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2013 Competitive HTC Application Cycle Frequently Asked Questions (FAQs)

Pursuant to §11.1(b) of the Qualified Allocation Plan (QAP), Department staff may, from time to time, make available for use by Applicants information and informal guidance in the form of reports, frequently asked questions, and responses to specific questions. The Department encourages communication with staff in order to clarify any issues that may not be fully addressed in the rules (Uniform Multifamily Rules and QAP) or be unclear when applied to specific facts. However, while these resources are offered to help Applicants prepare and submit accurate information, Applicants should also appreciate that this type of guidance is limited by its nature and that staff will apply the rules of the QAP to each specific situation as it is presented in the submitted Application. Notwithstanding the fact that the rules along with other Department resources may not contemplate unforeseen situations that may arise, the Department will apply a reasonableness standard to the evaluation of Applications for Housing Tax Credits.

Following is a list of questions that the Department has received with respect to the 2013 Uniform Multifamily Rules and QAP and how various provisions of the rules will be applied to Applications submitted and reviewed by the Department during the 2013 competitive cycle. Each of the questions was received via email or phone over the past several weeks and at the application workshops held in early December. Each time an update is made the most recently updated date will be added to the box at the top right of this page. The FAQ is an opportunity to provide all Applicants and the public the same information that was relayed to the individuals who asked the question.

Questions and answers are in the same order that their related sections appear in the rules. If questions and answers are added after the initial posting, the revision dates will appear at the top of this page and will be included next to each of the added questions. The Department may not send out a new listserv each time an update is made unless the update is extensive. Staff encourages interested individuals to check back periodically.

Chapter 10, Subchapter A – Uniform Multifamily Rules

§10.3 – Definitions and Staff Determinations

Q: **[ADDED 1/24/13]** The definition for "intergenerational" housing no longer appears in the QAP. Can an Applicant still submit an Application for a Development targeting both elderly households and family households?

A: The test to ensure that any Development meets the Fair Housing Act requirements for "housing for older persons" will be applied at the property owner level. There are three ways to meet these requirements as expressly provided for in the Fair Housing Act, as follows:

> As used in this section "housing for older persons" means housing --
> (A) provided under any State or Federal program that the Secretary determines is specifically designed and operated to assist elderly persons (as defined in the State

or Federal program); or
(B) intended for, and solely occupied by, persons 62 years of age or older; or
(C) intended and operated for occupancy by persons 55 years of age or older, and--
(i) at least 80 percent of the occupied units are occupied by at least one person who is 55 years of age or older;
(ii) the housing facility or community publishes and adheres to policies and procedures that demonstrate the intent required under this subparagraph; and
(iii) the housing facility or community complies with rules issued by the Secretary for verification of occupancy, which shall--
(I) provide for verification by reliable surveys and affidavits; and
(II) include examples of the types of policies and procedures relevant to a determination of compliance with the requirement of clause (ii). Such surveys and affidavits shall be admissible in administrative and judicial proceedings for the purposes of such verification.

This means that any Development with age restrictions that is not entirely Qualified Elderly will be deemed ineligible for funding unless the Secretary of HUD (or a designee) affirmatively makes a determination under paragraph (A) above. Staff is currently aware of such a determination for the USDA 515 program but has not reviewed other such determinations that may exist. Applicants should be aware that some HAP contracts for Project Based Section 8 transactions include age restrictions for a portion of the units in a Development. However, additional documentation of compliance with paragraph (A) will generally be required since the HAP contract alone does not constitute a determination from the Secretary. Any documentation that is provided will be reviewed by the Department's legal division.

Q: Are staff determinations under §10.3(b) precedent setting?

A: No. Staff determinations under §10.3(b) are based on the specific facts and circumstances that exist for a particular Application and the requesting Applicant. An Applicant should not rely on a staff determination provided for another Applicant.

NOTE: Also see question below regarding §11.3 Housing De-Concentration Factors as it relates to staff determinations.

Chapter 10, Subchapter B – Uniform Multifamily Rules

§10.101(a)(2) – Mandatory Site Characteristics

Q: From what point to what point will the Department measure the one or two mile radius for mandatory site characteristics?

A: Any point contained in the Development Site to any point contained on the land owned/leased at the subject amenity (*e.g.* the edge of the development site to an amenity's parking lot is acceptable). For consistency's sake, in the section regarding undesirable site features it reads, "The distances are to be measured from the nearest boundary of the Development Site to the boundary of the undesirable feature." These distances will also be measured "as the crow flies," with a straight line.

Q: Can multiple site amenities be lumped into one (*e.g.* A Super Wal-Mart could be a grocery store, pharmacy, and fast food restaurant)?

A: Yes, provided that each amenity provides a comparable level of service that would be available if the amenity were stand-alone.

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

Q: Can the Department define how "fall distances" as used in §10.101(a)(3)(E) should be calculated?

A: The Department would prefer to have evidence of a fall distance in the form of documentation from a third party, whether it is the owner of the subject structure or a third party engineer. In the absence of available third party documentation, the Department may also consider the height of the structure and a corresponding map showing the height of the structure as a fall radius.

Q: Do the undesirable site and area features requirements apply to an Application proposing the Rehabilitation of an existing development?

A: Rehabilitation (excluding Reconstruction) Developments with ongoing federal assistance from HUD or USDA are exempt from the Undesirable Site Features requirements in §10.101(A)(3). However, all Applicants are subject to the Undesirable Area Features requirements at §10.101(a)(4).

Chapter 10, Subchapter C – Uniform Multifamily Rules

§10.201 – Procedural Requirements for Application Submission

Q: **[ADDED 2/6/13]** There have been a couple different versions of the application posted on the website. If an applicant already started to complete an earlier version, will that version be acceptable?

A: Yes, as long as it is not a DRAFT version. Staff found some relatively minor formatting errors in the application and corrected them so that those applicants who had not started to fill out the application would not have to work through those technical difficulties. Also, the part of the Rent Schedule form that is related to the Cost per Square Foot calculation may lead to some confusion. The calculation has not changed, so applicants using the previous version do not necessarily need to make any changes. However, applicants are encouraged to read the updated FAQ (below) related to this scoring item to ensure the form is filled out correctly.

§10.204(5) – Experience Requirement

Q: Are Experience Certificates still good for two years?

A: Yes. For 2013, Experience Certificates from 2011 and 2012 are still valid. 2011 Certificates must be in the name of an individual and for at least 150 units.

Q: Can a general contractor be the source of the Experience Certificate for a deal?

A: A General Contractor or Principal of a General Contractor cannot be used to meet the experience requirements for an Application. However, if the General Contractor or a Principal of the General Contractor is also a Principal of the Development Owner, General Partner of the Development Owner, or Developer then they may be used to meet the experience requirements for an Application.

§10.204(7)(E)(i) – Operating and Development Costs Documentation

Q: Can the Site Work Cost form be signed by the Architect?

A: No. The rules explicitly require a Third-Party Professional Engineer to sign the form.

§10.204(10) – Zoning

Q: Can Applicants use the "No Zoning" letter found on the City of Houston's website as evidence of zoning?

A: Yes.

§10.207 – Waivers of Rules for Applications

Q: When do I need to ask for a waiver?

A: At or before pre-application (if a pre-application is filed) or with the Application (if no pre-application was filed) by submitting a Waiver, Pre-Clearance, Determinations & Disclosures Packet (WPDD).

Q: If an Applicant submits a request for pre-clearance, and the Department determines that the request for pre-clearance results in the requirement for a waiver, will the Applicant need to resubmit the documentation as a waiver request?

A: No. The Department would follow up with the Applicant via regular email and/or phone to obtain any missing forms that may be required for the waiver process. The documentation submitted with the pre-clearance request that is related to the issue at hand will be considered in the subsequent waiver request.

§11.3 – Housing De-Concentration Factors

Q: What if a portion of a Development Site is located in one county and a portion is located in a different county (for example – Travis and Williamson Counties)?

A: This is an example of a situation where a staff determination may be beneficial. Regarding housing de-concentration factors (§11.3), the rule will be applied individually to each municipality or county in which the site lies. Without a staff determination to the contrary, a site that does not entirely meet a particular rule is often deemed to violate the rule. Therefore, Applicants are advised to be very cautious with regard to sites that straddle multiple jurisdictions, census tracts, counties, city or place boundaries, or other kinds of geographically defined boundaries that may be used in the Department's rules.

§11.5-Competitive HTC Set-Asides and §11.6 Competitive HTC Allocation Process

Q: If an Application is in the Non-Profit Set-Aside and the At-Risk Set-Aside, does this Application count under both set-asides to meet the minimum allocation requirements of the QAP?

A: Yes. An Application may participate in both the Nonprofit Set-Aside and the At-Risk Set-Aside. Moreover, if that Application receives an allocation it would be counted toward meeting the minimum allocation requirements of both set-asides.

§11.8-Pre-Application Requirements (Competitive HTC Only)

Q: **[ADDED 1/24/13]** If newly elected public officials took office on January 8, 2013 (the date that the pre-applications were due to the Department), should the applicant have notified the outgoing or the incoming elected official? If I notified the outgoing official, can I simply re-notify any new official before application submission?

A: If, at the time pre-application notifications were sent, the notifications went to the elected (or appointed) officials in office at that point in time, full applications may be eligible for pre-application participation points, provided the Applicant ensures that the proper procedures for re-notification are followed. If the elected official notified at pre-application remains in the same elected position then no re-notification is necessary. However, if the outgoing elected official was notified at pre-application and after notifications were sent a new elected official took office, then the newly elected official must be notified at full application, in accordance with §10.203 of the Uniform Multifamily Rules.

§11.9-Competitive HTC Selection Criteria

§11.9(b)(2) – Sponsor Characteristics

Q: Under sponsor characteristics, how does an Applicant indicate the cash flow percentage that would go to the HUB or nonprofit?

A: The Applicant must identify the percentage of cash flow in the Application and the Applicant must certify that the information provided in the Application is true and correct. Additionally, the Applicant should be prepared to provide additional documentation at the time of cost certification. The percentage can change provided it continues to meet the minimum requirements for the elected level of points.

§11.9(c)(4) – Opportunity Index

Q: If a Development Site is located in an Urban Area that has a school district with district-wide enrollment and two elementary schools, will the Application qualify for points under the Opportunity Index?

A: Assuming that the poverty and median income factors are met, an Applicant could qualify if both of the elementary schools have 2011 TEA ratings of "Recognized" or "Exemplary." In the case of district-wide enrollment, staff will look at the lowest rating of all elementary schools in the district.

§11.9(d)(1) – Quantifiable Community Participation (QCP)

Q: Are resident councils still considered eligible Neighborhood Organizations?

A: Yes. As long as they were formed before the pre-application delivery date and meet the other requirements of the QAP, resident councils may be eligible Neighborhood Organizations.

Q: Do the eligible letters under Quantifiable Community Participation need to be postmarked by March 1, or are they due to the Department by 5pm on March 1?

A: They are **due** to the Department by 5pm on March 1, 2013. A postmark by this time and date will not suffice.

Q: If a Neighborhood Organization opposed a "general population" Development during the 2012 Competitive Housing Tax Credit cycle and supports a Qualified Elderly Development during the 2013 cycle by submitting an eligible letter of support, is the Qualified Elderly Development eligible for 16 points?

A: There is no requirement that the previously opposed Development serve the same Target Population as the proposed 2013 Application seeking 16 points under the Quantifiable Community Participation point item. Assuming there is no other relevant information, such as other letters of opposition, the Qualified Elderly Development would be eligible for 16 points.

§11.9(d)(3) – Commitment of Development Funding by a Unit of General Local Government (UGLG)

Q: If the Development Site is located within the city limits of a city what local political subdivisions would be eligible UGLGs for the purpose of scoring points?

A: The Applicant for such a site could approach the following UGLGs for funds:

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

NOTE: funding from a government instrumentality of the county would not qualify.

Q: If the Development Site is located within the Extraterritorial Jurisdiction (ETJ) what local political subdivisions would be eligible UGLGs for the purpose of scoring points?

A: A Development Site located in an ETJ is treated the same as any site not located in the boundaries of a city. The Applicant for such a site could approach the following UGLGs for funds:

- The county government for the county in which the Development Site is located;
- A government instrumentality of the county in which the Development Site is located provided at least 60% of the board of the instrumentality are also county commissioners for that county; or
- A government instrumentality of the county in which the Development Site is located provided at least 100% of the board of the instrumentality is appointed by county elected officials.

Q: Can CDBG-DR funding count for UGLG points (§11.9(d)(3)) and for CDBG-DR Community Revitalization Plan points (§11.9(d)(6)(B)(ii))? Does the source have to be divided into two separate sources?

A: It is not necessary to divide the funding into two separate grants/loans. One grant/loan of CDBG-DR funds could be used to meet the applicable elements under both of these scoring items. Applicants should note that the deadlines for when a commitment of funds must be in place differ under these two scoring items.

Q: In order to be eligible for the additional one (1) point under §11.9(d)(3)(B), must the commitment be for the entire amount?

A: The commitment must be for an amount that meets the applicable qualifying point level (§11.9(d)(3)(A)(i) – (v)) and the commitment must have been made prior to 5:00 PM on March 1, 2013. For example, if an Applicant needed $150,000 to qualify for 12 points under §11.9(d)(3)(A)(i) and also had a commitment in the form of a resolution approved February 2, 2013 for at least $150,000, then the Applicant could qualify for the additional point under §11.9(d)(3)(A)(vi) for a total of 13 points.

Q: When is the resolution under §11.9(d)(3)(B) due? By April 1, the Resolutions Delivery Date?

A: No. That April 1 date only refers to resolutions related to Housing De-Concentration Factors in §11.3. In order to be eligible for the additional point, the resolution must be submitted with the Application by 5:00pm on March 1.

§11.9(c)(5) – Educational Excellence

Q: Since we are using 2011 TEA ratings, should we also be using 2011 attendance zones? Or should we use 2012 attendance zones?

A: Use the most current attendance zone. The question is, "where would these kids go to school if they lived in that development right now?" There is language built in to the QAP regarding changing attendance zones due to schools being moved and/or new schools being built. Applicants should review this language carefully and contact staff directly for clarifying questions.

§11.9(d)(5) – Declared Disaster Area

Q: [**ADDED 1/23/13]** Is there a list of counties that qualify for points for disaster areas or a list of disaster declarations that qualify for points?

A: Pursuant to Board action taken at the January 17, 2013 meeting, applications for developments located in Dallas, Tarrant, and Kaufman counties will qualify for 8 points for this scoring item, based on a declaration related to tornadoes in those three counties in April 2012. Developments located in all other counties will qualify for 7 points, based on statewide disaster declarations related to wildfires and drought. This information is based on a review of all disaster declarations issued up until January 23, 2013 and could change if additional declarations are made by the Governor between this date and March 1, 2013.

Q: [**ADDED 1/23/13]** If an Applicant selected the wrong number of points for this scoring item at pre-application, will this count against the calculation used in order to determine eligibility for pre-application participation points under §11.9(e)(3)(E) ?

A: No. The same Board action referenced above allowed staff to automatically correct the number of points awarded under §11.9(d)(5) based upon the county in which each development is located. Upon full application review, staff will use the corrected pre-application score to compare to the full application self-score in order to determine eligibility for pre-application participation points.

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

Q: §11.9(d)(6)(A)(ii) uses the term "projected economic value." What does this mean?

A: Projected economic value was added to this provision in order to allow revitalization plans that provide development and revitalization incentives in non-cash forms. For example, a revitalization plan could provide for an application process to have reduced building permit fees where new development in an area targeted for revitalization will contribute to the city's revitalization effort. While the city is not providing cash to the developer, the reduction in fees has an economic value that is meaningful and can be counted toward the $4M or $6M thresholds necessary for points under this scoring item.

The Department received one inquiry questioning whether the total value of development or construction activity in the target area could be counted toward meeting the dollar thresholds. The answer is no. The "projected economic value" must be value that has been or is projected to be conveyed to the revitalization area from the city or local government.

To document what the total projected economic value of an incentive is, the Department will look for a fiscal impact or other budgetary impact statement or analysis.

Q: Is a resolution from the city supporting the extension of a roadway to the Development Site adequate to document the necessary "approval" under the Community Revitalization Plan scoring item for Rural Areas (§11.9(d)(6)(C))?

A: No. The approval referenced here is that final approval necessary prior to start construction on the infrastructure itself, such that no further action by the approving local or state government is required. The purpose of this item is not to provide points to Applicants creating the need for an infrastructure improvement by way of their own development. Also, as stated in the rule, such infrastructure improvements should not be contingent upon award of the tax credit application.

Q: If a community revitalization plan is part of a larger city-wide comprehensive plan, can the budget and/or projected economic value of the comprehensive plan be "pro-rated" in order to determine a budget/value of the community revitalization portion of the plan?

A: Staff will rely on statements from the local elected officials as to the budget or value of the community revitalization portion of the comprehensive plan.

§11.9(e)(2) – Cost per Square Foot

Q: [**ADDED 2/6/13]** In what category under §11.9(e)(2)(A) will a new construction, single story development targeting the elderly be considered? If proposing this type of development, should applicants check "yes" in cell G106 on the Rent Schedule form in the application?

A: This type of development would be considered New Construction under §11.9(e)(2)(A). Proposed developments are first categorized as Rehabilitation or not. If not Rehabilitation, then developments are categorized as elevator served, single family, or supportive housing. In order to be considered elevator served, the development must either be:

- a Qualified Elderly Development that has at least one building with an elevator
- a Development with at least one building with elevator serving at least four floors

One version of the application posted online indicated that any development targeting the elderly would be placed in the second category (with the elevator served, single family, and supportive housing developments), but the application manual and the QAP are clear. If using

the application dated December 28, applicants proposing Qualified Elderly Developments that do NOT have elevators should NOT check "yes" in cell G106. The application has since been updated to eliminate any confusion this may have caused.

Q: Are general requirements, general contractor profit, and contingency included in the calculation for cost per square foot?

A: No. Only vertical construction costs, those related to actual construction after site work, such as concrete, roofing, HVAC, MEP, furnishings, asbestos, lead-based paint abatement, etc. are included in the calculation.

Q: What is and is not included in Building Costs?

A: See above as well as the definition in §10.3 of the Uniform Multifamily Rules.

Q: Site Amenity Costs – what does this include?

A: This includes common amenities that are associated with the site and not with the buildings. For example, this would include a playground but not a community building.

§11.9(e)(3) – Pre-Application Participation

Q: Can the acreage of a site increase from pre-application to full application?

A: Yes. Staff may allow for some increase in the size of the site but cautions Applicants against abusing this provision. If the additional land would trigger any additional notifications (particularly to neighborhood organizations whose boundaries might be close by) or affect undesirable site/area features, that could pose a problem. While the rules allow for some flexibility when it comes to sites being adjusted, staff will not award pre-application participation points to applications that involve material changes to the site, the proposed development, or any other substantive aspect of the process.

NOTE: Also see question related to Declared Disaster Areas above with respect to the effect on pre-application participation points.