Under regulations prescribed by the Secretary, if the CPI for any calendar year (as defined in section 1(f)(4)) exceeds the CPI for the preceding calendar year by more than 5 percent, the CPI for the base calendar year shall be increased such that such excess shall never be taken into account under clause (i) .

(iii) Base calendar year. For purposes of this subparagraph, the term “base calendar year” means the calendar year with or within which the 1st taxable year of the credit period ends.

(H) Low-income portion. For purposes of this paragraph, the low-income portion of a building is the portion of such building equal to the applicable fraction specified in the extended low-income housing commitment for the building.

(I) Period for finding buyer. The period referred to in this subparagraph is the 1-year period beginning on the date (after the 14th year of the compliance period) the taxpayer submits a written request to the housing credit agency to find a person to acquire the taxpayer's interest in the low-income portion of the building.

(J) Effect of noncompliance. If, during a taxable year, there is a determination that an extended low-income housing agreement was not in effect as of the beginning of such year, such determination shall not apply to any period before such year and subparagraph (A) shall be applied without regard to such determination if the failure is corrected within 1 year from the date of the determination.

(K) Projects which consist of more than 1 building. The application of this paragraph to projects which consist of more than 1 building shall be made under regulations prescribed by the Secretary.

(7) Special rules.

(A) Building must be located within jurisdiction of credit agency. A housing credit agency may allocate its aggregate housing credit dollar amount only to buildings located in the jurisdiction of the governmental unit of which such agency is a part.

(B) Agency allocations in excess of limit. If the aggregate housing credit dollar amounts allocated by a housing credit agency for any calendar year exceed the portion of the State housing credit ceiling allocated to such agency for such calendar year, the housing credit dollar amounts so allocated shall be reduced (to the extent of such excess) for buildings in the reverse of the order in which the allocations of such amounts were made.

(C) Credit reduced if allocated credit dollar amount is less than credit which would be allowable without regard to placed in service convention, etc.

(i) In general. The amount of the credit determined under this section with respect to any building shall not exceed the clause (ii) percentage of the amount of the credit which would (but for this subparagraph) be determined under this section with respect to such building.

(ii) Determination of percentage. For purposes of clause (i), the clause (ii) percentage with respect to any building is the percentage which—

(I) the housing credit dollar amount allocated to such building bears to

(II) the credit amount determined in accordance with clause (iii).

(iii) Determination of credit amount. The credit amount determined in accordance with this clause is the amount of the credit which would (but for this subparagraph) be determined under this section with respect to the building if—

(I) this section were applied without regard to paragraphs (2)(A) and (3)(B) of subsection (f), and

(II) subsection (f)(3)(A) were applied without regard to "the percentage equal to 2/3 of".

(D) Housing credit agency to specify applicable percentage and maximum qualified basis. In allocating a housing credit dollar amount to any building, the housing credit agency shall specify the applicable percentage and the maximum qualified basis which may be taken into account under this section with respect to such building. The applicable percentage and maximum qualified basis so specified shall not exceed the applicable percentage and qualified basis determined under this section without regard to this subsection.

(8) Other definitions.

For purposes of this subsection —

(A) Housing credit agency. The term "housing credit agency" means any agency authorized to carry out this subsection.

(B) Possessions treated as states. The term "State" includes a possession of the United States.

(i) Definitions and special rules.

For purposes of this section —

(1) Compliance period.

The term "compliance period" means, with respect to any building, the period of 15 taxable years beginning with the 1st taxable year of the credit period with respect thereto.

(2) Determination of whether building is federally subsidized.

(A) In general. Except as otherwise provided in this paragraph, for purposes of subsection (b)(1), a new building shall be treated as federally subsidized for any taxable year if, at any time during such taxable year or any prior taxable year, there is or was outstanding any obligation the interest on which is exempt from tax under section 103 the proceeds of which are or were used (directly or indirectly) with respect to such building or the operation thereof.

(B) Election to reduce eligible basis by proceeds of obligations. A tax-exempt obligation shall not be taken into account under subparagraph (A) if the taxpayer elects to exclude from the eligible basis of the building for purposes of subsection (d) the proceeds of such obligation.

(C) Special rule for subsidized construction financing. Subparagraph (A) shall not apply to any tax-exempt obligation used to provide construction financing for any building if—

(i) such obligation (when issued) identified the building for which the proceeds of such obligation would be used, and

(ii) such obligation is redeemed before such building is placed in service.

(3) Low-income unit.

(A) In general. The term "low-income unit" means any unit in a building if—

(i) such unit is rent-restricted (as defined in subsection (g)(2)), and

(ii) the individuals occupying such unit meet the income limitation applicable under subsection (g)(1) to the project of which such building is a part.

(B) Exceptions.

(i) In general. A unit shall not be treated as a low-income unit unless the unit is suitable for occupancy and used other than on a transient basis.

(ii) Suitability for occupancy. For purposes of clause (i), the suitability of a unit for occupancy shall be determined under regulations prescribed by the Secretary taking into account local health, safety, and building codes.

(iii) Transitional housing for homeless. For purposes of clause (i), a unit shall be considered to be used other than on a transient basis if the unit contains sleeping accommodations and

kitchen and bathroom facilities and is located in a building—

(I) which is used exclusively to facilitate the transition of homeless individuals (within the meaning of section 103 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11302), as in effect on the date of the enactment of this clause) to independent living within 24 months, and

(II) in which a governmental entity or qualified nonprofit organization (as defined in subsection (h)(5)) provides such individuals with temporary housing and supportive services designed to assist such individuals in locating and retaining permanent housing.

(iv) Single-room occupancy units. For purposes of clause (i), a single-room occupancy unit shall not be treated as used on a transient basis merely because it is rented on a month-by-month basis.

(C) Special rule for buildings having 4 or fewer units. In the case of any building which has 4 or fewer residential rental units, no unit in such building shall be treated as a low-income unit if the units in such building are owned by—

(i) any individual who occupies a residential unit in such building, or

(ii) any person who is related (as defined in subsection (d)(2)(D)(iii)) to such individual.

(D) Certain students not to disqualify unit. A unit shall not fail to be treated as a low-income unit merely because it is occupied—

(i) by an individual who is—

(I) a student and receiving assistance under title IV of the Social Security Act,

(II) a student who was previously under the care and placement responsibility of the State agency responsible for administering a plan under part B or part E of title IV of the Social Security Act, or

(III) enrolled in a job training program receiving assistance under the Job Training Partnership Act or under other similar Federal, State, or local laws, or

(ii) entirely by full-time students if such students are—

(I) single parents and their children and such parents are not dependents (as defined in section 152 , determined without regard to subsections (b)(1) , (b)(2) , and (d)(1)(B) thereof) of another individual and such children are not dependents (as so defined) of another individual other than a parent of such children, or. [sic,]

(II) married and file a joint return.

(E) Owner-occupied buildings having 4 or fewer units eligible for credit where development plan.

(i) In general. Subparagraph (C) shall not apply to the acquisition or rehabilitation of a building pursuant to a development plan of action sponsored by a State or local government or a qualified nonprofit organization (as defined in subsection (h)(5)(C)).

(ii) Limitation on credit. In the case of a building to which clause (i) applies, the applicable fraction shall not exceed 80 percent of the unit fraction.

(iii) Certain unrented units treated as owner-occupied. In the case of a building to which clause (i) applies, any unit which is not rented for 90 days or more shall be treated as occupied by the owner of the building as of the 1st day it is not rented.

(4) New building.

The term “new building” means a building the original use of which begins with the taxpayer.

(5) Existing building.

The term “existing building” means any building which is not a new building.

(6) Application to estates and trusts.

In the case of an estate or trust, the amount of the credit determined under subsection (a) and any increase in tax under subsection (j) shall be apportioned between the estate or trust and the

beneficiaries on the basis of the income of the estate or trust allocable to each.

(7) Impact of tenant's right of 1st refusal to acquire property.

(A) In general. No Federal income tax benefit shall fail to be allowable to the taxpayer with respect to any qualified low-income building merely by reason of a right of 1st refusal held by the tenants (in cooperative form or otherwise) or resident management corporation of such building or by a qualified nonprofit organization (as defined in subsection (h)(5)(C)) or government agency to purchase the property after the close of the compliance period for a price which is not less than the minimum purchase price determined under subparagraph (B).

(B) Minimum purchase price. For purposes of subparagraph (A), the minimum purchase price under this subparagraph is an amount equal to the sum of—

(i) the principal amount of outstanding indebtedness secured by the building (other than indebtedness incurred within the 5-year period ending on the date of the sale to the tenants), and

(ii) all Federal, State, and local taxes attributable to such sale.

Except in the case of Federal income taxes, there shall not be taken into account under clause (ii) any additional tax attributable to the application of clause (ii).

(8) Treatment of rural projects.

For purposes of this section , in the case of any project for residential rental property located in a rural area (as defined in section 520 of the Housing Act of 1949), any income limitation measured by reference to area median gross income shall be measured by reference to the greater of area median gross income or national non-metropolitan median income. The preceding sentence shall not apply with respect to any building if paragraph (1) of section 42(h) does not apply by reason of paragraph (4) thereof to any portion of the credit determined under this section with respect to such building.

(9) Coordination with low-income housing grants.

(A) Reduction in state housing credit ceiling for low-income housing grants received in 2009. For purposes of this section, the amounts described in clauses (i) through (iv) of subsection (h)(3)(C) with respect to any State for 2009 shall each be reduced by so much of such amount as is taken into account in determining the amount of any grant to such State under section 1602 of the American Recovery and Reinvestment Tax Act of 2009.

(B) Special rule for basis. Basis of a qualified low-income building shall not be reduced by the amount of any grant described in subparagraph (A).

(j) Recapture of credit.

(1) In general.

If—

(A) as of the close of any taxable year in the compliance period, the amount of the qualified basis of any building with respect to the taxpayer is less than

(B) the amount of such basis as of the close of the preceding taxable year,

then the taxpayer's tax under this chapter for the taxable year shall be increased by the credit recapture amount.

(2) Credit recapture amount.

For purposes of paragraph (1), the credit recapture amount is an amount equal to the sum of—

(A) the aggregate decrease in the credits allowed to the taxpayer under section 38 for all prior taxable years which would have resulted if the accelerated portion of the credit allowable by reason of this section were not allowed for all prior taxable years with respect to the excess of the amount described in paragraph (1)(B) over the amount described in paragraph (1)(A), plus

(B) interest at the overpayment rate established under section 6621 on the amount determined under subparagraph (A) for each prior taxable year for the period beginning on the due date for filing the return for the prior taxable year involved.

No deduction shall be allowed under this chapter for interest described in subparagraph (B).

(3) Accelerated portion of credit.

For purposes of paragraph (2), the accelerated portion of the credit for the prior taxable years with respect to any amount of basis is the excess of—

(A) the aggregate credit allowed by reason of this section (without regard to this subsection) for such years with respect to such basis, over

(B) the aggregate credit which would be allowable by reason of this section for such years with respect to such basis if the aggregate credit which would (but for this subsection) have been allowable for the entire compliance period were allowable ratably over 15 years.

(4) Special rules.

(A) Tax benefit rule. The tax for the taxable year shall be increased under paragraph (1) only with respect to credits allowed by reason of this section which were used to reduce tax liability. In the case of credits not so used to reduce tax liability, the carryforwards and carrybacks under section 39 shall be appropriately adjusted.

(B) Only basis for which credit allowed taken into account. Qualified basis shall be taken into account under paragraph (1)(B) only to the extent such basis was taken into account in determining the credit under subsection (a) for the preceding taxable year referred to in such paragraph.

(C) No recapture of additional credit allowable by reason of subsection (f)(3). Paragraph (1) shall apply to a decrease in qualified basis only to the extent such decrease exceeds the amount of qualified basis with respect to which a credit was allowable for the taxable year referred to in paragraph (1)(B) by reason of subsection (f)(3).

(D) No credits against tax. Any increase in tax under this subsection shall not be treated as a tax imposed by this chapter for purposes of determining the amount of any credit under this chapter.

(E) No recapture by reason of casualty loss. The increase in tax under this subsection shall not apply to a reduction in qualified basis by reason of a casualty loss to the extent such loss is restored by reconstruction or replacement within a reasonable period established by the Secretary.

(F) No recapture where de minimis changes in floor space. The Secretary may provide that the increase in tax under this subsection shall not apply with respect to any building if—

(i) such increase results from a de minimis change in the floor space fraction under subsection (c)(1), and

(ii) the building is a qualified low-income building after such change.

(5) Certain partnerships treated as the taxpayer.

(A) In general. For purposes of applying this subsection to a partnership to which this paragraph applies—

(i) such partnership shall be treated as the taxpayer to which the credit allowable under subsection (a) was allowed,

(ii) the amount of such credit allowed shall be treated as the amount which would have been allowed to the partnership were such credit allowable to such partnership,

(iii) paragraph (4)(A) shall not apply, and

(iv) the amount of the increase in tax under this subsection for any taxable year shall be allocated among the partners of such partnership in the same manner as such partnership's taxable income for such year is allocated among such partners.

(B) Partnerships to which paragraph applies. This paragraph shall apply to any partnership which has 35 or more partners unless the partnership elects not to have this paragraph apply.

(C) Special rules.

(i) Husband and wife treated as 1 partner. For purposes of subparagraph (B)(i), a husband and wife (and their estates) shall be treated as 1 partner.

(ii) Election irrevocable. Any election under subparagraph (B), once made, shall be irrevocable.

(6) No recapture on disposition of building which continues in qualified use.

(A) In general. The increase in tax under this subsection shall not apply solely by reason of the disposition of a building (or an interest therein) if it is reasonably expected that such building will continue to be operated as a qualified low-income building for the remaining compliance period with respect to such building.

(B) Statute of limitations. If a building (or an interest therein) is disposed of during any taxable year and there is any reduction in the qualified basis of such building which results in an increase in tax under this subsection for such taxable or any subsequent taxable year, then—

(i) the statutory period for the assessment of any deficiency with respect to such increase in tax shall not expire before the expiration of 3 years from the date the Secretary is notified by the taxpayer (in such manner as the Secretary may prescribe) of such reduction in qualified basis, and

(ii) such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment.

(k) Application of at-risk rules.

For purposes of this section —

(1) In general.

Except as otherwise provided in this subsection , rules similar to the rules of section 49(a)(*1*) (other than subparagraphs (D)(ii)(II) and (D)(iv)(I) thereof), section 49(a)(2), and section 49(b)(1) shall apply in determining the qualified basis of any building in the same manner as such sections apply in determining the credit base of property.

(2) Special rules for determining qualified person.

For purposes of paragraph (1) —

(A) In general. If the requirements of subparagraphs (B), (C), and (D) are met with respect to any financing borrowed from a qualified nonprofit organization (as defined in subsection (h)(5)), the determination of whether such financing is qualified commercial financing with respect to any qualified low-income building shall be made without regard to whether such organization—

(i) is actively and regularly engaged in the business of lending money, or

(ii) is a person described in section 49(a)(1)(D)(iv)(II).

(B) Financing secured by property. The requirements of this subparagraph are met with respect to any financing if such financing is secured by the qualified low-income building, except that this subparagraph shall not apply in the case of a federally assisted building described in subsection (d)(6)(B) if—

(i) a security interest in such building is not permitted by a Federal agency holding or insuring the mortgage secured by such building, and

(ii) the proceeds from the financing (if any) are applied to acquire or improve such building.

(C) Portion of building attributable to financing. The requirements of this subparagraph are met with respect to any financing for any taxable year in the compliance period if, as of the close of such taxable year, not more than 60 percent of the eligible basis of the qualified low-income building is attributable to such financing (reduced by the principal and interest of any governmental financing which is part of a wrap-around mortgage involving such financing).

(D) Repayment of principal and interest. The requirements of this subparagraph are met with respect to any financing if such financing is fully repaid on or before the earliest of—

(i) the date on which such financing matures,

(ii) the 90th day after the close of the compliance period with respect to the qualified low-income building, or

(iii) the date of its refinancing or the sale of the building to which such financing relates.

In the case of a qualified nonprofit organization which is not described in section 49(a)(1)(D)(iv)(II) with respect to a building, clause (ii) of this subparagraph shall be applied as if the date described therein were the 90th day after the earlier of

the date the building ceases to be a qualified low-income building or the date which is 15 years after the close of a compliance period with respect thereto.

(3) Present value of financing.

If the rate of interest on any financing described in paragraph (2)(A) is less than the rate which is 1 percentage point below the applicable Federal rate as of the time such financing is incurred, then the qualified basis (to which such financing relates) of the qualified low-income building shall be the present value of the amount of such financing, using as the discount rate such applicable Federal rate. For purposes of the preceding sentence, the rate of interest on any financing shall be determined by treating interest to the extent of government subsidies as not payable.

(4) Failure to fully repay.

(A) In general. To the extent that the requirements of paragraph (2)(D) are not met, then the taxpayer's tax under this chapter for the taxable year in which such failure occurs shall be increased by an amount equal to the applicable portion of the credit under this section with respect to such building, increased by an amount of interest for the period—

(i) beginning with the due date for the filing of the return of tax imposed by chapter 1 for the 1st taxable year for which such credit was allowable, and

(ii) ending with the due date for the taxable year in which such failure occurs,

determined by using the underpayment rate and method under section 6621 .

(B) Applicable portion. For purposes of subparagraph (A), the term “applicable portion” means the aggregate decrease in the credits allowed to a taxpayer under section 38 for all prior taxable years which would have resulted if the eligible basis of the building were reduced by the amount of financing which does not meet requirements of paragraph (2)(D).

(C) Certain rules to apply. Rules similar to the rules of subparagraphs (A) and (D) of subsection (j)(4) shall apply for purposes of this subsection .

(l) Certifications and other reports to secretary.

(1) Certification with respect to 1st year of credit period.

Following the close of the 1st taxable year in the credit period with respect to any qualified low-income building, the taxpayer shall certify to the Secretary (at such time and in such form and in such manner as the Secretary prescribes)—

(A) the taxable year, and calendar year, in which such building was placed in service,

(B) the adjusted basis and eligible basis of such building as of the close of the 1st year of the credit period,

(C) the maximum applicable percentage and qualified basis permitted to be taken into account by the appropriate housing credit agency under subsection (h),

(D) the election made under subsection (g) with respect to the qualified low-income housing project of which such building is a part, and

(E) such other information as the Secretary may require.

In the case of a failure to make the certification required by the preceding sentence on the date prescribed therefor, unless it is shown that such failure is due to reasonable cause and not to willful neglect, no credit shall be allowable by reason of subsection (a) with respect to such building for any taxable year ending before such certification is made.

(2) Annual reports to the Secretary.

The Secretary may require taxpayers to submit an information return (at such time and in such form and manner as the Secretary prescribes) for each taxable year setting forth—

(A) the qualified basis for the taxable year of each qualified low-income building of the taxpayer,

(B) the information described in paragraph (1)(C) for the taxable year, and

(C) such other information as the Secretary may require.

The penalty under section 6652(j) shall apply to any failure to submit the return required by the Secretary

under the preceding sentence on the date prescribed therefor.

(3) Annual reports from housing credit agencies.

Each agency which allocates any housing credit amount to any building for any calendar year shall submit to the Secretary (at such time and in such manner as the Secretary shall prescribe) an annual report specifying—

(A) the amount of housing credit amount allocated to each building for such year,

(B) sufficient information to identify each such building and the taxpayer with respect thereto, and

(C) such other information as the Secretary may require.

The penalty under section 6652(j) shall apply to any failure to submit the report required by the preceding sentence on the date prescribed therefor.

(m) Responsibilities of housing credit agencies.

(1) Plans for allocation of credit among projects.

(A) In general. Notwithstanding any other provision of this section, the housing credit dollar amount with respect to any building shall be zero unless—

(i) such amount was allocated pursuant to a qualified allocation plan of the housing credit agency which is approved by the governmental unit (in accordance with rules similar to the rules of section 147(f)(2) (other than subparagraph (B)(ii) thereof)) of which such agency is a part,

(ii) such agency notifies the chief executive officer (or the equivalent) of the local jurisdiction within which the building is located of such project and provides such individual a reasonable opportunity to comment on the project,

(iii) a comprehensive market study of the housing needs of low-income individuals in the area to be served by the project is conducted before the credit allocation is made and at the developer's expense by a disinterested party who is approved by such agency, and

(iv) a written explanation is available to the general public for any allocation of a housing credit dollar amount which is not made in accordance with established priorities and selection criteria of the housing credit agency.

(B) Qualified allocation plan. For purposes of this paragraph, the term "qualified allocation plan" means any plan—

(i) which sets forth selection criteria to be used to determine housing priorities of the housing credit agency which are appropriate to local conditions,

(ii) which also gives preference in allocating housing credit dollar amounts among selected projects to—

(I) projects serving the lowest income tenants,

(II) projects obligated to serve qualified tenants for the longest periods, and

(III) projects which are located in qualified census tracts (as defined in subsection (d)(5)(C)) and the development of which contributes to a concerted community revitalization plan, and

(iii) which provides a procedure that the agency (or an agent or other private contractor of such agency) will follow in monitoring for noncompliance with the provisions of this section and in notifying the Internal Revenue Service of such noncompliance which such agency becomes aware of and in monitoring for noncompliance with habitability standards through regular site visits.

(C) Certain selection criteria must be used. The selection criteria set forth in a qualified allocation plan must include—

(i) project location,

(ii) housing needs characteristics,

(iii) project characteristics, including whether the project includes the use of existing housing as part of a community revitalization plan,

(iv) sponsor characteristics,

(v) tenant populations with special housing needs,

(vi) public housing waiting lists,

(vii) tenant populations of individuals with children,

(viii) projects intended for eventual tenant ownership,

(ix) the energy efficiency of the project, and

(x) the historic nature of the project.

(D) Application to bond financed projects. Subsection (h)(4) shall not apply to any project unless the project satisfies the requirements for allocation of a housing credit dollar amount under the qualified allocation plan applicable to the area in which the project is located.

(2) Credit allocated to building not to exceed amount necessary to assure project feasibility.

(A) In general. The housing credit dollar amount allocated to a project shall not exceed the amount the housing credit agency determines is necessary for the financial feasibility of the project and its viability as a qualified low-income housing project throughout the credit period.

(B) Agency evaluation. In making the determination under subparagraph (A), the housing credit agency shall consider—

(i) the sources and uses of funds and the total financing planned for the project,

(ii) any proceeds or receipts expected to be generated by reason of tax benefits,

(iii) the percentage of the housing credit dollar amount used for project costs other than the cost of intermediaries, and

(iv) the reasonableness of the developmental and operational costs of the project.

Clause (iii) shall not be applied so as to impede the development of projects in hard-to-develop areas. Such a determination shall not be construed to be a representation or warranty as to the feasibility or viability of the project.

(C) Determination made-when credit amount applied for and when building placed in service.

(i) In general. A determination under subparagraph (A) shall be made as of each of the following times:

(I) The application for the housing credit dollar amount.

(II) The allocation of the housing credit dollar amount.

(III) The date the building is placed in service.

(ii) Certification as to amount of other subsidies. Prior to each determination under clause (i), the taxpayer shall certify to the housing credit agency the full extent of all Federal, State, and local subsidies which apply (or which the taxpayer expects to apply) with respect to the building.

(D) Application to bond financed projects. Subsection (h)(4) shall not apply to any project unless the governmental unit which issued the bonds (or on behalf of which the bonds were issued) makes a determination under rules similar to the rules of subparagraphs (A) and (B) .

(n) Regulations.

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section , including regulations—

(1) dealing with—

(A) projects which include more than 1 building or only a portion of a building,

(B) buildings which are placed in service in portions,

(2) providing for the application of this section to short taxable years,

(3) preventing the avoidance of the rules of this section , and

(4) providing the opportunity for housing credit agencies to correct administrative errors and omissions with respect to allocations and record keeping within a reasonable period after their discovery, taking into account the availability of regulations and other administrative guidance from the Secretary.

INTERNAL REVENUE CODE §142 EXEMPT FACILITY BOND

(a) General rule.

For purposes of this part, the term "exempt facility bond" means any bond issued as part of an issue 95 percent or more of the net proceeds of which are to be used to provide—

(1) airports,

(2) docks and wharves,

(3) mass commuting facilities,

(4) facilities for the furnishing of water,

(5) sewage facilities,

(6) solid waste disposal facilities,

(7) qualified residential rental projects,

(8) facilities for the local furnishing of electric energy or gas,

(9) local district heating or cooling facilities,

(10) qualified hazardous waste facilities,

(11) high-speed intercity rail facilities,

(12) environmental enhancements of hydro-electric generating facilities,

(13) qualified public educational facilities,

(14) qualified green building and sustainable design projects, or

(15) qualified highway or surface freight transfer facilities.

(b) Special exempt facility bond rules.

For purposes of subsection (a) —

(1) Certain facilities must be governmentally owned.

(A) In general. A facility shall be treated as described in paragraph (1) , (2) , (3) , or (12) of subsection (a) only if all of the property to be financed by the net proceeds of the issue is to be owned by a governmental unit.

(B) Safe harbor for leases and management contracts. For purposes of subparagraph (A), property leased by a governmental unit shall be treated as owned by such governmental unit if—

(i) the lessee makes an irrevocable election (binding on the lessee and all successors in interest under the lease) not to claim depreciation or an investment credit with respect to such property,

(ii) the lease term (as defined in section 168(i)(3)) is not more than 80 percent of the reasonably expected economic life of the property (as determined under section 147(b)), and

(iii) the lessee has no option to purchase the property other than at fair market value (as of the time such option is exercised). Rules similar to the rules of the preceding sentence shall apply to management contracts and similar types of operating agreements.

(2) Limitation on office space.

An office shall not be treated as described in a paragraph of subsection (a) unless—

(A) the office is located on the premises of a facility described in such a paragraph, and

(B) not more than a de minimis amount of the functions to be performed at such office is not directly related to the day-to-day operations at such facility.

(c) Airports, docks and wharves, mass commuting facilities and high-speed intercity rail facilities.

For purposes of subsection (a) —

(1) Storage and training facilities.

Storage or training facilities directly related to a facility described in paragraph (1) , (2) , (3) , or (11) of subsection (a) shall be treated as described in the paragraph in which such facility is described.

(2) Exception for certain private facilities.

Property shall not be treated as described in paragraph (1) , (2) , (3) , or (11) of subsection (a) if such property is described in any of the following subparagraphs and is to be used for any private business use (as defined in section 141(b)(6)).

(A) Any lodging facility.

(B) Any retail facility (including food and beverage facilities) in excess of a size necessary to serve passengers and employees at the exempt facility.

(C) Any retail facility (other than parking) for passengers or the general public located outside the exempt facility terminal.

(D) Any office building for individuals who are not employees of a governmental unit or of the operating authority for the exempt facility.

(E) Any industrial park or manufacturing facility.

(d) Qualified residential rental project.

For purposes of this section —

(1) In general.

The term "qualified residential rental project" means any project for residential rental property if, at all times during the qualified project period, such project meets the requirements of subparagraph (A) or (B), whichever is elected by the issuer at the time of the issuance of the issue with respect to such project:

(A) 20-50 test. The project meets the requirements of this subparagraph if 20 percent or more of the residential units in such project are occupied by individuals whose income is 50 percent or less of area median gross income.

(B) 40-60 test. The project meets the requirements of this subparagraph if 40 percent or more of the residential units in such project are occupied by individuals whose income is 60 percent or less of area median gross income. For purposes of this paragraph, any property shall not be treated as failing to be residential rental

property merely because part of the building in which such property is located is used for purposes other than residential rental purposes.

(2) Definitions and special rules.

For purposes of this subsection —

(A) Qualified project period. The term "qualified project period" means the period beginning on the 1st day on which 10 percent of the residential units in the project are occupied and ending on the latest of—

(i) the date which is 15 years after the date on which 50 percent of the residential units in the project are occupied,

(ii) the 1st day on which no tax-exempt private activity bond issued with respect to the project is outstanding, or

(iii) the date on which any assistance provided with respect to the project under section 8 of the United States Housing Act of 1937 terminates.

(B) Income of individuals; area median gross income.

(i) In general. The income of individuals and area median gross income shall be determined by the Secretary in a manner consistent with determinations of lower income families and area median gross income under section 8 of the United States Housing Act of 1937 (or, if such program is terminated, under such program as in effect immediately before such termination). Determinations under the preceding sentence shall include adjustments for family size. Subsections (g) and (h) of section 7872 shall not apply in determining the income of individuals under this subparagraph.

(ii) Special rule relating to basic housing allowances. For purposes of determining income under this subparagraph, payments under section 403 of title 37, United States Code, as a basic pay allowance for housing shall be disregarded with respect to any qualified building.

(iii) Qualified building. For purposes of clause (ii), the term "qualified building" means any building located—

(I) in any county in which is located a qualified military installation to which the number of members of the Armed Forces of the United States assigned to units based out of such qualified military installation, as of June 1, 2008, has increased by not less than 20 percent, as compared to such number on December 31, 2005, or

(II) in any county adjacent to a county described in subclause (I) .

(iv) Qualified military installation. For purposes of clause (iii), the term "qualified military installation" means any military installation or facility the number of members of the Armed Forces of the United States assigned to which, as of June 1, 2008, is not less than 1,000.

(C) Students. Rules similar to the rules of 42(i)(3)(D) shall apply for purposes of this subsection .

(D) Single-room occupancy units. A unit shall not fail to be treated as a residential unit merely because such unit is a single-room occupancy unit (within the meaning of section 42).

Caution: Subpara. (d)(2)(E), following, is effective for determinations of area median gross income for calendar years after 2008.

(E) Hold harmless for reductions in area median gross income.

(i) In general. Any determination of area median gross income under subparagraph (B) with respect to any project for any calendar year after 2008 shall not be less than the area median gross income determined under such subparagraph with respect to such project for the calendar year preceding the calendar year for which such determination is made.

(ii) Special rule for certain census changes. In the case of a HUD hold harmless impacted project, the area median gross income with respect to such project for any calendar year after 2008 (hereafter in this clause referred to as the current calendar year) shall be the greater of the amount determined without regard to this clause or the sum of—

(I) the area median gross income determined under the HUD hold harmless policy with respect to such project for calendar year 2008, plus

(II) any increase in the area median gross income determined under subparagraph (B) (determined without regard to the HUD hold harmless policy and this subparagraph) with respect to such project for the current calendar year over the area median gross income (as so determined) with respect to such project for calendar year 2008.

(iii) HUD hold harmless policy. The term "HUD hold harmless policy" means the regulations under which a policy similar to the rules of clause (i) applied to prevent a change in the method of determining area median gross income from resulting in a reduction in the area median gross income determined with respect to certain projects in calendar years 2007 and 2008.

(iv) HUD hold harmless impacted project. The term "HUD hold harmless impacted project" means any project with respect to which area median gross income was determined under subparagraph (B) for calendar year 2007 or 2008

if such determination would have been less but for the HUD hold harmless policy.

(3) Current income determinations.

For purposes of this subsection —

(A) In general. The determination of whether the income of a resident of a unit in a project exceeds the applicable income limit shall be made at least annually on the basis of the current income of the resident. The preceding sentence shall not apply with respect to any project for any year if during such year no residential unit in the project is occupied by a new resident whose income exceeds the applicable income limit.

(B) Continuing resident's income may increase above the applicable limit. If the income of a resident of a unit in a project did not exceed the applicable income limit upon commencement of such resident's occupancy of such unit (or as of any prior determination under subparagraph (A)), the income of such resident shall be treated as continuing to not exceed the applicable income limit. The preceding sentence shall cease to apply to any resident whose income as of the most recent determination under subparagraph (A) exceeds 140 percent of the applicable income limit if after such determination, but before the next determination, any residential unit of comparable or smaller size in the same project is occupied by a new resident whose income exceeds the applicable income limit.

(C) Exception for projects with respect to which affordable housing credit is allowed. In the case of a project with respect to which credit is allowed under section 42, the second sentence of subparagraph (B) shall be applied by substituting “building (within the meaning of section 42)” for “project”.

(4) Special rule in case of deep rent skewing.

(A) In general. In the case of any project described in subparagraph (B) , the 2d sentence of subparagraph (B) of paragraph (3) shall be applied by substituting—

(i) “170 percent” for “140 percent”, and

(ii) “any low-income unit in the same project is occupied by a new resident whose income exceeds 40 percent of area median gross income” for “any residential unit of comparable or smaller size in the same project is occupied by a new resident whose income exceeds the applicable income limit”.

(B) Deep rent skewed project. A project is described in this subparagraph if the owner of the project elects to have this paragraph apply and, at all times during the qualified project period, such project meets the requirements of clauses (i), (ii), and (iii) :

(i) The project meets the requirements of this clause if 15 percent or more of the low-income units in the project are occupied by individuals whose income is 40 percent or less of area median gross income.

(ii) The project meets the requirements of this clause if the gross rent with respect to each low-income unit in the project does not exceed 30 percent of the applicable income limit which applies to individuals occupying the unit.

(iii) The project meets the requirements of this clause if the gross rent with respect to each low-income unit in the project does not exceed 1/2 of the average gross rent with respect to units of comparable size which are not occupied by individuals who meet the applicable income limit.

(C) Definitions applicable to subparagraph (B). For purposes of subparagraph (B) —

(i) Low-income unit. The term “low-income unit” means any unit which is required to be occupied by individuals who meet the applicable income limit.

(ii) Gross rent. The term “gross rent” includes—

(I) any payment under section 8 of the United States Housing Act of 1937, and

(II) any utility allowance determined by the Secretary after taking into account such determinations under such section 8 .

(5) Applicable income limit.

For purposes of paragraphs (3) and (4) , the term “applicable income limit” means—

(A) the limitation under subparagraph (A) or (B) of paragraph (1) which applies to the project, or (B) in the case of a unit to which paragraph (4)(B)(i) applies, the limitation which applies to such unit.

(6) Special rule for certain high cost housing area.

In the case of a project located in a city having 5 boroughs and a population in excess of 5,000,000, subparagraph (B) of paragraph (1) shall be applied by substituting “25 percent” for “40 percent”.

(7) Certification to secretary.

The operator of any project with respect to which an election was made under this subsection shall submit to the Secretary (at such time and in such manner as the Secretary shall prescribe) an annual certification as to whether such project continues to meet the requirements of this subsection. Any failure to comply with the provisions of the preceding sentence shall not affect the tax-exempt status of any bond but shall

subject the operator to penalty, as provided in section 6652(j).

(e) Facilities for the furnishing of water.

For purposes of subsection (a)(4) , the term "facilities for the furnishing of water" means any facility for the furnishing of water if—

(1) the water is or will be made available to members of the general public (including electric utility, industrial, agricultural, or commercial users), and

(2) either the facility is operated by a governmental unit or the rates for the furnishing or sale of the water have been established or approved by a State or political subdivision thereof, by an agency or instrumentality of the United States, or by a public service or public utility commission or other similar body of any State or political subdivision thereof.

(f) Local furnishing of electric energy or gas.

For purposes of subsection (a)(8) —

(1) In general.

The local furnishing of electric energy or gas from a facility shall only include furnishing solely within the area consisting of—

(A) a city and 1 contiguous county, or

(B) 2 contiguous counties.

(2) Treatment of certain electric energy transmitted outside local area.

(A) In general. A facility shall not be treated as failing to meet the local furnishing requirement of subsection (a)(8) by reason of electricity transmitted pursuant to an order of the Federal Energy Regulatory Commission under section 211 or 213 of the Federal Power Act (as in effect on the date of the enactment of this paragraph) if the portion of the cost of the facility financed with tax-exempt bonds is not greater than the portion of the cost of the facility which is allocable to the local furnishing of electric energy (determined without regard to this paragraph).

(B) Special rule for existing facilities. In the case of a facility financed with bonds issued before the date of an order referred to in subparagraph (A) which would (but for this subparagraph) cease to be tax-exempt by reason of subparagraph (A) , such bonds shall not cease to be tax-exempt bonds (and section 150(b)(4) shall not apply) if, to the extent necessary to comply with subparagraph (A) —

(i) an escrow to pay principal of, premium (if any), and interest on the bonds is established within a reasonable period after the date such order becomes final, and

(ii) bonds are redeemed not later than the earliest date on which such bonds may be redeemed.

(3) Termination of future financing.

For purposes of this section, no bond may be issued as part of an issue described in subsection (a)(8) with respect to a facility for the local furnishing of electric energy or gas on or after the date of the enactment of this paragraph unless—

(A) the facility will—

(i) be used by a person who is engaged in the local furnishing of that energy source on January 1, 1997, and

(ii) be used to provide service within the area served by such person on January 1, 1997 (or within a county or city any portion of which is within such area), or

(B) the facility will be used by a successor in interest to such person for the same use and within the same service area as described in subparagraph (A) .

(4) Election to terminate tax-exempt bond financing by certain furnishers.

(A) In general. In the case of a facility financed with bonds issued before the date of the enactment of this paragraph which would cease to be tax-exempt by reason of the failure to meet the local furnishing requirement of subsection (a)(8) as a result of a service area expansion, such bonds shall not cease to be tax-exempt bonds (and section 150(b)(4) shall not apply) if the person engaged in such local furnishing by such facility makes an election described in subparagraph (B) .

(B) Election. An election is described in this subparagraph if it is an election made in such manner as the Secretary prescribes, and such person (or its predecessor in interest) agrees that—

(i) such election is made with respect to all facilities for the local furnishing of electric energy or gas, or both, by such person.

(ii) no bond exempt from tax under section 103 and described in subsection (a)(8) may be issued on or after the date of the enactment of this paragraph with respect to all such facilities of such person,

(iii) any expansion of the service area—

(I) is not financed with the proceeds of any exempt facility bond described in subsection (a)(8) and

(II) is not treated as a nonqualifying use under the rules of paragraph (2) , and

(iv) all outstanding bonds used to finance the facilities for such person are redeemed not later than 6 months after the later of—

(I) the earliest date on which such bonds may be redeemed, or

(II) the date of the election.

(C) Related persons. For purposes of this paragraph, the term "person" includes a group of

related persons (within the meaning of section 144(a)(3)) which includes such person.

(g) Local district heating or cooling facility.

(1) In general.

For purposes of subsection (a)(9) , the term "local district heating or cooling facility" means property used as an integral part of a local district heating or cooling system.

(2) Local district heating or cooling system.

(A) In general. For purposes of paragraph (1) , the term "local district heating or cooling system" means any local system consisting of a pipeline or network (which may be connected to a heating or cooling source) providing hot water, chilled water, or steam to 2 or more users for—

(i) residential, commercial, or industrial heating or cooling, or

(ii) process steam.

(B) Local system. For purposes of this paragraph, a local system includes facilities furnishing heating and cooling to an area consisting of a city and 1 contiguous county.

(h) Qualified hazardous waste facilities.

For purposes of subsection (a)(10) , the term "qualified hazardous waste facility" means any facility for the disposal of hazardous waste by incineration or entombment but only if—

(1) the facility is subject to final permit requirements under subtitle C of title II of the Solid Waste Disposal Act (as in effect on the date of the enactment of the Tax Reform Act of 1986), and

(2) the portion of such facility which is to be provided by the issue does not exceed the portion of the facility which is to be used by persons other than—

(A) the owner or operator of such facility, and

(B) any related person (within the meaning of section 144(a)(3)) to such owner or operator.

(i) High-speed intercity rail facilities.

(1) In general.

For purposes of subsection (a)(11) , the term "high-speed intercity rail facilities" means any facility (not including rolling stock) for the fixed guideway rail transportation of passengers and their baggage between metropolitan statistical areas (within the meaning of section 143(k)(2)(B)) using vehicles that are reasonably expected to operate at speeds in excess of 150 miles per hour between scheduled stops, but only if such facility will be made available to members of the general public as passengers.

(2) Election by nongovernmental owners.

A facility shall be treated as described in subsection (a)(11) only if any owner of such facility which is not a governmental unit irrevocably elects not to claim—

(A) any deduction under section 167 or 168 , and

(B) any credit under this subtitle, with respect to the property to be financed by the net proceeds of the issue.

(3) Use of proceeds.

A bond issued as part of an issue described in subsection (a)(11) shall not be considered an exempt facility bond unless any proceeds not used within a 3-year period of the date of the issuance of such bond are used (not later than 6 months after the close of such period) to redeem bonds which are part of such issue.

(j) Environmental enhancements of hydro-electric generating facilities.

(1) In general.

For purposes of subsection (a)(12) , the term "environmental enhancements of hydroelectric generating facilities" means property—

(A) the use of which is related to a federally licensed hydroelectric generating facility owned and operated by a governmental unit, and

(B) which—

(i) protects or promotes fisheries or other wildlife resources, including any fish by-pass facility, fish hatchery, or fisheries enhancement facility, or

(ii) is a recreational facility or other improvement required by the terms and conditions of any Federal licensing permit for the operation of such generating facility.

(2) Use of proceeds.

A bond issued as part of an issue described in subsection (a)(12) shall not be considered an exempt facility bond unless at least 80 percent of the net proceeds of the issue of which it is a part are used to finance property described in paragraph (1)(B)(i) .

(k) Qualified public educational facilities.

(1) In general.

For purposes of subsection (a)(13) , the term "qualified public educational facility" means any school facility which is—

(A) part of a public elementary school or a public secondary school, and

(B) owned by a private, for-profit corporation pursuant to a public private partnership agreement with a State or local educational agency described in paragraph (2) .

(2) Public-private partnership agreement described.

A public-private partnership agreement is described in this paragraph if it is an agreement—

(A) under which the corporation agrees—

(i) to do 1 or more of the following: construct, rehabilitate, refurbish, or equip a school facility, and

(ii) at the end of the term of the agreement, to transfer the school facility to such agency for no additional consideration, and

(B) the term of which does not exceed the term of the issue to be used to provide the school facility.

(3) School facility.

For purposes of this subsection, the term "school facility" means—

(A) any school building,

(B) any functionally related and subordinate facility and land with respect to such building, including any stadium or other facility primarily used for school events, and

(C) any property, to which section 168 applies (or would apply but for section 179), for use in a facility described in subparagraph (A) or (B) .

(4) Public schools.

For purposes of this subsection, the terms "elementary school" and "secondary school" have the meanings given such terms by section 14101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8801), as in effect on the date of the enactment of this subsection .

(5) Annual aggregate face amount of tax-exempt financing.

(A) In general. An issue shall not be treated as an issue described in subsection (a)(13) if the aggregate face amount of bonds issued by the State pursuant thereto (when added to the aggregate face amount of bonds previously so issued during the calendar year) exceeds an amount equal to the greater of—

(i) $10 multiplied by the State population, or

(ii) $5,000,000.

(B) Allocation rules.

(i) In general. Except as otherwise provided in this subparagraph, the State may allocate the amount described in subparagraph (A) for any calendar year in such manner as the State determines appropriate.

(ii) Rules for carry forward of unused limitation. A State may elect to carry forward an unused limitation for any calendar year for 3 calendar years following the calendar year in which the unused limitation arose under rules similar to the rules of section 146(f), except that the only purpose for which the carry forward may be elected is the issuance of exempt facility bonds described in subsection (a)(13).

(l) Qualified green building and sustainable design projects.

(1) In general.

For purposes of subsection (a)(14) , the term "qualified green building and sustainable design project" means any project which is designated by the Secretary, after consultation with the Administrator of the Environmental Protection Agency, as a qualified green building and sustainable design project and which meets the requirements of clauses (i), (ii), (iii), and (iv) of paragraph (4)(A) .

(2) Designations.

(A) In general. Within 60 days after the end of the application period described in paragraph (3)(A) , the Secretary, after consultation with the Administrator of the Environmental Protection Agency, shall designate qualified green building and sustainable design projects. At least one of the projects designated shall be located in, or within a 10-mile radius of, an empowerment zone as designated pursuant to section 1391, and at least one of the projects designated shall be located in a rural State. No more than one project shall be designated in a State. A project shall not be designated if such project includes a stadium or arena for professional sports exhibitions or games.

(B) Minimum conservation and technology innovation objectives. The Secretary, after consultation with the Administrator of the Environmental Protection Agency, shall ensure that, in the aggregate, the projects designated shall—

(i) reduce electric consumption by more than 150 megawatts annually as compared to conventional generation,

(ii) reduce daily sulfur dioxide emissions by at least 10 tons compared to coal generation power,

(iii) expand by 75 percent the domestic solar photovoltaic market in the United States (measured in megawatts) as compared to the expansion of that market from 2001 to 2002, and

(iv) use at least 25 megawatts of fuel cell energy generation.

(3) Limited designations.

A project may not be designated under this subsection unless—

(A) the project is nominated by a State or local government within 180 days of the enactment of this subsection , and

(B) such State or local government provides written assurances that the project will satisfy the eligibility criteria described in paragraph (4) .

(4) Application.

(A) In general. A project may not be designated under this subsection unless the

application for such designation includes a project proposal which describes the energy efficiency, renewable energy, and sustainable design features of the project and demonstrates that the project satisfies the following eligibility criteria:

(i) Green building and sustainable design. At least 75 percent of the square footage of commercial buildings which are part of the project is registered for United States
Green Building Council's LEED certification and is reasonably expected (at the time of the designation) to receive such certification. For purposes of determining LEED certification as required under this clause, points shall be credited by using the following:

(I) For wood products, certification under the Sustainable Forestry Initiative Program and the American Tree Farm System.

(II) For renewable wood products, as credited for recycled content otherwise provided under LEED certification.

(III) For composite wood products, certification under standards established by the American National Standards Institute, or such other voluntary standards as published in the Federal Register by the Administrator of the Environmental Protection Agency.

(ii) Brownfield redevelopment. The project includes a brownfield site as defined by section 101(39) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601), including a site described in subparagraph (D)(ii)(II)(aa) thereof.

(iii) State and local support. The project receives specific State or local government resources which will support the project in an amount equal to at least $5,000,000. For purposes of the preceding sentence, the term “resources” includes tax abatement benefits and contributions in kind.

(iv) Size. The project includes at least one of the following:

(I) At least 1,000,000 square feet of building.

(II) At least 20 acres.

(v) Use of tax benefit. The project proposal includes a description of the net benefit of the tax-exempt financing provided under this subsection which will be allocated for financing of one or more of the following:

(I) The purchase, construction, integration, or other use of energy efficiency, renewable energy, and sustainable design features of the project.

(II) Compliance with certification standards cited under clause (i) .

(III) The purchase, remediation, and foundation construction and preparation of the brownfields site.

(vi) Prohibited facilities. An issue shall not be treated as an issue described in subsection (a)(14) if any proceeds of such issue are used to provide any facility the principal business of which is the sale of food or alcoholic beverages for consumption on the premises.

(vii) Employment. The project is projected to provide permanent employment of at least 1,500 full time equivalents (150 full time equivalents in rural States) when completed and construction employment of at least 1,000 full time equivalents (100 full time equivalents in rural States). The application shall include an independent analysis which describes the project's economic impact, including the amount of projected employment.

(B) Project description. Each application described in subparagraph (A) shall contain for each project a description of—

(i) the amount of electric consumption reduced as compared to conventional construction,

(ii) the amount of sulfur dioxide daily emissions reduced compared to coal generation,

(iii) the amount of the gross installed capacity of the project's solar photovoltaic capacity measured in megawatts, and

(iv) the amount, in megawatts, of the project's fuel cell energy generation.

(5) Certification of use of tax benefit.
No later than 30 days after the completion of the project, each project must certify to the Secretary that the net benefit of the tax-exempt financing was used for the purposes described in paragraph (4).

(6) Definitions.
For purposes of this subsection —

(A) Rural State. The term “rural State” means any State which has—

(i) a population of less than 4,500,000 according to the 2000 census,

(ii) a population density of less than 150 people per square mile according to the 2000 census, and

(iii) increased in population by less than half the rate of the national increase between the 1990 and 2000 censuses.

(B) Local government. The term “local government” has the meaning given such term by section 1393(a)(5) .

(C) Net benefit of tax-exempt financing. The term “net benefit of tax-exempt financing” means the present value of the interest savings (determined by a calculation established by the

Secretary) which result from the tax-exempt status of the bonds.

(7) Aggregate face amount of tax-exempt financing.

(A) In general. An issue shall not be treated as an issue described in subsection (a)(14) if the aggregate face amount of bonds issued by the State or local government pursuant thereto for a project (when added to the aggregate face amount of bonds previously so issued for such project) exceeds an amount designated by the Secretary as part of the designation.

(B) Limitation on amount of bonds. The Secretary may not allocate authority to issue qualified green building and sustainable design project bonds in an aggregate face amount exceeding $2,000,000,000.

(8) Termination.

Subsection (a)(14) shall not apply with respect to any bond issued after September 30, 2009.

(9) Treatment of current refunding bonds.

Paragraphs (7)(B) and (8) shall not apply to any bond (or series of bonds) issued to refund a bond issued under subsection (a)(14) before October 1, 2009, if—

(A) the average maturity date of the issue of which the refunding bond is a part is not later than the average maturity date of the bonds to be refunded by such issue,

(B) the amount of the refunding bond does not exceed the outstanding amount of the refunded bond, and

(C) the net proceeds of the refunding bond are used to redeem the refunded bond not later than 90 days after the date of the issuance of the refunding bond. For purposes of subparagraph (A), average maturity shall be determined in accordance with section 147(b)(2)(A) .

(m) Qualified highway or surface freight transfer facilities.

(1) In general.

For purposes of subsection (a)(15) , the term "qualified highway or surface freight transfer facilities" means—

(A) any surface transportation project which receives Federal assistance under title 23, United States Code (as in effect on the date of the enactment of this subsection),

(B) any project for an international bridge or tunnel for which an international entity authorized under Federal or State law is responsible and which receives Federal assistance under title 23, United States Code (as so in effect), or

(C) any facility for the transfer of freight from truck to rail or rail to truck (including any temporary storage facilities directly related to such transfers) which receives Federal assistance under either title 23 or title 49, United States Code (as so in effect).

(2) National limitation on amount of tax-exempt financing for facilities.

(A) National limitation. The aggregate amount allocated by the Secretary of Transportation under subparagraph (C) shall not exceed $15,000,000,000.

(B) Enforcement of national limitation. An issue shall not be treated as an issue described in subsection (a)(15) if the aggregate face amount of bonds issued pursuant to such issue for any qualified highway or surface freight transfer facility (when added to the aggregate face amount of bonds previously so issued for such facility) exceeds the amount allocated to such facility under subparagraph (C) .

(C) Allocation by Secretary of Transportation. The Secretary of Transportation shall allocate the amount described in subparagraph (A) among qualified highway or surface freight transfer facilities in such manner as the Secretary determines appropriate.

(3) Expenditure of proceeds.

An issue shall not be treated as an issue described in subsection (a)(15) unless at least 95 percent of the net proceeds of the issue is expended for qualified highway or surface freight transfer facilities within the 5-year period beginning on the date of issuance. If at least 95 percent of such net proceeds is not expended within such 5-year period, an issue shall be treated as continuing to meet the requirements of this paragraph if the issuer uses all unspent proceeds of the issue to redeem bonds of the issue within 90 days after the end of such 5-year period. The Secretary, at the request of the issuer, may extend such 5-year period if the issuer establishes that any failure to meet such period is due to circumstances beyond the control of the issuer.

(4) Exception for current refunding bonds.

Paragraph (2) shall not apply to any bond (or series of bonds) issued to refund a bond issued under subsection (a)(15) if—

(A) the average maturity date of the issue of which the refunding bond is a part is not later than the average maturity date of the bonds to be refunded by such issue,

(B) the amount of the refunding bond does not exceed the outstanding amount of the refunded bond, and

(C) the refunded bond is redeemed not later than 90 days after the date of the issuance of the refunding bond. For purposes of subparagraph

(A), average maturity shall be determined in accordance with section 147(b)(2)(A) .

GOVERNMENT CODE

TITLE 9. PUBLIC SECURITIES

SUBTITLE F. SPECIFIC AUTHORITY FOR STATE OR LOCAL GOVERNMENT TO ISSUE SECURITIES

CHAPTER 1372. PRIVATE ACTIVITY BONDS AND CERTAIN OTHER BONDS

NOTE: THIS DOCUMENT DOES NOT CONTAIN ANY CHANGES THERE MAY HAVE BEEN AS A RESULT OF THE 2011 LEGISLATIVE SESSION. USERS ARE ENCOURAGED TO RESEARCH THIS CHAPTER ONLINE FOR ANY POSSIBLE CHANGES AND NOT RELY ON THE CONTENT HEREIN.

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1372.001. DEFINITIONS. In this chapter:

(1) "Additional state ceiling" means authorization under federal law for the issuance of bonds that are tax-exempt private activity bonds subject to the limits imposed by Section 146, Internal Revenue Code (26 U.S.C. Section 146), in an amount in addition to the state ceiling, including the additional tax-exempt private activity bonds authorized by Section 3021 of the Housing and Economic Recovery Act of 2008 (Pub. L. No. 110-289).

(1-a) "Applicable official" means the state official or state agency designated by federal law to allocate a miscellaneous bond ceiling or designate bonds entitled to the federal subsidy limited by a miscellaneous bond ceiling or, in the absence of designation by federal law, the governor.

(1-b) "Board" means the Bond Review Board.

(2) "Bonds" means all obligations, including bonds, certificates, or notes, that are:

(A) authorized to be issued by:

(i) the constitution or a statute of this state; or

(ii) the charter of a home-rule municipality; and

(B) either:

(i) subject to the limitations of Section 146, Internal Revenue Code (26 U.S.C. Section 146); or

(ii) with respect to Subchapter D, otherwise entitled to a federal subsidy only if designated for the exemption, credit, or other subsidy, or allocated a portion of a limited amount of obligations for which the exemption, credit, or other subsidy is authorized, by this state or an applicable official or by an issuer to which this state or the applicable official has made an allocation, including exemptions, credits, and other subsidies authorized by:

(a) the Heartland Disaster Tax Relief Act of 2008 (Pub. L. No. 110-343), regarding Hurricane Ike disaster area bonds;

(b) the American Recovery and Reinvestment Act of 2009 (Pub. L. No. 111-5); or

(c) any other federal law authorizing a federal subsidy.

(3) "Closing" means the issuance and delivery of a bond by an issuer in exchange for the required payment for the bond. The term does not include a delivery of a bond if expenditure of the proceeds of the bond is conditioned on

obtaining credit enhancement in support of the bond.

(4) "Enterprise zone facility bond" means an enterprise zone facility bond under Section 1394, Internal Revenue Code (26 U.S.C. Section 1394).

(4-a) "Federal subsidy" means an exclusion of interest on a bond from gross income for federal income tax purposes, a federal income tax credit associated with a bond, a direct federal subsidy of interest on a bond, or any other federally authorized financial benefit associated with a bond.

(5) "Housing finance corporation" has the meaning assigned by Section 394.003, Local Government Code.

(6) "Internal Revenue Code" means the Internal Revenue Code of 1986 and its subsequent amendments.

(7) "Issuer" means:

(A) a department, board, authority, agency, subdivision, political subdivision, body politic, or instrumentality of this state; or

(B) a nonprofit corporation acting for or on behalf of an entity described by Paragraph (A).

(8) "Local government" has the meaning assigned by Section 394.003, Local Government Code.

(8-a) "Miscellaneous bond ceiling" means the maximum amount of bonds of any type that may be issued by issuers in this state during a calendar year, or cumulatively, that are entitled to a federal subsidy only if designated for the federal subsidy, or allocated a portion of a limited amount of bonds other than bonds subject to the limits imposed by Section 146, Internal Revenue Code (26 U.S.C. Section 146), for which the federal subsidy is authorized, by:

(A) this state or the applicable official; or

(B) an issuer to which this state or the applicable official has made an allocation.

(9) "Mortgage credit certificate" means a certificate of the type described by Section 25, Internal Revenue Code (26 U.S.C. Section 25).

(10) "Private activity bond" has the meaning assigned by Section 141(a), Internal Revenue Code (26 U.S.C. Section 141(a)).

(11) "Qualified mortgage bond" has the meaning assigned by Section 143(a), Internal Revenue Code (26 U.S.C. Section 143(a)). The term includes a mortgage credit certificate.

(12) "Qualified residential rental project bond" means a bond issued for a qualified residential rental project as defined by Section 142(d), Internal Revenue Code (26 U.S.C. Section 142(d)).

(13) "Qualified small issue bond" has the meaning assigned by Section 144(a), Internal Revenue Code (26 U.S.C. Section 144(a)).

(14) "Qualified student loan bond" has the meaning assigned by Section 144(b), Internal Revenue Code (26 U.S.C. Section 144(b)).

(15) "Reservation" means a reservation of a portion of the state ceiling for a specific bond issue.

(16) "State-voted issue" means an issue of bonds approved by the voters of this state in a statewide election.

(17) "State ceiling" means the maximum amount of tax-exempt private activity bonds that may be issued by all issuers in this state during a calendar year, as computed under Section 146(d), Internal Revenue Code (26 U.S.C. Section 146(d)).

(18) "Water development issue" means a bond issued as part of an issue of which 95 percent or more of the net proceeds are to be used to provide facilities for furnishing water, conserving water, developing water resources, or making water available.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1329, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1416, Sec. 4, eff. June 19, 2009.

Sec. 1372.002. "PROJECT".

(a) For purposes of this chapter, a project is:

(1) an eligible facility or facilities that are proposed to be financed, in whole or in part, by an issue of qualified residential rental project bonds;

(2) in connection with an issue of qualified mortgage bonds or qualified student loan bonds, the providing of financial assistance to qualified mortgagors or students located in all or any part of the jurisdiction of the issuer; or

(3) an eligible facility or facilities that are proposed to be financed, in whole or in part, by an issue of bonds other than bonds described by Subdivision (1) or (2).

(b) For purposes of Subsection (a)(2), the jurisdiction of an issuer is determined on the date the issuer's application for reservation is delivered to the board.

(c) For purposes of Subsection (a)(1), an application under this chapter may include either the rehabilitation or new construction, or both the rehabilitation and new construction, of qualified residential rental facilities located at multiple sites and with respect to which 51 percent or more of the residential units are located:

(1) in a county with a population of less than 75,000; or

(2) in a county in which the median income is less than the median income for the state, provided that the units are located in that portion of the county that is not included in a metropolitan statistical area containing one or more projects that are proposed to be financed, in whole or in part, by an issuance of bonds.

(d) For purposes of Subsection (c), in an application for a reservation, the number of sites may be reduced as needed without affecting their status as a project for purposes of the application, provided that the final application for a reservation contains at least two sites.

(e) For purposes of Subsection (a)(3), and only for applications for the financing of sewage facilities, solid waste disposal facilities, and qualified hazardous waste facilities, an application under this chapter may include multiple facilities in multiple jurisdictions. In such an application, the number of facilities may be reduced as needed without affecting their status as a project for purposes of the application.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1108, Sec. 1, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1416, Sec. 5, eff. June 19, 2009.

Sec. 1372.003. "CLOSING" IN CONNECTION WITH MORTGAGE CREDIT CERTIFICATES. The closing of mortgage credit certificates occurs on the date on which an issuer elects not to issue qualified mortgage bonds and to establish a mortgage credit certificate program under Section 25, Internal Revenue Code (26 U.S.C. Section 25).
Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

Sec. 1372.004. RULES. The board may adopt rules necessary to accomplish the purposes of this chapter.
Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

Sec. 1372.005. DELIVERY OF REQUIRED SUBMISSIONS TO BOARD; ISSUANCE OF RECEIPTS.

(a) A submission required by this chapter must be delivered to the board at its Austin office during normal business hours.

(b) The board shall:

(1) note on the face of the document delivered the date and time of delivery; and

(2) provide the submitting issuer with a receipt that:

(A) describes the document delivered; and

(B) states the date and time of delivery.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

Sec. 1372.006. FEES.

(a) An application for a reservation under Subchapter B or a carry forward designation under Subchapter C must be accompanied by a nonrefundable fee in the amount of $500, except that:

(1) for projects that include multiple facilities authorized under Section 1372.002(e), the application must be accompanied by a nonrefundable fee in an amount of $500 for each facility included in the application for the project; and

(2) for issuers of qualified residential rental project bonds the application must be accompanied by a nonrefundable fee of $5,000, of which the board shall retain $1,000 to offset the costs of the private activity bond allocation program and the administration of that program and of which the board shall transfer $4,000 through an interagency agreement to the Texas Department of Housing and Community Affairs for use in the affordable housing research and information program as provided by Section 2306.259.

(b) An issuer, other than an issuer under Section 1372.022(a)(2), shall submit to the board a closing fee in an amount that is equal to the greater of:

(1) $1,000; or

(2) 0.025 percent of the principal amount of the bonds certified as provided by Section 1372.039(a)(1).

(c) An issuer exchanging a portion of the state ceiling for mortgage credit certificates shall submit to the board a closing fee in an amount that is equal to the greater of:

(1) $1,000; or

(2) 0.0125 percent of the amount of the state ceiling exchanged.

(d) Of each fee required by Subsection (b) or (c):

(1) one-third must be submitted not later than the 35th day after the reservation date for the issue; and

(2) the remainder must be submitted at the time of closing.

(e) An issuer receiving a carryforward designation shall submit to the board a fee in an amount that is equal to the greater of:

(1) $1,000; or

(2) 0.025 percent of the amount of the carryforward designation.

(f) A fee required by Subsection (e) must be submitted not later than the fifth business day following the date of receipt of the carryforward designation.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.012(a), eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1329, Sec. 2, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 951, Sec. 2, eff. June 18, 2005.

Acts 2009, 81st Leg., R.S., Ch. 1416, Sec. 6, eff. June 19, 2009.

SUBCHAPTER B. ALLOCATION AND RESERVATION OF STATE CEILING

Sec. 1372.021. ANNUAL ALLOCATION OF STATE CEILING. The state ceiling for each calendar year is allocated to issuers of private activity bonds.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

Sec. 1372.022. AVAILABILITY OF STATE CEILING TO ISSUERS.

(a) If the state ceiling is computed on the basis of $75 per capita or a greater amount, before August 15 of each year:

(1) 28.0 percent of the state ceiling is available exclusively for reservations by issuers of qualified mortgage bonds;

(2) 8 percent of the state ceiling is available exclusively for reservations by issuers of state-voted issues;

(3) 2.0 percent of the state ceiling is available exclusively for reservations by issuers of qualified small issue bonds and enterprise zone facility bonds;

(4) 22.0 percent of the state ceiling is available exclusively for reservations by issuers of qualified residential rental project bonds;

(5) 10.5 percent of the state ceiling is available exclusively for reservations by issuers of qualified student loan bonds authorized by Section 53B.47, Education Code, that are nonprofit corporations able to issue a qualified scholarship funding bond as defined by Section 150(d)(2), Internal Revenue Code (26 U.S.C. Section 150(d)(2)); and

(6) 29.5 percent of the state ceiling is available exclusively for reservations by any other issuer of bonds that require an allocation.

(b) On and after August 15, that portion of the state ceiling available for reservations becomes available for all applications for reservations in the order determined by the board by lot. If all applicants for a reservation have been offered a portion of the available state ceiling, then the board shall grant reservations in the order in which the applications for those reservations are received.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1367, Sec. 10.01, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1420, Sec. 8.013(a), eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1468, Sec. 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1329, Sec. 3, eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1416, Sec. 7, eff. June 19, 2009.

Sec. 1372.0221. DEDICATION OF PORTION OF STATE CEILING FOR PROFESSIONAL EDUCATORS HOME LOAN PROGRAM. Until August 7, out of that portion of the state ceiling that is available exclusively for reservations by the Texas State Affordable Housing Corporation under Section 1372.0223, 54.5 percent shall be allotted each year and made available to the corporation for the purpose of issuing qualified mortgage bonds in connection with the professional educators home loan program established under Section 2306.562.

Added by Acts 2001, 77th Leg., ch. 1194, Sec. 1, eff. June 15, 2001. Amended by Acts 2003, 78th Leg., ch. 332, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 544, Sec. 1, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1108, Sec. 2, eff. September 1, 2007.

Sec. 1372.0222. DEDICATION OF PORTION OF STATE CEILING FOR FIRE FIGHTER, LAW ENFORCEMENT OR SECURITY OFFICER, AND EMERGENCY MEDICAL SERVICES PERSONNEL HOME LOAN PROGRAM. Until August 7, out of that portion of the state ceiling that is available exclusively for reservations by the Texas State Affordable Housing Corporation under Section 1372.0223, 45.5 percent shall be allotted each year and made available to the corporation for the purpose of issuing qualified mortgage bonds in connection with the fire fighter, law enforcement or security officer, and emergency medical services personnel home loan program established under Section 2306.5621.

Added by Acts 2003, 78th Leg., ch. 1050, Sec. 1, eff. June 20, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 196, Sec. 2, eff. May 27, 2005.

Acts 2005, 79th Leg., Ch. 728, Sec. 23.002(6), eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 455, Sec. 3, eff. June 16, 2007.

Acts 2007, 80th Leg., R.S., Ch. 544, Sec. 2, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1108, Sec. 3, eff. September 1, 2007.

Reenacted by Acts 2009, 81st Leg., R.S., Ch. 87, Sec. 11.016, eff. September 1, 2009.

Sec. 1372.0223. DEDICATION OF PORTION OF STATE CEILING TO CERTAIN ISSUERS OF QUALIFIED MORTGAGE BONDS. Until August 7, out of that portion of the state ceiling that is available exclusively for reservations by issuers of qualified mortgage bonds under Section 1372.022:

(1) 10 percent is available exclusively to the Texas State Affordable Housing Corporation for the purpose of issuing qualified mortgage bonds; and

(2) 56.66 percent is available exclusively to housing finance corporations for the purpose of issuing qualified mortgage bonds.

Added by Acts 2005, 79th Leg., Ch. 674, Sec. 9, eff. June 17, 2005.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 544, Sec. 3, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1108, Sec. 4, eff. September 1, 2007.

Sec. 1372.023. DEDICATION OF PORTIONS OF STATE CEILING TO TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS.

(a) Until August 7, of that portion of the state ceiling that is available exclusively for reservations by issuers of qualified mortgage bonds, 33.34 percent is available exclusively to the Texas Department of Housing and Community Affairs for the purpose of issuing qualified mortgage bonds.

(b) Until August 15, of that portion of the state ceiling that is available exclusively for reservations by issuers of qualified residential rental project bonds, one-fifth is available exclusively to the Texas Department of Housing and Community Affairs in the manner described by Section 1372.0231.

(c) The Texas Department of Housing and Community Affairs may not reserve a portion of the state ceiling that is available exclusively for reservations by issuers of qualified residential rental project bonds other than the portion dedicated to the department under Subsection (b).

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1367, Sec. 1.32, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 332, Sec. 2, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 544, Sec. 4, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1108, Sec. 5, eff. September 1, 2007.

Sec. 1372.0231. DEDICATION OF PORTION OF STATE CEILING AVAILABLE FOR QUALIFIED RESIDENTIAL RENTAL PROJECT BONDS.

(a) Until August 15, of that portion of the state ceiling that is available exclusively for reservations by issuers of qualified residential rental project bonds:

(1) 20 percent is available exclusively to the Texas Department of Housing and Community Affairs in the manner described by Subsection (b);

(2) 70 percent is available exclusively to housing finance corporations in the manner described by

Subsections (c)-(f); and

(3) 10 percent is available exclusively to the Texas State Affordable Housing Corporation in the manner described by Subsection (b-1).

Text of subsec. (b) as amended by Acts 2003, 78th Leg., ch. 330, Sec. 27

(b) With respect to the amount of the state ceiling set aside under Subsection (a)(1), the board shall grant reservations at the direction of the Texas Department of Housing and Community Affairs as provided by Section 2306.359 and in a manner that ensures that:

(1) the set-aside amount is used for proposed projects that are located throughout the state; and

(2) not more than 50 percent of the set-aside amount is used for proposed projects that are located in qualified census tracts as defined by Section 143(j), Internal Revenue Code of 1986.

Text of subsec. (b) as amended by Acts 2003, 78th Leg., ch. 1329, Sec. 4

(b) With respect to the amount of the state ceiling set aside under Subsection (a)(1), after the board's review and approval, the board shall grant reservations at the direction of the Texas Department of Housing and Community Affairs in accordance with Section 1372.0321 and criteria established by rules of that department. Subsequent allocations the board makes on behalf of that department are subject to review and approval by the board in accordance with Section 1231.041. Subject to Sections 1372.0321(a) and (b), the board shall grant reservations:

(1) in a manner that ensures that:

(A) the set-aside amount is used for proposed projects that are located throughout the state; and

(B) not more than 50 percent of the set-aside amount is used for proposed projects that are located in qualified census tracts as defined by Section 143(j), Internal Revenue Code of 1986; and

(2) in the order determined by lot, but only for those reservations granted between August 15 and November 30 of the program year.

(b-1) With respect to the amount of the state ceiling set aside under Subsection (a)(3), the board shall issue qualified residential rental project bonds and allocate bond funds at the direction of the Texas State Affordable Housing Corporation as provided by Section 2306.565. Issuances made by the board under this subsection are subject to review and approval by the board under Section 1231.041.

(c) With respect to the amount of the state ceiling set aside under Subsection (a)(2), the board shall grant reservations in a manner that ensures that not more than 50 percent of the set-aside amount is used for proposed projects that are located in qualified census tracts as defined by the most recent publication by the United States Department of Housing and Urban Development.

(d) Except as provided by Subsection (i), before May 1, the board shall apportion the amount of the state ceiling set aside under Subsection (a)(2) among the uniform state service regions according to the percentage of the state's population

that resides in each of those regions.

(e) Until March 1 of each year, for each of the uniform state service regions containing Dallas or Houston, the board shall reserve a total of $15 million of the state ceiling set aside for the region under Subsection (d) for:

(1) the areas in the region that are located outside of a metropolitan statistical area; or

(2) projects involving the rehabilitation of a qualified residential rental facility or facilities in the region, regardless of whether the projects are located inside or outside a metropolitan statistical area.

(f) In each area described by Subsection (d) or (e), the board shall grant reservations based on the priority levels of proposed projects as described by Section 1372.0321.

(g) On or after May 1, the board may not grant available reservations to housing finance corporations described by Subsection (a) based on uniform state service regions or any segments of those regions.

(h) Allocations by the board at the direction of the Texas Department of Housing and Community Affairs under Subsection (b) are subject to review and approval by the board as provided by Section 1231.041.

(i) Before May 1, the board shall apportion the amount of the state ceiling set aside under Subsection (a)(2) only among uniform state service regions with respect to which an issuer has submitted an application for a reservation of the state ceiling on or before March 1.

(j) An application by an issuer of qualified residential rental project bonds that is submitted after the deadline for eligibility to participate in the lottery has a priority lower than that of every application submitted before that date.

Added by Acts 2001, 77th Leg., ch. 1367, Sec. 10.02, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 330, Sec. 27, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 332, Sec. 3, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 969, Sec. 1, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1329, Sec. 4, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 728, Sec. 23.001(37), eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1108, Sec. 6, eff. September 1, 2007.

Sec. 1372.024. INCREASE IN AMOUNT OF STATE CEILING AVAILABLE TO ISSUERS OF STATE-VOTED ISSUES.

(a) If, before January 2, applications received for reservations for state-voted issues total more than eight percent of the available state ceiling for that program year, the percentage of state-voted ceiling requested that is more than eight percent of the state ceiling:

(1) is removed from the state ceiling available to other issuers on January 2; and

(2) is available for those applications for reservations for state-voted issues.

(b) The amount removed under Subsection (a) may not exceed eight percent of the state ceiling.

(c) The remaining portion of the state ceiling is available in accordance with Section 1372.022(a).

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 969, Sec. 2, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1329, Sec. 5, eff. Sept. 1, 2003.

Sec. 1372.025. REALLOCATION OF STATE CEILING ON FAILURE OF BONDS TO QUALIFY AS TAX-EXEMPT

OBLIGATIONS.

(a) If a type of bond listed in Section 1372.022(a) does not qualify on January 2 of any year for treatment as a tax-exempt obligation under the Internal Revenue Code:

(1) Section 1372.022(a) has no effect for that year for that type of bond; and

(2) by March 1, the portion of the state ceiling that but for Subdivision (1) would have been available exclusively for reservations by issuers of that type of bond shall be reallocated proportionately for reservation by each other category of issuer listed in that section.

(b) Subsection (a) does not apply to qualified mortgage bonds or qualified residential rental project bonds made available exclusively to the Texas Department of Housing and Community Affairs under Section 1372.023 or the Texas State Affordable Housing Corporation under Sections 1372.0221 and 1372.0222.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1367, Sec. 1.33, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 196, Sec. 3, eff. May 27, 2005.

Sec. 1372.026. LIMITATION ON AMOUNT OF STATE CEILING AVAILABLE TO HOUSING FINANCE CORPORATIONS.

(a) The maximum amount of the state ceiling that may be reserved before August 15 by a housing finance corporation for the issuance of qualified mortgage bonds may not exceed the amount computed as follows:

(1) if the local population of the housing finance corporation is 300,000 or more, $36 million plus the product of the amount by which the local population exceeds 300,000 multiplied by $40;

(2) if the local population of the housing finance corporation is 200,000 or more but less than 300,000, $32 million plus the product of the amount by which the local population exceeds 200,000 multiplied by $40;

(3) if the local population of the housing finance corporation is 100,000 or more but less than 200,000, $24 million plus the product of the amount by which the local population exceeds 100,000 multiplied by $80; or

(4) if the local population of the housing finance corporation is less than 100,000, the product of the local population multiplied by $240.

(b) A housing finance corporation may not receive an allocation for the issuance of qualified mortgage bonds in an amount that exceeds $40 million.

(c) For purposes of this section, the local population of a housing finance corporation is the population of the local government or local governments on whose behalf a housing finance corporation is created. If two local governments that have a population of at least 50,000 each and that have overlapping territory have created housing finance corporations that have the power to issue bonds to provide financing for home mortgages, the population of the housing finance corporation created on behalf of the larger local government is computed by subtracting from the population of the larger local government the population of the part of the smaller local government that is located in the larger local government. The reduction of population provided by this subsection is not required if the smaller local government assigns its authority to issue bonds, based on its population, to the larger local government.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1367, Sec. 10.03, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1416, Sec. 8, eff. June 19, 2009.

Sec. 1372.0261. FAILURE OF HOUSING FINANCE CORPORATION TO USE AMOUNT OF STATE CEILING ALLOCATED.

(a) In this section, "utilization percentage" means that portion of the amount of the state ceiling allocated to a housing finance corporation with respect to which the corporation issues private activity bonds that result in mortgage loans or mortgage credit certificates. A housing finance corporation's utilization percentage for an allocation of the state ceiling is the quotient of:

(1) the amount of the state ceiling:

(A) with respect to which mortgage loans have been originated, considering only the original principal balance of those loans;

(B) that is used to purchase mortgages or mortgage-backed securities; or

(C) that is used to issue mortgage credit certificates; divided by

(2) the amount of the state ceiling allocated, minus any amounts of the state ceiling required for debt service reserve funds.

(b) If a housing finance corporation's issue of bonds uses a new allocation of the state ceiling in combination with taxable bond proceeds or with bond proceeds recycled from previous allocations of the state ceiling, the first loans or certificates financed are considered in computing the utilization percentage of the new allocation of the state ceiling.

(c) If a housing finance corporation's utilization percentage is less than 80 percent but at least 25 percent, the next time the corporation becomes eligible for a reservation of the state ceiling, the maximum amount of the state ceiling that may be reserved for the corporation is equal to the amount for which the corporation would otherwise be eligible under Section 1372.026 multiplied by the utilization percentage of the corporation's last bond issue that used an allocation of the state ceiling.

(d) A housing finance corporation may not be penalized under Subsection (c) if:

(1) the corporation fails to use:

(A) bond proceeds recycled from previous allocations of the state ceiling; or

(B) taxable bond proceeds; or

(2) as the result of an issuance of bonds, the corporation's utilization percentage is 80 percent or greater.

(e) If a housing finance corporation's utilization percentage is less than 25 percent, the next time the corporation becomes eligible for a reservation of the state ceiling, the maximum amount of the state ceiling that may be reserved for the corporation is equal to the amount for which the corporation would otherwise be eligible under Section 1372.026 multiplied by 25 percent.

(f) A housing finance corporation may not be penalized under Subsection (c) in a program year if, by December 31 of the preceding program year, an amount equal to or less than 50 percent of the aggregate state ceiling available for

reservations by issuers of qualified mortgage bonds under Section 1372.022(a)(1):

(1) has been used in connection with bond issues that have closed on or before that date; or

(2) has had carryforward elections filed on or before that date.

(g) An issuer that has carryforward available from the state ceiling created by the Housing and Economic Recovery Act of 2008 (Pub. L. No. 110-289) is not restricted by project limits for the state ceiling. An issuer who uses the carryforward to issue qualified mortgage bonds or mortgage credit certificates is not subject to the utilization percentage calculation in determining the amount of the issuer's reservation request.

Added by Acts 2001, 77th Leg., ch. 1367, Sec. 10.04, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1108, Sec. 7, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1416, Sec. 9, eff. June 19, 2009.

Sec. 1372.027. PUBLICATION OF AVAILABLE STATE CEILING. The board shall publish at least weekly on its Internet site:

(1) a statement of the amount of the available state ceiling;

(2) a list of the issues that have received a reservation since the preceding publication, including the amount of each reservation; and

(3) a list of the issues that had previously received a reservation that have closed since the preceding publication.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 969, Sec. 3, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1329, Sec. 6, eff. Sept. 1, 2003.

Sec. 1372.028. APPLICATION FOR RESERVATION; FORM AND CONTENT.

(a) In this section, "qualified bond" has the meaning assigned by Section 141(e), Internal Revenue Code (26 U.S.C. Section 141(e)).

(b) An issuer may apply for a reservation for a program year not earlier than October 5 of the preceding year. An issuer may not submit an application for a program year after November 15 of that year.

(c) The application must:

(1) be on a form prescribed by the board;

(2) be signed by a member or officer of the issuer; and

(3) state:

(A) the maximum amount of the bonds in the issue that require an allocation under Section 146, Internal Revenue Code (26 U.S.C. Section 146);

(B) the project or, with respect to an eligible facility, a functional description of the project to be financed by the proceeds, including the identification of the user of the proceeds or project;

(C) whether the bonds are qualified bonds;

(D) if the bonds are qualified bonds:

(i) the subparagraph of Section 141(e)(1), Internal Revenue Code (26 U.S. C. Section 141(e)(1)), that applies; and

(ii) if Section 141(e)(1)(A) of that code (26 U.S.C. Section 141(e)(1)(A)) applies, the paragraph of Section 142(a) of that code (26 U.S.C. Section 142(a)) that applies;

(E) if the bonds are not qualified bonds:

(i) that Section 141(b)(5), Internal Revenue Code (26 U.S.C. Section 141(b)(5)), applies; or

(ii) for a transition rule project, the paragraph of the Tax Reform Act of 1986 that applies;

(F) that bonds are not being issued for the same stated project for which the issuer has received sufficient carryforward during a previous year or for which there exists unexpended proceeds from, including transferred proceeds representing unexpended proceeds from, one or more prior issues of bonds issued by the same issuer or based on the issuer's population; and

(G) other information that the board may require.

(d) An issuer is not required to provide the statement required by Subsection (c)(3)(F) if the issuer:

(1) is an issuer of a state-voted issue;

(2) is the Texas Department of Housing and Community Affairs or the Texas State Affordable Housing Corporation; or

(3) provides evidence that one or more binding contracts have been entered into, or other evidence acceptable to the board as described by program rule, to spend the unexpended proceeds by the later of:

(A) 12 months after the date the board receives the application; or

(B) December 31 of the program year for which the application is filed.

(e) If an issuer applied the previous year for a reservation for qualified mortgage bonds and has not received the reservation at the time of application for the lottery, the issuer, instead of filing a complete application under Subsection (c), may file a statement explaining whether there are any changes in information from the application information filed the previous year. If there are changes, the statement must specify the current information. An issuer that files a statement under this subsection must pay the same application fee required for a complete application.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.014(a), eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1468, Sec. 3, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 969, Sec. 4, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1329, Sec. 7, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 196, Sec. 4, eff. May 27, 2005.

Acts 2009, 81st Leg., R.S., Ch. 506, Sec. 1.19, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1416, Sec. 10, eff. June 19, 2009.

Sec. 1372.0281. INFORMATION REQUIRED OF ISSUERS OF CERTAIN QUALIFIED STUDENT LOAN BONDS.

(a) An issuer of qualified student loan bonds authorized by Section 53.47, Education Code, shall provide to the board

together with its application for a reservation information required by board rule.

(b) The board may require an issuer described by Subsection (a) to provide information with its application, or to supplement the application with information, that includes:

(1) financial statements;

(2) portfolio amounts;

(3) default rates;

(4) descriptions of how student loans are being used or spent; and

(5) information about the issuer's client agencies.

Added by Acts 2003, 78th Leg., ch. 1329, Sec. 8, eff. Sept. 1, 2003.

Sec. 1372.029. APPLICATIONS FOR MULTIPLE PROJECTS AT SAME SITE PROHIBITED. The board may not accept applications for reservations for more than one project located at, or related to, a business operation at a particular site for any one program year.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

Sec. 1372.030. GRANTING OF CERTAIN RESERVATIONS PROHIBITED; EXCEPTIONS.

(a) The board may not grant a reservation to an issuer to whom proceeds are available from other bonds issued by or on behalf of that issuer for the project stated in the issuer's application for the reservation.

(b) Subsection (a) does not apply to an issuer to which Section 1372.028(d) applies.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

Sec. 1372.031. PRIORITIES FOR RESERVATIONS AMONG CERTAIN ISSUERS.

(a) Except as provided by Subsection (b) and subject to Sections 1372.0321, 1372.0231, and 1372.035(c), if, on or before October 20, more than one issuer in a category described by Section 1372.022(a)(2), (3), (4), or (6) applies for a reservation of the state ceiling for the next program year, the board shall grant reservations in that category in the order determined by the board by lot.

(b) Until August 1 of the program year, within the category described by Section 1372.022(a)(6), the board shall grant priority to the Texas Economic Development Bank for projects that the Texas Economic Development and Tourism Office determines meet the governor's criteria for funding from the Texas Enterprise Fund. Notwithstanding the priority, the Texas Economic Development Bank may not receive an amount greater than one-sixth of the portion of the state ceiling available under Section 1372.022(a)(6) on January 1 of the program year.

(c) In selecting projects for reservations of the state ceiling for a program year under Subsection (b), among those projects the Texas Economic Development and Tourism Office determines meet the governor's criteria for funding from the Texas Enterprise Fund the office shall give priority to obtaining reservations for those projects located or to be located in an economically depressed or blighted area, as defined by Section 2306.004, or in an enterprise zone designated under Chapter 2303.

(d) This section and Section 1372.063 do not give a priority to any project described by Subsection (b) for the purpose of selecting projects for reservations under Section 1372.022(b).

(e) The Texas Economic Development Bank is subject to Section 1201.027(d).

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1367, Sec. 10.05, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1420, Sec. 8.015(a), eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 969, Sec. 5, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1329, Sec. 9, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 991, Sec. 8, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1108, Sec. 8, eff. September 1, 2007.

Reenacted by Acts 2009, 81st Leg., R.S., Ch. 87, Sec. 11.017, eff. September 1, 2009.

Sec. 1372.032. PRIORITIES FOR RESERVATIONS AMONG ISSUERS OF QUALIFIED MORTGAGE BONDS.

(a) If, on or before October 20, more than one housing finance corporation applies for a reservation of the state ceiling for qualified mortgage bonds for the next program year, the board shall give priority in granting reservations in that category to issuers that:

(1) applied before September 1 of the preceding year for a reservation on behalf of the same local population for that year; but

(2) were not granted a reservation during that year.

(b) The priority of an issuer under Subsection (a) that is composed of more than one jurisdiction is not affected by the issuer's loss of a sponsoring local government and that government's population if the dollar amount of the application has not increased.

(c) Within the group of issuers given priority and within the group not given priority, the board shall grant reservations in reverse order of the date of the most recent closing of qualified mortgage bonds applicable to the housing finance corporations, with a corporation that has never received a reservation for mortgage revenue bonds being the first to receive a reservation and the corporation that had the most recent closing being the last to receive a reservation. If closings occurred on the same date, the board shall grant reservations in the order determined by the board by lot.

(d) For purposes of Subsection (c), the most recent closing applicable to a newly created housing finance corporation sponsored by one or more local governments that had previously sponsored another housing finance corporation, whether existing or not, or to a housing finance corporation sponsored by a local government that has participated in the program of another housing finance corporation is the most recent closing of qualified mortgage bonds the proceeds of which were available to the population of the corporation.

(e) A housing finance corporation or its sponsoring local government may not achieve an advantage in the determination of its most recent closing by creating, dissolving, or withdrawing from a housing finance corporation.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1367, Sec. 10.06, eff. Sept. 1, 2001.

Sec. 1372.0321. PRIORITIES FOR RESERVATIONS AMONG ISSUERS OF QUALIFIED RESIDENTIAL RENTAL PROJECT ISSUES.

(a) In granting reservations to issuers of qualified residential rental project issues, the board shall give first priority to:

(1) projects in which:

(A) 50 percent of the residential units in the project are:

(i) under the restriction that the maximum allowable rents are an amount equal to 30 percent of 50 percent of the area median family income minus an allowance for utility costs authorized under the federal low-income housing tax credit program; and

(ii) reserved for families and individuals earning not more than 50 percent of the area median income; and

(B) the remaining 50 percent of the residential units in the project are:

(i) under the restriction that the maximum allowable rents are an amount equal to 30 percent of 60 percent of the area median family income minus an allowance for utility costs authorized under the federal low-income housing tax credit program; and

(ii) reserved for families and individuals earning not more than 60 percent of the area median income;

(2) projects in which:

(A) 15 percent of the residential units in the project are:

(i) under the restriction that the maximum allowable rents are an amount equal to 30 percent of 30 percent of the area median family income minus an allowance for utility costs authorized under the federal low-income housing tax credit program; and

(ii) reserved for families and individuals earning not more than 30 percent of the area median income; and

(B) the remaining 85 percent of the residential units in the project are:

(i) under the restriction that the maximum allowable rents are an amount equal to 30 percent of 60 percent of the area median family income minus an allowance for utility costs authorized under the federal low-income housing tax credit program; and

(ii) reserved for families and individuals earning not more than 60 percent of the area median income;

(3) projects:

(A) in which 100 percent of the residential units in the project are:

(i) under the restriction that the maximum allowable rents are an amount equal to 30 percent of 60 percent of the area median family income minus an allowance for utility costs authorized under the federal low-income housing tax credit program; and

(ii) reserved for families and individuals earning not more than 60 percent of the area median income; and

(B) which are located in a census tract in which the median income, based on the most recent information published by the United States Bureau of the Census, is higher than the median income for the county, metropolitan statistical area, or primary metropolitan statistical area in which the census tract is located as established by the United States Department of Housing and Urban Development; or

(4) on or after June 1, projects that are located in counties, metropolitan statistical areas, or primary metropolitan statistical areas with area median family incomes at or below the statewide median family income established by the United States Department of Housing and Urban Development.

(a-1) In granting reservations to issuers of qualified residential rental project issues, the board shall give second priority to projects in which 80 percent or more of the residential units in the project are:

(1) under the restriction that the maximum allowable rents are an amount equal to 30 percent of 60 percent of the area median family income minus an allowance for utility costs authorized under the federal low-income housing tax credit program; and

(2) reserved for families and individuals earning not more than 60 percent of the area median income.

(a-2) In granting reservations to issuers of qualified residential rental project issues, the board shall give third priority to any other qualified residential rental project.

(b) The board may not reserve a portion of the state ceiling for a first or second priority project described by this section unless the board receives evidence that an application has been filed with the Texas Department of Housing and Community Affairs for the low-income housing tax credit that is available for multifamily transactions that are at least 51 percent financed by tax-exempt private activity bonds.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 8.015(a), eff. Sept. 1, 2001 and Acts 2001, 77th Leg., ch. 1367, Sec. 10.07(a), eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 330, Sec. 28, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1329, Sec. 10, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1108, Sec. 9, eff. September 1, 2007.

Sec. 1372.033. PRIORITIES FOR RESERVATIONS AMONG CERTAIN ISSUERS OF QUALIFIED STUDENT LOAN BONDS.

(a) In this section:

(1) "Additional need" means the additional need of a qualified nonprofit corporation determined by subtracting the floor allocation for that qualified nonprofit corporation from that corporation's annual need.

(2) "Annual need" means, for a qualified nonprofit corporation, one-half of the total principal amount of Texas eligible loans the qualified nonprofit corporation purchased in the two most recently completed fiscal years ending June 30.

(3) "Floor allocation" means, for a qualified nonprofit corporation, an allocation in the amount of the lesser of $27 million or the qualified nonprofit corporation's annual need.

(4) "Qualified nonprofit corporation" has the meaning assigned by Section 53.47, Education Code.

(5) "Remaining amount to be allocated" is the total amount to be allocated under Section 1372.022(a)(5) in a

calendar year less the sum of the floor allocations of the qualified nonprofit corporations that have applied for a student loan bond allocation for the calendar year.

(6) "Student loan bond allocation" means an allocation for private activity bonds under Section 1372.022(a)(5).

(7) "Texas eligible loan" means a Texas loan purchased from the originating lender by a nonprofit corporation acting as described by Section 53.47(g), Education Code.

(8) "Texas loan" means a guaranteed student loan, as defined by Section 53.47, Education Code, made on behalf of a borrower who is:

(A) a resident of this state; or

(B) a student attending an accredited institution, as defined by Section 53.47, Education Code, that is located in this state.

(9) "Total amount to be allocated" means the total available under Section 1372.022(a)(5) for all applicants.

(b) Only a qualified nonprofit corporation may apply for a student loan bond allocation.

(c) An application for a student loan bond allocation must include a statement as provided by this subsection. The statement must be certified by an officer of the applicant, whose signature must be notarized. The statement must be audited by an independent auditor, and the report of the independent auditor must be attached to the statement. The statement must list:

(1) the principal amount of Texas eligible loans the applicant purchased in the two most recently completed fiscal years ending June 30;

(2) the agencies that are guaranteeing the Texas eligible loans listed and the amount of Texas eligible loans guaranteed by each agency;

(3) the originating lenders from whom the Texas eligible loans were purchased and the amount of Texas eligible loans each originating lender sold; and

(4) the date of each purchase transaction.

(d) Each qualified nonprofit corporation that applies for a student loan bond allocation in compliance with all applicable application requirements is entitled to receive a floor allocation except as provided by this section. If the total amount to be allocated is less than the sum of the floor allocations for all of the applicants, each applicant is entitled to a proportion of the total amount to be allocated equal to the proportion its floor allocation bears to the total of the floor allocation for all of the applicants. A qualified nonprofit corporation whose annual need is zero is not entitled to apply for a student loan bond allocation.

(e) If, after allocations are computed under Subsection (d), there is a remaining amount to be allocated and there are one or more applicants with additional need, each applicant with additional need is entitled to a proportion of the remaining amount to be allocated equal to the proportion the applicant's additional need bears to the total of the additional need of all applicants but not to exceed the amount of the applicant's additional need. Any amount remaining after distribution to applicants with additional need shall be allocated in equal amounts to the other applicants that have a floor allocation of greater than $27 million.

(f) Notwithstanding Subsection (e), if an applicant's share of the remaining amount to be allocated is greater than 50 percent, that applicant is entitled to 50 percent of the remaining amount to be allocated. The other 50 percent of the remaining amount to be allocated shall be distributed to the other applicants in proportion to their unmet additional need, except that the allocations may not exceed, for any applicant, the additional need of the applicant. If, after the additional needs of the other applicants are met, there remains any amount of the remaining amount to be allocated available for distribution, that amount shall be distributed to the applicant with the share of more than 50 percent of the remaining amount to be allocated in an amount not to exceed the amount of the applicant's additional need.

(g) A qualified nonprofit corporation that receives a student loan bond allocation may not:

(1) transfer the allocation to another entity; or

(2) loan to another entity other than a student proceeds of bonds issued under the allocation.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1367, Sec. 10.08, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1329, Sec. 11, eff. Sept. 1, 2003.

Sec. 1372.034. ORDER OF ACCEPTANCE OF CERTAIN APPLICATIONS FOR RESERVATION. The board shall accept applications for a reservation submitted after October 20 in the order in which they are received.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

Sec. 1372.035. GRANTING OF RESERVATIONS; ORDER.

(a) The board may not grant a reservation of a portion of the state ceiling for a program year before January 2 or after November 15 of that year.

(b) Except as provided by Sections 1372.031-1372.033 and Subsection (c), the board shall grant reservations in the order in which the applications for those reservations are received, regardless of the amounts of the related bond issues.

(c) If, with respect to an application, an issuer receives a carryforward designation under Section 1372.061(b), the board shall grant a reservation with respect to the issuer's next available application on the earlier of the following:

(1) the date of receipt of notice from the issuer that the application for which the issuer received the carryforward designation is being withdrawn; or

(2) if the amount of the carryforward is sufficient to satisfy fully the issuer's next available application, the date of expiration of the period specified by Section 1372.042(a-1).

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1108, Sec. 10, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1416, Sec. 11, eff. June 19, 2009.

Sec. 1372.036. RESERVATIONS FROM PORTION OF STATE CEILING SUBSEQUENTLY BECOMING AVAILABLE.

(a) If, before June 1, any portion of the state ceiling in a category described by Section 1372.022(a) from which issuers were granted reservations becomes available in that category:

(1) those amounts of the state ceiling shall be aggregated; and

(2) the board shall grant reservations from that category on June 1.

(b) Beginning June 1, partial reservations may be offered once to each applicant in each category described by Section 1372.022(a) until an applicant in the category accepts the partial reservation or until additional volume is returned in an amount sufficient to grant a full reservation.

(c) After January 1, the board may grant a reservation to an issuer if the amount of state ceiling available in a category is greater than the amount of state ceiling applied for in that category.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 969, Sec. 6, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1329, Sec. 12, eff. Sept. 1, 2003.

Sec. 1372.037. LIMITATIONS ON GRANTING OF RESERVATIONS FOR INDIVIDUAL PROJECTS.

(a) Except as provided by Subsection (b), before August 15 the board may not grant for any single project a reservation for that year that is greater than:

(1) $40 million, if the issuer is an issuer of qualified mortgage bonds, other than the Texas Department of Housing and Community Affairs or the Texas State Affordable Housing Corporation;

(2) $50 million, if the issuer is an issuer of a state-voted issue, other than the Texas Higher Education Coordinating Board, or $75 million, if the issuer is the Texas Higher Education Coordinating Board;

(3) the amount to which the Internal Revenue Code limits issuers of qualified small issue bonds and enterprise zone facility bonds, if the issuer is an issuer of those bonds;

(4) the lesser of $20 million or 15 percent of the amount set aside for reservation by issuers of qualified residential rental project bonds, if the issuer is an issuer of those bonds;

(5) the amount as prescribed in Sections 1372.033(d), (e), and (f), if the issuer is an issuer authorized by Section 53B.47, Education Code, to issue qualified student loan bonds; or

(6) $50 million, if the issuer is any other issuer of bonds that require an allocation.

(b) In addition to a reservation under Subsection (a)(2), the board may grant to the Texas Water Development Board a reservation for not more than $100 million of the available state ceiling for a water development issue.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1329, Sec. 13, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 600, Sec. 1, eff. June 17, 2005.

Acts 2007, 80th Leg., R.S., Ch. 544, Sec. 5, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1108, Sec. 11, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1416, Sec. 12, eff. June 19, 2009.

Sec. 1372.038. RESERVATION DATE. The reservation date for an issue is the date on which the board notifies an issuer whose application for the reservation has been accepted for filing by the board that a portion of the state ceiling is

available to that issue.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

Sec. 1372.039. CERTIFICATION REQUIRED OF ISSUER; CANCELLATION ON FAILURE.

(a) Not later than the 35th day after an issuer's reservation date, the issuer shall submit to the board:

(1) a certificate signed by an authorized representative of the issuer that certifies the principal amount of the bonds to be issued; and

(2) a list of finance team members and their addresses and telephone numbers.

(b) If the principal amount certified by the issuer is less than the amount stated in the issuer's application for the reservation, the amount of the issuer's reservation is reduced to the amount certified.

(c) If an issuer does not submit the documents as required by this section and the fee as required by Section 1372.006(d)(1):

(1) the reservation is canceled; and

(2) from the reservation date of the canceled reservation until the expiration of the applicable period described by Section 1372.042(a) or (b):

(A) no issuer may submit an application for a reservation for the same project; and

(B) the issuer is eligible for a carryforward designation for the project only as provided by Subchapter C.

(d) If an issuer does not submit the documents during the period provided by Subsection (a), the issuer may submit the documents not later than the third day after the end of the 35-day period together with a statement and evidence regarding extenuating circumstances that prevented a timely filing. The board shall review the statement and the evidence and may, based on the statement and evidence, permit the late filing.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1329, Sec. 14, eff. Sept. 1, 2003.

Sec. 1372.040. RESERVATION BY CERTAIN ISSUERS OF QUALIFIED MORTGAGE BONDS OF MONEY FOR MORTGAGES FOR CERTAIN PERSONS. An issuer of qualified mortgage bonds, other than the Texas Department of Housing and Community Affairs or the Texas State Affordable Housing Corporation, shall reserve for six months 50 percent of the funds available for loans outside the federally designated target areas to provide mortgages to individuals and families with incomes below 80 percent of the applicable median family income, as defined by Section 143(f)(4), Internal Revenue Code (26 U.S.C. Section 143(f)(4)).

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 969, Sec. 7, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1329, Sec. 15, eff. Sept. 1, 2003.

Sec. 1372.041. REFUSAL TO ACCEPT RESERVATION BY ISSUER.

(a) An issuer may:

(1) refuse to accept a reservation if the amount of state ceiling available is less than the amount for which the issuer applied; or

(2) refuse to accept a reservation for any amount if the reservation is granted after September 23.

(b) The amount of available state ceiling is subject to the grant of a reservation to each succeeding issuer eligible to be granted a reservation of that available state ceiling in the order of priority under this subchapter.

(c) An issuer's refusal to accept a reservation does not affect the issuer's order of priority for a subsequent grant of a reservation.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

Sec. 1372.042. DEADLINE FOR CLOSING ON BONDS BY ISSUER.

(a) An issuer other than an issuer of qualified residential rental project bonds, an issuer of state-voted issues, or an issuer of qualified mortgage bonds shall close on the bonds for which the reservation was granted not later than the 120th day after the reservation date.

(a-1) An issuer of qualified residential rental project bonds shall close on the bonds for which the reservation was granted not later than the 150th day after the reservation date. If an issuer of qualified residential rental project bonds fails to close on the bonds for which a reservation was granted, the issuer shall pay the full closing fee provided by Section 1372.006(b) if the application is not withdrawn before the 120th day after the reservation date.

(b) An issuer of state-voted issues or an issuer of qualified mortgage revenue bonds shall close on the bonds for which the reservation was granted not later than the 180th day after the reservation date.

(c) Notwithstanding Subsections (a), (a-1), and (b), if the 120-day period, the 150-day period, or the 180-day period, as applicable, expires on or after December 24 of the year in which the reservation was granted, the issuer shall close on the bonds before December 24, except that if the applicable period expires after December 31 of that year, the issuer may notify the board in writing before December 24 of the issuer's election to carry forward the reservation and of the issuer's expected bond closing date. In compliance with the requirements of Section 146(f), Internal Revenue Code of 1986, the board shall file in a timely manner a carryforward election with respect to any bonds expected to close after December 31 to permit the bonds to close by the expected date, except that the board may not file the carryforward election after February 15 of the year following the year in which the reservation was granted. The grant of the reservation for the balance of the 120-day period, the 150-day period, or the 180-day period, as applicable, is automatically and immediately reinstated on the board's filing of a carryforward election with respect to the reservation.

(d) Not later than the fifth business day after the date on which the bonds are closed, the issuer shall submit to the board:

(1) a written notice stating the delivery date of the bonds and the principal amount of the bonds issued;

(2) if the project is a project entitled to first or second priority under Section 1372.0321, evidence from the Texas Department of Housing and Community Affairs that an award of low-income housing tax credits has been approved for the project; and

(3) a certified copy of the document authorizing the bonds and any other document relating to the issuance of the bonds, including a statement of the bonds':

(A) principal amount;

(B) interest rate or formula by which the interest rate is computed;

(C) maturity schedule; and

(D) purchaser or purchasers.

(e) In addition to any other fees required by this chapter, an issuer shall submit to the board a nonrefundable fee in the amount of $500 before receiving a carryforward designation under Subsection (c).

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1367, Sec. 10.09, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1420, Sec. 8.016(a), eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1329, Sec. 16, eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1416, Sec. 13, eff. June 19, 2009.

Sec. 1372.043. CANCELLATION OF RESERVATION ON ISSUER'S FAILURE TO TIMELY CLOSE ON BONDS. If an issuer does not close on the issuer's bonds as required by Section 1372.042:

(1) the reservation for the issue is canceled; and

(2) for the period beginning on the reservation date and ending on the 150th day after the reservation date or on the 210th day after the reservation date if the issuer is an issuer of qualified mortgage bonds:

(A) no issuer may submit an application for a reservation for the same project; and

(B) the issuer is eligible for a carryforward designation for the project only as provided by Subchapter C.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

Sec. 1372.044. ASSIGNMENT OF RESERVATION. A reservation may be assigned only between a governmental unit and an issuer that is authorized to issue private activity bonds on behalf of that governmental unit.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

Sec. 1372.045. RESERVATION, ALLOCATION, AND CARRYFORWARD DESIGNATION BY BOARD OF ADDITIONAL STATE CEILING.

(a) The board is authorized to establish and administer programs for the reservation, allocation, and carryforward designation of additional state ceiling in accordance with the federal law that establishes the additional state ceiling and, to the extent consistent with the federal law, as the board determines will achieve the purposes for which the additional state ceiling is authorized by federal law.

(b) The board may adopt rules and procedures the board considers necessary to effectively administer programs authorized under this section.

(c) The board may prescribe forms and applications as needed to effectively implement and administer programs authorized under this section.

(d) The board may adopt emergency rules in connection with the programs authorized under this section when the board determines that the emergency rules are necessary for the state to obtain the full benefits of the additional state ceiling.
Added by Acts 2009, 81st Leg., R.S., Ch. 1416, Sec. 14, eff. June 19, 2009.

SUBCHAPTER C. CARRYFORWARD OF STATE CEILING

Sec. 1372.061. DESIGNATION BY BOARD OF CERTAIN AMOUNTS OF STATE CEILING AS CARRYFORWARD.

(a) The board may designate as carryforward:

(1) the amount of the state ceiling that is not reserved before December 15; and

(2) any amount of the state ceiling that:

(A) was reserved before December 15; and

(B) becomes available on or after that date because of the cancellation of a reservation.

(b) The board shall designate as carryforward a reservation amount for which the board receives written notice from an issuer of an election to carry forward the reservation under Section 1372.042(c) if the bonds relating to the reservation are not required to close by December 31 of the year in which the reservation was granted.
Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1367, Sec. 10.10, eff. Sept. 1, 2001.

Sec. 1372.062. PRIORITY CLASSIFICATIONS OF CARRYFORWARD DESIGNATIONS.

(a) The board shall:

(1) designate amounts as carryforward in accordance with the system of priority classifications specified in Sections 1372.063-1372.068; and

(2) in each classification, make the designations in order of the application for those designations.

(b) Notwithstanding Subsection (a), the board shall designate in compliance with the requirements of Section 146(f), Internal Revenue Code of 1986, a carryforward relating to an issuer's written election under Section 1372.042(c) according to the category of bonds to which the reservation subject to the carryforward relates.
Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1367, Sec. 10.10, eff. Sept. 1, 2001.

Sec. 1372.063. PRIORITY 1 CARRYFORWARD CLASSIFICATION. The priority 1 carryforward classification applies to:

(1) an issuer of a state-voted issue; and

(2) a state agency, other than an issuer of a state-voted issue, that applies for a carryforward designation for a project that:

(A) is described by Section 1372.067(a)(2); and

(B) the Texas Economic Development and Tourism Office determines meets the governor's criteria for funding from the Texas Enterprise Fund.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 991, Sec. 9, eff. September 1, 2007.

Sec. 1372.064. PRIORITY 2 CARRYFORWARD CLASSIFICATION. The priority 2 carryforward classification applies to an issuer of bonds approved by the voters of a political subdivision of this state if:

(1) the bonds will be private activity bonds for which an allocation will be required for the bonds to be tax exempt under the Internal Revenue Code; or

(2) the excess private use of a governmental bond will require allocation so that the bond may retain its tax exempt status under the Internal Revenue Code.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

Sec. 1372.065. PRIORITY 3 CARRYFORWARD CLASSIFICATION. The priority 3 carryforward classification applies to:

(1) a state agency, other than an issuer of a state-voted issue; and

(2) a political subdivision whose board of directors holds office under Section 30a, Article XVI, Texas Constitution.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

Sec. 1372.066. PRIORITY 4 CARRYFORWARD CLASSIFICATION.

(a) The priority 4 carryforward classification applies to any political subdivision:

(1) that is authorized to issue bonds; and

(2) to which priority carryforward classifications 1-3 do not apply.

(b) A project that is the subject of an application for a priority 4 carryforward classification must be owned by a governmental unit in accordance with applicable provisions of the Internal Revenue Code.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

Sec. 1372.067. PRIORITY 5 CARRYFORWARD CLASSIFICATION.

(a) The priority 5 carryforward classification applies to an issuer that:

(1) was created to act on behalf of this state or one or more political subdivisions of this state; and

(2) is applying for carryforward for a project:

(A) for which there has been an inducement resolution or other comparable preliminary approval; and

(B) with respect to which:

(i) a binding contract to incur significant expenditures for construction, reconstruction, or

rehabilitation was entered into before submission of the application;

(ii) significant expenditures for construction, reconstruction, or rehabilitation were readily identifiable with and necessary to carry out a binding contract for the supply of property or services or the sale of output; or

(iii) significant expenditures were paid or incurred before submission of the application.

(b) In this section, "significant expenditures" means expenditures that are greater than the lesser of:

(1) $1 million; or

(2) 10 percent of the reasonably anticipated cost of the project.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

Sec. 1372.068. PRIORITY 6 CARRYFORWARD CLASSIFICATION. The priority 6 carryforward classification applies to an issuer that:

(1) was created to act on behalf of this state or one or more political subdivisions of this state; and

(2) is applying for carryforward for a project that is not eligible for another priority carryforward classification.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

Sec. 1372.069. APPLICATION FOR CARRYFORWARD DESIGNATION; LIMITATIONS.

(a) An issuer may apply for a carryforward designation at any time during the year in which the designation is sought.

(b) An issuer that applies for a carryforward designation may not apply later in the same year for a reservation for the same project.

(c) An issuer may not apply for the carryforward designation of an amount that is greater than $50 million.

(d) The board by rule shall prevent an issuer from applying for a carryforward designation in an amount that is greater than the amount needed.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

Sec. 1372.070. FORM AND CONTENTS OF APPLICATION FOR CARRYFORWARD APPLICATION. An application for a carryforward designation must:

(1) be on a form prescribed by the board;

(2) be signed by a member or officer of the issuer and by the governor, if the issuer was created to act on behalf of this state;

(3) state the amount of carryforward sought;

(4) describe the project;

(5) state which priority classification is applicable to the applicant;

(6) include evidence satisfactory to the board that that priority classification is correct; and

(7) contain any other information that the board by rule requires.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1108, Sec. 12, eff. September 1, 2007.

Sec. 1372.071. ACTION ON APPLICATION FOR CARRYFORWARD DESIGNATION. On receipt of an application for a carryforward designation, the board shall:

(1) determine whether the application complies with the requirements of this chapter and board rules; and

(2) note its determination on the application.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

Sec. 1372.072. AMENDMENT OR WITHDRAWAL OF APPLICATION FOR CARRYFORWARD DESIGNATION.

(a) An issuer may amend or withdraw an application for a carryforward designation by submitting to the board a notice of the amendment or withdrawal.

(b) If an application is amended, the application's place in the order of eligibility for a carryforward designation in a priority classification is determined using the date of the amendment instead of the date of the original application.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

Sec. 1372.073. DESIGNATION BY BOARD OF UNENCUMBERED STATE CEILING. Notwithstanding any other provision of this chapter, the board on the last business day of the year may assign as carryforward to state agencies at their request and in the order received any state ceiling that is not reserved or designated as carryforward and for which no application for carryforward is pending.

Added by Acts 2009, 81st Leg., R.S., Ch. 1416, Sec. 15, eff. June 19, 2009.

SUBCHAPTER D. ALLOCATION OF MISCELLANEOUS BOND CEILING

Sec. 1372.101. PROGRAM ADMINISTRATION.

(a) The applicable official may designate bonds as entitled to a portion of a miscellaneous bond ceiling or allocate a portion of a miscellaneous bond ceiling to an issuer of bonds:

(1) in accordance with the federal law that establishes the federal subsidy for which the miscellaneous bond ceiling is established; and

(2) to the extent consistent with the federal law, as the applicable official determines will achieve the purposes for which the federal subsidy is authorized by federal law.

(b) The board is authorized to administer programs established by the applicable official for the allocation of a miscellaneous bond ceiling or the designation of bonds entitled to the federal subsidy limited by a miscellaneous bond ceiling.

Added by Acts 2009, 81st Leg., R.S., Ch. 1416, Sec. 16, eff. June 19, 2009.

Sec. 1372.102. RULES AND PROCEDURES.

(a) Unless otherwise provided by law, the board may adopt rules and procedures the board considers necessary to effectively administer programs established by the applicable official for allocation of a miscellaneous bond ceiling or for designating bonds as entitled to the federal subsidy limited by the miscellaneous bond ceiling.

(b) The board may adopt emergency rules in connection with the programs described in Subsection (a) when the board determines that the emergency rules are necessary for the state to obtain the full benefits of the federal subsidy that is limited by the miscellaneous bond ceiling.

(c) The board may prescribe forms and applications as needed to effectively implement and administer programs described in Subsection (a).

(d) This section does not prevent an applicable official from adopting rules and procedures in connection with the allocations and designations when required by federal or state law or from administering a program independently of the board.

Added by Acts 2009, 81st Leg., R.S., Ch. 1416, Sec. 16, eff. June 19, 2009.

Sec. 1372.103. APPLICATION FEES. In connection with programs established by the applicable official for the allocation of a miscellaneous bond ceiling or the designation of bonds entitled to the federal subsidy limited by a miscellaneous bond ceiling, the board may charge an application fee for each application it receives under this subchapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 1416, Sec. 16, eff. June 19, 2009.